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2008/167937/23 CC

**GAMAGARA SCRAP  
AND  
METAL DEALERS**

DEALERS IN SCRAP METAL

29 October 2018

**Exact Scope of Work**

1. Vendor number: 30139816.
2. Removal of scrap steel and conveyor and off cut cable.



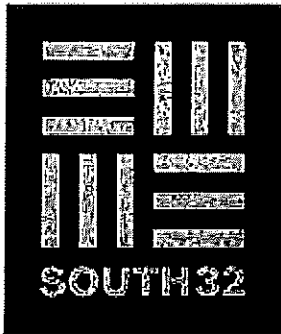
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**J.J. DU BRUYN**  
**GAMAGARA SCRAP & METAL DEALERS**



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**A. BEUKES**  
**SUPPLY LEAD HMM SOUTH32**



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**CONTRACT NUMBER: 8100034745**

**Amendment – 18 July 2016  
INTERWASTE (PTY) LTD**

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**South32 Legal**

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	2.0	June 2015

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**TABLE OF CONTENTS**

1. INTRODUCTION.....2  
2. AMENDMENT TO THE CONTRACT.....2  
3. REMAINING PROVISIONS .....2  
4. MODIFICATION SCHEDULE 1 .....3

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2016

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*[Handwritten initials]*

1. INTRODUCTION

- 1.1. The Parties entered into Contract number 8100034745 ("the Contract").
- 1.2. In terms of the Contract no modification, variation or waiver of any provision of the Contract, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing by both Parties.
- 1.3. The Parties accordingly wish to enter into this Modification to the Contract on the terms and conditions set out below.
- 1.4. Unless otherwise defined in this Modification, words and expressions used in this Modification shall bear the meaning ascribed to such words and expressions in the Contract.

2. AMENDMENT TO THE CONTRACT

This amendment shall become effective on the date set out in Modification Schedule 1. In the event that no date is set out in Modification Schedule 1, the amendment shall become effective on the date of signature of this Modification by the last of the Parties to sign.

3. REMAINING PROVISIONS

Save as set out in clause 2 above, the provisions of the Contract remain unaltered and of full force and effect.

SIGNED AT JHB ON DAY OF 08 Aug 2016

WITNESSES

1. [Signature]

2. [Signature]

[Signature]  
On behalf of HOTAZEL  
MANGANESE MINES(PTY) LTD

SIGNED AT Germiston ON DAY OF 2 August 2016

WITNESSES

1. [Signature]

2. \_\_\_\_\_

[Signature]  
CONTRACTOR

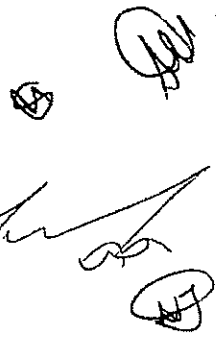
DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015

**4. MODIFICATION SCHEDULE 1**

The contract amendment serves to confirm the following:

1. Terms and Condition as per signed original agreement are applicable.
2. The contract will be extended until 30 April 2018
3. The prices will only be adjusted in August 2017.

July 16



DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2016

#### 4. MODIFICATION SCHEDULE 1

The contract amendment serves to confirm the following:

1. Terms and Condition as per signed original agreement are applicable.
2. The pricing schedule will be as follows as at 1 February 2016

Staff	Current	Proposed	Current Cost	New Proposed Cost
Site Manager	1	1	R 30 800.00	R 20 000.00
<b>Mamatwan Employees</b>				
Site Supervisor	1	1	R 9 185.00	R 9 185.00
Driver (Code 14)	1	0	R 11 275.00	R 0.00
Truck Assistant	1	1	R 6 050.00	R 6 050.00
Sorters	2	2	R 12 100.00	R 12 100.00
<b>Mamantwan Total</b>	<b>6</b>	<b>5</b>	<b>R 69 410.00</b>	<b>R 47 335.00</b>
Current site manager is to be replaced by a Site manager who will manage the contract remotely from Postmasburg with the assistance of the site supervisors.				
<b>Wessels Employees</b>				
Site Supervisor	1	1	R 9 185.00	R 9 185.00
Driver	1	1	R 11 275.00	R 11 275.00
Truck Assistant	2	2	R 12 100.00	R 12 100.00
Sorters	5	1	R 30 250.00	R 6 050.00
<b>Total Wessels</b>	<b>9</b>	<b>5</b>	<b>R 62 810.00</b>	<b>R 38 610.00</b>
<b>Labour Total</b>	<b>15</b>	<b>10</b>	<b>R 132 220.00</b>	<b>R 85 945.00</b>

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015

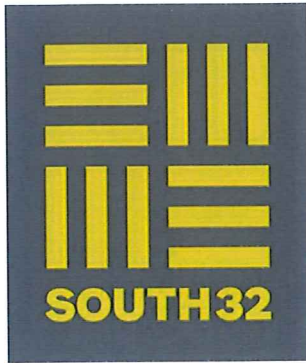
<b>Equipment</b>	<b>Current</b>	<b>Proposed</b>	<b>Current Cost</b>	<b>New Proposed Cost</b>
REL	1	1	R 98 600.00	R 98 600.00
Skip Truck + Trailer	1	0	R 98 600.00	R 0.00
LDV	1	1	R 9 500.00	R 9 500.00
Staff Transport	1	1	R 12 500.00	R 12 500.00
Trailer	0	1		R 7 500.00
Container Rentals 6m3	75	75	R 16 500.00	R 16 500.00
Roro 18m3 bin Rentals	3	3	R 2 250.00	R 2 250.00
Container Rental 240lt Wheelie Bins	100	100	R 3 500.00	R 3 500.00
<b>Total</b>			<b>R 241 450.00</b>	<b>R 150 350.00</b>

**What I suggest on the equipment is the following:**

1. We Remove the Skip Truck and Trailer service adhoc from Postmasburg and escort the truck on the mine when the skip bins containing Scrap and Conveyor Belts needs servicing.
2. The pallets and the Air Filters can be collected with the LDV and the trailer

<b>Management fee</b>	<b>Current</b>	<b>Proposed</b>	<b>Current Cost</b>	<b>New Proposed Cost</b>
Site Infrastructure	1	1	R 19 500.00	R 19 500.00
Head Office - Management, support and reporting	1	1	R 18 500.00	R 18 500.00
<b>Total</b>			<b>R 38 000.00</b>	<b>R 38 000.00</b>
<b>Grand Total</b>			<b>R 411 670.00</b>	<b>R 274 295.00</b>

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015



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**CONTRACT NUMBER: 8100034745**

**INTERWASTE**

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**South32 Legal**

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	2.0	June 2015

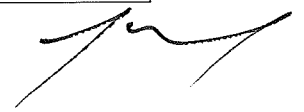
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**TABLE OF CONTENTS**

1. INTRODUCTION.....2  
2. AMENDMENT TO THE CONTRACT.....2  
3. REMAINING PROVISIONS .....2  
4. MODIFICATION SCHEDULE 1 .....3

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015



**1. INTRODUCTION**

- 1.1. The Parties entered into Contract number ("the Contract") **8100034745**
- 1.2. In terms of the Contract no modification, variation or waiver of any provision of the Contract, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing by both Parties.
- 1.3. The Parties accordingly wish to enter into this Modification to the Contract on the terms and conditions set out below.
- 1.4. Unless otherwise defined in this Modification, words and expressions used in this Modification shall bear the meaning ascribed to such words and expressions in the Contract.

**2. AMENDMENT TO THE CONTRACT**

This amendment shall become effective on the date set out in Modification Schedule 1. In the event that no date is set out in Modification Schedule 1, the amendment shall become effective on the date of signature of this Modification by the last of the Parties to sign.

**3. REMAINING PROVISIONS**

Save as set out in clause 2 above, the provisions of the Contract remain unaltered and of full force and effect.

SIGNED AT \_\_\_\_\_ ON DAY OF \_\_\_\_\_ 2018

WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_


\_\_\_\_\_  
On behalf of HOTAZEL  
MANGANESE MINES (PTY) LTD

SIGNED AT \_\_\_\_\_ ON DAY OF \_\_\_\_\_ 2018

WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

  
\_\_\_\_\_  
CONTRACTOR

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015

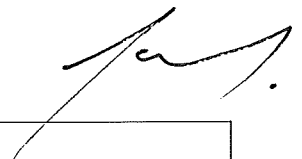
#### 4. MODIFICATION SCHEDULE 1

The contract amendment serves to confirm the following:

1. Terms and Condition as per signed original agreement are applicable.
2. The contract will be extended until 31 October 2018
3. The prices will be amended as follow:

Description	Old Rates	New Rates
Site Manager	33 418.00	36 258.53
MMT Site Supervisor	9 965.73	10 812.81
MMT Truck Assistant	6 564.25	7 122.21
WSSL Site Supervisor	9 965.73	10 812.81
WSSL Truck Assistant	6 564.25	7 122.21
WSSL Sorters	6 564.25	7 122.21
REL	105 009.00	109 419.38
LDV	10 117.50	10 542.44
Staff transport	13 312.50	13 871.63
Trailer	7 987.50	8 322.98
Roro 18m3 bin rental	798.75	832.30
Container Rental 240lt Wheelie Bin	37.28	38.84
Skip Truck + Trailer	105 009.00	109 419.38
Container Rentals 6m3	234.30	244.14
Site Infrastructure	10 383.75	10 819.87
Head Office - Management, support & report	19 702.50	21 377.21
WSSL Driver	12 233.38	13 273.21

DOCUMENT NAME	VERSION	ISSUE DATE
Contract Modification	1	June 2015





**SAMANCOR MANGANESE (PROPRIETARY) LIMITED**

Registration Number 2003/020080/07

(hereinafter referred to as the **Company**)

**AND**

**OLEGRA OIL (PROPRIETARY) LIMITED**

Registration Number 2008/009151/07

((hereinafter referred to as the **Contractor**)

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**SHORT FORM SERVICES CONTRACT**

**[Used industrial oil sales at HMM]**

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ICE

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**CONTENTS**

**CONTRACT SPECIFICS ..... 1**

**JURISDICTION SPECIFIC CONDITIONS ..... 4**

1. **SOUTH AFRICA JURISDICTION SPECIFIC CONDITIONS..... 4**

2. **BUSINESS PARTNER JURISDICTION SPECIFIC CONDITIONS ..... 5**

**STANDARD TERMS AND CONDITIONS ..... 9**

1. **DEFINITIONS ..... 9**

2. **INTERPRETATION ..... 15**

3. **SUPPLY OF GOODS AND SERVICES ..... 16**

4. **TIME FOR PERFORMANCE AND EXTENSIONS OF TIME ..... 17**

5. **PURCHASE ORDERS ..... 18**

6. **CANCELLATION OF A PURCHASE ORDER ..... 20**

7. **CONDITIONS AS TO QUALITY OF THE GOODS ..... 21**

8. **CONDITIONS AS TO QUALITY OF THE SERVICES..... 21**

9. **INSPECTION AND INFORMATION ..... 22**

10. **CONTRACTOR'S OBLIGATIONS..... 22**

11. **REPRESENTATIVES ..... 23**

12. **CONTRACTOR'S PERSONNEL AND CONTRACTOR'S KEY PERSONNEL ..... 24**

13. **SITE AND SEPARATE CONTRACTORS ..... 25**

14. **PLANT AND EQUIPMENT..... 26**

15. **CONTRACT PRICE..... 26**

16. **INVOICING AND PAYMENT ..... 26**

17. **TITLE AND RISK ..... 28**

18. **DEFECTS ..... 28**

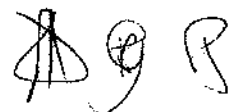
19. **VARIATION ..... 29**

20. **ENDING THIS CONTRACT ..... 31**

21. **SUSPENDING THIS CONTRACT ..... 33**

22. **INSURANCE ..... 34**

23. **LIABILITY AND INDEMNITY ..... 36**



24.	INTELLECTUAL PROPERTY.....	38
25.	CONFIDENTIAL INFORMATION AND PUBLICITY .....	39
26.	PRIVACY .....	41
27.	TAXES .....	41
28.	ASSIGNMENT AND SUBCONTRACTING.....	41
29.	DISPUTE RESOLUTION.....	42
30.	ADDRESS FOR SERVICE OF DIRECTIONS AND NOTICES .....	43
31.	INCONSISTENCY BETWEEN PARTS OF THIS CONTRACT .....	44
32.	GOVERNING LAW OF THIS CONTRACT .....	44
33.	NATURE OF THE RELATIONSHIP.....	44
34.	EXERCISING RIGHTS .....	44
35.	AMENDMENTS AND WAIVERS .....	45
36.	ENTIRE AGREEMENT.....	45
37.	ACKNOWLEDGEMENTS .....	45
38.	SEVERABILITY.....	45
39.	GIVING EFFECT TO THIS CONTRACT.....	45
40.	CONTRACTOR MORE THAN ONE ENTITY.....	46
41.	ANTI-CORRUPTION .....	46
42.	COMPANY CONTRACTING ON BEHALF OF OTHERS .....	46
43.	CONTRACT LANGUAGE .....	46
44.	ANTI-COMPETITIVE BEHAVIOUR .....	46
45.	APPLICATION OF THIS CONTRACT.....	46
	SCHEDULE 1 – SCOPE OF GOODS AND SERVICES .....	47
	SCHEDULE 2 – SITE STANDARDS AND PROCEDURES .....	48
	SCHEDULE 3 – CONTRACT VARIATION FORM.....	49
	EXECUTION OF THIS CONTRACT.....	50

**SHORT FORM SERVICES CONTRACT**

**CONTRACT SPECIFICS**

**Contract number / 1CMS number**  
(clause 16.5)

**Bank or entity**  
(for purpose of calculation of Interest Rate)

(clauses 1 & 16)

**Company**  
(clause 1) Samancor Manganese (Pty) Ltd  
6 Hollard Street  
Johannesburg  
Fax: +27 11 367 2228

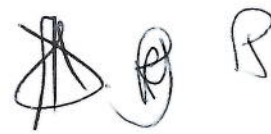
**Company Supplied Plant and Equipment**  
(clause 1) Yes

**Company's Representative**  
(clause 1) Khomotso Bvuma  
6 Hollard Street  
Johannesburg  
  
Telephone: + 27 11 376 2568  
Facsimile: +2711 688 4568  
Email: [khomotso.bvuma@bhpbilliton.com](mailto:khomotso.bvuma@bhpbilliton.com)

**Completion Date**  
(clause 1) 30 November 2014

**Contract Price**  
(clause 1) The Contract price is **R4,000,000.00**

**Contractor**  
(clause 1) Olegra (Pty) Ltd  
1 Noord street  
Lime Acres  
8410



Telephone: +27 53 385 0041

<b>Contractor's Representative</b> (clause 1)	Andries Abraham van As  E-mail: johan@olegra.co.za
<b>Currency</b> (clause 1)	South African Rand
<b>Defects Correction Period</b> (clause 1)	10 days from the date on which a Service performed.
<b>End Date</b> (clause 1)	30 November 2014
<b>Framework Agreement</b> (clause 1)	Yes
<b>Governing Law</b> (clause 1)	South African Law
<b>Joint Venture Partners</b> (clause 1)	Not Applicable
<b>Jurisdiction</b> (clause 1)	South African Jurisdiction
<b>Language</b> (clause 1)	English
<b>Services</b> (clause 1)	The Services are described in Schedule 1.
<b>Site</b> (clause 1)	Mamatwan/Wessels Mines and Metalloys plant
<b>Start Date</b> (clause 1)	16 November 2012
<b>Standards that apply to this Contract</b> (clause 8)	The standards are those as set out in the contract and those attached under Schedules 1 and 2 hereto
<b>Payment</b>	Payment timing: Within 30 days After collection Progress payments: Yes
<b>Workers' compensation and employer's indemnity insurance</b>	Required

Handwritten signature and initials, possibly 'Johan' and 'R'.



(clause 22.1(a))

**Public and product liability/general liability insurance (clause 22.1(b))**

Required  
Minimum amount: R5million

**Motor vehicle insurance**

Not required

**Professional Indemnity insurance (clause 22.1(d))**

Required  
Minimum amount: R5million

**Other insurances (clause 22.1(f))**

Not required

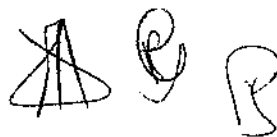
**Contractor's liability (clause 23)**

Unlimited

**Company policies**

As set out in Schedule 2.

**Date of signing this Contract**

Handwritten initials or signatures, possibly representing the contractor or insurer, located at the bottom of the page.

## JURISDICTION SPECIFIC CONDITIONS

To the extent of inconsistency between these Jurisdiction Specific Conditions and the Standard Terms and Conditions contained in this Contract, these Jurisdiction Specific Conditions prevail.

### 1. SOUTH AFRICA JURISDICTION SPECIFIC CONDITIONS

If the Governing Law is the Law of the Republic of South Africa, then the following Jurisdiction Specific Conditions apply.

#### 1.1 Definitions

The existing clause of the Standard Terms and Conditions is amended by inserting the following new definitions:

**"Payroll Tax** means any Tax (including income Tax, employees Tax and Pay-As-You-Earn ("PAYE") as provided for in terms of the South African Income Tax Act 58 of 1962, as amended), employer contribution or deduction (both statutory and otherwise), Unemployment Insurance Fund ("UIF") contribution or deductions (both statutory and otherwise), Skills Development Levy ("SDL"), withholding, benefit, pension, and workers' compensation payments and contributions imposed, assessed, levied or collected by any person on or in respect of the Contractor or the Contractor's Personnel in respect of remuneration earned from the performance of such services, together with any fine, penalty or interest.

**Value Added Tax or VAT** means the Tax payable in terms of the Value Added Tax Act 89 of 1991, as amended."

The existing definition of "Tax" in clause 1 of the Standard Terms and Conditions is deleted and replaced with the following definition:

**"Tax** means, other than Value Added Tax, any tax (including Payroll Tax as defined) imposed in terms of the South African Income Tax Act 58 of 1962, as amended, levy, impost, duty, excise, fee, withholding, assessment, deduction or charge whatsoever, imposed, assessed, levied or collected by any Authority, together with any fine, penalty or interest, including any tax, duty, levy or similar charge imposed in terms of the South African Customs and Excise Act 91 of 1964 as amended."

#### 1.2 Tax

The existing clause 27 of the Standard Terms and Conditions is amended by inserting new clauses 27.4, 27.5 and 27.6 in terms as follows:

- "27.4 The Contractor must pay any Tax or Payroll Tax imposed or levied on or in connection with the Goods or Services and the Contractor's Personnel.
- 27.5 The Company is responsible for payment of VAT to the extent that the Company or the Contractor is liable and responsible for payment of VAT in respect of this Contract or the Goods or Services.
- 27.6 In circumstances where there is a price adjustment event under this Contract that impacts the VAT legislation, the Party which issued the Tax Invoice (supplier) must promptly issue a credit note for the overpayment, or issue an additional Tax Invoice for the underpayment and both Parties must, as applicable, include the additional Tax Invoice and/or Tax credit note in the following month's VAT return, in order to claim a refund of any overpayment of VAT (input Tax for the supplier, output Tax for the VAT vendor) or pay additional VAT where there has been an

*underpayment (input Tax claim by the vendor and additional payment of output Tax by the supplier)."*

### 1.3 Access to Information

A new clause 26.3 is inserted into the Standard Terms and Conditions in terms as follows:

*"The Contractor agrees that for the purposes of Section 65 of the Promotion of Access to Information Act 2 of 2000, the Contractor may not disclose any information relating to this Contract to any third party without the Company's prior written consent."*

### 1.4 Codes of Good Practice

A new clause 46 is inserted into the Standard Terms and Conditions in terms as follows:

#### **"46 CODES OF GOOD PRACTICE**

46.1 *The Company subscribes to the Department of Trade and Industry Broad-Based Black Economic Empowerment Codes of Good Practice and/or any code in the Charter issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 and has undertaken to measure itself against this standard. It is the Company's strategic intent to continuously improve its B-BBEE contribution level in terms of the Codes, and the Contractor undertakes to assist the Company in this regard.*

46.2 *The Contractor must:*

- (a) *notify the Company of its B-BBEE rating at the Start Date and for the duration of this Contract, retain and/or improve its B-BBEE rating;*
- (b) *provide a valid B-BBEE accreditation certificate from a verification agency accredited by the South African National Accreditation System;*
- (c) *provide the Company with annual updates on its status in respect of B-BBEE compliance requirements and confirmation that it has maintained or improved its B-BBEE rating; and*
- (d) *in the event of an adverse change to its B-BBEE rating, advise the Company within a period of 20 Business Days from the date on which the event giving rise to the adverse change in the B-BBEE rating occurs and what steps have and/or will be taken by the Contractor to restore its original B-BBEE rating."*

### 1.5 Occupational Injuries and Diseases Act

A new clause 47 is inserted into the Standard Terms and Conditions in terms as follows:

#### **"47 OCCUPATIONAL INJURIES AND DISEASES ACT**

*The Contractor must, during the continuance of this Contract, comply with the provisions of the Compensation for Occupational Injuries and Diseases Act 1994 and the Unemployment Insurance Act 1966."*

## 2. BUSINESS PARTNER JURISDICTION SPECIFIC CONDITIONS

The following Jurisdiction Specific Conditions apply.

## 2.1 Material Obligation

The existing definition of "Material Obligation" in clause 1 of the Standard Terms and Conditions is amended to include the following provision following subclause (a)0:

"(xvi) clauses 41A, 41B and 41C (Business Partner Jurisdiction Specific Conditions)."

## 2.2 Contractor not to offer anything of value to Government Officials

A new clause 41A is inserted into the Standard Terms and Conditions in terms as follows:

### **"41A CONTRACTOR NOT TO OFFER ANYTHING OF VALUE**

*The Contractor represents, warrants and agrees that neither the Contractor, any of its Related Entities nor the Contractor's Personnel authorised, offered, promised or gave or will authorise, offer, promise or give anything of value to:*

- (a) any:
  - (i) individual who is employed by or acting on behalf of an Authority, government, government-controlled entity or public international organisation;
  - (ii) political party, party official or candidate;
  - (iii) individual who holds or performs the duties of an appointment, office or position created by custom or convention; or
  - (iv) individual who holds himself out to be the authorised intermediary of any person specified in paragraphs (i), (ii) or (iii) above,

*(each, a "Government Official"), in order to influence official action relating to either, or both, the Company or this Contract;*
- (b) any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("**acting improperly**") in relation to either, or both, the Company or this Contract, to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value; or
- (c) any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorised, offered, promised or given or will be offered, promised or given to:
  - (i) a Government Official in order to influence or reward official action relating to either, or both, the Company or this Contract; or
  - (ii) any person in order to influence or reward such person for acting improperly."

## 2.3 Acceptance of Gifts and other Advantages

A new clause 41B is inserted into the Standard Terms and Conditions in terms as follows:

### **"41B ACCEPTANCE OF GIFTS AND OTHER ADVANTAGES**

*The Contractor must ensure that neither the Contractor, any of its Related Entities nor their Personnel will receive or agree to accept any payment, gift or other advantage which violates any Applicable Anti-corruption Laws."*

Handwritten initials 'AB' and a signature 'B' are present in the bottom right corner of the page.

## 2.4 Ownership of the Contractor

A new clause 41C is inserted into the Standard Terms and Conditions in terms as follows:

### **"41C OWNERSHIP OF THE CONTRACTOR**

- 41C.1 *The Contractor represents and warrants that neither the Contractor, any of its Related Entities nor any other entity in which the Contractor has an ownership interest is directly or indirectly owned or controlled, in whole or in part, by any Government Official in a position to take or influence official action for or against the Company and no officer, director, employee or shareholder of the Contractor is, or currently expects to become, such a Government Official during the term of this Contract.*
- 41C.2 *The Contractor will notify the Company promptly, and in any event not less than 5 Business Days, upon becoming aware that any officer, director, employee or shareholder becomes, or expects to become, a Government Official in a position to take or influence official action for or against the Company."*

## 2.5 Contractor to Maintain Books and Records

A new clause 46 is inserted into the Standard Terms and Conditions in terms as follows:

### **"46 CONTRACTOR TO MAINTAIN BOOKS AND RECORDS**

- 46.1 *The Contractor will keep and maintain accurate and reasonably detailed books and financial records in connection with its performance under, and payments made in connection with, this Contract.*
- 46.2 *The Contractor will, upon request, permit the Company to audit and examine any books and financial records necessary for the verification of compliance with the Contractor's representations, warranties and undertakings under this Contract.*
- 46.3 *The Contractor will provide any information and assistance reasonably required by the Company to enable and facilitate the audit and examination under clause 46.2, including access to its Key Personnel."*

## 2.6 Breach of Business Partner Jurisdiction Specific Conditions

A new clause 47 is inserted into the Standard Terms and Conditions in terms as follows:

### **"47 BREACH OF BUSINESS PARTNER JURISDICTION SPECIFIC CONDITIONS**

*If:*

- (a) *a breach of clause 41A, clause 41B or clause 41C occurs or the Company knows or believes, acting reasonably, that such a breach is imminent; or*
- (b) *notice is given pursuant to clause 41C.2 above,*

*then the Company may (without prejudice to any other rights that it might have):*

- (c) *suspend this Contract under clause 21 until such time as it has received confirmation to its satisfaction that no breach has occurred or is likely to occur; or*
- (d) *exercise its right under clause 20 to end this Contract, in which event, the Company will not be obliged to:*

Handwritten signatures and initials, including a large signature and the letter 'P'.

- (i) *make any payment (whether under clause 20 or otherwise) to the Contractor in respect of goods, services or other benefits that have been procured through, or are related to, the breach of clause 41A, clause 41B or clause 41C; and*
- (ii) *reimburse or indemnify the Contractor for any liability or cost connected with the breach of clause 41A, clause 41B or clause 41C."*

**2.7 Ending this Contract**

Clause 20.7 of the Standard Terms and Conditions is amended by inserting the following words to the end of the clause:

*"or any amount which represents a payment for, or reimbursement of, the acts that contravened clause 41A, clause 41B or clause 41C."*

Three handwritten signatures in black ink, appearing to be initials or names, located to the right of the text.

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

In this Contract (unless the context otherwise requires):

**Anti-competitive Behaviour** means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of coordination or cooperation with any competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition Laws.

**Applicable Anti-corruption Laws** means any anti-corruption Laws that are applicable to either the Company, the Contractor or this Contract, including the US Foreign Corrupt Practices Act and the UK Bribery Act.

**Authority** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday at the Site, nor 27, 28, 29, 30 or 31 December.

**Company** means the entity named as such in the Contract Specifics.

**Company Supplied Plant and Equipment** means the Plant and Equipment specified as such in the Contract Specifics.

**Company's Background IP** means any Intellectual Property of the Company (or licensed to the Company by a third party, including a Subcontractor) which the Company makes available, contributes, brings to or uses in connection with this Contract.

**Company's Dispute Resolution Representative** is the person named as such in the Contract Specifics or any replacement person notified to the Contractor.

**Company's Representative** is the person named as such in the Contract Specifics or any replacement person notified to the Contractor.

**Company's Technical Material** means any Technical Material provided by the Company to the Contractor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

**Completion** means delivery of any Goods to the Delivery Point and the completed performance of all Services.

**Completion Date** means the date for Completion specified in the Contract Specifics or, if no date is specified, the End Date.

**Confidential information** means the terms of this Contract and the Company's information made available to the Contractor at any time together with any information that concerns the business, operations, finances, plans or customers of the Company (or the Company's Related Entities) disclosed to or acquired by the Contractor (including any information that is derived from such information), but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Contract;
- (b) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or

- (c) has been independently developed by the Contractor or acquired from a source which was not subject to a duty of confidentiality to the Company.

**Consequential Loss** means any special, exemplary or punitive damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads.

**Consumption Tax** means value-added Tax, goods and services Tax or any Tax analogous thereto, but excludes any statutory late payment interest or penalties.

**Contract** means this agreement and includes the Contract Specifics, Jurisdiction Specific Conditions, these Standard Terms and Conditions, all schedules, attachments and annexures and any Purchase Order.

**Contract Price** means the price or rates specified as such in the Contract Specifics.

**Contract Specifics** means the schedule of contract information with that name forming part of this Contract.

**Contract Variation Form** means a notice substantially in the form set out in Schedule 3 under which the Company has directed a Variation in accordance with clause 19.

**Contractor** is the Party or Parties named as such in the Contract Specifics.

**Contractor Reference Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of Goods or performance of Services.

**Contractor's Background IP** means any Intellectual Property of the Contractor (or licensed to the Contractor by a third party) which:

- (a) is in existence before the date of this Contract or comes into existence after the date of this Contract other than in connection with this Contract; and
- (b) the Contractor makes available, contributes, brings to or uses in connection with this Contract,

and **Subcontractor's Background IP** has a corresponding meaning.

**Contractor's Dispute Resolution Representative** is the person named as such in the Contract Specifics or any replacement person notified to the Company.

**Contractor's Personnel** means any and all personnel engaged by the Contractor, including its directors, officers, employees, agents, invitees, Key Personnel, Subcontractors and any director, officer, employee, agent or invitee of any Subcontractor, in performing the Contractor's obligations under this Contract.

**Contractor's Representative** is the person named as such in the Contract Specifics or any replacement person notified to the Company.

**Contractor's Technical Material** means all Technical Material which is:

- (a) prepared, or required to be prepared, by or on behalf of the Contractor under this Contract;
- (b) delivered, or required to be delivered, by or on behalf of the Contractor to the Company under this Contract; or





(c) incorporated into Technical Material described in paragraph (a) or (b).

**Currency** means the currency specified as such in the Contract Specifics.

**Defect** means any aspect of the Goods or the Services not in accordance with this Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.

**Defects Correction Period** means the period stated as such in the Contract Specifics, as adjusted in accordance with this Contract.

**Delivery Point** means the Site or such other place as is specified in the Contract Specifics as the place for the delivery of the Goods.

**Direction** includes any agreement, approval, authorisation, certificate, decision, determination, direction, instruction, notice, consent, failure to consent, rejection, request or requirement but does not include meeting notes or minutes.

**Dispute** means any dispute, controversy or claim arising out of or in relation to this Contract.

**Dispute Notice** means a written notice served under clause 29.2.

**Dispute Resolution Representative** means the Company's Dispute Resolution Representative or the Contractor's Dispute Resolution Representative and a reference to **Dispute Resolution Representatives** is a reference to both of them.

**End Date** has the meaning set out in the Contract Specifics.

**Framework Agreement** means a Contract designated as such in the Contract Specifics.

**Goods** means the goods specified as such in the Contract Specifics (including any part of the goods specified).

**Governing Law** means the governing law specified in the Contract Specifics.

**Insolvency Event** means any of the following events in relation to a Party:

- (a) the Party informs the other Party in writing or informs creditors generally or passes a resolution to the effect that it is insolvent or is likely to become insolvent or the Party is deemed to be insolvent under any legislation;
- (b) the Party commits an act of bankruptcy, has a bankruptcy petition presented against it or is made or declared bankrupt;
- (c) the Party enters, or attempts or proposes to enter a scheme of arrangement or any other form of court sanctioned corporate reconstruction (other than if the Party can demonstrate to the satisfaction of the other Party that it is to carry out a reconstruction or amalgamation while solvent);
- (d) the Party enters or attempts to enter or proposes to enter a compromise or other arrangement with creditors or any class of its creditors;
- (e) the Party has a liquidator, provisional liquidator, administrator, insolvency officer or any other similar official appointed to it or has a receiver, receiver and manager or other controller or similar official appointed over its property or part of its property;
- (f) the Party takes any steps to obtain protection or is granted protection from creditors under any Law;

- (g) any charge, mortgage or encumbrance is enforced or exercised against any asset of the Party;
- (h) the Party is taken to have failed to comply with a statutory demand or has an application made to the court for its winding up and such application is not withdrawn or dismissed within 10 Business Days;
- (i) the Party has a winding up order made against it, is deregistered, dissolved or has any steps taken against it to enforce a judgment of a court or an arbitral award; or
- (j) the Party has something having substantially similar effect to any of the events specified above occur in any jurisdiction under or in respect of any existing or future Law.

**Intellectual Property** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**Interest Rate** means the monthly corporate overdraft interest rate (or where that rate is not available, a similar rate chosen by the Company) quoted by the bank or entity listed in the Contract Specifics for amounts comparable to the amount in question.

**Invoice** means an invoice or claim submitted by the Contractor in accordance with clauses 16.1(b) and 16.4.

**Joint Venture Partners** are those parties nominated as the joint venture partners in the Contract Specifics (if any).

**Jurisdiction** means the jurisdiction specified in the Contract Specifics.

**Jurisdiction Specific Conditions** means the conditions of that name which form part of this Contract.

**Key Personnel** means the people named as such in the Contract Specifics.

**KPIs** means the key performance indicators set out in this Contract (if any).

**Language** means the language specified in the Contract Specifics.

**Law** means:

- (a) legislation including regulations, by-laws, orders, awards and proclamations with which a Party is legally required to comply;
- (b) common law and equity (if applicable); and
- (c) Authority requirements, guidelines, consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a Party is legally required to comply.

**Material Obligation** includes:

- (a) in respect of the Contractor, each of its obligations set out in:
- (i) clauses 3.3 and 3.4 (Supply of Goods and Services);
  - (ii) clause 4 (Time for performance and extensions of time);
  - (iii) clause 7 (Conditions as to quality of the Goods);
  - (iv) clause 8 (Conditions as to quality of the Services);
  - (v) clause 9.3 (Access to the premises);
  - (vi) clause 10.1 (Delivery of the Goods or performance of the Services);
  - (vii) clauses 10.2 and 10.3 (Unsafe conditions or activities);
  - (viii) clause 14.3 (Company Supplied Plant and Equipment);
  - (ix) clause 18.3 (Contractor to replace, re-perform or reimburse for Defect);
  - (x) clause 22 (Insurance);
  - (xi) clause 23 (Liability and indemnity);
  - (xii) clause 24.9 (Intellectual Property);
  - (xiii) clause 25 (Confidential Information and publicity);
  - (xiv) clause 28 (Assignment and subcontracting); and
  - (xv) clause 41 (Anti-corruption); and
- (b) in respect of the Company, its obligations set out in clause 15.1 (Contract Price).

**Party** means the Company or the Contractor, and **Parties** means both of them.

**Personnel** means directors, employees, agents, contractors or subcontractors but a reference to the **Company's Personnel** excludes the Contractor and the Subcontractors.

**Plant and Equipment** means plant, equipment, tools, appliances or other property and items the Contractor requires to fulfil the Contractor's obligations under this Contract.

**Professional Contractor** means a contractor with skill and experience in, and the expertise and resources necessary to complete, the provision of goods of a similar nature to the Goods and the performance of services, the same as or similar to, the Services.

**Project IP** means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Contract (including all Intellectual Property developed by the Contractor or a Subcontractor in performing this Contract and any Intellectual Property in the Contractor's Technical Material).

**Proposal** means a proposal submitted by the Contractor in accordance with clause 5.2.

**Purchase Order** means a document entitled "Purchase Order" or "Service Order", which references the number of this Contract (if any) and is issued by the Company to the Contractor to order any Goods or Services under this Contract.

**Related Entity** means, in relation to a Party or other entity, a body corporate which is:

- (a) a controlling company;
- (b) a controlled company; or
- (c) a controlled company of a controlling company,

of that Party or other entity and in respect of the Company includes:

- (d) BHP Billiton Plc;
- (e) BHP Billiton Limited;
- (f) any body corporate controlled by BHP Billiton Plc or BHP Billiton Limited;
- (g) any body corporate controlled by BHP Billiton Plc and BHP Billiton Limited taking into account the aggregate percentage interests of their respective direct or indirect shareholdings in that body corporate; or
- (h) any body corporate controlling or controlled by the bodies corporate referred to in paragraphs (d) to (g).

For the purposes of this definition, one body corporate controls another when at the relevant time:

- (a) it owns either directly or indirectly or is otherwise in a position to cast, or control the casting of, not less than 50% of the shares entitled to vote at general meetings of that other body corporate; or
- (b) it controls the composition of a majority of the board of that other body corporate,

and "controlled" and "controlling" will be construed accordingly.

**Representative** means the Company's Representative or the Contractor's Representative.

**Separate Contractors** means all contractors, consultants and other persons engaged to carry out any works or services of whatever nature at or in the vicinity of the Site (other than the Contractor and its Subcontractors).

**Services** means the services specified as such in the Contract Specifics (including any part of the specified services and any ancillary services and services required to be performed to deliver the Goods).

**Site** means the place described as such in the Contract Specifics or a Purchase Order as the place for the performance of the Services or the use or storage of the Goods by the Company.

**Site Standards and Procedures** means the standards, specifications, policies, procedures and matters listed in Schedule 2 and any updates or any other guidelines, rules or requirements notified to the Contractor in writing from time to time.

**Standard Terms and Conditions** means these Standard Terms and Conditions of Contract.

**Start Date** means the date specified as such in the Contract Specifics.

Handwritten initials and signatures, including a large stylized 'A' and other illegible marks.

**Subcontractor** means any person engaged by the Contractor to perform any part of the work under this Contract for the Contractor and includes consultants, subcontractors, suppliers and other contractors.

**Tax:**

- (a) includes all present or future taxes, fees, levies, duties, imposts, assessment royalties, tariffs, fees and charges imposed or assessed in respect of this Contract by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but
- (b) does not include Consumption Tax.

**Technical Material** means, to the extent it relates to the Goods or Services, the models, software (including source code and object code versions), information, design concepts, audio, video, drawings (including "as built" drawings), programmes, schedules, manuals, diagrams, charts, specifications, records, concepts, plans, formulae, designs (including structural, mechanical, electrical and instrumentation designs) in any medium, methods and processes, including all copies of and extracts from them and data stored by any means.

**Unsafe** includes unacceptable actual or potential hazards and incidents relating to safety, health or the environment.

**Variable Information** means proposals in a Proposal submitted by the Contractor in accordance with the clause or in a Purchase Order issued by the Company in accordance with clause 5.4 as to:

- (a) Delivery Point;
- (b) Key Personnel;
- (c) Site;
- (d) Goods;
- (e) Services;
- (f) the aggregate Contract Price payable; and
- (g) any other information requested by the Company.

**Variation** means any change to the Goods or Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Goods or Services.

**Wilful Misconduct** means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences.

**Withholding Amount** means the amount that the Company is required by Law to withhold or deduct with respect to or which relates to any Tax .

**Written Claim** means a written claim the Contractor submits to the Company in accordance with clause 20.6.

## 2. INTERPRETATION

- (a) In this Contract (unless the context otherwise requires):

- (i) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
  - (ii) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
  - (iii) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
  - (iv) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
  - (v) words in the singular include the plural and vice-versa;
  - (vi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
  - (vii) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
  - (viii) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
  - (ix) headings are for convenience only and do not affect interpretation of this Contract;
  - (x) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it;
  - (xi) no provision of this Contract constitutes a stipulation for the benefit of a third party who is not a Party to this Contract, save to the extent expressly otherwise stated in this Contract; and
  - (xii) a reference to a clause of this Contract is a clause in the Standard Terms and Conditions, unless otherwise stated.
- (b) Unless otherwise specified in this Contract, any monetary amount referred to in this Contract is a reference to the Currency.

### 3. SUPPLY OF GOODS AND SERVICES

- 3.1 This Contract starts on the Start Date and ends on the End Date.
- 3.2 Any Goods or Services (or part of them) supplied pursuant to a Purchase Order prior to the date of this Contract or the Start Date will be deemed to have been supplied pursuant to this Contract.
- 3.3 The Contractor must supply the Goods and provide the Services to the Company in accordance with, and as specified in, this Contract.
- 3.4 The Contractor must:
- (a) obtain, at the Contractor's expense, any necessary licences, permits, qualifications, registrations and other statutory requirements necessary for the supply of the Goods or the performance of the Services under this Contract; and

Handwritten initials and signatures, including a large 'A' and a 'P'.

- (b) comply with any applicable Laws in supplying the Goods and/or providing the Services to the Company.
- 3.5 This Contract does not prevent the Company from entering into arrangements or agreements with third parties for the purchase of equivalent or similar goods or services to any Goods or Services.
- 3.6 The Company may specify in this Contract an estimate of the quantity or volume of Goods and Services the Contractor may be required to deliver or perform. If the Company does specify an estimate of the quantity or volume of Goods and Services the Contractor may be required to deliver or perform, this does not amount to an undertaking, representation or guarantee that the Company will in fact purchase any minimum or the estimated volume or quantity of Goods and Services.
- 3.7 If the Contractor delivers more Goods than the quantity specified in this Contract, the Company may return any excess quantities to the Contractor at the Contractor's sole risk and expense.
- 3.8 If the Contractor performs more Services than the quantity specified in this Contract, the Company is not liable to pay for the additional quantity.
- 4. TIME FOR PERFORMANCE AND EXTENSIONS OF TIME**
- 4.1 The Contractor must deliver the Goods to the Delivery Point and perform the Services by the Completion Date.
- 4.2 The Parties acknowledge and agree that time is of the essence for the delivery of the Goods and the performance of the Services.
- 4.3 If the Contractor considers that the Services will not be completed and/or the Goods will not be delivered to the Delivery Point by the Completion Date, subject to the Contractor's compliance with clauses 4.4 and 4.5 and the Company's approval pursuant to clause 4.6, the Contractor is entitled to an extension to the Completion Date if the reason for the delay is one or more of the following:
- (a) industrial disputes of general application which are not particular to the Contractor or Subcontractor and which are not limited to the Site;
  - (b) breach by the Company of its obligations under this Contract;
  - (c) war, revolution, embargo, riot or civil disturbance, cyclone, hurricane, flood, fire, earthquake or weather conditions of a severity that could not normally be expected to occur within a 10 year period at the Site and causing inundation or flood which prevents access to, or work at, the Site;
  - (d) compliance with the Contractor's obligations under clauses 10.2, 10.3 and 10.4 in circumstances where the Contractor or the Contractor's Personnel did not cause the Unsafe condition or perform the Unsafe act;
  - (e) suspension of this Contract under clause 21, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; and
  - (f) a Variation being granted under clause 19.
- 4.4 The Contractor may only claim an extension of time under clause 4.3 if:
- (a) the Contractor could not reasonably have been expected to foresee the delay at the date of signing this Contract as set out in the Contract Specifics; and

- (b) the delay did not result from any negligent act or omission by the Contractor or the Contractor's Personnel, or any failure by the Contractor or the Contractor's Personnel to comply with any obligations under this Contract.
- 4.5 The Contractor's claim for an extension to the Completion Date must be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen, and must include full and detailed particulars (to the extent the Contractor is reasonably able to provide) of the extension to the Completion Date to which the Contractor considers it is entitled. Compliance with this clause 4.5 is a condition precedent to the Contractor's entitlement to any extension to the Completion Date.
- 4.6 The Company must, upon receipt of such particulars, reasonably consider all the circumstances known to the Company's Representative at that time. If the Company's Representative within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the particulars referred to in clause 4.5 reasonably considers that:
- (a) the claim for an extension of time relates to an event listed in clause 4.3; and
- (b) the requirements of clauses 4.4 and 4.5 have been satisfied,
- the Company must grant an extension of time determined by the Company to the Completion Date. Such extension will be a period of time that is reasonable having regard to the nature of the event specified in clause 4.3 (as determined by the Company, acting reasonably). If the Company grants an extension of time to the Completion Date, the Company or the Company's Representative must give the Contractor notice in writing of the extension of time.
- 4.7 If the Contractor applies for an extension of the Completion Date, but the Company, within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the particulars referred to in clause 4.5, reasonably considers that the Contractor is not entitled to an extension of time, the Company's Representative must inform the Contractor and the Completion Date remains unchanged.
- 4.8 In the event that the Contractor fails to comply with clause 4.5, then the Contractor will have no entitlement to an extension of time and the Contractor must comply with the requirements to carry out the Services and/or deliver the Goods to the Delivery Point by the Completion Date.
- 4.9 If an extension of time is granted in accordance with this clause 4, provided that those costs are not also reimbursable pursuant to clause 19 or clause 21, the Company will reimburse the Contractor for any costs reasonably incurred directly thereby and for on-Site overheads attributable to the delay, but without regard to off-Site overheads, or profit or for any other cost, loss, expense or damage.
- 5. PURCHASE ORDERS**
- 5.1 The Company or the Company's Representative may request Goods and Services from the Contractor under this Contract by giving the Contractor a Purchase Order before the End Date.
- 5.2 If this Contract is a Framework Agreement, the Company or the Company's Representative may request Goods and Services from time to time by giving the Contractor a Purchase Order and prior to issuing the Purchase Order, the Company or the Company's Representative may invite the Contractor to submit a Proposal in relation to a proposed Purchase Order. If the Company invites the Contractor to submit a Proposal:
- (a) as soon as practicable, and in any event within the time set out in the invitation to submit a Proposal, the Contractor must provide the Company with a Proposal setting out the Variable Information;



- (b) if the Company or the Company's Representative does not agree with the Variable Information in the Proposal, the Parties must attempt to agree on the Variable Information;
  - (c) the Company or the Company's Representative may not issue a Purchase Order unless the Parties reach agreement on the Variable Information contained in the Purchase Order; and
  - (d) once the Variable Information has been agreed, the Company or the Company's Representative may issue a Purchase Order containing the agreed Variable Information and the Contractor must sign and return the Purchase Order to the Company and perform its obligations under the Purchase Order as if the provisions of the Purchase Order form part of this Contract. For the avoidance of doubt, any failure by the Contractor to sign and return a Purchase Order issued to it in accordance with this clause 5.2(d) will not relieve the Contractor of its obligation to perform its obligations under the Purchase Order and this Contract.
- 5.3 If this Contract is a Framework Agreement, the Company is not obliged to invite the Contractor to submit a Proposal, nor is it obliged to issue a Purchase Order following the Contractor submitting a Proposal for any of the Goods and Services.
- 5.4 If the Company or the Company's Representative has issued a Purchase Order without first requesting a Proposal, within 5 Business Days (or any other period agreed in writing by the Parties) after receipt of a Purchase Order the Contractor must give notice to the Company if it:
- (a) disagrees with any of the Variable Information contained in the Purchase Order, and include in the notice details of the aspects in which it disagrees with the Variable Information; or
  - (b) recommends any change to any of the Variable Information contained in the Purchase Order and include in the notice the Contractor's reasons for the recommendation.
- 5.5 If the Contractor gives notice under clause 5.4, the Parties must attempt to agree on the Variable Information. Once the Variable Information has been agreed, the Company must re-issue a Purchase Order containing the agreed Variable Information and the Contractor must sign and return the Purchase Order to the Company and perform its obligations under the Purchase Order in accordance with this Contract.
- 5.6 If the Contractor does not give notice pursuant to clause 5.4 within 5 Business Days (or any other period agreed in writing by the Parties) after receipt of the Purchase Order, the Contractor will be deemed not to disagree with any of the Variable Information or to recommend any change to the Purchase Order and the Contractor must perform its obligations under the Purchase Order in accordance with this Contract.
- 5.7 Without limiting the Company's right to vary the Services and/or Goods in accordance with this Contract, the Company or the Company's Representative may at any time within 20 Business Days (or any other period agreed in writing by the Parties) after issuing a Purchase Order amend the Variable Information in that Purchase Order to address any issues raised by the Contractor.
- 5.8 Without limiting clause 5.4, the amounts payable by the Company must not exceed the amount set out in the relevant Purchase Order.
- 5.9 The Company and the Company's Representative may not issue, and the Contractor must not accept, any new Purchase Orders after the End Date. However, if the Company or the Company's Representative has issued a Purchase Order prior to the End Date, and the Parties have not fulfilled all of their obligations under that Purchase Order by the End Date, then:

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- (a) that Purchase Order will continue, in accordance with its terms and the terms of this Contract, until each Party has fulfilled its obligations under that Purchase Order;
- (b) the End Date is extended, but solely for the purpose of allowing completion of that Purchase Order; and
- (c) for the avoidance of doubt, the extension of the End Date does not permit the Company or the Company's Representative to issue, or the Contractor to accept, any new Purchase Orders under this Contract after the original End Date.

5.10 Subject to clause 5.9, no Purchase Order will have the effect of varying the contractual terms.

5.11 For the avoidance of doubt, no item of Variable Information specified in a Proposal under clause 5 will depart from or be different to the rates or descriptions set out in the Schedules or the Contract Specifics.

## 6. CANCELLATION OF A PURCHASE ORDER

6.1 The Company or the Company's Representative may cancel any Purchase Order by providing written notice to the other Party for any reason, but, subject to clause 6.2:

- (a) the Company must pay for any part of the Goods delivered to the Delivery Point or Services performed prior to the cancellation;
- (b) if the Contractor has shipped any Goods before the cancellation but the Goods have not been delivered to the Delivery Point at the time of cancellation, the Company must either:
  - (i) subject to clause 18, accept those Goods when delivered, and pay the Contract Price for them; or
  - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 6.1(b)(ii) or clause 6.1(c) applies:
  - (i) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Contractor for the Company, the Company must reimburse the Contractor in respect of any expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
  - (ii) the Contractor is not entitled to the Contract Price of those Goods or Services, or to any compensation for that cancellation other than as specified in clause 6.1(d)(i).

6.2 If the Company or the Company's Representative cancels a Purchase Order in conjunction with ending this Contract pursuant to clause 20:

- (a) clause 6.1 does not apply; and

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- (b) the rights and obligations of the Parties in respect of such cancellation will be limited to those set out in clause 20, and the Contractor expressly waives any legal action against the Company that could arise because of the cancellation of a Purchase Order, whether in contract, warranty, tort (including negligence), strict liability, products liability, professional liability, indemnity, contribution or any other cause of action.

## 7. CONDITIONS AS TO QUALITY OF THE GOODS

The Contractor must ensure that:

- (a) the Goods supplied by the Contractor match the description (including performance criteria) of the Goods in this Contract;
- (b) if the Contractor gave the Company a sample of the Goods before the Company entered into this Contract or issued a Purchase Order for any of those Goods, the Goods correspond with the sample;
- (c) the Goods comply with the standards set out in the Contract Specifics and any other standards specified in this Contract;
- (d) the Goods are fit for the purposes set out in, or which a Professional Contractor would reasonably infer from, this Contract;
- (e) the Goods are new and of merchantable quality; and
- (f) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company so requests).

## 8. CONDITIONS AS TO QUALITY OF THE SERVICES

The Contractor must ensure that:

- (a) the Services match the description of the Services in this Contract;
- (b) if the Contractor provided the Company with a demonstration of the Services before the Company entered into this Contract or issued a Purchase Order for any of those Services, the Services correspond in nature and quality with the Services demonstrated;
- (c) if the Contractor showed the Company a result achieved by the Services before the Company entered into this Contract or issued a Purchase Order for any of those Services, the Services correspond in nature and quality with the services that achieved that result;
- (d) the Services are performed by appropriately qualified and trained Contractor's Personnel, and comply with the standards set out in the Contract Specifics;
- (e) the Services are performed with the professional skill, care and diligence expected of a Professional Contractor;
- (f) the Services are fit for the purposes set out in, or which a Professional Contractor would infer from, this Contract;
- (g) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Contract; and

- (h) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with the standards set out in the Contract Specifics and any other standards specified in this Contract and are fit for their usual purpose and any purpose described in this Contract.

## 9. INSPECTION AND INFORMATION

9.1 The Contractor must:

- (a) inform the Company if any aspects of any of the Goods or the performance of any Services will not be in accordance with this Contract; and
- (b) provide to the Company any details of or information about such aspects of those Goods or performance of those Services as the Company may reasonably request but including the Contractor's Technical Material, progress reports and a projected supply program.

9.2 At all reasonable times, the Company may itself or through an agent:

- (a) review, inspect, examine and witness tests of, any Goods or Services, or the performance of any Goods or Services;
- (b) inspect any equipment used in measuring any Goods or Services at any time up to 12 months after the measurement of the Goods or Services occurs; and
- (c) carry out site inspections,

at the Delivery Point, the Site, the Company's premises, the Contractor's premises and/or at the premises of any Subcontractors.

9.3 The Contractor must ensure that the Company has access to the Contractor's and any Subcontractor's premises for the purposes of clause 9.2.

9.4 The Contractor must give the Company 10 Business Days notice (or such other period as the Company's Representative and Contractor's Representative agree) prior to the date the Goods will be ready for delivery, final inspection or for performance tests prior to delivery, so that the Company's Representative or his nominee can be present.

9.5 The Contractor is not relieved of its responsibilities under this Contract because the Company or the Company's Representative has reviewed, inspected, examined or witnessed any testing prior to delivery of the Goods or the Completion of the Services.

9.6 The Contractor must, on request by the Company or the Company's Representative, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, in respect of any thing used, produced or created in connection with the performance of the Contractor's obligations under this Contract.

## 10. CONTRACTOR'S OBLIGATIONS

10.1 The Contractor must, in delivering the Goods to the Delivery Point or performing the Services:

- (a) not interfere with the Company's activities or the activities of any other person at the Delivery Point or the Site;
- (b) be aware of and comply with and ensure that the Contractor's Personnel are aware of and comply with:

- (i) any applicable Laws;
  - (ii) all Site Standards and Procedures, to the extent that these documents are applicable to the Contractor's performance of this Contract; and
  - (iii) all lawful Directions and orders given by the Company's Representative or any person authorised by Law or the Site Standards and Procedures to give Directions to the Contractor;
- (c) ensure that the Contractor's Personnel entering the Company's premises perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
- (i) safe working practices;
  - (ii) safety and care of property; and
  - (iii) continuity of work;
- (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or internal health and safety investigation in connection with this Contract or the Goods or Services; and
- (e) leave the Company's premises secure, clean, orderly and fit for immediate use having regard to the condition of the Company's premises immediately prior to the delivery of Goods or performance of Services.
- 10.2 The Contractor must not cause, permit or tolerate an Unsafe condition or activity over which the Contractor has control on the Company's premises.
- 10.3 The Contractor must, at its cost, comply with a Direction from the Company to modify, or stop any activity that the Company considers is an Unsafe act.
- 10.4 If the Company observes or becomes aware of an Unsafe condition, the Company or the Company's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of the Unsafe condition, and the Contractor must comply with that Direction and modify the Contractor's method of work in order to avoid the Unsafe condition arising.
- 10.5 Subject to the Contractor satisfying clauses 4.4 and 4.5 and if the Contractor or Contractor's Personnel can demonstrate to the Company that it did not cause the Unsafe condition or perform the Unsafe act:
- (a) the Contractor is entitled to an extension of time to the Completion Date for any delay suffered by the Contractor as a result of complying with its obligations under clauses 10.2, 10.3 and 10.4; and
  - (b) if it is necessary for the Contractor to undertake additional work as a result of complying with its obligations under clauses 10.2, 10.3 and 10.4, the additional work will be treated as if it were a Variation.

## 11. REPRESENTATIVES

- 11.1 Each Party will appoint a Representative who will be authorised to act on behalf of the Party that appointed the Representative in relation to this Contract. Without limiting the Company's rights, the Company's Representative may exercise all of the Company's rights and functions under this Contract (including giving Directions), other than the right to terminate this Contract, or resolve a Dispute which is the subject of the Dispute resolution procedure in clause 29.

11.2 The Contractor's Representative, for the duration of this Contract, will have responsibility and accountability for the quality, timeliness, cost and provision of the Goods and Services in accordance with this Contract.

11.3 The Company's Representative, for the duration of this Contract will monitor and manage the ongoing performance of the Contractor in meeting the Company's requirements in respect of Completion Dates, quality of performance and service support.

## 12. CONTRACTOR'S PERSONNEL AND CONTRACTOR'S KEY PERSONNEL

12.1 If the Company or the Company's Representative is dissatisfied with the performance of the Services by any of the Contractor's Personnel:

- (a) the Company may hold discussions with the Contractor to address the Company's dissatisfaction and give the Contractor a reasonable opportunity to remedy the issue;
- (b) if, on a reasonable basis, the Company remains dissatisfied, the Company or the Company's Representative may give written notice to the Contractor requiring removal of the relevant Contractor's Personnel from provision of the Services; and
- (c) upon receipt of a notice pursuant to clause 12.1(b), the Contractor must immediately comply with the notice and provide, at the Contractor's expense, a suitable replacement.

12.2 The Contractor must:

- (a) whenever the Company or the Company's Representative directs the Contractor to do so, provide the Company with any information reasonably required regarding Key Personnel; and
- (b) use reasonable endeavours to:
  - (i) supply and retain the Key Personnel and not remove the Key Personnel from their position without the Company's or the Company's Representative's prior approval in writing;
  - (ii) if it is necessary to replace Key Personnel (whether as a result of death, illness, injury, resignation, or an act or omission of the Contractor), promptly replace the relevant Key Personnel, at the Contractor's expense, with a person of comparable skill, experience, expertise and qualification, approved by the Company or the Company's Representative;
  - (iii) ensure that each of the Key Personnel is available at the times set out in this Contract or as otherwise required to ensure Completion; and
  - (iv) ensure that the Contractor's Personnel and Key Personnel:
    - (A) properly perform their roles and responsibilities; and
    - (B) have appropriate skill, experience, professional qualifications and membership of appropriate professional organisations and have completed the appropriate training and competency assessments in order to work on the Site.

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**13. SITE AND SEPARATE CONTRACTORS**

- 13.1 Subject to clauses 13.2 and 13.3, the Company must, on or before the Start Date (or any other date specified in writing by the Company), give the Contractor non-exclusive access to the Site sufficient to enable the Contractor to carry out its obligations under this Contract.
- 13.2 The Company is not obliged to give the Contractor access to the Site unless the Contractor satisfies the Company or the Company's Representative that:
- (a) all insurances which the Contractor must effect under this Contract have been effected;
  - (b) all the Contractor's Personnel that will enter upon the Site satisfy the requirements of clause 12.2(b)(iv)(B); and
  - (c) all the Contractor's Personnel that will enter upon the Site have met and complied with the Company's Site access requirements.
- 13.3 The Contractor must ensure that:
- (a) the Company, the Company's Representative and any other person authorised by the Company (including Separate Contractors); and
  - (b) any person authorised by Law to have access to the Site for the purpose of exercising a function or discharging a responsibility which that person has under Law,
- have safe access to any part of the Site at all times during the performance of the Services on the Site.
- 13.4 The Contractor must provide the Company's Representative and any person authorised by the Company, at all reasonable times, with access to all workshops and places at the Site and the workshops and places set out in this Contract or where work is being prepared or from where materials, manufactured articles or machinery are being obtained, for use in the performance of the Services, for the purpose of allowing the Company to monitor, inspect and audit the work being conducted at such workshop or place.
- 13.5 The Contractor warrants that it has:
- (a) carefully examined the Site and its surroundings and fully informed itself as to the means of access to the Site and facilities and made reasonable enquiries and examined all information relevant to the risks, contingencies and other circumstances having an effect on its obligations under this Contract; and
  - (b) thoroughly investigated and satisfied itself as to the local and other conditions affecting performance of its obligations under this Contract, including geological, labour, accommodation, fuel, power and transport conditions.
- 13.6 The Contractor must:
- (a) co-operate with all Separate Contractors and co-ordinate its work with the Separate Contractors' work to eliminate or, if it is not possible to eliminate, minimise any delays to Completion of the Services; and
  - (b) not obstruct, delay or interfere with or damage the Separate Contractors' work or property.
- 13.7 The Contractor must not assert any right to a lien over the Site (or any part of the Site) or any Goods or take any steps whatsoever to lodge or register a lien over the Site (or any part of the Site) or any Goods under, or in pursuance of, any Law relating to liens.

**14. PLANT AND EQUIPMENT**

- 14.1 Unless this Contract provides otherwise, the Contractor must supply all labour and Plant and Equipment, at the Contractor's expense.
- 14.2 Any Company Supplied Plant and Equipment remains the Company's property and the Contractor may only use that Company Supplied Plant and Equipment for the purposes of fulfilling the Contractor's obligations under this Contract.
- 14.3 The Contractor must keep any Company Supplied Plant and Equipment in good order and condition, except for fair wear and tear.
- 14.4 The Contractor must compensate the Company for any loss or damage to the Company's premises or property (including the Company Supplied Plant and Equipment) caused by Wilful Misconduct or negligent act or omissions of the Contractor or the Contractor's Personnel.

**15. CONTRACT PRICE**

- 15.1 The Company must pay the Contractor the Contract Price at the times and subject to the deductions contemplated by this Contract.
- 15.2 Unless this Contract provides otherwise, the Contract Price is inclusive of:
- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Contract;
  - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Services;
  - (c) the Contractor's compliance with its obligations under this Contract; and
  - (d) all Taxes.

**16. INVOICING AND PAYMENT**

- 16.1 On Completion or, where the Contract Specifics state that the Company must make progress payments, as soon as reasonably practicable following the end of each calendar month (or other period specified in the Contract Specifics), the Contractor must provide to the Company:
- (a) a Contractor Reference Document; or
  - (b) if the Company directs, an Invoice which meets all the requirements of a valid invoice for Consumption Tax purposes in a relevant jurisdiction,
- which must include the information set out in clause 16.5.
- 16.2 The Contractor must provide the documents referred to in clause 16.1 using an electronic invoicing system if directed to by the Company.
- 16.3 The provision of a Contractor Reference Document or Invoice that complies with the requirements of clause 16.5 is a precondition to the Contractor's right to payment for the Goods and/or Services which are the subject of Contractor Reference Document or Invoice.
- 16.4 Where clause 16.1(a) applies and subject to any right of the Company to retain, withhold, reduce or set-off any amount due to the Contractor, upon approval in writing of a Contractor Reference Document by the Company the Company will notify the Contractor that it is



authorised to submit an Invoice which must meet all requirements of a valid invoice for Consumption Tax purposes in a relevant jurisdiction, in respect of the Goods and/or Services that are the subject of the approved Contractor Reference Document.

- 16.5 A Contractor Reference Document and any invoice must include the following details:
- (a) a reference to a Purchase Order and this Contract including the line item numbers on the Purchase Order and the Contract number (if any) set out in the Contract Specifics;
  - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the Contractor Reference Document or Invoice relates and the relevant quantity;
  - (c) an individual reference number for the Company to quote with remittance of payment;
  - (d) the Contract Price relating to the relevant Goods and/or Services, broken down to reflect the same Contract Price components on the Purchase Order;
  - (e) the amount of any applicable Consumption Tax;
  - (f) Company operation and Site;
  - (g) Company contact name; and
  - (h) in the case of an Invoice submitted in accordance with clause 16.1(b), a reference to the Contractor Reference Document and the written approval given by the Company to issue the Invoice.
- 16.6 Should any Contractor Reference Document or Invoice not contain the information required by clause 16.5, the Company may at its option complete the missing details or return it to the Contractor, in which latter case the Contractor must submit a replacement compliant Contractor Reference Document or compliant Invoice.
- 16.7 If the Company requests, the Contractor must provide the Company with all relevant records to calculate and verify the amount set out in any Contractor Reference Document or any Invoice.
- 16.8 The Company must pay all Invoices that comply with clause 16.5 within 20 Business Days (or such other period as the Company's Representative and Contractor's Representative agree) of their generation or receipt (as the case may be), except where the Company:
- (a) is required by Law to pay within a shorter time frame, in which case the Company must pay within that time frame;
  - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
  - (c) disputes the Invoice, in which case:
    - (i) to the extent permitted by Law, the Company may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
    - (ii) if the resolution of the Dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that Dispute.

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- 16.9 The Contractor may charge interest at the Interest Rate on the undisputed portion of any Invoice which remains due and unpaid for at least 60 days after the Company receives the Invoice. Interest will accrue daily on and from the 60th day following receipt of the Invoice by the Company.
- 16.10 The Company may reduce any payment due to the Contractor under this Contract by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.
- 16.11 Unless otherwise agreed between the Parties, any money payable under this Contract is to be paid by electronic funds transfer to the Contractor's nominated bank account or by such other means as the Parties agree.
- 16.12 A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Goods delivered or the Services performed, or any part of the Goods delivered or the Services performed, were to the satisfaction of the Company but will only be taken to be payment on account.
- 17. TITLE AND RISK**
- 17.1 Subject to clause 17.3, the Company will:
- (a) have title to the Goods when the Company pays for those Goods; and
  - (b) bear risk in the Goods when the Company takes delivery of those Goods at the Delivery Point.
- 17.2 The Contractor warrants that:
- (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and that it sells the Goods to the Company on that basis; and
  - (b) the Company will be entitled to clear title to and complete and quiet possession of the Goods upon payment for them.
- 17.3 If the Company or the Company's Representative rejects the Goods because the Goods do not conform to the requirements of this Contract, then title and risk do not pass to the Company.
- 18. DEFECTS**
- 18.1 If, during the Defects Correction Period, the Company finds any Defect in the Goods or Services, then the Company or the Company's Representative may give the Contractor notice in writing of the Defect and require the Contractor to make good the Defect within a reasonable period stated in the notice.
- 18.2 If the Contractor does not make good the Defect within the period stated in the notice given pursuant to clause 18.1, the Company or the Company's Representative may:
- (a) reject the Goods with the Defect and return them to the Contractor;
  - (b) reject the Services with the Defect; or
  - (c) make good or engage another contractor to make good the Defect.
- 18.3 At the Company's or the Company's Representative's request, the Contractor must:

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- (a) replace any Goods with a Defect that the Company or the Company's Representative returns under clause 18.2(a) free of charge (and reimburse the Company for any costs it incurs in returning those Goods);
  - (b) re-perform any Services with a Defect that the Company or the Company's Representative rejects under clause 18.2(b) free of charge; and
  - (c) reimburse the Company for any expenses the Company incurs in making good any Defect under clause 18.2(c).
- 18.4 If the Contractor does not replace Goods or re-perform Services pursuant to clause 18.3 (a) or 18.3(b) and:
- (a) the Company has already paid the Contractor for the Goods or Services with the Defect, the Contractor must repay the Company the Contract Price for the Goods or Services rejected under clause 18.2(a) or clause 18.2(b); or
  - (b) the Company has not already paid the Contractor for the Goods or Services with the Defect, the Company is not liable to pay the Contractor for any Goods or Services rejected under clause 18.2(a) or clause 18.2(b).
- 18.5 Where the Contractor has made good any Defect under this clause 18, those Goods or Services will be subject to the same Defects Correction Period as the original Goods or Services, from the date the Contractor made good the Defect.
- 18.6 The Contractor will not be liable for any Defect caused by the negligence of the Company or the Company's Personnel.
- 18.7 The Company's rights under this clause 18 do not in any way affect:
- (a) the Contractor's obligations under this Contract; or
  - (b) any of the Company's other rights under this Contract or at Law, including the right to claim for any damage or loss it may suffer because of the Contractor's failure to fulfil any of its obligations under this Contract.
- 18.8 If the Company or the Company's Representative decides to accept some Goods or Services with a Defect, this decision does not bind the Company to accept any other Goods or Services with a Defect and does not affect any of the Company's other rights under this Contract or at Law, including the right to claim for any damage or loss it may suffer because of the Contractor's failure to fulfil any of its obligations under this Contract.
- 18.9 The rights and obligations under this clause 18 continue after the End Date.
- 19. VARIATION**
- 19.1 The Company or the Company's Representative may direct the Contractor in writing to perform a Variation by issuing a Contract Variation Form.
- 19.2 A Direction is not a Variation unless a Contract Variation Form has been signed by both Parties.
- 19.3 A Variation may include increases in or additions to, reductions in or omissions from, or variations in the character or the quality of the Goods or Services (including any material or anything described in the specification (if any)).
- 19.4 If a Variation requires the omission of work, the Company's Representative may have the omitted work carried out by others or not as it sees fit.

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- 19.5 The Company or the Company's Representative may request the Contractor to provide the Company with details of the effect the Contractor anticipates a proposed Variation will have on the Completion Date and the Contract Price.
- 19.6 If the Company or the Company's Representative requests details pursuant to clause 19.5:
- (a) the Contractor must provide those details to the Company or the Company's Representative promptly;
  - (b) following receipt of the details by the Company or the Company's Representative, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the Completion Date;
  - (c) the Company or the Company's Representative is not obliged to direct a Variation after receiving the details from the Contractor;
  - (d) the Company or the Company's Representative may direct the Contractor to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the Completion Date; and
  - (e) the Contractor must not commence performing the proposed Variation unless and until the Company or the Company's Representative directs the Contractor to perform the Variation after receiving the details from the Contractor.
- 19.7 If the Parties have agreed on the price for the Variation and the impact of the Variation on the Completion Date, the Contractor is entitled to be paid the agreed amount for performing the Variation and the Completion Date will be adjusted as agreed.
- 19.8 If the Company or the Company's Representative directs a Variation and after the Variation has been signed by both Parties in accordance with clause 19.2, the Parties are not able to reach agreement on:
- (a) the price for the Variation within 10 Business Days (or such other period as the Company's Representative and Contractor's Representative agree) after the date of issue of the Direction, the Variation must be valued by the Company's Representative as follows:
    - (i) if this Contract prescribes specific rates or prices to be applied in respect of work that is the same or similar to that contemplated by the relevant Variation, those rates or prices must be used; or
    - (ii) if clause 19.8(a)(i) does not apply, reasonable rates or prices must be used, having regard to all circumstances which the Company's Representative (acting reasonably) considers to be relevant; and
  - (b) the impact of the Variation on the Completion Date, then the Company's Representative must determine a reasonable impact and amend the Completion Date by notice in writing to the Contractor.
- 19.9 If a Variation requires the omission of Services or work, then where a lump sum (or part of it) applies to those Services or that work, there must be a proportionate deduction in the amount payable in respect of those Services or that work and the deduction must include a reasonable amount in respect of loss of profit and on-Site and off-Site overheads.
- 19.10 If the Variation relates to additional costs incurred by the Contractor for delay or disruption, the price of the Variation may include a reasonable amount for on-Site overheads but must not include off-Site overheads, profit or loss of profit.

19.11 The Contract Price must be increased or decreased by the price of the Variation that has been signed by both Parties as required by clause 19.2, calculated in accordance with clauses 19.7 to 19.10.

19.12 A Variation does not invalidate this Contract.

19.13 The Contractor may request that the Company direct a Variation and the Company or the Company's Representative may, in its absolute discretion, direct a Variation under clause 19.1 or elect not to direct a Variation.

## 20. ENDING THIS CONTRACT

20.1 If a Party breaches or repudiates this Contract, nothing in this clause 20 prejudices the right of the other Party to recover damages or exercise any other right under this Contract or under any applicable Law.

20.2 The Company may, in its absolute discretion, and without being obliged to give any reasons, end this Contract at any time by giving not less than 5 Business Days written notice to the Contractor.

20.3 A Party may immediately end this Contract by notice in writing to the other Party:

(a) if the other Party does not carry out (in whole or in part) a Material Obligation at the time and in the manner required under this Contract and fails to remedy that default within the time specified (being not less than 5 Business Days) by the non-defaulting Party by notice in writing; or

(b) if an Insolvency Event occurs in relation to the other Party.

20.4 The Company may end this Contract if:

(a) the Contractor or the Contractor's Personnel cause an Unsafe condition or performs an Unsafe act;

(b) the Company or the Company's Representative has suspended this Contract under clause 21.2; and

(c) the Contractor, within 5 Business Days of the Company suspending this Contract, does not show cause to the Company's satisfaction why the Company should not end this Contract.

20.5 When this Contract is ended pursuant to clause 20.2, 20.3 or 20.4, the Contractor must:

(a) stop work;

(b) not place any further orders nor enter into any further contracts or other binding arrangements in respect of any Goods or Services;

(c) take such action as the Company directs in writing, or as is otherwise necessary, for the transfer, protection and preservation of any Goods or Services and any property in the Contractor's possession and in which the Company has or may acquire an interest under this Contract;

(d) if the Company so directs in writing, remove from the Company's premises all of the Contractor's Personnel and Plant and Equipment;

(e) promptly return to the Company any of the Company's Technical Material, the Company Supplied Plant and Equipment and any other property or documents which the Company owns or in which the Company has an interest;

- (f) take any other action relating to any Goods or Services which the Company may reasonably require;
  - (g) do its best to minimise the cost to the Parties of ending this Contract; and
  - (h) if the Company directs in writing, assign to the Company all rights and benefits under contracts with third parties to the extent that the Contractor has entered into in order to perform its obligations under this Contract.
- 20.6 If the Company ends this Contract by giving a notice under clause 20.2 or 20.4 or either Party ends this Contract by giving a notice under clause 20.3, the Contractor may, within 20 Business Days after the End Date (or such other period as the Company's Representative and Contractor's Representative agree), send the Company a Written Claim prepared in accordance with clause 20.7 and supported by records to enable the Company to verify the amounts in the Written Claim.
- 20.7 A Written Claim must only include:
- (a) the Contract Price for any Goods or Services provided to the Company prior to the End Date and not included in any previous payment;
  - (b) the cost of materials the Contractor reasonably ordered prior to the End Date for the purpose of providing the Goods or Services and which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials are delivered to the Delivery Point and become the Company's property upon payment;
  - (c) the costs the Contractor actually and reasonably incurred prior to the End Date in the expectation of providing the Goods or Services (which, for the avoidance of doubt, does not include holding or break costs associated with Plant and Equipment (except where the Company had agreed in writing to bear the cost of such Plant and Equipment) or redundancy payments), and not included in any previous payment by the Company; and
  - (d) the relevant portion of the Contract Price allocated for demobilisation (if any),
- and must not include any additional amount for anticipated profit, unperformed work or Consequential Loss.
- 20.8 If:
- (a) the Written Claim has been submitted in the time period specified in clause 20.6;
  - (b) the Company is satisfied that the Written Claim has been prepared in accordance with clause 20.7; and
  - (c) the Company is reasonably satisfied and notifies the Contractor that all costs are supported by records to enable the Company to verify the amounts in the Written Claim,
- the Contractor may claim payment from the Company in the manner set out in clause 16 for the amount of the Written Claim. If the Contractor has complied with its obligations under clause 3, the Company must pay the amount claimed by the Contractor subject to and in accordance with clause 16.8 as full and final compensation on unperformed work, including loss of profit on unperformed work as a result of the termination.
- 20.9 To the extent permitted by Law, the remedy set out in clause 20.8 is the Contractor's sole and exclusive remedy in respect of the Company ending this Contract and, therefore, the Contractor expressly waives any legal action against the Company that could arise as a result of the ending of this Contract, whether in contract, warranty, tort (including

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negligence), strict liability, product liability, professional liability, indemnity, contribution or any other cause of action.

- 20.10 The ending of this Contract does not affect:
- (a) any rights of the Parties which may have accrued before the End Date; and
  - (b) the rights and obligations of the Parties under any clause or part of this Contract which, expressly or by implication from its nature, are intended to continue after the End Date.
- 20.11 If for any reason a purported termination by the Company under clauses 20.3 or 20.4 is ineffective, the purported termination is not a breach or repudiation of this Contract and is deemed to have been effected under clause 20.2.
- 20.12 If the Company terminates this Contract pursuant to clauses 20.2, 20.3 or 20.4, or if the Contractor repudiates this Contract and the Company otherwise terminates this Contract, then the Company:
- (a) is not obliged to make any further payments to the Contractor; and
  - (b) is entitled to recover from the Contractor any costs, losses, damages and liabilities incurred or suffered or suffered by it as a result of, or arising out of, or in any way in connection with, the termination.

## 21. SUSPENDING THIS CONTRACT

- 21.1 The Company or the Company's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- 21.2 Without limiting clause 21.1, the Company or the Company's Representative may suspend this Contract or any part of this Contract immediately if, in its opinion, an Unsafe act has occurred or is likely to occur or an Unsafe condition exists.
- 21.3 When the Contractor receives a written notice of suspension from the Company or the Company's Representative, the Contractor must suspend the performance of its obligations under this Contract from the time and date in the written notice until the Company or the Company's Representative directs the Contractor in writing to continue, at which time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- 21.4 Where the suspension of this Contract is not a result of any breach of this Contract by the Contractor or any act or omission by the Contractor or the Contractor's Personnel not authorised by this Contract, the Company must reimburse the Contractor for the Contractor's reasonable additional costs provided that those costs are verified and have been incurred as a direct consequence of the suspension of this Contract.
- 21.5 If the Company or the Company's Representative suspends this Contract or any part of it in accordance with clause 21.1 (other than where such suspension is due to breach of this Contract by the Contractor or any act or omission by the Contractor or the Contractor's Personnel not authorised by this Contract), the Completion Date and the End Date are extended by the period of that suspension.
- 21.6 The remedies set out in clauses 21.4 and 21.5 are the Contractor's sole and exclusive remedy in respect of the Company suspending this Contract and the Contractor expressly waives any or legal action against the Company that could arise because of the Company suspending this Contract, whether in contract, warranty, tort (including negligence), equity, strict liability, products liability, professional liability, indemnity, contribution or any other cause of action.

## 22. INSURANCE

- 22.1 The Contractor must (and in doing so bears the sole responsibility for determining the requirements of those Laws relating to insurance) procure and maintain the following minimum insurances, unless stated otherwise in the Contract Specifics:
- (a) workers' compensation (where required by Law, including occupational disease if required by Law) and employer's indemnity insurance (called employer's liability insurance in some jurisdictions) which complies with the relevant Laws, covering all claims and liabilities under any Law and, where claims (such as common law claims) are allowed outside of the statutory scheme, for employer's liability for such claims, for not less than the amount for each occurrence set out in the Contract Specifics, for the death of or injury to:
- (i) any person employed by the Contractor in connection with this Contract; and
  - (ii) any person who is a worker of the Contractor or any of its Subcontractors in connection with this Contract and who may be deemed under any Law to be a worker of the Company;
- (b) public and product liability insurance written on an occurrence basis with a limit of indemnity of not less than the greater of the amount set out in the Contract Specifics or the minimum amount prescribed by Law for each and every occurrence and, in the case of product liability, no less than the amount set out in the Contract Specifics in the aggregate during any one 12 month period of insurance which covers the liability of the Contractor and any of the Contractor's Personnel (including to the Company) in respect of:
- (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person,
- arising out of the performance of or in connection with this Contract (including the provision of the Goods and Services) by the Contractor. This insurance must also extend to cover liability for:
- (iii) underground operations, if applicable;
  - (iv) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
  - (v) registered vehicles used as a tool of trade in the performance of the Services; and
  - (vi) any Plant and Equipment of the Company in the care, custody or control of the Contractor, except to the extent such Plant and Equipment is otherwise insured against the risk of loss or damage under other insurances required to be effected pursuant to this Contract;
- (c) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Contract, including:
- (i) insurance that is compulsory under applicable Laws governing the use of motor vehicles and liability for personal injury or death; and

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- (ii) liability insurance for third party property damage with a sum insured of not less than the amount set out in the Contract Specifics per occurrence;
  - (d) professional indemnity insurance of not less than the amount set out in the Contract Specifics for each claim and in the aggregate for all claims arising in any one 12 month period of insurance, covering the liability of the Contractor for any professional services provided by the Contractor and the Contractor's Personnel under this Contract;
  - (e) property insurance covering the Contractor's Plant and Equipment against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of the Company for not less than its market value; and
  - (f) such other insurances as are stated in the Contract Specifics.
- 22.2 The Contractor must ensure that:
- (a) the public and product liability insurance referred to in clause 22.1(b) is endorsed to add the Company as a principal and contain a waiver of subrogation from the insurer in favour of the Company as principal;
  - (b) the motor vehicle insurance referred to in clause 22.1(c) must provide that all insurance agreements and endorsements name the Contractor and the Company for their respective rights and interests;
  - (c) all insurances required under clause 22.1 (except for statutory insurances) provide that:
    - (i) failure by an insured to observe and fulfil the terms of the policy or to comply with any duty of disclosure does not prejudice the insurance of any other insured; and
    - (ii) the insurer waives all rights, remedies or relief to which it might become entitled against named insureds.
- 22.3 The Contractor must ensure that its Subcontractors are insured as required by this clause 22, as appropriate (including as to amounts of insurance and type of insurance) given the nature of Services or work to be performed by them, as if they were the Contractor.
- 22.4 The Contractor must ensure that each policy of insurance referred to in:
- (a) clauses 22.1(a), 22.1(b), 22.1(c) and 22.1(e) is in force from the Start Date and is maintained until the end of the last Defects Correction Period;
  - (b) clause 22.1(d) is in force from the Start Date and is maintained for at least 7 years after the end of the last Defects Correction Period, or such other period as the Parties may agree in writing; and
  - (c) clause 22.1(f) is in force from the Start Date and is maintained until the end of the last Defects Correction Period, unless otherwise stated in this Contract.
- 22.5 The Contractor must ensure (and, where relevant, procure that its Subcontractors ensure) that any insurance required to be taken out under this clause 22 (other than statutory insurances under clauses 22.1(a) and 22.1(c)) is effected with reputable insurers with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency.
- 22.6 The Contractor must, on or prior to the Start Date and otherwise when requested by the Company, promptly satisfy the Company that each contract of insurance it is required to

procure under this Contract is current by providing to the Company certificates of currency and renewal certificates (in a form acceptable to the Company) or other evidence reasonably required by the Company. Despite anything to the contrary in this Contract, the Company:

- (a) has the right to refuse the Contractor (and any of the Contractor's Personnel) entry to the Company's premises; and
- (b) is not obliged to pay, and may withhold payment of any amount owed by it to the Contractor without any interest accruing under this Contract,

unless and until the Company has been so satisfied. Nothing in this clause 22.6 will fix the Company with notice of the contents of any policy and will not be raised as a defence to any claim by the Company against the Contractor.

- 22.7 If the Contractor fails to procure and maintain insurance policies in accordance with this Contract, the Company may, but is not obliged to:
- (a) procure and maintain any such insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Company; or
  - (b) refuse to make any further payments due from time to time to the Contractor (under this Contract or any other contract) until the insurance policies and receipt for the payment of premiums are made available for inspection by the Company.
- 22.8 Whenever a claim is made under any of the policies of insurance referred to in this clause 22, the Contractor is liable for any excess or deductible payable as a consequence.
- 22.9 The Contractor must:
- (a) inform the Company in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the insurances referred to in this clause 22, except claims which the Company may have against the Contractor; and
  - (b) where relevant provide all such assistance to the Company as may be required for the preparation and negotiation of insurance claims.
- 22.10 The Contractor agrees that where the Company procures or maintains insurance under this Contract, the Company may:
- (a) provide that insurance through a captive insurer or by self insuring; or
  - (b) place that insurance with an insurer of its choice (including placing the whole or a part of the insurance with BHP Billiton Marine and General Insurances Pty Ltd and/or Stein Insurance Company Limited).
- 22.11 The insurance policies under this Contract are primary, and not secondary, to the indemnities referred to in this Contract. It is the intention of the Parties that the insurer cannot require any Party to exhaust a claim under an indemnity referred to in this Contract before the insurer considers or pays the relevant claim.

## 23. LIABILITY AND INDEMNITY

- 23.1 The Contractor must indemnify, and keep indemnified, the Company from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel or any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel, except to the extent of liability

which is caused by the Wilful Misconduct or a negligent act or omission of the Company or the Company's Personnel.

23.2 To the extent permitted by Law, the Contractor must indemnify and keep indemnified each employee of the Company from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, fines, penalties and liabilities arising out of or in connection with any breach of a term of this Contract by the Contractor or the Contractor's Personnel or any Wilful Misconduct or negligent act or omission of the Contractor or the Contractor's Personnel where:

- (a) the act, omission or breach by the Contractor or the Contractor's Personnel relates to a matter of safety; and
- (b) the employee has acted in good faith in relation to the subject matter of any claim for indemnity under this clause 23.2.

The Company holds the indemnity set out in this clause 23.2 on trust for each of its employees.

23.3 In relation to Consequential Loss:

- (a) subject to clauses 23.2, 23.3(b), 23.4 and 23.5 but notwithstanding any other clause in this Contract, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- (b) clause 23.3(a) does not exclude liability of a Party for Consequential Loss or damage if, but for clause 23.3(a), that Party would have insurance cover for that Consequential Loss under a policy of insurance that Party is required to procure and maintain pursuant to this Contract.

23.4 To the extent permitted by Law, the Contractor's liability to the Company under this Contract is limited to the amount set out in the Contract Specifics, save that nothing in this clause 23 excludes or limits the Contractor's liability:

- (a) in respect of the death or personal injury of any person;
- (b) in respect of the breach of third party Intellectual Property Rights;
- (c) in respect of liquidated damages (if any);
- (d) in respect of an amount the Contractor is entitled to recover from an insurer, Subcontractor or third party;
- (e) for a deliberate breach of this Contract or any Wilful Misconduct by the Contractor;
- (f) under any provision in this Contract where a debt or other payment is due;
- (g) to rectify any Defect; or
- (h) to supply the Goods and Services by the Completion Date.

23.5 To the extent permitted by Law, the Company's liability to the Contractor under this Contract is limited to the Contract Price, save that nothing in this clause 23 excludes or limits the Company's liability:

- (a) in respect of the death or personal injury of any person;
- (b) in respect of the breach of third party Intellectual Property Rights;

- (c) in respect of liquidated damages (if any);
- (d) for a deliberate breach of this Contract or any Wilful Misconduct by the Company;  
or
- (e) under any provision in this Contract where a debt or other payment is due.

## 24. INTELLECTUAL PROPERTY

- 24.1 Subject to the terms and conditions of this clause 24, the Contractor's Background IP remains vested in the Contractor.
- 24.2 The Contractor hereby grants to the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Contractor's Background IP to the extent necessary to use the Project IP.
- 24.3 The Contractor hereby assigns to the Company all Project IP upon the creation of that Project IP or, to the extent that any Intellectual Property Rights are not created at the time of the creation of the Project IP, upon the later creation of those rights.
- 24.4 The Contractor must, if required by the Company, do all further things necessary to assign the Project IP to the Company.
- 24.5 The Company's Background IP and all Intellectual Property Rights in the Company's Technical Material remain vested in the Company.
- 24.6 The Company hereby grants to the Contractor a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP, the Company's Technical Material and the Company's Background IP to the extent required to perform the Contractor's obligations under this Contract.
- 24.7 The Contractor warrants that:
- (a) the Contractor is able to license the Contractor's Background IP and assign the Project IP as described in clauses 24.2 and 24.3;
  - (b) use by the Company, or by another person at the Direction or with the permission of the Company, of the Contractor's Background IP and Project IP in accordance with this Contract will not infringe the Intellectual Property Rights of any third party or breach any Law;
  - (c) neither the Company, nor any other person acting at the Direction or with the permission of the Company, is liable to pay any third party any licence or other fee in respect of the use of the Contractor's Background IP and Project IP; and
  - (d) the Contractor has obtained from any third party involved in the creation of, or whose Intellectual Property Rights form part of, the Project IP, all necessary written consents to ensure the Company and any person claiming an interest in the Project IP through the Company do not infringe any Intellectual Property Rights.
- 24.8 The Company warrants that:
- (a) the Company is able to license the Company's Background IP and the Company's Technical Material as described in clause 24.6;
  - (b) use by the Contractor, or by another person at the direction or with the permission of the Contractor, of the Company's Background IP and the Company's Technical

Material in accordance with this Contract will not infringe the Intellectual Property Rights of any third party or breach any Law; and

- (c) neither the Contractor, nor any other person acting at the direction or with the permission of the Contractor, is liable to pay any third party any licence or other fee in respect of the use of the Company's Background IP and the Company's Technical Material.

24.9 The Contractor must:

- (a) notify the Company as soon as the Contractor becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights arising by reason of this Contract or the Company's use of the Goods or Services; and

(b) at the Company's Direction:

(i) either:

- (A) modify the Goods or the affected part of them so as to overcome the infringement of the Intellectual Property Right concerned;
- (B) replace the affected part of the Goods, so as to overcome the infringement of the Intellectual Property Right concerned; or
- (C) remove the affected part of the Goods and compensate the Company for any cost, loss, expense or damage incurred by the Company as a result,

and any such modification, replacement or removal will not constitute a Variation, nor will it entitle the Contractor to an extension to the Completion Date;

(ii) indemnify, defend, protect and hold harmless, at the Contractor's cost, the Company from and against any claim for infringement of any Intellectual Property Rights arising by reason of the supply or use of the Goods or Services; and

(iii) provide all reasonable assistance the Company may request to protect the Intellectual Property Rights in the Project IP and the Company's Background IP.

24.10 The rights and obligations under this clause 24 continue after the End Date.

## 25. CONFIDENTIAL INFORMATION AND PUBLICITY

25.1 The Contractor must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Goods and Services, this Contract or the Company's Confidential Information without the prior written approval of the Company.

25.2 The Contractor must refer to the Company any enquiries from the media concerning the Goods and Services, this Contract or the Company's Confidential Information.

25.3 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Company, use Confidential Information other than as necessary for the purposes of fulfilling its obligations under this Contract or, subject to clause 25.4, disclose the Confidential Information (other than to Related Entities or the Contractor's Personnel who need the information to enable the Contractor to perform this Contract).

- 25.4 Subject to clause 25.6, the Contractor's obligation not to disclose Confidential Information without the Company's prior written approval does not apply to disclosures to the extent that they are:
- (a) required by Law (including disclosure to any stock exchange or by any Authority);
  - (b) made to its legal advisers, accountants or auditors; or
  - (c) required to enable the Contractor to make or defend any claim under this Contract.
- 25.5 Even if the Contractor is entitled to disclose Confidential Information without the prior written approval of the Company, the Contractor must otherwise keep the Confidential Information confidential and ensure that any person to whom the Confidential Information is disclosed keeps the Confidential Information confidential in accordance with this Contract.
- 25.6 Before making any disclosure pursuant to clauses 25.4(a) or 25.4(b), the Contractor must:
- (a) give the Company details of the reasons for the disclosure and a copy of the information the Contractor proposes to disclose;
  - (b) where reasonably possible, provide the Company with sufficient notice to enable the Company to seek a protective order or other remedy; and
  - (c) provide the Company with all assistance and co-operation which the Company considers necessary to prevent or limit that disclosure including by making such amendments (if any) as requested by the Company to the terms of the disclosure.
- 25.7 The Contractor must, within 10 Business Days (or any other period agreed in writing by the Parties) after a Direction by the Company to do so, return or destroy all Confidential Information in the Contractor's possession, custody or control, save that the Contractor may retain Confidential Information that it is required to retain by Law or which the Contractor requires to comply with its bona fide document retention policies, provided that any Confidential Information retained is kept confidential in accordance with this clause 25.
- 25.8 Notwithstanding the provisions of clause 25.7:
- (a) the Contractor may retain in its possession one copy of documents which may incorporate Confidential Information and which have been submitted to its management for decision making purposes;
  - (b) the Contractor, its Related Entities and their advisers may retain any Confidential Information which is required to be retained by Law or for the purposes of compliance with any relevant professional standards or insurance policies or where reasonably necessary to support any advice given to the Contractor or a Related Entity;
  - (c) to the extent that the Contractor's computer back-up procedures or those of its Related Entities and their advisers to whom Confidential Information has been disclosed create copies of Confidential Information, those entities may retain those copies for the period backed-up computer records are normally archived by the relevant entity; and
  - (d) any Confidential Information retained under clauses 25.8(a), 25.8(b) or 25.8(c) will remain subject to the provisions of this clause 25 until it is destroyed.
- 25.9 The rights and obligations under this clause 25 continue after the End Date.

**26. PRIVACY**

- 26.1 The Contractor agrees to be bound by applicable privacy and data protection Laws with respect to any act done or practice engaged in by the Contractor for the purposes of this Contract in the same way and to the same extent as the Company would have been bound by them in respect of that act or practice had it been directly done or engaged in by the Company.
- 26.2 Each Party must (and must procure that its Personnel) comply with any applicable privacy or data protection Laws (including in any jurisdiction where the Goods or Services may be provided) and all guidelines issued by applicable privacy offices (and any similar regulatory bodies).

**27. TAXES**

- 27.1 The Contractor must pay all Taxes to the relevant Authority. If the Contractor pays any Taxes on behalf of the Company, the Contractor must provide the Company with documentary evidence of the payment of those Taxes.
- 27.2 Without limiting clause 27.1, the Contractor will be solely liable for Tax imposed on the Contractor in respect of income derived by the Contractor in the provision of any Goods or Services.
- 27.3 Where the Company believes it is required by Law to withhold or deduct any Withholding Amount from any payment due to the Contractor, the Contractor:
- (a) authorises the Company to withhold or deduct the Withholding Amount; and
  - (b) acknowledges and agrees that when the Company pays the Withholding Amount to the relevant Authority, the Company is deemed to have paid an amount equal to the Withholding Amount to the Contractor,

and when the Company withholds or deducts that amount from any payment due to the Contractor, the Company must give the Contractor written notice of the Withholding Amount.

**28. ASSIGNMENT AND SUBCONTRACTING**

- 28.1 The Contractor must not assign, transfer, charge, subcontract or otherwise deal with its rights or obligations under this Contract without the Company's prior written consent (which consent must not be unreasonably withheld).
- 28.2 The Company and the Joint Venture Partners (to the extent there are any) may assign, transfer, novate or otherwise deal with any or all of the Company's rights or obligations under this Contract at any time to any Related Entity or to any party that is financially capable of meeting the Company's obligations under this Contract.
- 28.3 If required by the Company, the Contractor must enter into documentation in a form provided by the Company to give effect to the assignment or transfer of the Company's rights or obligations under this Contract.
- 28.4 If the Contract Specifics provide that the Company is entering into this Contract as agent for the Joint Venture Partners then, in the event of:
- (a) a sale, assignment, transfer or disposal of an interest in the relevant joint venture by the Joint Venture Partners;
  - (b) purchase of an interest in the relevant joint venture by a third party; or
  - (c) sale to a joint venture by a sole joint venture party,

the Company will give the Contractor written notice of the change and that a novation of contract is required to reflect the change in the identity of the Joint Venture Partners and/or in the Joint Venture Partners' several interests and liabilities. Upon presentation of a new contract which expresses those changes, the Contractor must promptly execute and perform and complete the work in accordance with the new contract.

- 28.5 The Contractor must ensure that any subcontract contains terms that oblige the Subcontractor to perform its obligations under the subcontract in a way that ensures that the Contractor complies with its obligations under this Contract, including terms that:
- (a) give the Company the rights and impose on the Subcontractor the obligations set out in clause 9; and
  - (b) the Subcontractor agrees to assign to the Company all Intellectual Property Rights in any of the relevant Subcontractor's Background IP and Project IP created by it for the purposes of this Contract.
- 28.6 Where the Contractor has subcontracted the whole or any part of this Contract, the Contractor continues to be liable:
- (a) for the Contractor's obligations under this Contract; and
  - (b) to the Company for the acts and omissions of any Subcontractors and any Subcontractor's Personnel as if they were the Contractor's acts or omissions.
- 28.7 The Contractor must:
- (a) ensure that any of its Subcontractors are suitably experienced and qualified and perform according to this Contract;
  - (b) provide the Company's Representative with any information about any Subcontractor reasonably requested by the Company's Representative within 5 Business Days of receipt of the Company's Representative's request (or such other period as the Company's Representative and Contractor's Representative agree); and
  - (c) remove the Subcontractor if requested by the Company or the Company's Representative in accordance with clause 28.8.
- 28.8 The Company or the Company's Representative may, on reasonable prior written notice to the Contractor, request the removal of a Subcontractor:
- (a) if it reasonably considers the Subcontractor's performance is defective or the Company or Company's Representative has reasonable grounds to believe that the Subcontractor's future performance will be defective; or
  - (b) if the Subcontractor assigns performance of its obligations to a third party without the Company's prior written approval.

## 29. DISPUTE RESOLUTION

- 29.1 Until the Parties have complied with this clause 29, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory injunctive relief from a court or to preserve for that Party its claim against the operation of any Law requiring the proceedings to be commenced within a specified period after the accrual of the cause of action the subject of the Dispute.
- 29.2 Where any Dispute arises, a Party may give a Dispute Notice to the other Party's Dispute Resolution Representative setting out the material particulars of the Dispute. Within 20 Business Days of the Dispute Notice (or any other period agreed in writing between the

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Parties), the Dispute Resolution Representatives (or their nominees) must confer to attempt to resolve the Dispute.

- 29.3 If the Parties have not resolved the Dispute within 20 Business Days after the Dispute Notice (or any other period agreed in writing between the Parties), either Party may commence court proceedings in relation to the Dispute.
- 29.4 In the event of a Dispute, subject to any statutory rights, both Parties must continue to perform their obligations under this Contract, except in the case of a disputed Invoice under clause 16.8(c), in which case, to the extent that it is permitted to do so by Law, the Company is not required to pay the amount disputed.

### 30. ADDRESS FOR SERVICE OF DIRECTIONS AND NOTICES

30.1 Any Direction or notice under this Contract must be in writing and delivered by hand or by prepaid, registered or certified mail to the address, sent to the facsimile number or sent electronically as an attachment to an email or other internet address, set out for the Company and the Contractor in the Contract Specifics.

30.2 A Direction or notice is effective:

- (a) if delivered by hand, on the date it is delivered to the addressee;
- (b) if mailed to an address in the city of dispatch, on the date which is 3 Business Days after the date of dispatch;
- (c) if mailed to an address not in the city of dispatch, on the date which is 5 Business Days after the date of dispatch;
- (d) if sent by facsimile, on the date send-back confirmation of its receipt by the addressee's facsimile is received by the sender; or
- (e) if sent electronically:
  - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
  - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent,

unless a later time is specified in the Direction or notice.

- 30.3 A Direction or notice received after 5pm (recipient's time) is taken to be received on the next Business Day in the place of receipt.
- 30.4 A Party may, from time to time, notify the other Party of any change to its details in the Contract Specifics.
- 30.5 For the purpose of this clause 30, email includes email whether sent using a network or using a common information system.
- 30.6 An email does not itself constitute a Direction or notice, but subject to clause 30.7 a Direction or notice may be sent (transmitted) as an attachment to an email.

- 30.7 A Direction or notice given pursuant to clauses 20, 28.1 to 28.4, 29 and 35, may only be given in accordance with clauses 30.2(a), 30.2(b), 30.2(c) or 30.2(d) and may not be sent electronically by email or as an attachment to an email.
- 30.8 Giving any Direction or notice referred to in clause 30.7 by email will not be effective for the purposes of this Contract, but a Party may send a copy of the communication by email.
- 30.9 This clause 30 does not prevent normal day-to-day communications between the Parties taking place by email.

### 31. INCONSISTENCY BETWEEN PARTS OF THIS CONTRACT

To the extent of any inconsistency between the several parts of this Contract, the following parts are listed in order of precedence:

- (a) Contract Specifics;
- (b) Jurisdiction Specific Conditions;
- (c) Standard Terms and Conditions;
- (d) Schedule 2;
- (e) Schedules to this Contract other than Schedule 2;
- (f) any attachments or annexures to this Contract; and
- (g) any Purchase Order.

### 32. GOVERNING LAW OF THIS CONTRACT

- 32.1 This Contract and any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes) will be governed by, construed and take effect in accordance with the Governing Law.
- 32.2 The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Contract.
- 32.3 The Parties irrevocably agree that the courts of the Jurisdiction will have non-exclusive jurisdiction to settle any Dispute that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual Disputes).

### 33. NATURE OF THE RELATIONSHIP

- 33.1 Nothing in this Contract constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.
- 33.2 The Contractor acknowledges that it has no authority to bind the Company.
- 33.3 At all times when performing its obligations under this Contract, the Contractor is an independent contractor and not an employee or agent of the Company.
- 33.4 The Contractor must not act outside the scope of the authority conferred on it under this Contract.

### 34. EXERCISING RIGHTS

Unless this Contract provides otherwise:

- (a) a Party may exercise a right, remedy or power in any way that Party considers appropriate; and
- (b) the rights, powers and remedies provided by this Contract are in addition to any rights, powers and remedies provided by Law.

### 35. AMENDMENTS AND WAIVERS

- 35.1 This Contract may only be amended, or its provisions waived, in writing by the Parties.
- 35.2 The non-exercise of, or a delay in exercising, any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a Party.
- 35.3 A power or right of a Party may only be waived in writing by that Party.

### 36. ENTIRE AGREEMENT

- 36.1 To the extent permitted by Law, this Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Contract.
- 36.2 To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Company in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Contract (even if any of the Company's Personnel signs those terms and conditions or annexes the terms and conditions to this Contract).

### 37. ACKNOWLEDGEMENTS

- 37.1 By entering into this Contract, except to the extent stated in this Contract, the Contractor does not rely on any representation, warranty, condition or other conduct which may have been made by the Company or any person purporting to act on behalf of the Company.
- 37.2 The Contractor has read this Contract and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of the Contractor's obligations under, this Contract.

### 38. SEVERABILITY

Any provision in this Contract which is invalid or unenforceable in any jurisdiction:

- (a) is to be:
  - (i) read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; and
  - (ii) severed to the extent of the invalidity or unenforceability; and
- (b) does not affect the remaining provisions of this Contract or the validity or unenforceability of that provision in any other jurisdiction.

### 39. GIVING EFFECT TO THIS CONTRACT

Each Party must take any reasonable steps (including executing any document), and must ensure that its Personnel take any reasonable steps (including executing any document), that the other Party may reasonably require to give full effect to this Contract.

Handwritten signatures and initials, including a large stylized signature and two smaller initials.

**40. CONTRACTOR MORE THAN ONE ENTITY**

Where the Contractor comprises two or more persons, each of them is, to the extent permitted by Law, jointly and severally liable for the obligations and liabilities of the Contractor created by, arising under or in connection with this Contract.

**41. ANTI-CORRUPTION**

Each Party, in performing this Contract, must comply with any Applicable Anti-corruption Law and must not give or offer to give, receive, or agree to accept, any payment, gift or other advantage which violates an Applicable Anti-corruption Law.

**42. COMPANY CONTRACTING ON BEHALF OF OTHERS**

If the Contract Specifics state that the Company enters into this Contract on behalf of any other company or entity, the Company:

- (a) holds the indemnity set out in clause 23.1 for itself and on trust for any such other company or entity; and
- (b) holds the indemnity set out in clause 23.2 on trust for each of its employees and the employees of any such other company or entity.

**43. CONTRACT LANGUAGE**

The Parties agree that this Contract will be recorded in the Language only and, to the extent that they are able to do so, waive any right to have this Contract translated into any other language. Notwithstanding the above, in the event that this Contract is recorded in any other language, this Contract in the Language will prevail.

**44. ANTI-COMPETITIVE BEHAVIOUR**

Each Party hereby warrants that, as at the date of this Contract and on each subsequent occasion it performs obligations under this Contract, it has not engaged in any Anti-competitive Behaviour in relation to the potential or actual terms and conditions of this Contract, including the Contract Price.

**45. APPLICATION OF THIS CONTRACT**

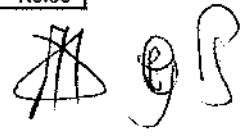
This Contract applies to the performance of the Contractor's obligations under this Contract whether performed before, on or after the Start Date.

SCHEDULE 1 – SCOPE OF GOODS AND SERVICES

SERVICES

Collection of industrial used oil at HMM

Service Number	Description	UOM	Rate (Zar) Excl. VAT
	Industrial Used oil	litre	R0.80

Handwritten signature and initials in black ink, located to the right of the table.

**SCHEDULE 2 – SITE STANDARDS AND PROCEDURES**

1. All health and safety requirements as indicated by the Contract Owner per site

Handwritten initials or signature consisting of three distinct characters: a stylized 'A' with a diagonal slash, a 'B', and a 'S'.

**SCHEDULE 3 – CONTRACT VARIATION FORM**

**(Clause 19)**

**VARIATION DIRECTION – CONTRACT VARIATION FORM**

**1. DIRECTION TO VARY THE GOODS AND SERVICES UNDER THIS CONTRACT**

[Insert description of the Variation to the Goods and Services under this Contract ]

**2. COST IMPLICATION OF THE VARIATION DIRECTION**

The Company's preliminary assessment of the valuation of the additional or omitted work (as applicable) is as follows:

[Insert preliminary assessment of valuation]

**3. TIME IMPLICATION OF THE VARIATION DIRECTION**

The Company's determination as to the time implication (if any) of the Variation Direction, as determined under clause 4.3, is as follows:

[insert determination of time implication]

**4. OTHER INFORMATION CONCERNING THE VARIATION DIRECTION**

[insert any other information required to clarify the Variation to the Goods or Services under this Contract]

Signed: \_\_\_\_\_

**FOR THE COMPANY**

Signed:  \_\_\_\_\_

**FOR THE CONTRACTOR**

**EXECUTION OF THIS CONTRACT**

The Parties agree to the terms and conditions set out in this Contract

**Signed on behalf of Samancor Manganese (Pty) Ltd (the Company):**

\_\_\_\_\_  
Name:.....  
Designation:.....  
Date:.....  
Place:.....

WITNESSES:

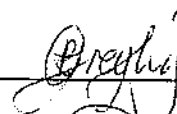

1. \_\_\_\_\_  
2. \_\_\_\_\_

**Signed on behalf of Olegra Oil (Pty) Ltd (the Contractor):**

  
\_\_\_\_\_

Name: A.A. VAN AS  
Designation: SENIOR MANAGER  
Date: 22.11.2012  
Place: LIME ACRES

WITNESSES:

1.   
2. 





**Olegra Oil (Pty) Limited**

Physical Address: 1 Noord Str, Lime Acres, 8410  
Postal Address: P.O. Box 557 Lime Acres, 8410  
Tel no: 053 385 0041 / Fax: 053 385 0041  
Cell: 081 324 3836 / 082 575 9595  
Email: [accounts@olegra.co.z](mailto:accounts@olegra.co.z)  
Website: [www.olegra.co.za](http://www.olegra.co.za)  
VAT No: 4450252798

**The Manager,**

**Hotazel Manganese Mines**

**HOTAZEL**

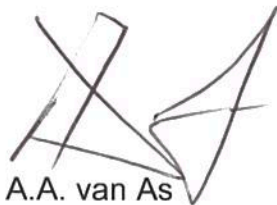
Dear Sir / Ms,

**To Whom it May Concern**

This is to certify that Olegra Oil (Pty) Ltd is collecting all used lubrication oil from Mamatwan- and Wessels Mines since August 2009. Oil is collected on a monthly basis and stored at our PPC used oil facility.

Olegra Oil (Pty) Ltd is an accredited NORA-SA collector, while PPC is an accredited NORA-SA processor.

Yours Sincerely,



A.A. van As

**DIRECTOR**

16 October 2018