

## 1. Definitions and Interpretations

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### 1.1 Definitions

Throughout this Agreement, unless the context otherwise requires;

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

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

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

**Claim** means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement and any actual or alleged entitlement or right of any kind arising out of this Agreement or a breach of it, or arising at common law, in equity or under any Law.

**Commencement Date** is set out under this Agreement or in the Purchase Order.

**Company** means Century Mining Limited or a Related Body Corporate if set out in a Purchase Order.

**Company Representative** means the representative of the Company specified in a Purchase Order.

**Consequential Loss** means indirect loss of any kind whatsoever and includes loss of sales, loss of profit, loss of revenue, loss of goodwill or business opportunities and damage to reputation, even if a party knew or should have known of the possibility of such loss or damage.

**Force Majeure** has the meaning given in clause 16.2

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

**Goods** means the goods, materials, equipment, supplies or other items supplied by the Supplier under this Agreement or any Purchase Order.

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

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

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

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those acts and terms used in this Agreement will, where the context requires, have the meaning ascribed to such terms in the GST Law.

**Initial Term** starts on the Commencement Date and runs according to Clause 3.

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

- (a) the affected Party becomes insolvent or commits an act of bankruptcy or is declared insolvent; or
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party, or
- (c) Any trustee, receiver or receiver and manager is appointed in respect any material part of the affected Party's assets.

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

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

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

**Parties** means the Company and the Supplier.

**Party Representatives** means the representatives nominated by each Party to manage the operation of the Agreement.

**Personnel** means the directors, officers, employees, Suppliers and agents of the Supplier or Company or their respective Related Bodies Corporate as the context requires.

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

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

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

**Remuneration** means **Purchase Price** and the **Services Price**.

**Services** means those services to be provided by the Supplier.

**Services Price** has the meaning ascribed to that term in clause 6.1.

**Site** means the Lawnhill site or any of the sites identified by the Company.

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

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

**Special Conditions** means the special conditions to this Agreement.

**Supplier** means the party (and its Related Bodies Corporate where required by the context) providing the Services to the Company.

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

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

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

**Term** has the meaning given in Clause 3 of this Agreement.

**Third Party Claim** means any Claim in respect of:

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

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

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

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

## **2. Supply Arrangements**

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### 2.1 Provision of Services

The Company appoints the Supplier and the Supplier accepts the appointment to provide the Services to the Company on a non-exclusive basis during the Term in accordance with the terms and conditions of this Agreement.

### 2.2 Ordering Procedure

(a) A request for Services must be made by issue from the Company to the Supplier of a Purchase Order. Upon receipt of a Purchase Order, the Supplier must perform the Services required under the Purchase Order (and as more particularly described in the Purchase Order or Description of Services) on the terms and conditions of this Agreement.

(b) A variation of a Purchase Order by the Supplier will only be binding on the Company if confirmed in writing by the Company Representative.

## **3. Term**

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### 3.1 Term

Subject to any earlier termination provided for under this Agreement, the Term commences on the Commencement Date and continues for the Initial Term and any Overholding Period.

### 3.2 Overholding Period

Subject to any earlier termination provided for under this Agreement, this Agreement will continue in force beyond the Initial Term until a party notifies the other party in writing by giving 30 days' notice that it wishes to terminate this Agreement.

## **4. Co-operative Approach**

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4.1 The fundamental objectives of the Parties under this Agreement are to sell and deliver provide the Services safely, efficiently and at the lowest possible cost to the Company.

- 4.2 In order to achieve this objective, the Parties commit to act with mutual co-operation based on trust, integrity and open book dealings.

## **5. Continuous Improvement**

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- 5.1 Supplier agrees to participate in the Company's continuous improvement initiatives for the purpose of identifying improvements in Service to better manage risk, create business options, and reduce costs.
- 5.2 The Parties' Representatives must meet in accordance with an agreed to schedule to discuss the performance of the Services, the progress of the Supplier's participation in the Continuous Improvement Program and to exchange information which will assist the Parties to identify performance efficiencies.
- 5.3 All information exchanged between the Parties under the Agreement and the Continuous Improvement Program shall be treated as confidential. The Parties must not to disclose any such information to any third party other than as contemplated in this Agreement.

## **6. Pricing and Payment**

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### 6.1 Price

Subject to this Agreement, Company shall pay Supplier for the supply of the Services in accordance with the Purchase Order (**Services Price**).

### 6.2 No minimum purchase

Nothing in this Agreement obliges the Company to request or acquire any minimum level of Service from the Supplier.

### 6.3 Invoice and Payment

#### (a) Services

The Supplier must, within 5 days from the end of a month during which Services were provided, provide the Company with an invoice to support the payment of the Services Price in a form acceptable to Company and must contain the following information:

- i. A brief description of the Services supplied, including the location of the Site on which services were provided;
- ii. The quantity of the Services supplied (including days and times that Services were provided);
- iii. Any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Services; and
- iv. Such other accurate verification documentation as may be required by Company.

- (b) Subject to clause 6.4, payment will be made by Company 30 days from the invoice date after an invoice has been validly issued under this clause 6.3.

- (c) Any amounts due by the Company to the Supplier under this Agreement may be set off against any amounts due to the Company from the Supplier.
- (d) Unless otherwise agreed, all payments to be made pursuant to this Agreement shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

#### 6.4 Dispute

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

### **7. Performance**

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- 7.1 In consideration of the payment of the Remuneration by the Company, the Supplier must, and must ensure that its Personnel:
  - (a) perform the Services required under a Purchase Order with due expedition in accordance with the terms of this Agreement;
  - (b) at its, or their cost, obtain all Government Authorisations require to perform this Agreement;
  - (c) strictly comply with all Laws and Government Authorisations;
  - (d) comply with the Company's National Police Clearance Process;
  - (e) strictly comply with the Company's policies, including, without limitation, any such relating to Site access, drugs, alcohol, health, safety and the environment; and
  - (f) except for any facilities agreed in writing to be provided by the Company, provide all facilities necessary for the proper performance of the Services.
- 7.2 The Supplier must not, and must ensure that its Personnel do not, without the prior approval of the Company:
  - (a) start fires on or in the vicinity or any work area or Site;
  - (b) drive vehicles off roads or designated access routes;
  - (c) dispose of solid or liquid waste other than in areas prescribed for that purpose by the Company;
  - (d) bring firearms onto the Site; or
  - (e) bring dogs, cats or other domestic pets onto the Site.
- 7.3 The Supplier must, where practicable, immediately report to the Company any incident or accident which causes or has the potential to cause:
  - (a) damage to the environment or pollution; and

- (b) injury to persons, plant or equipment at the Site,

and must without limiting the above, immediately notify the Company of any health, environmental or safety incident and must make available to the Company all relevant records, documents and personnel as the Company may request to allow the Company to carry out a full investigation of any such incident.

- 7.4 The Supplier must to the satisfaction of the Company clean up any damage to the Site or pollution caused by or emitted from any facilities or equipment used by the Supplier in the performance of the Services.
- 7.5 A reference in this clause 7 to an obligation on the Supplier includes an obligation on the Supplier to ensure compliance with those obligations by its Personnel (and their employees, agents or contractors) that enters or is at the Site.

## **8. Warranty**

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- 8.1 Without limiting any other warranty or obligation under the Agreement, Supplier represents and warrants to the Company (as at the date of this Agreement and on each day during the Term) that:
- (a) it will perform the Services in an efficient manner in accordance with all applicable Laws and Government Authorisations;
  - (b) that it has read and understood the Company's policies, including in respect of the health, safety and environment policies applicable to the Site;
  - (c) it will furnish all Personnel, supervision and expertise necessary for the satisfactory performance of the Services;
  - (d) the Services will be provided to the highest standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work and in accordance with the Description of Services or, in the absence of such Description of Services, in accordance with any Good Operating Practices;
  - (e) in relation to the provision of Goods as part of the Services:
    - i. the Goods will be of merchantable quality and fit for purpose;
    - ii. any Goods, including equipment, used on Site by the Supplier will be in safe working condition, will comply with all applicable Laws and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company;
    - iii. the Goods will be free from defects in design, materials and workmanship;
    - iv. it has good and marketable title to such Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
    - v. it will obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Company and that at completion of the Services the Supplier will assign the benefit of these warranties to the Company and provide copies of the warranties to the Company; and

- (f) all information and materials forming part of the tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to perform the Services or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Services.

8.2 Time is of the essence with respect to the performance of the Supplier's obligations under this Agreement.

## **9. Supplier's Personnel**

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9.1 The Supplier must ensure that its Personnel regularly consult or liaise with and report (either orally or in writing) to the Company Representative with respect to the scope and nature of the Services

9.2 It is a condition of entry to the Site that the Supplier's Personnel complete the Company's Site Induction and any other reasonable training as the Company may require from time to time. The Company may deny access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion.

9.3 In addition to the requirements stated in clause 9.2, the Supplier's Personnel must also undertake compulsory vehicle and bag searches, conducted by the Company.

9.4 The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Services, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 9.

9.5 The Company may from time to time impose restrictions on access to any Site and limitations on possession of parts of the Site in its sole discretion.

9.6 The Company reserves the right to at any time request a detailed list of the Personnel the Contractor intends to provide for the performance of the Services. The Company reserves the right at its sole discretion to request that the Contractor replace any Personnel, including the Contractor's Representative, who in the opinion of the Company, is not performing in a manner that ensures the due performance and completion of the Services. The Contractor shall bear all costs associated with the change or replacement of its Personnel.

## **10. Consent to Alcohol and other Drug Testing**

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10.1 The Supplier must procure the prior consent of its Personnel to alcohol and drug testing in such form as the Company reasonably requires.

10.2 The Supplier must ensure that alcohol and drug testing is carried out in respect of its Personnel during the Term as the Company requires from time to time requires.

10.3 The Supplier must ensure that any Personnel that fails to participate in alcohol and drug testing as required by the Company, or that fails a relevant test to a standard determined by the Company, is immediately removed from the Site and is not permitted to re-enter the Site.



## **11. National Police Clearance**

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- 11.1 The Supplier must ensure that all its Personnel sign all of the Company's documentation in relation to the Company's site Clearance protocols prior to entering the Site.
- 11.2 The Supplier must ensure that its Personnel that refuse to comply with the National Police Clearance process, or that fail the National Police Clearance process (as determined by the Company), are immediately removed from the Site and are not permitted to re-enter the Site.

## **12. Assumed risks by the Supplier**

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- 12.1 Notwithstanding:
- (a) any information provided to the Supplier by or obtained by the Supplier from the Company or others or which is withheld (except where information is unreasonably withheld by the Company);
  - (b) any difficulties the Company might have in satisfying the requirements of this Agreement;
  - (c) any changes in law whether or not foreseeable at the date of execution of this Agreement;
  - (d) compliance with the Company's directions and any consequences in connection with such compliance;
  - (e) any increases in cost; or
  - (f) any other difficulties the Supplier might have in providing the Services in accordance with this Agreement,

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

## **13. Goods and Services Tax**

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

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

13.3 This clause 13 does not apply if the consideration payable or to be provided by the Recipient for the supply includes GST.

## **14. Dispute Resolution**

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### 14.1 Notice of Dispute

- (a) Subject to clause 14.4, if a dispute between the Supplier and the Company arises out of or in connection with this Agreement (**Dispute**) then, subject to clause 14.2, a party may give the other party a notice (**Notice of Dispute**) specifying the Dispute and requiring its resolution under this clause 14.
- (b) During the existence of any Dispute, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute.

### 14.2 Time of Notice

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

### 14.3 Escalation

- (a) If the Dispute remains unresolved 7 days after receipt of the Notice of Dispute, the Supplier's Representative must meet with the Company's Representative to resolve the Dispute.
- (b) If the Dispute is not resolved within 30 days after receipt of the Notice of Dispute, then either party may commence legal proceedings in an appropriate court to resolve the matter.

### 14.4 Urgent interlocutory relief

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

## **15. Termination and suspension**

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### 15.1 Termination by either party

- (a) Either Party may terminate this Agreement by written notice if the other Party breaches an Essential Term of this Agreement and has not remedied the breach within 30 days after the non-defaulting Party gives written notice of the breach and the non-defaulting Party's requirement to remedy the breach.
- (b) Either Party may terminate this Agreement by written notice where an Insolvency Event has occurred in respect of the other Party.

#### 15.2 Termination by the Company

- (a) In addition to the rights of the Company as provided for elsewhere in the Agreement the Company may at any time for any reason and without cause and at its absolute discretion terminate the Agreement in whole or in part by giving the Supplier not less than 10 days' notice.
- (b) In the event of termination by the Company under clause 15.2(a) above (and provided that the Supplier has not in any way committed a breach or repudiation of the Essential Terms) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Goods delivered prior to the termination becoming effective, which shall be accepted by the Supplier in full and final settlement of all and any rights and remedies of the Supplier in respect of termination of the Agreement by the Company. All Goods for which the Supplier is paid in accordance with this Clause shall be delivered to, and become the property of the Company.
- (c) Upon payment by the Company to the Supplier in accordance with clause 15.2(b), the Supplier shall waive any Claims for damages, loss, expenses and costs (including loss of any anticipated profits) which the Supplier may otherwise have had on account of the termination of the Agreement by the Company, and acknowledges that the Company be released from all further obligations to the Supplier pursuant to the provisions of the Agreement from the date on which termination is effective (other than as contemplated in this clause 15.2).

#### 15.3 Effects of Termination

Any termination under this clause 15:

- i. Applies prospectively to prevent any dispatch of Goods by the Supplier under these terms after the termination but will not apply to any Goods dispatched by the Supplier (whether delivered to the Company or not) before the termination date; and
- ii. Will not affect any accrued rights or obligations of the Company or the Supplier prior to the termination.

#### 15.4 Suspension by the Company

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

- (c) cease performance of the Services to the extent specified in the notice and on the date and time specified in the Suspension Notice; and

- (d) take such other action as is specified in the Suspension Notice or as may be necessary to minimise costs associated with the suspension.

#### 15.5 Suspension by the Company

Provided that:

- (a) the Supplier complies with the requirements of this clause 15; and
- (b) the suspension pursuant to clause 15.4 is not caused by a an act or omission or breach of contract by the Supplier,

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

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

#### 15.6 Resumption of Services

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

### **16. Force Majeure**

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#### 16.1 No liability for inability to perform resulting from Force Majeure

- (a) During the period when a party is affected by Force Majeure (**Affected Party**), either party shall be excused from performance and shall not be in default in respect of any obligation under this Agreement to the extent that the failure to perform such obligation relates to a Force Majeure.
- (b) For the avoidance of doubt, the Company shall be excused from its payment obligations if the Force Majeure prohibits or materially inhibits its ability to conduct its usual mining or milling operations.

#### 16.2 Meaning of Force Majeure

- (a) In this agreement, **Force Majeure** means any event not within the control of the Affected Party and which by the exercise of due diligence, the Affected Party is not reasonably able to prevent or overcome, and which prevents the Affected Party from complying with its obligations under this agreement, or which prohibits or materially inhibits the Company conducting its usual mining or milling operations.
- (b) Force Majeure includes but is not limited to:

- i. acts of God, including epidemics, landslides, earthquakes, cyclones, and unusually severe weather;
- ii. strikes, labour disputes or other industrial disturbances;
- iii. acts of the enemy including wars, blockades or insurrections;
- iv. acts of terrorism;
- v. riots and civil disturbance;
- vi. Laws of any Government Agency not resulting from any wrongful act or omission of the affected party; and
- vii. refusal or delay in obtaining any necessary consents or approvals from any Government Agency, provided that the affected party has acted in a competent and timely manner in endeavouring to secure same.

### 16.3 Notification of Force Majeure

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

### 16.4 Reasonable diligence to overcome

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

### 16.5 Termination due to an event of Force Majeure

- (a) If an event of Force Majeure is operative for a period of 60 days, the Company may give the Supplier a notice of termination with immediate effect.
- (b) After termination under clause 16.516.5(a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Services provided to the date of termination.

## **17. Indemnity and Insurance**

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- 17.1 The Supplier must indemnify (and keep indemnified), defend and hold harmless the Company and its Related Bodies Corporate from and against all Liabilities that any of them suffer, sustain or incur, (including Third Party Claims) arising from any one or more of the following:

- (a) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under this Agreement or a Purchase Order;
- (b) the negligence or any act or omission of, or misconduct by the Supplier or its Personnel arising out of or in any way connected or related to the performance and non-performance of this Agreement or a Purchase Order;
- (c) the entry onto and the activities undertaken on and in, the Site, by the Supplier and its Personnel;
- (d) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this Agreement;
- (e) any Claim made against the Company and its Related Bodies Corporate by any of the Supplier's Personnel in respect of any Law,

provided that the Supplier is not obliged to indemnify, defend or hold harmless the Company and its Related Bodies Corporate for any Liability pursuant to clause 17.1 to the extent that the Liability arises directly from the negligence of the Company and its Related Bodies Corporate.

17.2 Neither party is liable to the other for Consequential Loss.

17.3 Prior to commencing the Services the Supplier shall provide to the Company certificates of currency for:

- (a) public liability insurance for an amount not less than \$20,000,000;
- (b) compulsory motor vehicle third Party liability insurance for all Supplier's vehicles;
- (c) insurance for third Party property damage by Supplier's vehicles for an amount of not less than \$20,000,000;
- (d) workers compensation insurances; and
- (e) journey cover insurance (if Supplier's Personnel are travelling to and from site).

17.4 The insurances referred to in this clause 17 must be maintained by the Supplier for the Term of this Agreement.

## **18. Plant Security**

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The Company has the right in the interests of ensuring the security of the property and Personnel of the Supplier and the Company to examine and inspect any package, container or vehicle carried or driven by any Personnel upon entering or exiting the Site.

## **19. Records**

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The Supplier must:

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

## **20. Assignment**

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- (a) Neither Party shall, without the prior written consent of the other Party, assign, mortgage or charge any or all of its rights or obligations under or pursuant to this Agreement.
- (b) Notwithstanding clause 20(a) Company may assign its rights or obligation under this Agreement to any Related Body Corporate without the prior written consent of Supplier.

## **21. Governing Law**

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This Agreement shall be governed by the laws of Victoria. Each Party submits to the non-exclusive jurisdiction of courts of Victoria.

## **22. Confidentiality**

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Subject to any requirement at law, the details of this Agreement are confidential and must not be disclosed without the written consent of the other Party.

## **23. Entire Agreement**

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

## **24. Variation and Waiver**

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- 24.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred upon such Party under this Agreement shall operate as waiver of any such power or right, nor shall any single or partial exercise of any such power or right preclude any other future exercise of such power or right or the exercise of any other owner or right under this Agreement. No variation, modification or waiver of any provision of this Agreement shall have any effect unless expressly agreed in writing by the Parties, and then only in specific instances, and for the purpose for which, and to the extent to which it is made or given.
- 24.2 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part or validity of the other provisions of this Agreement and the remainder of the provision in question will not be affected.

## 25. Relationship of the Parties

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- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of principal and independent contractor.
- (b) Nothing in this Agreement will be deemed to constitute Supplier nor any of its Personnel as an employee, partner, agent or representative of Company and Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.

## 26. Counterparts

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- (a) This Agreement may be executed in counterpart.
- (b) All counterparts, taken together, constitute one instrument.

## 27. Essential Terms and Survival

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- (a) The provisions in clauses 3.2, 15, 17, 19, 21, 22, 23, 24, 27, 28 and the Special Conditions, as well as any other provision which, by its general terms, may be reasonably intended to survive, survive the expiration or termination of this Agreement or any Purchase Order.
- (b) The provisions in clauses 7, 8, 9, 10 and 11 are essential terms of this Agreement.

## 28. Notices

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- (a) Any notice or other communication to or by any Party shall be in writing, in English, signed and addressed to the address of the recipient shown on the Purchase Order. Any communication shall be deemed duly given or made in the case of:
  - i. being personally served on a Party, when delivered;
  - ii. being left at the Party's current address for service, when delivered;
  - iii. being sent to the Party's current address for services by pre-paid ordinary mail, on the second Business Day after posting;
  - iv. if the address is outside Australia, by being sent to the Party's current address by pre-paid airmail on the tenth Business Day after posting;
  - v. A facsimile transmission to the Party's current number for service, upon a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the Recipient's facsimile number.
  - vi. if delivered by email, the day that the sender's computer reports that the message has been delivered to the email address of the addressee **and** receipt is confirmed by the sender. For the avoidance of doubt `replying to the email or acting on information contained in the email would serve as confirmation of receipt. It is incumbent on the sender of any electronic communication to confirm it has been received by the intended recipient.



- (b) If delivery is not made before 4.00pm on a Business Day, it shall be deemed to be received on the next Business Day in that place.
- (c) A Party may from time to time change its address or numbers for service by written notice to the other Party.