



Australia West Business Unit Services Agreement Terms and Conditions

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SERVICES AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract:

Affiliate	shall mean any entity, including any corporation, limited liability company, partnership, or joint venture controlled by, under common control with, or controlling the entity in relation to which the term "Affiliate" is used, with "control" being defined as owning, directly or indirectly, fifty percent (50%) or more of the assets or the outstanding shares having voting rights, or otherwise having the right, by contract or otherwise, to control the operation, management, or policy of an entity.
Applicable Laws	shall mean all national, federal, state, and local laws (including statutes, decrees, edicts, codes, orders, judgments, judicial decisions, rules, ordinances, proclamations, by-laws, regulations, and executive orders of, and the terms of any licenses, leases, rights of way, permits, or authorizations issued by, any local, municipal, national, or other duly constituted governmental authority) that are applicable to the Services, Worksites, and the persons in relation to whom the term is used.
Approved	shall mean approved in writing by Company and " Approval " and " Approve " have a corresponding meaning.
Claims	shall mean any of the following, including any combination thereof: causes of action (<i>in rem</i> or <i>in personam</i>), claims, assertions, demands, allegations, proceedings, suits, losses, liabilities, fines, penalties, costs, damages, judgments, awards, and expenses, including court costs and attorneys' fees, and sums paid by way of settlement and compromise.
Company	shall mean the entity identified as "Company" in the Purchase Order.
Company Group	shall mean any or all of: <ul style="list-style-type: none">(a) Company and its Affiliates;(b) Coventurers and their Affiliates;(c) any Disclosed Principal and its Affiliates;(d) Company's other contractors (other than members of Contractor Group) and their subcontractors of any tier, who are engaged directly or indirectly to perform work or services for the project to which the Services relate or are otherwise present at a Worksite during Contractor's performance of the Services, and their respective Affiliates; and(e) the respective agents of any of the entities addressed in (a) through (d) above; all the foregoing being "members of Company Group".
Consequential Loss	shall mean any or all of the following, in each case arising out of or occurring in connection with the Contract, or performance of the Services under the Contract: <ul style="list-style-type: none">(a) loss or deferment of revenue or profit;(b) loss of use, loss of production, or business interruption;(c) loss of business opportunity or goodwill; and(d) to the extent not included in the foregoing, any consequential or indirect losses; whether or not any of the foregoing were (i) a natural result of the breach or matter giving rise to such loss or damages; or (ii) contemplated by the

Parties at the time of execution of the Contract as a probable result of such a breach or matter.

Consequential Loss shall not include any of the following: (i) liquidated damages provided for in any Contract; (ii) a Party's obligation to provide its Indemnitees with a legal defence in connection with that Party's Indemnification obligations set forth in the Contract; (iii) a Party's obligation, pursuant to its Indemnification obligations set forth in the Contract, to pay or reimburse judgments or settlements to persons other than the other Party; and (iv) damages for breach of the obligations in Article 7.

Contract	shall mean the contract for the provision of the Services created between Company and Contractor, comprising the Purchase Order, these <i>Services Agreement Terms and Conditions</i> , and any other documents annexed to the Contract or incorporated therein by reference. In the event of any inconsistency between Contract documents, the Purchase Order and these <i>Services Agreement Terms and Conditions</i> take precedence unless stated otherwise.
Contractor	shall mean the entity identified as "Contractor" in the Purchase Order.
Contractor Group	shall mean any or all of: <ul style="list-style-type: none">(a) Contractor;(b) its Affiliates;(c) Subcontractors and their Affiliates; and(d) the respective agents of any of the entities addressed in (a) through (c) above; all the foregoing being "members of Contractor Group".
Coventurer	shall mean any entity having an interest in a joint venture, consortium, or other joint association with Company or with any Affiliate of Company (and being a party to the related joint operating agreement, unit operating agreement, joint venture agreement, shareholders' agreement, production sharing agreement, or other agreement governing operations) in relation to which the Services are being performed; and the successors and assigns of such entity.
Disclosed Principal	shall mean any entity identified in the Contract as a Disclosed Principal of Company. For the avoidance of doubt, an Affiliate or Coventurer may, but need not, be a Disclosed Principal of Company.
Goods	shall mean any equipment, materials, spare parts, or other tangible items of any nature (other than Work Product as defined in Article 9.1) to be provided by Contractor, and thereby subject to transfer of title, to Company pursuant to the Purchase Order, together with any associated items such as software, firmware, special tools, handling and installation aids, and operating and maintenance manuals.
Indemnify	shall mean defend, indemnify, release, and hold harmless; and terms such as " Indemnified ", " Indemnifying ", " Indemnification ", " Indemnity ", " Indemnitor ", and " Indemnitee " shall have appropriately correlative meanings and be construed accordingly.
Intellectual Property	shall mean any industrial or intellectual property throughout the world, including any patent, copyright, trade or service mark, registered or unregistered trademark, registered design, moral right, or any right in any trade secret, know-how, confidential information, or any other proprietary right or right to registration of such rights whether protectable by statute, at common law, or in equity.

Legal Fault	shall mean negligence or other tort liability, breach of duty (statutory or otherwise), breach of warranty, breach of contract, strict liability, or any failure to act in accordance with legal or contractual requirements.
Party	shall mean a party to the Contract, and "Parties" shall mean both of the parties to the Contract.
Personal Injury	shall mean any injury suffered by a natural person, including death, sickness, ill health, disease, mental anguish, and mental distress.
PPSA	shall mean the <i>Personal Property Securities Act 2009</i> (Cth), any regulations under that Act, and any statutory instruments or binding determinations made under any of them.
Proportionate Liability Legislation	shall mean Part 1F (Proportionate Liability) of the <i>Civil Liability Act 2002</i> (WA), and any provision of any other Applicable Law that has a substantially similar effect to any provision of Part 1F.
Purchase Order	shall mean the order form, entitled 'Purchase Order' or 'Service Order', for a specific scope of supply which is issued by Company to Contractor and which forms part of the Contract.
Services	shall mean all elements of the activities to be performed by or on behalf of Contractor under the Contract, whether or not specifically described therein, including everything that may be reasonably inferred from the Contract as needing to be done by or on behalf of Contractor in order for Contractor to fulfill all its duties, obligations, and responsibilities under the Contract.
Subcontractor	shall mean any company engaged by Contractor or another Subcontractor of any tier to perform any part of the Services.
Wilful Misconduct	means a deliberate or reckless act or omission which is committed or omitted (i) with the intent to cause harmful consequences or risks, or (ii) with knowledge of or conscious indifference to any probable harmful consequences or risks, including injury or death to persons, damage to or loss of property, and any other type of loss.
Worksite	shall mean any location at which Services are performed, including any premises of Company or Company's other contractors but excluding any locations where the manufacture or pre-delivery handling of Goods takes place.

1.2 Interpretation

1.2.1 In the Contract:

- (a) the Article headings shall not form part of, and shall not be used in interpretation of, the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of context;
- (c) words importing a gender include every gender;
- (d) a reference to any Applicable Law includes (i) all statutes, regulations, proclamations, resolutions, ordinances, or by-laws amending, consolidating or replacing such Applicable Law; and (ii) all regulations, proclamations, ordinances, and by-laws issued thereunder;
- (e) the terms "including", "include", "such as", "in particular", and the like shall be deemed to be completed by the expression "but not limited to", and are to be construed without limitation;
- (f) references to periods of time (such as "day", "week", "month", and "year") are to periods of time under the Gregorian calendar, such periods following one another consecutively when referred to in their plural form;

- (g) the term “company” includes any incorporated limited liability company, joint stock company, firm, corporation, individual proprietorship, partnership, or other business concern;
- (h) the term “person” includes any natural or legal person, such as any individual, company, general or limited partnership, country or state, governmental authority, labor union, organization, estate, or trust; or a joint venture or association (whether or not having separate legal personality) of two or more of the foregoing, whether they are in the same category or in different categories;
- (i) the term “personnel” in relation to an entity includes such entity’s permanent, part-time, special, seconded, contract, or temporary staff, whether its employees or otherwise, as well as (i) employees of such entity’s Affiliates who are providing services to such entity in relation to the Services; and (ii) individuals engaged to act for such entity in a consultancy or similar role and who work under its direct control;
- (j) references to “writing” and “written” include any means of reproducing words in a tangible visible form, including facsimiles but otherwise excluding items transmitted exclusively in an electronic form (such as “emails”), even if the recipient may be able to convert such items to a tangible visible form.

1.2.2 The Contract is not intended to, and does not, create any partnership, joint venture, agency relationship, or other business entity between Company and Contractor.

1.2.3 Performance of an obligation of any kind by Contractor must be carried out at Contractor’s cost unless the Contract expressly states otherwise.

1.2.4 If Company makes any payment or otherwise incurs any liability of any kind in meeting any obligation of Contractor pursuant to the Contract, the cost so incurred becomes a debt then due and owing by Contractor to Company.

1.2.5 When the Contract, expressly or impliedly:

- (a) allows Company discretion as to whether or not to take or not to take any action, or as to how it may be taken; or
- (b) confers a power of determination or a right or obligation to form an opinion or the like;

that discretion, power, right, or obligation may be exercised or performed in the absolute discretion of Company, unless expressly stated otherwise.

1.2.6 In the interpretation of a provision of the Contract, a construction adverse to a Party must not be preferred solely on the ground that:

- (a) that Party was responsible for the preparation of the Contract or that provision; or
- (b) the Contract or that provision favours the person relying upon that provision.

2. NATURE OF OBLIGATIONS AND PERFORMANCE

2.1 Contractor must perform the Services in accordance with the terms and conditions of the Contract and in a diligent, safe, competent, professional, and timely manner. Contractor acknowledges that (i) it has read and understood such terms and conditions; (ii) such terms and conditions reflect commercial positions and are not considered unfair; and (iii) it has had adequate opportunity to review and negotiate and, if desired, seek legal advice on such terms and conditions.

2.2 Contractor must provide all necessary personnel, equipment, know how, skills, and supplies to perform the Services in accordance with the Contract.

2.3 In the performance of the Contract, Contractor must:

2.3.1 provide all things and take all measures necessary to protect people and property;

2.3.2 avoid unnecessary interference with the passage of people, vehicles, and ships;

2.3.3 prevent damage, obstruction, or other interference with services performed by any other person, including any member of Company Group;

- 2.3.4** prevent nuisance and unnecessary noise and disturbance; and
- 2.3.5** prevent environmental damage and pollution.
- 2.4** Contractor must not impede or interfere with other work or operations conducted at premises of any of the members of Company Group.
- 2.5** Contractor must hold, and must procure that each member of Contractor Group engaged in the Services holds, all licences, permits, and registrations necessary or desirable for the performance of the Services.
- 2.6** Contractor must ensure that the Services meet any service levels or key performance indicators set out in the Contract.
- 2.7** Contractor must keep Company fully and immediately informed of all matters affecting or likely to affect the Services of which any of the members of Contractor Group may become aware.
- 2.8** Contractor must provide Company with such information or access as Company may from time to time require to monitor the conduct of the Services, including access to inspect and test equipment and supplies at any time.
- 2.9** No member of Company Group owes or assumes any duty of care to any member of Contractor Group to review, inspect, test, or monitor, or in reviewing, inspecting, testing, or monitoring, the Services; and no review, inspection, testing, or monitoring (or the absence thereof) nor acceptance or rejection of any aspect of the Services will relieve Contractor from, or alter or affect, Contractor's liabilities or responsibilities under, or prejudice Company's rights in connection with, the Contract.
- 2.10** All equipment, materials, goods, and supplies provided for or in connection with the Contract and performance of the Services shall:
- 2.11** comply with all relevant standards or specifications stipulated by Company and all Applicable Laws;
- 2.12** be fit for the purpose for which they are intended; and
- 2.13** remain at the risk of Contractor in accordance with the Contract.
- 2.14** Title to Goods passes to Company upon the earlier of (i) any payment therefor under the Contract; or (ii) delivery into Company's possession; without prejudice to Company's right to reject any matters or items not conforming to the Contract. Risk in Goods passes to Company upon satisfactory delivery thereof into Company's possession, but reverts to Contractor if Goods are rejected by Company.
- 2.15** Any items Company delivers into Contractor's possession, custody, or control are not Contractor's property. As between Company and Contractor, such items are Company's property and Contractor is the bailee. This remains the position even if Contractor performs Services on the items or incorporates the items into the Services.

3. TERM

- 3.1** The Contract shall be effective from the earlier of the date of the Contract and the date on which Contractor commences performance of the Services. Contractor must resolve any issues it may have with the terms and conditions of the Contract before commencing performance under the Contract. If Contractor commences performance under the Contract without having expressly notified Company of any such issues and fully resolved them with Company, Contractor shall be deemed to have accepted the terms and conditions set out in the Contract without reservation, exception, or qualification.
- 3.2** The provisions of the Contract shall continue in full force and effect until all obligations of the Parties under the Contract, including those with regard to early termination (if applicable), have been duly fulfilled.

4. PERSONNEL

- 4.1** Contractor shall provide, itself or through other members of Contractor Group, all required personnel in sufficient numbers to perform the Services safely and efficiently.
- 4.2** Contractor shall assign only such personnel of members of Contractor Group to perform the Services who are fully competent, experienced, qualified, trained, have all necessary physical

capacities to perform the applicable Services, and otherwise capable of properly performing such Services. Company shall have the right, exercisable at any time, to Approve any personnel of members of Contractor Group proposed for assignment to the Services.

4.3 Contractor must comply with, and shall ensure that its personnel and the other members of Contractor Group and their respective personnel shall comply with, Company's policies and procedures applicable to the Services and Worksites, including without limitation:

4.3.1 the requirements set out in the *HSE Requirements for Contracts* (incorporating Company's *8 Life Saving Rules*), as amended and updated from time to time and available from Company's website at http://www.conocophillips.com.au/our-business-activities/supply-chain/Documents/BU_Services/ALL-HSE-PRO-016_Att_A1_HSE_Requirements_for_Contracts.pdf and also available from Company on request, and support of Company's zero incident HSE culture and substance abuse policy. All Company-established rules are to be observed throughout its operations with the objective of minimizing the potential for personal injury incidents. Such rules will also be binding upon any contractors or vendors who perform services or are otherwise present at any facility owned or operated by Company or its Affiliates as provided in the applicable site-specific rules. Contractor shall ensure that these rules (including Company's *8 Life Saving Rules*) are communicated to and understood by all personnel of the members of Contractor Group before they are assigned to the Services, with subsequent regular follow-up to reinforce compliance. Contractor, by its acceptance of the Contract and commencement of the Services, confirms it has been given a copy of or access to Company's policies and guidelines which are applicable to the performance of the Contract and the Services, and

4.3.2 Company's "Privacy Policy", as amended and updated from time to time and available from Company's website at <http://www.conocophillips.com.au/privacy-policy/>.

4.4 Company in its absolute discretion may direct Contractor to remove or withdraw a member of Contractor Group or personnel of any of the members of Contractor Group from the performance of the Services and Contractor must immediately replace each such person at its cost and in accordance with the Contract. Unless otherwise agreed by the Parties, the replacement shall be subject to Approval.

4.5 Contractor shall ensure that personnel of members of Contractor Group assigned to perform the Services shall not be removed from the Services before their role in such performance has been duly completed. If required by Company, Contractor must notify Company: (a) quarterly of all leave schedules and other scheduled absences of personnel of Contractor Group assigned to perform the Services; and (b) at least 14 days prior to any changes to those leave schedules. Company reserves the right to require Contractor to adjust leave schedules and any contemplated reassignment of Contractor Group personnel. Company shall reimburse Contractor for any increase in actual costs reasonably incurred for the costs of transportation of Contractor Group personnel when such costs are directly caused by Company-instructed adjustments of leave schedules as provided in this Article 4.5.

5. PRICING, INVOICING, AND PAYMENTS

5.1 Company shall pay Contractor in accordance with the rates and charges set out in the Contract for the Services duly provided; such rates and fees to remain fixed for the term of the Contract unless otherwise expressly (i) provided in the Contract or (ii) agreed in writing between the Parties.

5.2 Unless the Contract provides otherwise, Contractor shall deliver to Company within the first ten (10) days of each month an invoice covering the Services provided during the previous month. Invoices shall be submitted in the number and form requested by Company, accompanied by such certification and documentation as Company may require.

5.3 When Company receives an invoice from Contractor conforming to Article 5.2 (each a "**Conforming Invoice**"), Company will, unless a dispute is raised under Article 5.4, pay the Conforming Invoice within 30 days of receipt thereof.

5.4 If Company disputes any Conforming Invoice in whole or in part (each a "**Disputed Invoice**"), Company will notify Contractor of the dispute as soon as reasonably practicable.

- 5.5 When a dispute is raised under Article 5.4, Contractor must issue a credit note ("**Credit Note**") to Company for the disputed portion of the Disputed Invoice ("**Disputed Portion**") in the form requested by Company. Contractor must also immediately issue a new invoice in respect of the Disputed Portion ("**Disputed Portion Invoice**") in the form requested by Company.
- 5.6 If a Disputed Invoice has not already been paid by Company prior to a dispute being raised under Article 5.4, then Company will pay the undisputed portion of such Disputed Invoice within 30 days of receipt of both a Credit Note and Disputed Portion Invoice pursuant to Article 5.5.
- 5.7 When a dispute is raised under Article 5.4, Company and Contractor shall discuss the dispute in good faith with the aim of determining the amount, if any, that should be paid in respect of the Disputed Portion Invoice ("**Determined Amount**").
- 5.8 When a Determined Amount is determined in accordance with Article 5.7 or Article 15:
- (a) Contractor must promptly issue a credit note to Company in the form required by Company to the extent that the amount of the Disputed Portion Invoice is in excess of the Determined Amount; and
 - (b) Company will pay such amount of the Disputed Portion Invoice that is equal to the Determined Amount within 30 days of such determination or, if later, of receipt of the credit note (if required) referred to in Article 5.8(a).
- 5.9 Should Contractor not be satisfied with the timeliness of payment of Conforming Invoices by Company, it shall be entitled to notify Company of its dissatisfaction, setting out full details of the reasons for its dissatisfaction and as well as full details of the dates on which all relevant Conforming Invoices were issued and the dates and amounts of any payments made by Company in respect of such Conforming Invoices. Company will then meet with Contractor to discuss Contractor's dissatisfaction in good faith and shall thereafter use all reasonable endeavours to address Contractor's concerns to the satisfaction of Contractor.
- 5.10 Company may set off against payments due to Contractor any amounts due to Company from Contractor.
- 5.11 No payment by Company shall prejudice Company's rights to question or dispute an invoice and require adjustment thereof, or pursue or recover any Claims against Contractor.
- 5.12 Unless otherwise agreed by the Parties, invoices shall be submitted and payable in the currency stated in the Contract.

6. BUSINESS ETHICS

- 6.1 Contractor must not, and must ensure that each other member of Contractor Group and its and each such member's officers, directors, and personnel shall not, directly or indirectly, (i) pay salaries, commissions, or fees, or make payments or rebates to any of the members of Company Group or their respective officers, directors, or personnel; (ii) favour any of the members of Company Group or their respective officers, directors, or personnel with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value; or (iii) enter into business arrangements with any of the members of Company Group or their respective officers, directors, or personnel, unless any such person is properly and duly acting in its capacity as a representative of Company Group or of the applicable member thereof. Contractor must comply, and must ensure each member of Contractor Group shall comply, with the principles of the ConocoPhillips *Code of Business Ethics and Conduct*, available from Company on request or at http://static.conocophillips.com/files/resources/conocophillips_code_of_business_ethics_and_conduct.pdf
- 6.2 Contractor must not, and must ensure that each other member of Contractor Group and its and each such member's officers, directors, and personnel shall not, offer, pay, arrange for a third party to pay, or agree to pay any payment, gift, or other thing of value of any nature to any officials, employees, or agents of any government; any department, agency, or instrumentality of any government; any political party; any candidate for political office; or any other person, including a legislative, administrative, or judicial office (including any person exercising a public function for a public agency, a public enterprise, or a public international organization) when such payment, gift or other consideration would violate Applicable Laws or the principles set forth in the *Convention for Combating Bribery of Foreign Public Officials in International Business Transactions*, signed in Paris on December 17, 1997 (and without limitation, must not

perform any act which would constitute “bribery of a foreign official” as defined in Article 1(3) of such Convention), the United States *Foreign Corrupt Practices Act* (“**FCPA**”), the United Kingdom *Bribery Act*, or other anti-bribery or anti-corruption legislation applicable to either Party.

- 6.3 Notwithstanding that the FCPA and certain other applicable anti-bribery or anti-corruption legislation may permit, in limited circumstances, payments called “facilitating payments” (i.e., small payments made in order to expedite or secure the performance by a governmental authority of routine actions of a non-discretionary nature, which a person is otherwise entitled by law to receive), Contractor shall not, and shall ensure that its officers, directors, and personnel, and the other members of Contractor Group and their respective officers, directors, and personnel shall not, make any “facilitating payments” in connection with the Services or the Contract.
- 6.4 If Company reasonably believes that Contractor or any other member of Contractor Group has engaged or will engage, directly or indirectly, in improper conduct in breach of this Article 6, Company may, at its sole discretion, do any or all of the following: suspend any further performance by Contractor, withhold further payment to Contractor, and terminate the Contract with immediate effect.
- 6.5 Contractor must ensure that each member of Contractor Group complies with this Article 6 and Contractor shall Indemnify the members of Company Group from and against any Claim which arises from a breach of this Article 6 by any of the members of Contractor Group or their respective officers, directors, or personnel.

7. **CONFIDENTIALITY**

- 7.1 Contractor shall treat as confidential and shall not, without Company’s prior written consent, divulge to any third party, or, except to the extent necessary for performance under the Contract, make any use of any proprietary business or technical information owned or supplied by any of the members of Company Group or any representatives of Company and disclosed to or discovered by Contractor in connection with the Contract, or performance of the Services under the Contract, including any of the following: business plans, forecasts, contracting procedures, maintenance records, procedures, methods and technical information related to proprietary processes or products, cost information, marketing or business-related information, asset details, and strategic plans (collectively “**Confidential Information**”).
- 7.2 Contractor may only disclose Confidential Information to (i) other members of Contractor Group who need, and (ii) to its and their respective officers, directors, and personnel who need, the Confidential Information for performance of the Services under the Contract and who are bound by confidentiality and limited use obligations no less stringent than those in this Article 7. Contractor shall be responsible for ensuring compliance with this Article 7 by all members of Contractor Group and their respective officers, directors, and personnel who will receive, or who might in performance of Services discover or be exposed to, any Confidential Information.
- 7.3 Information which was lawfully in Contractor's possession without restriction on use or disclosure prior to disclosure thereof by or on behalf of Company Group to Contractor, or which is or shall become part of the public knowledge or literature from a source other than Contractor Group, either directly or indirectly, shall not be subject to the provisions of this Article 7. Information which shall become lawfully available to Contractor from a source other than Company Group shall be released from the provisions of this Article 7 to the extent necessary to permit such use and disclosures as are authorized by such source.
- 7.4 Contractor shall not, and shall require its officers, directors, and personnel and each of the other members of Contractor Group and their officers, directors, and personnel not to, take advantage of any information which it is obliged to treat as confidential under this Article 7 for the purpose of buying, selling, or otherwise dealing with shares or securities of the members of Company Group or for purposes of securing financial gain otherwise than by means of the compensation provided for in the Contract.
- 7.5 Contractor must ensure that no member of Contractor Group releases or allows the release of any information to the press, any news disseminating agency, or communications media, except as required by Applicable Laws, concerning the details of the Services, or the terms of the Contract, without in each instance securing prior Approval, which Company may withhold in its absolute discretion.

- 7.6 Contractor must obtain prior Approval to the text of any publicity that Contractor proposes to issue in connection with the Contract.
- 7.7 If Contractor enters into or has entered into a separate confidentiality agreement with Company which conflicts with the terms of this Article 7 as regards particular Confidential Information, then the terms of such confidentiality agreement shall take precedence over this Article 7 with respect to the information disclosed under such separate confidentiality agreement.
- 7.8 All documents and all copies thereof furnished by Company to Contractor are Company's property and Contractor must return them to Company upon completion of the Services. All documents (and their copyright) prepared by Contractor in the performance of the Services are the property of Company and must be turned over to Company upon request or completion of the Services.
- 7.9 Contractor must ensure that each member of Contractor Group complies with this Article 7 and Contractor shall Indemnify the members of Company Group from and against any Claim which arises from a breach of this Article 7 by any member of Contractor Group.

8. PATENT INFRINGEMENT AND INTELLECTUAL PROPERTY

- 8.1 Contractor must not, and must ensure that other members of Contractor Group shall not, violate or infringe the intellectual property rights of any other person in performance of the Services. Contractor shall Indemnify the members of Company Group from and against all Claims of whatsoever kind asserted by or arising in favor of any person or entity for or as a result of infringement, misappropriation, or misuse of any Intellectual Property rights, based on or related to Contractor Group's use or application of any material, equipment, article of manufacture, machine, computer software, composition of matter, or process or based on Company Group's use or application of any material, equipment, article of manufacture, machine, computer software, composition of matter, or process (which is supplied or provided by Contractor Group to Company Group) for its intended purpose or in reliance on advice or instruction from any member of Contractor Group or else is attributable to Contractor Group in connection with the Services. Should Contractor be prevented from performing under the Contract by reason of legal proceedings based upon such claim of infringement, Company shall be relieved of its obligations to make payment for the Services not performed or for items of equipment, machinery, or materials affected by such proceedings.
- 8.2 All payments for royalties, patent rights, copyright, or in respect of any Intellectual Property and all fees due or payable for, or in connection with any matter or thing, used or required to be used in the performance of the Contract or to be supplied under the Contract whether payable in one sum or by instalments or otherwise, shall be deemed to have been included by Contractor in the rates and prices payable under the Contract and must be paid by Contractor to those persons to whom they may be due and payable.

9. WORK PRODUCT

- 9.1 Title to, all Intellectual Property rights in, possession of, and free use of all ideas, concepts, techniques, inventions, processes, works of authorship, drawings, documents, calculations, or any other documentation and Intellectual Property produced under the Contract ("**Work Product**") shall vest exclusively in Company immediately upon commencement of the Contract. Company shall be entitled to use the Work Product in any way and for any purpose.
- 9.2 To the extent that any Work Product does not vest exclusively in Company by operation of Article 9.1, Contractor agrees to assign, and hereby assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest Contractor may have in such Work Product. Upon request of Company, Contractor must take such further actions, including execution and delivery of declarations, instruments of conveyance, and the like for any applications or registrations for which Company may, at its expense, apply and as may be appropriate to give full and proper effect to such assignments.
- 9.3 Contractor further agrees that any and all ideas, improvements, and inventions, whether patentable or not, that are based upon information provided to Contractor by Company and that are conceived, created, or first reduced to practice during performance of the Services or within one year after completion of the applicable Services shall be solely and exclusively property of Company. Contractor must promptly provide to Company a full written disclosure of any such ideas, improvements, and inventions. Both during the term of the Contract and after its

termination or expiration, Contractor shall execute all papers, including documents related to domestic and foreign patent applications and invention assignments, and otherwise assist Company as reasonably requested to perfect in Company the rights, title, and other interests in such ideas, improvements, and inventions, as well as obtain and enforce patents derived from such applications.

- 9.4** Contractor grants, and must procure that other relevant members of Contractor Group grant, to Company a perpetual, non-exclusive, irrevocable, and royalty-free licence to use, disclose, modify, copy, and develop Intellectual Property rights of members of Contractor Group in any item in which any of the members of Contractor Group retains Intellectual Property rights to the extent necessary for Company to:
- (a) use, operate, repair, replace, expand, complete, maintain, refurbish, modify, adapt, integrate, and develop the Services, including to manufacture, fabricate, and reproduce any part of or all of the Services for those purposes;
 - (b) train operators of any facility that results from the Services;
 - (c) dispose of the Services and to do anything necessary or incidental for those purposes; and
 - (d) assign its rights, without consent, to any purchaser of an interest in all or part of any facility related to the Services.
- 9.5** Contractor authorizes Company to sublicense the licence granted under Article 9.4 to any of the members of Company Group.
- 9.6** Contractor must ensure that all subcontracts contain provisions consistent with this Article 9.

10. APPLICABLE LAWS; TAXES

10.1 Compliance with Applicable Laws

- 10.1.1** Contractor must, and must procure that each other member of Contractor Group shall, comply with all Applicable Laws and not do or fail to do anything which would cause any member of Company Group to be in breach of Applicable Laws. Contractor shall Indemnify each of the members of Company Group against any Claim arising out of any failure by any of the members of Contractor Group to comply with this Article.
- 10.1.2** Contractor must, and must procure that each other member of Contractor Group shall, comply with all Applicable Laws with respect to environmental protection, including those pertaining to the use, application, and handling of pesticides, plant regulators, defoliants, and desiccants, and, without limitation to any other Indemnity contained in the Contract, Contractor must Indemnify each of the members of Company Group from and against any Claim arising out of any actual or alleged failure by any of the members of Contractor Group to comply with this Article. Contractor must remove any debris or material related to equipment, tools, or other items which the members of Contractor Group bring onto sites or property of any of the members of Company Group.
- 10.1.3** Contractor must give all notices, make all applications, and pay all fees and expenses, including increased or new fees and expenses, necessary to ensure compliance with all Applicable Laws.

10.2 Taxes

- 10.2.1** Contractor shall be solely liable, unless specifically stated elsewhere in the Contract, for payment of all taxes, licence and permit fees, import and export duties, harbour dues and pilotage fees, income, profit, payroll, fringe benefit, franchise, and personal property taxes, and other similar imposts and all penalties or interest thereon.
- 10.2.2** Contractor shall Indemnify and keep Indemnified the members of Company Group from and against all Claims with respect to the taxes and other items referred to in Article 10.2.1 and the non-payment of any of them, whether arising from the performance of the Services or under any contract or arrangement with any member of Contractor Group.

10.3 Withholding Tax

- 10.3.1 Company shall not be liable to Contractor and Contractor shall have no Claim against Company in respect of any sum which would otherwise be payable to Contractor under the Contract:
- (a) which Company has withheld from payment in accordance with any Applicable Laws, including in respect of income taxes, until Company is released or relieved from all potential liability pursuant to Applicable Laws in respect of the amount so withheld and is lawfully entitled to pay the sum to Contractor; or
 - (b) which Company has paid in accordance with the provisions of any Applicable Laws to the governmental authority or other person legally entitled to accept payment.

10.4 Goods and Services Tax

- 10.4.1 Any reference in this Article 10.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 10.4.2 Unless expressly included, the consideration for any supply made under or in connection with the Contract does not include an amount on account of GST in respect of the supply (“**GST- Exclusive Consideration**”) except as provided in this Article 10.4.
- 10.4.3 Any amount referred to in the Contract (other than an amount referred to in Article 10.4.8) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST-exclusive basis.
- 10.4.4 To the extent that GST is payable in respect of any supply made by a Party (“**Supplier**”) under or in connection with the Contract, the consideration to be provided under the Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST-Exclusive Consideration (or its GST-exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 10.4.5 The recipient of the taxable supply must pay the additional amount payable under Article 10.4.4 to the Supplier at the same time as the GST-Exclusive Consideration is required to be paid.
- 10.4.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Article 10.4.4 or at such other time as the Parties may agree.
- 10.4.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Contract, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid pursuant to Article 10.4.5, the amount of the difference must be paid by, refunded to, or credited to the recipient, as applicable.
- 10.4.8 If one of the Parties is entitled to be reimbursed or Indemnified for a loss, cost, expense, or outgoing incurred in connection with the Contract, then the amount of the reimbursement or Indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or Indemnified is entitled in relation to that loss, cost, expense, or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Article 10.4.4.

11. AUDIT

- 11.1 Contractor must, and must ensure that each of the other members of Contractor Group shall:
- (a) maintain a true and correct set of records pertaining to all activities relating to its performance of the Services and all transactions related thereto;
 - (b) retain all such records for a period of not less than four (4) years after final payment for the Services; provided however there shall be no obligation to continue to maintain records that have been audited and determined to be fully accurate by Company;

- (c) permit any representatives authorized by Company to audit, at any reasonable time or times and with reasonable notice during the term of the Contract and during the four (4) year period after final payment for the Services and all transactions related thereto, any and all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data pertaining to the Contract, or any other data deemed, in the sole opinion of Company, necessary for the conduct of Company's business during such audits;
 - (d) provide any and all information and documents relevant to the Services to Company upon request, save where such information or documents are confidential and commercially sensitive and are not subject to any requirement of disclosure under Applicable Laws; and
 - (e) co-operate fully with Company and Company's authorized representatives during the audits performed hereunder, including furnishing copies of all requested documents. Company shall have the right to also obtain statements from officers, directors, and personnel of the members of Contractor Group in the course of such audits.
- 11.2** Contractor must maintain a complete log of all Services performed and must provide Company with reports containing all information as required by Company from time to time.

12. RISK STRUCTURE

12.1 Workers Compensation Liabilities

12.1.1 To the extent permitted by Applicable Laws, Contractor shall Indemnify each of the members of Company Group against the payment of any compensation under the *Workers Compensation and Injury Management Act 1981 (WA)* or under any other workers' compensation scheme when the event giving rise to such compensation arises in connection with the Services and relates to Personal Injury of officers, directors, or personnel of any of the members of Contractor Group.

12.1.2 To the extent permitted by Applicable Laws, Company shall Indemnify each of the members of Contractor Group against the payment of any compensation under the *Workers Compensation and Injury Management Act 1981 (WA)* or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Services and relates to Personal Injury of any of the members of Company Group.

12.2 Indemnities Relating to People

12.2.1 Contractor shall Indemnify each of the members of Company Group from and against any and all Claims (save for those Claims addressed in Article 12.1.1) arising out of or related in any way to Personal Injury of:

- (a) any officers, directors, or personnel of any of the members of Contractor Group; and
- (b) any persons not addressed in Articles 12.2.1(a) and 12.2.2(a) to the extent the Personal Injury actually or allegedly arises out of or results from Legal Fault of any of the members of Contractor Group or their respective officers, directors, or personnel;

occurring in connection with the Contract or performance of the Services, regardless of the identity of the claimant, including such officers, directors, personnel, or third parties themselves and their respective representatives, agents, heirs, beneficiaries, assigns, and family members.

12.2.2 Company shall Indemnify each of the members of Contractor Group from and against any and all Claims (save for those Claims addressed in Article 12.1.2) arising out of or related in any way to Personal Injury of:

- (a) any officers, directors, or personnel of any of the members of Company Group; and
- (b) any persons not addressed in Articles 12.2.2(a) and 12.2.1(a) to the extent the Personal Injury actually or allegedly arises out of or results from Legal Fault of any of the members of Company Group or their respective officers, directors, and personnel;

occurring in connection with the Contract or performance of the Services, regardless of the identity of the claimant, including such officers, directors, personnel, or third parties themselves and their respective representatives, agents, heirs, beneficiaries, assigns, and family members.

12.3 Indemnities Relating to Property

12.3.1 Contractor shall Indemnify each of the members of Company Group from and against any and all Claims and rights against any of the members of Company Group arising out of or related in any way to physical damage to or loss of property, including environmental contamination of such property:

- (a) owned, hired, or supplied by any of the members of Contractor Group; and
- (b) of any persons other than the members of Contractor Group and Company Group and their respective officers, directors, and personnel to the extent the loss or damage is caused by or contributed to by any of the members of Contractor Group or their respective officers, directors, or personnel;

occurring in connection with the Contract or performance of the Services.

12.3.2 Contractor shall be liable for and shall Indemnify Company and Company's Affiliates and Coventurers from and against any and all Claims arising out of or related in any way to physical damage to or loss of any property of Company or Company's Affiliates or Coventurers, including environmental contamination of such property, to the extent such damage or loss results from or arises out of the Legal Fault of any of the members of Contractor Group or their respective officers, directors, or personnel. Provided, however, that Contractor's maximum liability for such damage or loss shall not exceed One Million United States Dollars (US\$ 1,000,000) per occurrence; and, subject to Contractor fulfilling such Indemnification obligation, Company shall Indemnify the members of Contractor Group from and against Claims in respect of such damage or loss to the extent they exceed One Million United States Dollars (US\$ 1,000,000) per occurrence.

12.3.3 Except as provided in Article 12.3.2, Company shall Indemnify each of the members of Contractor Group from and against any and all Claims and rights against any of the members of Contractor Group arising out of or related in any way to physical damage to or loss of property, including environmental contamination of such property:

- (a) owned by any of the members of Company Group; and
- (b) of any persons other than the members of Company Group and Contractor Group and their respective officers, directors, and personnel to the extent the loss or damage is caused by or contributed to by any of the members of Company Group or their respective officers, directors, or personnel;

occurring in connection with the Contract or performance of the Services under the Contract.

12.3.4 Notwithstanding the passage of title to Company as provided in Articles 2.11 and 9.1, risk of loss of or damage to Goods and Work Product shall remain with Contractor until delivery and acceptance of the Goods and Work Product in accordance with the terms of the Contract. Upon such delivery and acceptance, Company shall assume risk of loss of or damage to the Goods and Work Product, subject to (i) the risk allocations in Article 12.3.2; (ii) the obligations in Article 14; and (iii) Contractor having risk of loss of or damage to defective or nonconforming Goods rejected by Company pursuant to Article 2.11.

12.4 Pollution

12.4.1 Except as provided in Articles 12.2.2 and 12.3.3, Contractor shall Indemnify each of the members of Company Group from and against any and all Claims arising out of or attributable to pollution or contamination (including control, containment, clean-up, and removal thereof) to the extent that (i) the polluting or contaminating material is discharged, escapes, or emanates from any property of Company or Company's Affiliates or Coventurers and (ii) such discharge, escape, or emanation arises out of or results from the Legal Fault of any of the members of Contractor Group or any of their respective officers, directors, or personnel. Provided, however, that Contractor's maximum liability for such Claims shall not exceed Five Million United States Dollars

(US\$ 5,000,000) per occurrence; and, subject to Contractor fulfilling such Indemnification obligation, Company shall Indemnify the members of Contractor Group from and against such Claims to the extent they exceed Five Million United States Dollars (US\$ 5,000,000) per occurrence.

12.4.2 In addition to the obligations under Article 12.4.1, except as provided in Articles 12.2.2 and 12.3.3, Contractor shall Indemnify each of the members of Company Group from and against any and all Claims arising out of or attributable to pollution or contamination (including control, containment, clean-up, and removal thereof) occurring in connection with performance of the Services under the Contract to the extent that the polluting or contaminating material is discharged, escapes, or emanates from property of any of the members of Contractor Group.

12.4.3 Initiation of clean-up operations by either Party shall not be construed as an admission or assumption of liability by such Party.

12.4.4 It is the express intent of the Parties that in the event the application of Articles 12.4.1 and 12.4.2 to prosecutions, fines, penalties, or other actions maintained or imposed by any governmental authority is determined to be void or unenforceable, such provisions and the obligations therein shall nevertheless apply to all other Claims.

12.5 Consequential Loss

12.5.1 The members of Contractor Group shall not be liable to any of the members of Company Group for, and Company shall Indemnify each of the members of Contractor Group from and against, any Consequential Loss suffered by any of the members of Company Group resulting from or arising out of or occurring in connection with the Contract or performance of the Services.

12.5.2 The members of Company Group shall not be liable to any of the members of Contractor Group for, and Contractor shall Indemnify each of the members of Company Group from and against, any Consequential Loss suffered by any of the members of Contractor Group resulting from or arising out of or occurring in connection with the Contract or performance of the Services.

12.5.3 Insurances

12.5.4 The obligations under this Article 12 (i) are independent of and in addition to any other provisions of this Agreement, including the requirements of Article 13; and (ii) shall not be prejudiced, reduced or limited by any insurance coverage that Contractor is required to maintain pursuant to Article 13, by operation of law or otherwise, or by any insurance that Contractor actually maintains. Additionally, any enforcement or failure to enforce any of the obligations related to insurance shall not prejudice, reduce, or limit the obligations contained in this Article 12.

12.6 Subcontracting

12.6.1 In the event Contractor subcontracts any of the Services, such subcontracts shall contain Indemnification and Consequential Loss and waiver of subrogation provisions equivalent to those set forth in this Article 12, elsewhere in this Agreement, and in Article 13, whereby the Subcontractors undertake the same obligations and duties for the benefit of the members of Company Group as does Contractor. With regard to any subcontract not containing such equivalent provisions, the personnel and property of the Subcontractor shall be deemed, for purposes of this Article 12 and Article 13, to be the personnel and property of Contractor. Additionally, in the event subcontracts contain Indemnification and waiver of subrogation provisions in favor of or for the benefit of the members of Company Group, Contractor shall take such steps as may be requested by Company to enforce such provisions on behalf of the members of Company Group.

12.7 Proportionate Liability Legislation

12.7.1 To the extent permitted by Applicable Laws, the provisions of the Proportionate Liability Legislation are excluded, and will not limit or otherwise affect the operation of the express provisions with respect to the rights, obligations, and liabilities of the Parties under the Contract.

12.8 Wilful Misconduct

12.8.1 The Indemnities and exclusions or limitations of liability contained in the Contract shall

not apply for the benefit of a member of Contractor Group to the extent any Claim is attributable to the Wilful Misconduct of such member or any of its officers, directors, or personnel.

- 12.8.2** The Indemnities and exclusions or limitations of liability contained in the Contract shall not apply for the benefit of a member of Company Group to the extent any Claim is attributable to the Wilful Misconduct of such member or any of its officers, directors, or personnel.

12.9 Application of Indemnities, Exclusions and Limitations of Liability

- 12.9.1** Contractor's obligations under, and Indemnities in favor of Contractor in, this Article 12 are not intended to and shall not reduce, terminate, supersede, or otherwise affect (nor be construed as inconsistent with) Contractor's responsibilities, duties, and obligations pursuant to other provisions of this Agreement.

- 12.9.2** Except as expressly provided otherwise in this Article 12, any Indemnification granted in this Article 12 shall apply and be enforceable:

- (a) with respect to any loss, damage, Personal Injury, pollution, or Consequential Loss which actually or allegedly occurs or is caused during or results from or arises out of the performance of the Services under the Contract (whether directly or indirectly in relation thereto), or which occurs at any place related to the Services where officers, directors, personnel, or property of any of the members of Company Group or of any of the members of Contractor Group are located by reason of the performance of the Contract, including going to or from any Worksite;
- (b) even if the loss, damage, Personal Injury, pollution, or Consequential Loss that is the subject of such Indemnification actually or allegedly is caused by or results from negligence, breach of duty (statutory or otherwise), breach of contract, or strict liability of the Indemnitee; and
- (c) regardless of whether a Claim is based upon (i) common law, civil law, maritime law, or statute; (ii) contractual obligations between the Indemnitee and another person; (iii) operation of Applicable Laws requiring the Indemnitee to make a contribution in respect of a Claim by another person; or (iv) any other theory of legal liability.

- 12.9.3** For all purposes including Section 11 of the Property Law Act 1969 (WA):

- (a) Company intends to confer a benefit on each of the members of Contractor Group and their respective officers, directors, and personnel in each Indemnity and exclusion or limitation of liability given by Company in favor of the members of Contractor Group in the Contract and Contractor holds the benefit of each of those Indemnities and exclusions or limitations of liability on trust for the benefit of each of the members of Contractor Group and their respective officers, directors, and personnel; and
- (b) Contractor intends to confer a benefit on each of the members of Company Group and their respective officers, directors, and personnel in each Indemnity and exclusion or limitation of liability given by Contractor in favor of the members of Company Group in the Contract and Company holds the benefit of each of those Indemnities and exclusions or limitations of liability on trust for the benefit of each of the members of Company Group and their respective officers, directors, and personnel.

12.10 Conduct of Claims

- 12.10.1** When a person ("Indemnified Person") has the benefit of an Indemnity in respect of any Claim pursuant to the Contract, the Indemnified Person must give written notice to the Party giving the Indemnity ("Indemnifying Party") of the nature and, to the extent reasonably known at the time, quantum of the Claim as soon as reasonably practicable after the commencement of the circumstances giving rise to the Claim. No such Claim shall be settled without the approval of the Indemnifying Party. After it has been notified of any such Claim, the Indemnifying Party shall assume the defense thereof, at its sole expense.

- 12.10.2** The Indemnified Person must provide reasonable information and documentation

relating to such Claim to the Indemnifying Party on a continuing basis.

- 12.10.3** Upon service of a notice by the Indemnified Person, the Indemnifying Party must defend any Claim on behalf of the Indemnified Person and the Indemnified Person must, at the Indemnifying Party's cost, do all things reasonably necessary to assist the Indemnifying Party to defend, settle, or mitigate such Claim. Each applicable member of Company Group shall have the right, at its discretion, to select or approve the counsel to be engaged by Contractor to defend such member. Without prejudicing its right to the defense obligations set out in this Article 12.11.3, an Indemnified Person may participate, at its own expense, in its defense conducted by the Indemnifying Party.
- 12.10.4** Except when a Claim by an Indemnified Person, or the quantum of any such Claim, is the subject of a bona fide dispute by the Indemnifying Party, the Indemnifying Party must pay the Indemnified Person in respect of the Claim within 30 days of a demand for payment of the Claim.
- 12.10.5** When a Claim by an Indemnified Person is the subject of a bona fide dispute by the Indemnifying Party, the Indemnifying Party must pay to the Indemnified Person the undisputed amount within 30 days of a demand for payment of the Claim and the remainder within 30 days of the resolution of the dispute.
- 12.10.6** An Indemnified Person must do all things reasonably necessary to mitigate any Claim.

12.11 Contractor Group Claims

- 12.11.1** Contractor must inform each of the members of Contractor Group of the Indemnities under the Contract and ensure that each member of Contractor Group does not make any Claim against any of the members of Company Group when Contractor has Indemnified the members of Company Group against such Claim.

12.12 Enforceability of Provisions

- 12.12.1** The Indemnities in the Contract are given to the extent permitted by Applicable Laws, and to the extent that an Indemnity is void, unenforceable, or not permitted under Applicable Laws the relevant Indemnity shall remain in force in accordance with Article 23.6.
- 12.12.2** If any provision contained in this Article 12 in favour of a Party is determined by a court or other authority of competent jurisdiction to be void or unenforceable, in whole or in part, the similar provision in favour of the other Party shall be rendered void or unenforceable or shall be adjusted to the same degree.

13. INSURANCE

13.1 Insurance Requirements

- 13.1.1** Contractor shall maintain insurance of the types and with limits of liability not less than those set out below at its expense during the term of the Contract from insurers reasonably acceptable to Company covering items, risks and operations required to fulfill the Contract:
- a. Insurance that Contractor is obliged by Applicable Laws to carry that covers all of Contractor's personnel performing work under the Contract, including coverage under applicable maritime law.
 - b. Employer's Liability Insurance, including coverage for marine operations (if applicable), with a limit not less than One Million United States Dollars (US\$ 1,000,000) any one occurrence or the statutory requirement, whichever amount is greater.
 - c. Commercial General Liability Insurance, including contractual liability coverage, with a limit not less than Five Million United States Dollars (US\$ 5,000,000) any one occurrence. Such insurance shall include sudden and accidental pollution liability coverage.
 - d. Automobile Liability Insurance with a combined bodily injury and property damage limit not less than One Million United States Dollars (US\$ 1,000,000) any one occurrence or the statutory requirement, whichever amount is greater, for all vehicles (whether owned, leased, or howsoever otherwise obtained) used in

performance of Services.

- e. Such other insurance in the types and amounts required by Applicable Laws.

13.2 Primary Insurance

13.2.1 All insurance coverage required of Contractor pursuant to Article 13.1 shall be primary, with regard to the obligations and liabilities assumed by Contractor under the Contract, to any insurance coverage available to any of the members of Company Group. The minimum requirements stated in Article 13.1 are not intended to indicate the amounts and types of insurance that Contractor needs or may ultimately need. Contractor shall be liable for all deductibles in relation to such insurance coverage.

13.3 Waiver of Subrogation and Additional Insured

13.3.1 The policies under Articles 13.1.1(c) through 13.1.1(e) shall show Company Group as additional insureds (coverage inclusive of defense costs) to the extent of the risks and liabilities assumed by Contractor (including those with regard to other members of Contractor Group) under the Contract, irrespective of minimum limits and amounts stated for insurance required of Contractor in Article 13.1, and shall contain a provision that any breach by Contractor or any of the other members of Contractor Group of any warranty, covenant, or representation in any of the policies shall not prejudice any claim by the additional insureds.

13.3.2 All insurance policies obtained by any of the members of Contractor Group in relation to the Contract must contain a waiver of subrogation, when legally permitted, in favour of Company, the other members of Company Group, and Company's and such other members' respective officers, directors and personnel, to the extent of the risks and liabilities assumed by Contractor under the Contract.

13.4 Certificates of Insurance and Policies

13.4.1 None of the insurance required of Contractor by this Article 13 shall be materially changed or cancelled without written notice thereof to Company at least thirty (30) days in advance. All coverages must be set out in appropriate policy documents that conform to the requirements of the Contract.

13.4.2 Upon request of Company, Contractor shall furnish to Company certificates of insurance demonstrating that Contractor has obtained the insurance coverages set out in Article 13.1 and fulfilled the requirements of Article 13.3. Each certificate shall expressly contain a statement that the notice of material change or cancellation addressed in Article 13.4.1 shall be provided to Contractor; and Contractor shall immediately give the written notice to Company required by Article 13.4.1. Neither Company's review nor its failure to review such certificates shall constitute Approval thereof or be deemed to waive or diminish Contractor's obligations or Company's rights under the Contract.

13.4.3 In the event of an accident or loss having the potential to result in a claim under Contractor's insurance policies that are required by Article 13.3.1 to show Company Group as additional insureds, Contractor, at Company's request, shall make sufficient policy information available as reasonably required by Company to enable applicable members of Company Group to file a claim against Contractor's applicable policies. This obligation shall survive the termination or expiration of the Contract.

13.5 Failure to Comply

13.5.1 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve Contractor from Contractor's liability and Indemnity obligations in the Contract. If Contractor fails or refuses to comply with the obligations prescribed in this Article 13: (i) Contractor shall be liable for and Indemnify Company Group from and against any Claim that would have been covered by the insurance required by Article 13.1 and from costs incurred by Company and any of the other members of Company Group in enforcing such Indemnity; and (ii) Company, without prejudice to any other rights or remedies available to it under any the Contract or at law, may: (a) treat the Contract as having been repudiated by Contractor; or (b) procure the required insurances and deduct the cost thereof from any amounts due under the Contract or otherwise recover such amounts from Contractor.

13.6 Subcontracting

13.6.1 Contractor must ensure that each Subcontractor shall maintain insurance which is

required under Applicable Laws, together with other insurance of types and amounts that Contractor may deem necessary.

14. WARRANTY

14.1 Contractor hereby warrants as follows:

- (a) all Services shall be diligently performed with competent and skilled personnel in a professional and workmanlike manner;
- (b) performance of the Contract shall be in full compliance with all Applicable Laws;
- (c) all Services and Goods shall be complete and free of errors, omissions, defects, deficiencies, and discrepancies in materials, workmanship, or other respects relative to, and any other failure of the Services to comply with, the requirements of the Contract; and
- (d) all Services shall be performed in accordance with any particular requirements stipulated in the Contract.

14.2 If Contractor fails to comply with any term or condition in the Contract or if any defect in Services or Goods (including any deterioration or damage due to patent or latent defect in any Goods or any part thereof) or other nonconformance with the warranties set out in Article 14.1 is found:

- (a) after commencement and before completion of the Services and Company's acceptance thereof; or
- (b) within the period commencing upon completion and Company's acceptance of the Services and ending twenty-four (24) months thereafter (the "Warranty Period");

14.3 Contractor shall be in breach of warranty and, in order to cure such breach, Contractor shall diligently, on an expedited basis, and at its own cost: (i) perform all necessary Services associated with remedying defects or nonconformances in Goods; and (ii) re-perform any such defective or nonconforming Services, including as a precondition for the completion and acceptance of the Services mentioned in Article 14.2(a). In each instance of Contractor so remedying any defective or nonconforming Services or Goods found during the Warranty Period, the portion of the Services so remedied shall have a new Warranty Period commencing upon completion and Company's acceptance of the remedied Services and ending twenty-four (24) months thereafter.

14.4 Contractor shall commence and diligently proceed with remedying of any defective or nonconforming Services or Goods within five (5) days of receipt of Company's notice of the defects or nonconformances, or such longer period agreed by Company in writing. Should Contractor refuse or fail to do so, Company shall have the right, on an expedited basis, to carry out the re-performance itself or to have re-performance carried out by others. Contractor shall be liable for all costs of such re-performance and Company's internal costs; and Company may collect such costs directly from Contractor or by offset against performance security, if any, or by deduction from amounts due to Contractor.

14.5 Notwithstanding the terms of Articles 14.2 and 14.3, if Company determines that it is not feasible or practicable to have the required re-performance or other remedial actions carried out within a reasonable time or at all, Company shall have the option to require Contractor to refund to Company amounts reasonably determined as corresponding to the payments made previously by Company to Contractor for the Services or Goods in question.

14.6 Contractor shall Indemnify each of the members of Company Group against all Claims or any loss or damage which the members of Company Group may suffer or otherwise incur by reason of Contractor's failure to comply with the provisions of the Contract.

14.7 Contractor must not invoice or claim from Company Group any cost or expense that arises out of a delay, default, failure, or fault of any of the members of Contractor Group.

15. DISPUTE RESOLUTION

15.1 Notice of Dispute

15.1.1 In the event of any dispute between Company and Contractor under the Contract or in connection with the subject matter of the Contract (“Dispute”), either Party must give to the other written notice adequately identifying the matters that are the subject of the Dispute.

15.1.2 Parties to Confer. Within 14 days of the service of a notice of Dispute, the Parties must confer at least once to attempt to resolve the Dispute and failing resolution of the Dispute to explore alternative methods of resolving the Dispute. At any such conference each Party must be represented by a person having authority to agree to a resolution of the Dispute.

15.2 Escalation

15.2.1 If the Dispute has not been resolved within 20 days of the first meeting addressed in Article 15.1, the matter shall be referred to a senior executive of each Party who shall have been delegated the authority to settle the Dispute (each a “Senior Executive”). The Parties must promptly prepare and exchange memoranda stating full particulars of the Dispute and their positions, summarizing the negotiations which have taken place, and attaching relevant documents (“Position Memoranda”). The Senior Executives will meet for negotiations at an agreed time within 14 days of the end of the 20-day period specified in this Article 15.

15.2.2 If the Senior Executives do not resolve the Dispute, then the Senior Executives may agree an alternative dispute resolution method (for example, mediation or expert determination).

15.2.3 If the Dispute is not resolved after compliance with this Article 15, the Parties may by mutual agreement refer the Dispute to arbitration or, in the absence of such agreement, either Party may commence legal proceedings.

15.3 Proceeding with the Services

Notwithstanding Article 15.2, if the Services have not been completed, at all times Contractor must proceed with expedition to continue to perform the Services and in so doing shall comply with all instructions of Company pending resolution of the Dispute.

15.4 Urgent Court Application

Notwithstanding the provisions of this Article 15, neither Party shall be prevented or restrained from applying to a court of competent jurisdiction to seek urgent relief. The Parties must, as soon as is practicable and in conjunction with the urgent court application, comply with the procedure set out in Articles 15.1 to 15.3.

16. EXPORT CONTROL COMPLIANCE

16.1 Contractor must comply (and must ensure that its officers, directors, and personnel, and the other members of Contractor Group and their respective officers, directors, and personnel shall comply) with all Applicable Laws relating to control of exports and re-exports, and to sanctions, including those of Australia and the United States. Notwithstanding anything to the contrary in this Article 16, neither Company nor Contractor shall be required to meet its obligations under the Contract in a way that violates Applicable Laws.

16.2 Contractor shall be responsible for obtaining any authorizations or licenses required under applicable export control regimes in connection with performance of the Contract, including licenses required for the transfer of any regulated technology to nationals of certain countries. Contractor shall, always in good time: (i) identify in writing to Company those items, technology, software, or services for which an export authorization is required; and (ii) provide in writing to Company export control classification and licensing information necessary for export documents (e.g., Export Control Classification Numbers (ECCNs)). Contractor shall keep records of its export and re-export related activities for a minimum of five (5) years or such period as required by Applicable Laws, whichever is greater, and shall make those records available to Company upon request.

16.3 In connection with the Contract and the Services, Contractor shall not, and shall require that the other members of Contractor Group shall not:

- (a) hire, charter, or contract or subcontract with, any person that is listed on any Australian or United States or other applicable government list of prohibited or denied parties or organized under the laws of, operating under the flag of, performing services in, or resident in, any country against which Australia or the United States or other applicable government has imposed comprehensive economic sanctions; or
 - (b) obtain any items, technology, software or services originating from any country against which Australia or the United States or other applicable government has imposed comprehensive import sanctions or restrictions.
- 16.4** In the event that Contractor carries out any procurement of services or Goods or technology in relation to the Contract or any Services, Contractor shall verify and ensure that the persons from whom such procurement is made do not perform any act prohibited by Articles 16.3(a) or (b) in connection with the Contract or any Services.
- 16.5** Contractor shall Indemnify each of the members of Company Group from and against any and all Claims that may arise as a result of any actual or alleged acts or omissions of any of the members of Contractor Group or of any of their respective officers, directors, or personnel not conforming to the requirements of this Article 16.
- 16.6** Company confirms that no Goods, technology, software, or other items received from Contractor are intended to be shipped, either directly or indirectly, to any country or person, or for any end-use, that is prohibited under Applicable Laws relating to export control. Company shall Indemnify each of the members of Contractor Group from and against any and all Claims that may arise as a result of any actual or alleged breach by Company or by any of Company's officers, directors, personnel, or agents of Applicable Laws pertaining to export control.

17. TERMINATION

- 17.1** Company shall be entitled to terminate the Contract or the Services or any part thereof upon notice in writing to Contractor if Contractor fails to comply with any term, condition, or warranty in the Contract and either:
- (a) it is not possible to remedy such non-compliance; or
 - (b) Contractor has not promptly remedied such non-compliance as required by Article 14.
- 17.2** In the event of termination pursuant to Article 17.1, Contractor shall be liable for extra costs incurred by Company as a result of such termination, and Company shall be entitled to offset such extra costs against any amounts otherwise due from Company to Contractor for Services duly performed prior to the termination.
- 17.3** In addition to its rights under Articles 17.1 and 17.2, Company may terminate by written notice the whole or any part of the Services or the Contract without liability to Contractor save (i) to pay for that part of the Services duly performed by Contractor up to the date of termination; and (ii) to reimburse Contractor for any substantiated costs suffered by Contractor as a direct result of such termination to the extent that Contractor, using reasonable endeavors, is unable to avoid or mitigate such costs. Contractor acknowledges that the provision of the Services is a competitive business and that Company may terminate the Contract under this Article without considering the impact of such termination on Contractor. Without prejudice to any other rights of Company, Company may, following termination of the Contract, the Services, or any part thereof (including pursuant to this Article 17), perform the Services itself or procure a third party to perform the Services for reward in the place of Contractor.

18. SURVIVAL OF OBLIGATIONS

- 18.1** The provisions in respect of confidentiality, insurance, audit rights, taxes and duties, dispute resolution, intellectual property, indemnities, and governing law contained in the Contract shall survive the termination, expiry, or completion of the Contract.
- 18.2** Termination of the Contract shall be without prejudice to any rights or remedies that the Parties may have arising prior to or in connection with such termination or the event leading to such termination and any provisions necessary to give effect to such termination.

19. SUSPENSION

- 19.1** Contractor must not suspend the whole or any part of the Services without a written direction from Company. In particular, Contractor must not cease or suspend or threaten to cease or

suspend the whole or any part of the Services for convenience or on the basis that it is not making sufficient profit under the Contract or that it can make more profit working elsewhere. Contractor must ensure that each member of Contractor Group complies with this Article and Contractor shall Indemnify the members of Company Group against any Claim which arises from breach of this Article 19.1 by any of the members of Contractor Group.

- 19.2** If Company considers that suspension of the whole or part of the Services is necessary for any reason, Company may direct Contractor to suspend the whole or any part of the Services for such reasonable time and under such reasonable conditions as Company determines.

20. COMPANY AS AGENT

- 20.1** If Company enters into the Contract in its capacity as agent on behalf of any Disclosed Principal as set out in the Contract or as otherwise notified to Contractor by Company:

- (a) Contractor must nevertheless deal only with Company in relation to the Contract;
- (b) Contractor acknowledges that, in the event Company enters into the Contract in its capacity as agent on behalf of Coventurers, the interests of the Coventurers may change from time to time without notice to Contractor;
- (c) the rights and remedies under the Contract may be exercised by Company for itself and for and on behalf of the Coventurers;
- (d) Contractor's duties and obligations under the Contract are deemed to take effect for the benefit of Company and each of the Coventurers, and Company is authorized to enforce those duties and obligations on its own and the Coventurers' behalf; and
- (e) Contractor may only enforce its rights and remedies in and under the Contract against Company (i) with respect to Company's own interest; and (ii) as agent severally for each of the Coventurers.

- 20.2** Contractor must not without prior Approval communicate in any way directly or indirectly with any Coventurer or any governmental or semi-governmental authority or body in respect of any matter or thing relating directly or indirectly to the Contract (except to the extent required by any Applicable Laws).

21. GOVERNING LAW

- 21.1** The Contract is governed by the laws of Western Australia.
- 21.2** Each Party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.
- 21.3** Each Party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

22. NOTICES

- 22.1** A notice or other communication under the Contract must be in writing and delivered by hand or sent by pre-paid registered post or by facsimile transmission to a Party at the address or the fax number for that Party specified in the Purchase Order or as otherwise specified by a Party by notice.
- 22.2** Email or similar electronic means of communication must not be used to give notices under the Contract unless and to the extent the Parties have agreed on, and duly conformed to, a protocol making certain notices by email permissible. Emails shall not, however, be used to modify any terms of the Contract.
- 22.3** Subject to Article 22.5, a notice sent by post is regarded as given and received on the date of delivery.
- 22.4** Subject to Article 22.5, a fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the notice is illegible or incomplete within 4 hours of it being transmitted.
- 22.5** A notice delivered or received (i) other than on a day on which banks are open for general banking business in Perth, Western Australia ("Business Day") or (ii) after 4.00pm (recipient's time) is regarded as received at 9.00am (recipient's time) on the following Business Day; and a notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am

(recipient's time).

23. GENERAL

- 23.1** The Contract comprises the entire agreement of the Parties and supersedes all previous communications, representations, and agreements with respect to the subject matter of the Contract, except to the extent that Company relies on representations made by Contractor as to Contractor's ability to perform the Services, the costs of performing the Services, and the way in which Contractor shall perform the Services. Any purported amendment of the Contract shall be void and of no force unless it is (i) in writing, (ii) signed by duly authorized representatives of Company and Contractor, (iii) expressly refers to the specific provision to be amended, and (iv) expressly indicates agreement of Company and Contractor to amend such specific provision.
- 23.2** The Contract is personal to Contractor and Contractor may not assign or purport to assign or transfer or sub-contract to any other party any of its rights or any of its obligations under the Contract without prior Approval. Approval may be withheld in the absolute discretion of Company or given subject to certain conditions. Approval does not relieve Contractor from responsibility for performance of the assigned or subcontracted Services or any of its other obligations under the Contract. Reasonable utilization by Contractor of personnel engaged directly by any of the members of Contractor Group or engaged by any of the members of Contractor Group through a personnel services agreement or similar arrangement for casual or ad hoc labour shall not be considered as subcontracts that require Approval. Company and its Coventurers may assign their interests under the Contract without the consent of Contractor, and Contractor must execute any documentation required to give effect to such assignment when directed to do so.
- 23.3** Contractor is an independent contractor and in no event shall any member of Contractor Group be considered an employee or agent of any of the members of Company Group, and Contractor shall Indemnify the members of Company Group against any such Claim from any of the members of Contractor Group.
- 23.4** Any waiver by either Party of a breach of any term of the Contract (i) shall not be valid unless set forth in writing and executed by a duly authorized representative of the Party; and (ii) shall not be construed as a waiver of any subsequent breach of the Contract.
- 23.5** Contractor must protect and Indemnify the members of Company Group from all liens and other encumbrances against property of the members of Company Group on account of debts or Claims alleged to be due from any member of Contractor Group to any person, including Subcontractors; and on behalf of the members of Company Group, and in their names, shall defend at its own expense any Claim or litigation in connection therewith.
- 23.6** If any provision of the Contract is invalid, illegal, or unenforceable in any respect in any jurisdiction then in that jurisdiction the provision remains enforceable to the extent that it is not invalid, illegal, or unenforceable, whether it is in severable terms or not, unless enforcement of the provision in accordance with this Article would materially affect the nature or effect of the Party's obligations under the Contract.
- 23.7** If any one or more of the provisions of the Contract is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Contract are not affected or impaired thereby in any way unless incapable of being operable in the absence of such provisions.
- 23.8** Contractor expressly acknowledges and warrants that Company entered into the Contract in reliance upon the skill and judgment of Contractor as an experienced and safe designer, manufacturer, fabricator, supplier, transporter, installer, erector, constructor, tester, repairer, and commissioner (to the extent that the Services include those activities) of work similar in size, nature, and standard to the Services and Contractor's ability to carry out the Services in accordance with its tender or quotation.
- 23.9** No variation to the Contract shall be binding unless set out in writing and signed by duly authorized representatives of both Parties.
- 23.10** The Contract may be executed in counterparts and will be deemed to have been fully executed once both Parties have executed a counterpart. For the purposes of assembling the counterparts into one document, Company is authorized to detach the signed signature page from one or more counterparts and attach each of these to one single counterpart.
- 23.11** Should Contractor comprise two or more persons, each of them shall be jointly and severally

liable for due fulfillment all of Contractor's duties, obligations, and responsibilities under the Contract.