

# General Conditions for Goods and Services (MN)

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## 1. Definitions and interpretation

### 1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

**Affiliate** means any corporation, company, partnership, limited partnership, limited liability company, joint venture, or other form of enterprise, which controls, is controlled by, or is under common control with, a Party. Control, when used as a verb, means the ability, directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity through (i) legal or beneficial ownership of voting securities or membership interests; (ii) the right to appoint managers, directors or corporate management; (iii) contract; (iv) operating agreement; (v) voting trust; or otherwise; and when used with respect to a person, means the actual or legal ability to control the actions of that person; and when used as a noun means an interest which gives the holder the ability to exercise any of the foregoing powers.

**Alternative Supply** is defined in Clause 18.1.

**Applicable Laws** means any local, state, provincial, territorial, national or federal laws, legislation, statutes, regulations, rules, treaties and orders of a Government Agency which are applicable in the jurisdiction(s) where the Supply is to be performed and used and which relate to a Party's rights or obligations under the Contract.

**Business Day** means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 44, the place to which a Notice is sent.

**Cancellation Date** is defined in Clause 37.2(b)(iii).

**Claim** means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company, an End User or their respective Personnel by Personnel of the Supplier or any third party).

**Commencement Date** is defined in the Key Terms.

**Commissioning** includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks, no-load commissioning, full-load commissioning, testing to demonstrate performance in accordance with the Specifications and any other actions which are described in the Special Conditions, or otherwise agreed by the Parties, as being part of Commissioning.

**Company** is defined in the Key Terms.

**Company Competencies** is defined in Clause 28.5(b).

**Company Default** is defined in Clause 38.1.

**Company Default Notice** is defined in Clause 38.2.

**Company Induction Courses** is defined in Clause 28.5(a).

**Company Representative** is, initially, as defined in the Key Terms, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

**Company's Personal Data** means the Personal Data that the Company transfers to the Supplier from time to time in connection with the Contract.

**Confidential Information** means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential)

which relates to the business, affairs or activities of the Company, an End User or members of the Rio Tinto Group (including in relation to the Supply) and which:

- (a) is disclosed to the Supplier or its Personnel by or on behalf of the Company;
- (b) is generated by the Supplier or its Personnel in performing the Supply; or
- (c) otherwise comes to the knowledge of the Supplier or its Personnel.

**Contract** is defined in Clause 2.1.

**Contract IP** means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Supply or the Contract (including all Intellectual Property Rights in anything developed by the Supplier in providing the Supply and any Intellectual Property Rights in the Documentation provided by the Company to the Supplier).

**Contract Price** is defined in Clause 13.1.

**Customs Duties** means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

**Deducted Amount** is defined in Clause 17.2(a).

**Defects Liability Period** is defined in the Key Terms.

**Delivery Point** is defined in the Key Terms.

**Dispute** is defined in Clause 39.1.

**Dispute Notice** is defined in Clause 39.1.

**Dispute Representative** is defined in Clause 39.2(a).

**Documentation** includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

**End User** means an entity identified in the Contract (or notified to the Supplier by the Company) to whom the Company provides goods and/or services comprising, or derived from, in whole or in part, the Supply.

**Equipment** means the items of Equipment, if any, that are generally described in Schedule A (Goods) as being Equipment, and that are more particularly described in an individual EPF which are to be supplied by Supplier thereunder (including, if applicable, Spare Parts).

**Equipment Purchase Form ("EPF")** means a mutually agreed to document executed by authorized representatives of the Supplier and the Company in the form of Schedule H for the provision of certain Equipment, including any Spare Parts and/or Services, identified therein to the Company that complies with the terms and conditions of this Contract (including, without limitation, Clause 5.4).

**Excise Duties** means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

**Facilities** means any accommodation, sustenance, transportation, medical or toilet facilities.

**Force Majeure** means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);

- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

**Goods** means the goods, materials, supplies, equipment (including Equipment purchased under an EPF), Spare Parts or other items identified in Schedule A (Goods).

**Government Agency** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Hazardous Substances** means any substance which: (a) is defined as a pollutant, contaminant, dangerous substance, toxic substance, hazardous or toxic chemical, hazardous waste or hazardous substance under Applicable Laws, including, without limitation, asbestos and any materials containing asbestos; or (b) requires reporting, investigation, removal or remediation under Applicable Laws.

**HSE Management Plan(s)** is defined in Clause 28.4(a).

**HSE Policies and Standards** is defined in Clause 28.3(a).

**Illegal Information Brokering** means the practice by which an individual or entity approaches contractors, sub-contractors, vendors and other suppliers, and offers confidential information or illegal or improper influence in order to obtain business through bribery, fraud, corruption of competitive bidding processes or other dishonest activity.

**Indemnified Parties** is defined in Clause 35.2(a).

**Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

**Input Tax Credit** means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

**Intellectual Property Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not able to be registered), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Joint Venturers** means, in respect of a joint venture, the participants in that joint venture.

**Key Terms** means the document named "Key Terms" forming part of the Contract, but not including the Schedules to that document.

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind.

**Liens** is defined in Clause 12.4.

**Materials** is defined in Clause 43.5(a)(i).

**Notice** is defined in Clause 44.1.

**Official** includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;

- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

**Party** means a party to the Contract.

**Personal Data** means information relating to identifiable individuals and includes all information relating to individuals that is protected by Applicable Laws.

Personnel means:

- (a) in relation to the Supplier, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply;
- (b) in relation to the Company, an End User or a member of the Rio Tinto Group, any of its past or present officers, employees, agents (including, for the purposes of Clause 35, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

**Processing** means collecting, holding, using, transferring, destroying and any other dealing.

**Purchase Order** means an individual purchase order as may be issued by the Company to the Supplier in respect of the supply of Goods or the performance of Services which shall be subject to the terms of the Contract.

**Quadrem** means the Global eMarketplace for the natural resources industry operated as at the date of the Contract by Quadrem International Ltd.

**Release Date** is defined in Clause 21.5.

**Rio Tinto Group** means the dual listed company structure incorporating Rio Tinto plc and Rio Tinto Limited and including:

- (a) any Affiliate of Rio Tinto plc or Rio Tinto Limited;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or any Affiliate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%;
- (c) any business entity (body corporate) or unincorporated joint venture managed by Rio Tinto plc or Rio Tinto Limited or any Affiliate of Rio Tinto plc or Rio Tinto Limited; and
- (d) such other entities as the Parties agree in writing.

**Rio Tinto IP** means the Intellectual Property Rights of the Company or any member of the Rio Tinto Group (as the case requires) which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Rio Tinto Limited** means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33<sup>rd</sup> Floor, 120 Collins Street, Melbourne, Victoria, 3000.

**Rio Tinto plc** means Rio Tinto plc (Company No. 719885) of 2 Eastbourne Terrace, London, W2 6LG, United Kingdom.

**Security** is defined in Clause 21.1 and includes any additional or replacement Security provided pursuant to Clause 21.2.

**Services** means the services (if any) identified in Schedule B (Services) that are to be performed by the Supplier.

**Site** means the Company's premises identified in the Key Terms.

**Special Conditions** means the special conditions set out in Schedule F (Special Conditions).

**Specifications** means the specifications for the Supply and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

**Statement of Work ("SOW")** means a mutually agreed to document executed by authorized representatives of the Supplier and the Company for the provision of certain project specific Services identified therein to the Company that complies with the terms and conditions of this Contract (including, without limitation, Clause 5.3).

**Sub-contractor** means any person engaged by the Supplier in accordance with Clause 52 to perform all or any part of the Supply on behalf of the Supplier.

**Supplier** is defined in the Key Terms.

**Supplier Default Notice** is defined in Clause 37.1.

**Supplier Insurances** is defined in Clause 34.1.

**Supplier IP** means the Supplier's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Supplier Representative** is defined in the Key Terms.

**Supply** means the supply of Goods (including EPFs) and the performance of any Services (including SOWs) in accordance with the Contract.

**Supply Chain** means all steps and processes involved in the provision of the Supply to the Company, commencing with the sourcing of the Goods and (if applicable) Services and finishing with the use of the Goods and Services by the Company.

**Supply Timetable** means the schedule set out in Schedule D (Supply Timetable) for the effective monitoring of the progress of the Supply which:

- (a) (unless otherwise agreed between the Parties) is in a time-based format in which critical items and activities relating to the performance of the Supply are clearly identified and detailed; and
- (b) indicate the dates or times for commencement and completion of the various stages or parts of the Supply,

and includes any amendments to such Supply Timetable in accordance with Clause 9.2.

**Tax or Taxes** means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, Excise Tax, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

**Tax Invoice** means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

**Tender** means the Supplier's offer or counter-offer in writing to perform the Supply whether described as a "tender" or "proposal" or otherwise.

**Term** is defined in the Key Terms.

**Termination Notice** is defined in Clause 36.1.

**Variation** is defined in Clause 6.1(a).

**Variation Date** is defined in Clause 6.1(a).

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause or Appendix is a reference to a clause of, or appendix to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Supplier will perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.

## 2. Evidence of Contract and precedence of documents

### 2.1 Contract

The **Contract** consists of the following documents:

- (a) Key Terms;
- (b) An executed SOW or EPF, but only with respect to the information specified in Clauses 5.3(c)(i-vii) and 5.4(b)(i-vii), respectively;
- (c) Schedule F (Special Conditions) (if any);
- (d) Schedule E (Site Specific Terms) (if any);

- (e) these General Conditions;
- (f) Schedule A (Goods);
- (g) Schedule B (Services) (if applicable);
- (h) Schedule C (Prices);
- (i) Schedule D (Supply Timetable) (if applicable); and
- (j) any other Schedules, including SOWs and EPFs with respect to all information not specified in Clauses 5.3(c) and 5.4(b), respectively,

but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless the Company expressly so agrees in writing.

## 2.2 Precedence of Contract documents

- (a) If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.
- (b) If there is any conflict or inconsistency between a Purchase Order and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.
- (c) If there is any conflict or inconsistency between an executed SOW and this Contract, the SOW will prevail with respect to the items specified in Clause 5.3(c)(i-vii); but with respect to all other conflicts or inconsistencies, the General Conditions, Special Conditions and Site Specific Terms of this Contract shall prevail and control to the extent of such conflicts or inconsistencies.
- (d) If there is any conflict or inconsistency between an executed EPF and this Contract, the EPF will prevail with respect to the items specified in Clause 5.4(b)(i-vii); but with respect to all other conflicts or inconsistencies, the General Conditions, Special Conditions and Site Specific Terms of this Contract shall prevail and control to the extent of such conflicts or inconsistencies.

## 2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.
- (b) If at any time in relation to the Supply, the Supplier provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice) such terms and conditions will not form part of, or be incorporated into, the Contract. Where the Goods or other items supplied under the Contract are accompanied by the Supplier's documentation, acceptance of the Goods (or other items) or documentation by the Company is limited to an acknowledgement of receipt or delivery of the Goods or other items so supplied and not of the Supplier's documentation.
- (c) If during the Term the Company issues a Purchase Order which attaches a separate set of terms and conditions other than those incorporated in the Contract, those terms and conditions will not form part of, or be incorporated into, that Purchase Order or the Contract.

## 2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Supplier and the Company.

## 3. Supplier's representations

The Supplier represents to the Company that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to perform the Supply;
- (c) it is properly licensed, equipped, organised and financed to perform all its obligations under the Contract and that there are no contracts in existence that would affect the Supplier's ability to perform its obligations under the Contract in a timely and satisfactory manner;
- (d) the Contract has been validly executed by the Supplier and constitutes valid and binding obligations of the Supplier enforceable according to its terms; and
- (e) the execution of the Contract and the performance of the Supply do not and will not result in the breach of:
  - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Supplier may be affected or bound; or
  - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Supplier by which the Supplier may be bound.

## 4. Supplier's investigations

### 4.1 Investigations regarding Contract

The Supplier acknowledges that, prior to the submission of its Tender or, where no Tender is submitted, prior to accepting the Company's offer in relation to the provision of the Supply:

- (a) the Company provided it with every opportunity for inspecting and testing the Site and gave it every assistance in relation to the investigation of all local and other conditions affecting the performance of the Contract, and the provision of the Supply, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and
- (b) that it is deemed to have:
  - (i) inspected and tested the Site;
  - (ii) (without limiting Clause 4.2) carefully and fully examined all documents which have been provided by the Company as part of any tender process; and
  - (iii) to have fully informed itself in relation to each of the matters referred to in this Clause 4.1.

### 4.2 No representation by Company

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Supplier or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the

Supplier or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Supplier only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Supplier and its subsequent execution and performance of the Contract is deemed to have been based on the Supplier's own investigations and determinations.

#### 4.3 Supplier satisfied with accuracy

The Supplier agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

#### 4.4 No relief

Failure by the Supplier to do all or any of the things it is deemed to have done under this Clause 4 will not relieve the Supplier from any of its obligations under the Contract.

#### 4.5 Company not liable

The Company is not liable for any Liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Company.

### 5. Performance by Supplier

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#### 5.1 Performance of Supply

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

#### 5.2 Ordering

Without limiting Clause 9, the Company may complete and forward a Purchase Order to the Supplier in respect of all or any part of the Supply.

#### 5.3 Statements of Work

- (a) From time to time, the Company and the Supplier may enter into Statements of Work governed by the Contract for the provision or performance of project specific Services to or for the Company, which Services shall be performed and paid for as provided in the relevant Statement of Work. A pro forma SOW is attached as Schedule G.
- (b) Each SOW shall reference the Contract, the Company and the Supplier and shall be governed by the Contract. There may be more than one SOW for under the Contract. Each SOW shall be in the form of Schedule G, and shall be effective when executed by authorized representatives of the Supplier and the Company. The terms and conditions of the Contract shall apply to all SOWs. For the avoidance of doubt, each SOW, together with these General Conditions, and any Special Conditions in Schedule F, which are incorporated by this Section into the SOW, shall act as a separate and distinct contract between the Parties.
- (c) Each SOW shall contain the following information, plus any other applicable terms:
  - (i) a description of the Services;
  - (ii) the Site(s) where the Services are required or will be performed;

- (iii) any Standards in addition to those set forth herein for the Services;
- (iv) the performance schedule for the Services;
- (v) the number and names of the Supplier's Personnel providing the Services;
- (vi) designation of a project manager for each Party; and
- (vii) the Price for the Services.

(d) If and only to the extent that a Statement of Work provides for the Company to reimburse the Supplier for any necessary, reasonable, and actual out-of-pocket expenses in connection with the Services, then such expenses shall be reimbursed by the Company at the Supplier's actual cost, with no mark-up, surcharge or other add-on, provided that:

- (i) all such expenses are in accordance with the Company's then-current expense reimbursement policy or the Company otherwise gives its prior written consent; and
- (ii) when submitting its invoice(s) for the Services, the Supplier shall provide to Company an itemized list of all reimbursable expenses and copies of the paid receipts therefore.
- (iii) In the event of any conflict or ambiguity between this Clause and any SOW concerning reimbursement of expenses, this Clause shall prevail and control.

#### 5.4 Equipment Purchase Forms

- (a) Notwithstanding anything in the Contract to the contrary, all Equipment will be supplied and paid for only under mutually agreed to Equipment Purchase Forms ("EPFs") executed from time to time by authorized representatives of the Supplier and the Company. The Supplier agrees that it will not supply any Equipment under the Contract generally (i.e. without a specific EPF covering the relevant Equipment). A pro forma EPF is attached as Schedule H.
- (b) Each EPF shall reference this Contract and shall be governed by this Contract. There may be more than one EPF under this Contract. Each EPF shall be in the form of Schedule H, and shall be effective when executed by authorized representatives of the Supplier and the Company. The terms and conditions of this Contract shall apply to all EPFs. Each EPF, together with these General Conditions, and any Special Conditions in Schedule F, which are incorporated by this Section into the EPF, shall act as a separate and distinct contract between the Parties. Each EPF shall contain, at a minimum, the following information:
  - (i) a description of the Equipment;
  - (ii) the Site(s) where the Equipment will be delivered;
  - (iii) any Specifications in addition to those set forth herein for the Equipment;
  - (iv) the performance schedule for the fabrication and delivery of the Equipment, including any additional requirements regarding Commissioning;
  - (v) lists of all Spare Parts, if any, to be provided for the Equipment;
  - (vi) designation of a project manager for each Party; and



- (vii) the Price for the Equipment.

## 6. Variations

### 6.1 Variations

- (a) During the Term, the Company Representative may by Notice direct the Supplier to vary any aspect of the Supply (**Variation**) on and from the date specified in the Notice (**Variation Date**).
- (b) To the extent that the Variation is reasonable, the Supplier must comply with the Notice and any Variation will be binding on the Parties as if it was included in the Contract.

### 6.2 Cost of Variations

- (a) The difference in the cost (excluding any Indirect Transaction Taxes), if any, including a reasonable allowance in respect of Goods already prepared and Supply already performed but not required, caused by Variations directed by the Company Representative will be added to or deducted from the Contract Price as applicable.
- (b) To the extent that the rates for Variations are specified in a Schedule, they may be used by the Supplier to calculate the cost of a Variation, but otherwise the cost of a Variation will be estimated by the Supplier at the lowest reasonable cost consistent with sound industry practices.

### 6.3 Variation procedure

- (a) Within 10 days after a Variation Date, the Supplier must submit to the Company Representative a statement advising whether, in its opinion, a difference in the Contract Price will arise as a result of the Variation and, if so, the approximate value of the cost difference.
- (b) Within 30 days of a Variation Date, the Supplier must provide a detailed statement to the Company Representative of either the cost of the Variation or a detailed statement as to why the Supplier has been unable to state the cost of the Variation within the 30 day period. In the latter case, the Supplier must, without prejudice to the rights and remedies of the Company in those circumstances, provide the detailed statement of cost as soon as possible.
- (c) If either of the statements referred to in Clauses 6.3(a) or (b) are submitted later than the relevant time limits specified in those Clauses the claims contained in those statements may, at the sole discretion of the Company Representative, be time barred.
- (d) The Company Representative must use all reasonable endeavours to make a decision in relation to Variation claims as soon as is practicable after the claim is made.
- (e) As soon as practicable after the Company Representative makes a decision in regard to the Supplier's claim, the Company Representative must prepare a document to be signed by the Company Representative and the Supplier Representative setting out the details of the Variation to the Supply directed by the Company Representative and any consequent Variation in the Contract Price.
- (f) If the Company Representative does not approve the claim and the Supplier and the Company Representative are unable to agree upon the amount of the difference in cost then the Dispute must be resolved in accordance with Clause 39.

## 7. Supplier's warranties

### 7.1 Supplier's warranties

In addition to the warranties contained in Clauses 42.5, 43.1 and 45.1 and the warranty contained in Clause 8.1, the Supplier warrants that:

- (a) all of the Supply will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Supply will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia;
- (c) in relation to the performance of the Supply:
  - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
  - (ii) any equipment used on-Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company; and
- (d) in relation to the provision of Goods as part of the Supply:
  - (i) the Goods will be of merchantable quality;
  - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
  - (iii) it has good and marketable title to the Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
  - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Supply it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Supplier's Sub-contractors.
- (e) 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 Supply or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Supply.

### 7.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 7.1(d)(iv) must be supplied to the Company with Invoices.

### 7.3 Asbestos and other prohibited substances

Without in any way limiting the operation of Clause 31 or any other Clause of these General Conditions, the Supplier warrants that:

- (a) all Goods supplied to the Company and all material used for packing and shipping the Goods (including, without limitation, temporary or replacement fittings such as transport gaskets, packaging and strapping or protective materials) will be free from asbestos and any materials containing asbestos and will be free from any other substance which is prohibited under any applicable legislation, laws or Government Agency requirements; and
- (b) the Supplier has applied and will at all times continue to apply due diligence and surveillance in its design, material specification, material selection and manufacture and in respect of its suppliers and Sub-contractors to ensure asbestos or any material containing asbestos and any other prohibited substance has not been incorporated into the Goods or any material used for packing and shipping the Goods.

## **8. Defects liability**

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### **8.1 Warranty**

The Supplier warrants each Good against any defect which arises during the Defects Liability Period.

### **8.2 Commencement of Defects Liability Period**

In respect of each Good, the Defects Liability Period will commence on and from the date that Good is accepted by the Company Representative in writing.

### **8.3 Rectification of defects**

Upon receipt of a Notice from the Company Representative of any defect in any Good during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the Notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

## **9. Supply Timetable**

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### **9.1 Adherence to Supply Timetable**

- (a) Time is of the essence in the performance of the Supplier's obligations under the Contract.
- (b) The Supplier must perform the Supply in accordance with the Supply Timetable. The Supplier acknowledges that the Company Representative will rely upon the Supply Timetable in co-ordinating other work at the Site and elsewhere.
- (c) If the Company Representative is of the opinion that the Supplier will not be able to complete the Supply or any part of the Supply in accordance with the Supply Timetable, then the Company Representative (without prejudice to the Company's other rights under the Contract) may instruct the Supplier to work overtime (including night shifts, Saturdays, Sundays and public holidays) and to provide all necessary additional labour, supervision and plant to achieve and maintain adherence to the Supply Timetable at no additional cost to the Company, until such time as the performance of the Supply is in accordance with the Supply Timetable. The Supplier must

comply with any instruction from the Company Representative given in accordance with this Clause 9.1(c).

### **9.2 Amendments to Supply Timetable**

- (a) If the Supplier at any time is of the opinion that despite all reasonable steps having been taken, it will not be able to adhere to all or any part of the Supply Timetable due to:
  - (i) a breach of any provision of the Contract by the Company;
  - (ii) Force Majeure;
  - (iii) a delay or suspension in access to the Site as outlined in Clause 29.3;
  - (iv) a delay caused by another on-Site supplier or its personnel as outlined in Clause 32.3; or
  - (v) the Company directing a Variation,

the Supplier must within 14 days of such event give Notice to the Company applying for an amendment to the Supply Timetable setting out in detail the reasons for the application and clearly establishing the delay in question.

- (b) The Company must, if it considers an application made by the Supplier in accordance with Clause 9.2(a) to be reasonable, by Notice amend the Supply Timetable in such manner as it considers appropriate and such amendment will be the Supplier's sole remedy for any delay and the Supplier will not be entitled to any increase in the Contract Price or any damages, costs or expenses in connection with such extension provided that the Company may (in its discretion) reimburse the Supplier for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.
- (c) Unless the Supplier has applied for an amendment to the Supply Timetable in accordance with this Clause 9.2 and unless and until the Company has granted an amendment, the Supplier will not by reason of any delay arising from any cause be relieved in any way or to any extent from its obligations to proceed with and complete the Supply in accordance with the Supply Timetable. In the event of an amendment to the Supply Timetable, the Supplier will only be so relieved to the extent that it will have until the expiry of the relevant dates (as amended), in which to perform and complete the Supply.

## **10. Term**

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The Contract will commence on the Commencement Date and will remain in force, unless terminated earlier in accordance with the Contract, for the Term.

## **11. Representatives**

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### **11.1 Performance**

The Supply must be performed by the Supplier in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

### **11.2 Company Representative**

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) Directions given to the Supplier by any person other than the Company Representative will not

bind the Company unless ratified by the Company Representative.

### 11.3 Supplier Representative

- (a) The Supplier Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 11.2, and the Supplier Representative will have full power to legally bind the Supplier in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Supplier Representative is deemed to have been given to the Supplier for and on behalf of the Company and the Supplier must comply with that direction accordingly. Any communication given, or document signed, by a Supplier Representative is deemed to have been given or signed by the Supplier and will bind the Supplier. Matters within the knowledge of a Supplier Representative are deemed to be within the knowledge of the Supplier.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give Notice of such revocation and appointment to the other Party.

## 12. Delivery, title and risk

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### 12.1 Delivery

The Supplier must deliver the Goods to the Delivery Point. Any late charges to be imposed on Supplier for late delivery of any Equipment or other Goods, which shall not be considered a penalty but a reasonable estimate of harm caused due to such late delivery, may be specified in the applicable EPF or SOW.

### 12.2 Title

Full unencumbered title to each Good (including Spare Parts) will pass to the Company upon the earlier of:

- (a) the Company making payment in full to the Supplier for that Good; or
- (b) the Good being delivered to the Delivery Point, (if applicable) inspected and tested in accordance with Clauses 26 and 27 and accepted by the Company Representative.

### 12.3 Title to Equipment

Unless otherwise specified in the applicable EPF, full unencumbered title to an item of Equipment will pass to Company upon Commissioning of that Equipment.

### 12.4 Liens

Supplier shall make prompt and timely payment of any debts or liabilities incurred by Supplier in connection with or arising out of the Contract. Supplier will not cause or permit any mechanic's liens, materialmen's liens, legal hypothecs, state, provincial, local, or federal statutory bond claims, labour and material payment bond claims or other private bond claims, agreement claims or other liens or Claims for work, labour or services ordered directly or indirectly by Supplier or any of Supplier's Personnel or Subcontractors pursuant to the Contract or any Purchase Order (collectively "**Liens**"), to attach to any property or assets that the Company owns, leases, licenses or otherwise has an interest in. Supplier hereby waives any right to assert a lien, levy or attachment, and shall immediately discharge or obtain release of liens, levies or attachments filed by any third party respecting the Supply or any property into which the Supply may be integrated. In addition to any other remedies available at law, Company may withhold any monies due to

Supplier under the Contract up to an amount equal to 125% of the aggregate amount of such Liens until they are discharged or released. If all such Liens are not discharged, satisfied or released within 20 days after Company's demand that the same be discharged, satisfied or released, then Company may, upon notice to Supplier, discharge or secure the release of same and apply the amount that Company used to secure such discharge or release against any payments owed to Supplier under the Contract.

### 12.5 Risk

Risk in each Good (including Equipment and Spare Parts) will remain with the Supplier until its delivery to, and acceptance by the Company Representative.

## 13. Contract Price

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### 13.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 14) by the Company to the Supplier in relation to the Supply.

### 13.2 Contract Price to be inclusive

- (a) All expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Supplier must separately disclose to the Company details of any Customs Duties included in the Contract Price.

### 13.3 Greenhouse gas emissions

Notwithstanding any other provision of this Contract, the Supplier is not entitled to be reimbursed by the Company for any amount that the Supplier pays or is liable to pay as a result of the Supplier, or an Affiliate of the Supplier, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of producing or supplying the Goods or performing any Services supplied under the Contract; or
- (b) performing the Supply.

## 14. Taxes and Duties

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### 14.1 Taxes, Indirect Transaction Taxes and Withholding Taxes

- (a) For purposes of this Section 14.1: (i) "**Taxes**" means all taxes, levies, duties and assessments of whatever kind, including, for example and without limitation, sales taxes, value-added taxes ("VAT"), income taxes, stamp duties, import/export taxes, customs duties, excise taxes and social and health insurance. "**Taxes**" also include Mongolian Workplace Payments. (ii) "**Mongolian Workplace Payment**" means the Mongolian workplace fee imposed under the Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad for foreign (non-Mongolian) workers in Mongolia who are engaged in the supply of Goods, or performance of related services, under the Contract (whether employed by Supplier or by sub-suppliers or subcontractors). (iii) "**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister,

Crown corporation, court, board, tribunal, dispute settlement panel or body or other law-, rule- or regulation-making entity.

- (b) Supplier is responsible at its own cost for complying with all applicable laws, regulations and administrative requirements of any Governmental Authority relating to Taxes.
- (c) Payment of Taxes.
  - (i) Except as provided in Section 14.1(c) (ii) below, Supplier is responsible for paying (which term, for purposes of this Section 14.1, includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Governmental Authority anywhere in the world in connection with the supply of Goods or performance of related services, under this Contract. In this respect, Supplier shall apply for and use its best endeavors to receive the benefit of all VAT credits and refunds available under applicable law. Supplier shall also consult and cooperate with Company in seeking, and use its best endeavors to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into the Goods. All Taxes payable by Supplier shall be included in the Purchase Price and shall not be in addition to the Purchase Price.
  - (ii) Subject to Section 14.1(c)(iii) below, Company is responsible for paying the following Taxes arising or imposed by or under the authority of the government of Mongolia in connection with the supply of Goods or performance of related services, under this Contract:
    - (A) For Goods delivered to Company or Services performed within the territory of Mongolia,
      - (1) any Mongolian Value-Added Tax imposed on such Goods or Services under Chapter 3 of the Mongolian Value-Added Tax Law ("*Mongolian VAT*"); and
      - (2) after the Effective Date, any increase in or any new Mongolian excise tax to be assessed against such Goods and / or related services,; and
    - (B) For Goods delivered to Company or Services performed outside the territory of Mongolia, any Taxes payable under Mongolian law, including without limitation any Mongolian customs duties and Mongolian VAT.
  - (iii) Company shall pay any Taxes under Section 14.1(c)(ii) by direct payment to the relevant Mongolian tax authority if direct payment is permitted by law. If direct payment is not permitted by law, Supplier shall pay such Taxes and Company shall reimburse Supplier therefor.
- (d) Supplier shall include with its first invoice to Company hereunder valid certificates of domicile from all applicable taxation authorities. If Supplier fails to provide valid certificates of domicile, or if such certificates of domicile fail to demonstrate to Company's reasonable satisfaction that Supplier is entitled to an exemption from or a reduced rate for any Mongolian withholding tax in accordance with a double-taxation treaty between Mongolia and

Supplier's country of domicile, then Supplier shall be required to pay such withholding tax at the full standard rate under Mongolian law.

- (e) Upon written request from Company, Supplier shall provide to Company: (i) any and all other information and forms necessary to enable Company to comply with any request for tax information from any Governmental Authority, including company registration and VAT registration certificates; (ii) commercial invoices in form and substance satisfactory to Company; and (iii) Mongolian VAT receipts in a form that complies with the requirements of Mongolian Value-Added Tax Law.
- (f) If Supplier is not a registered Mongolian business entity and taxpayer, Company will deduct withholding tax from payments to Supplier if required under Mongolian law. In such circumstances, commencing with the first invoice submitted by Supplier, Company will deduct from payments to Supplier the withholding tax that Company is legally obligated to withhold, remit such tax to the appropriate government authority, and forward the appropriate receipts or similar documentation to Supplier evidencing such remittance. Such withholding taxes payable by Company will be included in the Purchase Price, not in addition to the Purchase Price.
- (g) If a payment by Company to Supplier hereunder does not include a withholding tax deduction but such deduction was required under applicable law, or if a payment to Supplier hereunder does include a withholding tax deduction but under applicable law such deduction was required to be made at a higher rate, then Supplier shall reimburse or otherwise pay Company the amount that should have been deducted or deducted at a higher rate within fourteen (14) days of receiving an official receipt (or certified copy thereof) or other documentation evidencing the amount that was required to have been deducted or deducted at a higher rate.
- (h) Supplier releases, indemnifies and shall defend Company from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees, fines, penalties and interest thereon) arising from Supplier's or any subcontractor's or sub-supplier's failure to discharge its obligations with respect to Taxes and tax laws.
- (i)

#### 14.2 Company Customs Duties

- (a) Where the Company elects to acquire Goods that are inclusive of Freight Costs, the Supplier will: (1) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and (2) where applicable, ensure that the Goods may be imported free of Customs Duties through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) Regardless of the shipping or freight terms used, the Supplier will, at the Company's request, provide the Company with all information and documentation necessary for the Company to comply with Applicable Laws in relation to applications or certifications for Customs Duties concessions or bilateral free trade agreements (or the equivalent), in each case in form and substance satisfactory to the Company. Where the Company succeeds in such applications, the Supplier will obtain Custom Duties refunds and pass on any Customs Duties savings to the Company.

## 15. Payments to Supplier

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### 15.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Supplier by the Company pursuant to the Contract in relation to the performance of the Supply must be made in the currency specified in Schedule C (Prices) by electronic funds transfer into the Supplier's nominated bank account.

### 15.2 Invoices

- (a) The Supplier must, unless otherwise agreed with the Company, render an Invoice to the Company in relation to the provision of the Supply at the end of each month during the period in which the Supply is provided and calculated by reference to the prices, fees or other amounts specified in Schedule C (Prices), SOW or EPF, as applicable.
- (b) Invoices must be in a form acceptable to the Company and must contain the following information:
  - (i) the number of the Purchase Order to which the Invoice relates;
  - (ii) a brief description of the Supply provided in the period covered by the Invoice; and
  - (iii) any further verification or documentation in relation to the Invoice as is reasonably required by the Company.

### 15.3 Payment of Invoices

The Company will make payment of all undisputed amounts due to Supplier within thirty (30) days from receipt of the relevant Invoice by the Company Representative; provided, however, that if an Invoice for Products is received by the Company Representative before delivery of the Goods or performance of the Services, the 30-day time period for payment of the Invoice will not begin until the date the Goods are actually delivered to the Company and/or the Services are completed. If any amount claimed by Supplier in any Invoice is disputed by the Company, the Parties will resolve such dispute in accordance with Clause 39. Payment of an Invoice is not evidence or an admission that the Goods and/or Services conform to the terms and conditions of the Contract.

### 15.4 Errors or exceptions in invoicing

Without limiting Clause 15.3, if the Supplier discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Supplier and the Company will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

## 16. E-Commerce (Quadrem)

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### 16.1 Supplier's e-commerce obligations

The Supplier undertakes to continually monitor and review its business processes in order to identify e-commerce opportunities and must use its best endeavours to develop and use such opportunities in its dealings with the Company.

### 16.2 E-Commerce

The Supplier acknowledges that it is the Company's preference to conduct business by way of e-commerce using Quadrem wherever possible.

### 16.3 Use of Quadrem

The Supplier agrees that, upon request by the Company, the Supplier will use Quadrem (or such other comparable e-market place approved by the Company in writing that provides a link through Quadrem or is otherwise interoperable with Quadrem, such that the Company is able to utilise Quadrem in its transactions with the Supplier) in conducting business with the Company and will (to the extent it is not already able to) undertake all action required to enable it to furnish a catalogue of goods and products (including Goods) in electronic form and accept orders from, and send relevant invoices to, the Company electronically.

### 16.4 Costs of Quadrem

Each Party must bear the costs of required changes to its business systems when moving to, and ongoing fees and charges in relation to, the use of Quadrem.

## 17. Deduction from payments

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### 17.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Supplier pursuant to Clause 15.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 14):
  - (i) all debts and moneys due from the Supplier or its Personnel to the Company;
  - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Supplier or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
  - (iii) the cost of remedying any defective or damaged Goods or performance of the Services below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Supplier under the Contract, until the matter has been remedied.

### 17.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Supplier when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
  - (i) give Notice to the Supplier demanding payment of an amount equal to the Deducted Amount and the Supplier will pay that amount to the Company within 30 days of receiving the Notice;
  - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Supplier and the amount so deducted will be treated as having been paid to the Supplier when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier; or

- (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 17.2(b)(i) and deducting an amount under Clause 17.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Supplier, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

### 17.3 Notification of withholding or deductions

The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clauses 17.1 or 17.2.

## 18. Alternative Supply

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### 18.1 Alternative Supply

To the extent that the Supplier is unable to perform all or any part of the Supply in accordance with the Contract for any reason (including Force Majeure), the Company may, in its sole discretion, source such part of the Supply from any third party (**Alternative Supply**).

### 18.2 Supplier responsible for incremental costs

- (a) If the Company exercises its rights under Clause 18.1 to source an Alternative Supply, the Supplier is responsible for all incremental costs to the Company associated with sourcing the Alternative Supply, including Supply Chain differentials, except where the reason for the inability to perform all or part of the Supply was:
  - (i) due to the Supplier being subject to Force Majeure; or
  - (ii) as a direct result of an act or omission of the Company.
- (b) The Company must use reasonable endeavours in exercising its rights under Clause 18.1 to source the Alternative Supply at the minimum cost reasonably available.

## 19. Supplier's information, accounts and records

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### 19.1 Provision of information

The Supplier must provide the Company with any information requested by the Company in relation to the provision of the Supply.

### 19.2 Supplier to maintain accounts and records

The Supplier must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in Clause 19.2(a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

### 19.3 Supplier to provide access

- (a) In addition to the rights set out in Clause 19.1, the Supplier and its Personnel must permit the Company to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
  - (i) the Contract Price, including any amendment to the Contract Price;

- (ii) the existence (or otherwise) of any Indirect Transaction Taxes; or
- (iii) any other amount payable to, or claimed by, the Supplier pursuant to the Contract.

- (b) The Company may make and retain copies of any of the items referred to in Clause 19.3(a).

## 20. Right to audit by Company

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### 20.1 Right of audit of Supplier performance

In addition to the rights set out in Clause 19, the Supplier and its Personnel must permit the Company to have access to the Supplier's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Supplier's Personnel in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Supplier's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in Clause 28; and
- (b) the Company policies identified in Clause 30.

### 20.2 Action by Supplier

Without limiting any other rights or remedies available to the Company as a result of the Supplier's non-compliance with any of the conditions, policies and standards referred to in Clause 20.1, if deficiencies are identified by an audit undertaken under Clause 20.1, the Supplier must take prompt corrective action and notify the Company of such action.

## 21. Performance Security

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### 21.1 Security

The Supplier must, within 30 days of a request by the Company in writing, lodge with the Company an unconditional irrevocable bank guarantee payable on demand:

- (a) from a bank acceptable to the Company in its absolute discretion;
- (b) in the form set out in Appendix A, or such other form as the Company may accept; and
- (c) for an amount equal to 10% of:
  - (i) the Contract Price; or
  - (ii) where the Contract Price cannot be determined conclusively as at the date of a request by the Company under this Clause 21.1, the Company's estimate of the aggregate amount payable by the Company to the Supplier in respect of the Supply,

(Security).

### 21.2 Additional Security

If, as a result of a Variation there is an increase in the Contract Price (as evidenced by a document signed in accordance with Clause 6.3(e)), the Supplier must within 30 days of a request by the Company in writing, lodge with the Company an additional or replacement Security so as to ensure that Securities are provided for, in aggregate, an amount equal to 10% of the revised Contract Price.

### 21.3 Stamp duty and other Taxes

All stamp duty and other Taxes payable in relation to the Security and any additional Security must be paid by the Supplier prior to lodging the Security with the Company.

#### **21.4 No payment prior to lodgment of Security**

Notwithstanding any other provision of the Contract, the Company is not obliged to pay any amount to the Supplier until the Supplier has lodged a Security, or additional Security, with the Company in compliance with a request from the Company under Clauses 21.1 or 21.2, as the case may be.

#### **21.5 Release Date**

The Security will be held by the Company for the proper performance of the Contract until the later of:

- (a) the date on which all the obligations and contingent obligations of the Supplier pursuant to the Contract (including in respect of any Defects Liability Period) have been fulfilled; or
- (b) the date on which all moneys payable to the Company by the Supplier pursuant to the Contract have been paid,

(Release Date).

#### **21.6 Recourse to Security**

- (a) The Company may have recourse to the Security if the Company believes (acting reasonably) that the Supplier has not performed its obligations in accordance with the Contract or otherwise has a claim against the Supplier (whether in relation to the Contract or otherwise).
- (b) Notwithstanding any other provision of the Contract, the Company will not be liable for any Liabilities incurred or suffered by the Supplier in relation to the conversion of the Security.
- (c) The Supplier agrees that it will not in any proceedings whatsoever exercise any rights it may otherwise have, nor take any steps to injunct or otherwise restrain:
  - (i) the Company from using any sum or sums received from the conversion of the Security;
  - (ii) the Company from exercising its rights under the Security; or
  - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security.

#### **21.7 Return of Security**

- (a) Subject to Clause 21.7(b), within 30 days after the Release Date, the Company must return the Security to the Supplier.
- (b) As a condition precedent to the return of any Security to the Supplier, the Supplier must execute and deliver a release in the form set out in Appendix B.

#### **22. Preservation of existing third party supply arrangements**

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The Supplier acknowledges that:

- (a) supply arrangements exist between the Company and third party suppliers as at the Commencement Date; and
- (b) the Company has no obligation to the Supplier to seek to alter, modify or terminate any of the supply arrangements referred to in Clause 22(a).

#### **23. No minimum purchase or exclusivity**

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##### **23.1 No minimum purchase**

Nothing in the Contract obliges the Company to request or acquire any minimum level of Supply from the Supplier.

##### **23.2 No exclusivity**

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Supplier in respect of the Supply (or any aspect of it).

#### **24. Supplier Personnel, Facilities and equipment**

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##### **24.1 Supplier Personnel**

The Supplier is required to supply all Personnel necessary for the proper performance of the Supply. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Supply in respect of which they are engaged.

##### **24.2 Engagement of Personnel**

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply comply with Clauses 40, 41, 42, 43, 46 and 47 with respect to Intellectual Property Rights, Documentation, Confidential Information and business standards.

##### **24.3 Supplier Personnel information**

- (a) Promptly following the date of the Contract, the Supplier must provide the Company Representative with a detailed organisational chart containing details of the positions and reporting relationships within the Supplier's organisation in relation to supervisory Personnel associated with the provision of the Supply.
- (b) During the Term, the Supplier must promptly notify the Company Representative of any changes to the positions and reporting relationships outlined in the organisational chart provided in accordance with Clause 24.3(a).
- (c) The Supplier must at all times keep an updated list of its Personnel undertaking work on the Site.

##### **24.4 Company may object to Personnel**

The Company Representative may object to any of the Supplier's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Supplier must remove such Personnel upon receipt from the Company Representative of Notice requiring it to do so and must not re-employ that person in connection with the Supply without the prior written consent of the Company Representative. In addition, the Supplier must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

##### **24.5 Supplier responsibilities**

The Supplier is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for

the Supplier to provide the Supply in accordance with the Contract; and

- (c) the health and safety of its Personnel.

#### **24.6 Company Facilities**

- (a) Subject to Clauses 24.5 and Clause 24.6(b), to the extent that the Company has relevant Facilities in place which are available, those Facilities will be available for use by the Supplier or any of its Personnel in relation to the provision of the Supply. The Supplier is responsible for the provision of any Facilities which are required for the provision of the Supply to the extent that they are not already in existence and available (as determined by the Company).
- (b) The Supplier is required to inform the Company Representative at least 7 days in advance of its requirements in relation to the use of the Company's Facilities. The terms of use of any of the Company's Facilities will be at the Company's discretion.
- (c) The Supplier must ensure that at all times the Site and any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

#### **24.7 Improper or defective items**

- (a) The Company Representative may object to and have removed from the Site any improper or defective materials, plant, machinery or implements and may also request the addition of such items as in the opinion of the Company Representative are necessary for the due completion and fulfilment of the Contract.
- (b) If the Supplier fails to comply with any such objection or request made by the Company Representative within 7 days of receiving Notice of that objection or request, then the Company may add to or remove such materials, plant, machinery or implements as it sees fit at the cost of the Supplier.

### **25. Packing, despatch and transport**

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#### **25.1 Supplier responsible**

The Supplier is responsible, at its cost, for packing and transporting the Goods to the Delivery Point.

#### **25.2 Where Company to arrange transport**

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Goods, then the Supplier must notify the Company Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

#### **25.3 Preparation for transport**

The Supplier must pack and protect all Goods ready for despatch in accordance with best practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the Delivery Point. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

#### **25.4 Notification of despatch dates**

The Supplier must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

### **26. Inspection**

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#### **26.1 Inspection**

The Company Representative has the right to inspect any of the Goods at any time to determine whether the Goods are in accordance with the Contract and are to the standard provided for in the Contract.

#### **26.2 Access**

The Supplier must ensure that the Company has access to the Goods at all times and the Supplier must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture.

#### **26.3 Cost of inspections**

- (a) Subject to Clause 26.3(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Supplier.
- (b) If the Company Representative gives the Supplier reasonable Notice that the Company Representative wants to inspect any portion of a Good before it is assembled, and the Supplier assembles that Good without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that Good will be borne by the Supplier.

### **27. Testing and Commissioning**

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#### **27.1 Testing**

The Supplier must conduct tests of the Goods or parts of the Goods in accordance with the Contract and otherwise as required in accordance with the relevant standards set by the Australian Standards Association and any applicable industry codes or, where there are no such standards or codes, in accordance with generally accepted practices.

#### **27.2 Cost of testing**

In addition to the Company's rights set out in Clause 26.1, the Company Representative may conduct such tests of the Goods as it deems reasonably necessary. The costs of tests carried out by the Company Representative and the costs of tests that are not provided for in the Contract but are carried out by a testing authority employed by the Supplier at the direction of the Company Representative, will be borne by the Company. The costs of all other tests will be borne by the Supplier.

#### **27.3 Notice of testing**

The Party obliged to carry out a test or requiring a test to be made must give the other Party not less than 5 Business Days' Notice of the date on which the test will be made. The test must be commenced on the date notified provided that the test does not, or is not likely to, in the reasonable opinion of the Company Representative, interfere with or interrupt the Company's operations in which case the Company Representative may direct that the test be performed at



another time. The Party not conducting the test is entitled to be present at the testing, but the test will proceed regardless of whether that Party is present.

#### 27.4 Delayed testing

Subject to Clause 27.5(a), if a Party delays unreasonably in making a test which it is required to make then the other Party may by Notice to the delaying Party require the test to be commenced within 5 Business Days' of the Notice. If the delaying Party does not commence the test within the specified period, the other Party may make the test at the delaying Party's risk and expense.

#### 27.5 Repeating of tests

- (a) Any test required to be performed in accordance with this Clause 27, must be repeated at the other Party's request. If the repeat test confirms the previous test, all costs in relation to the repeat test must be paid by the Party who requested the repeat test, but otherwise must be paid by the Party obliged to make, or who required, the original test.
- (b) On completion of any alteration or replacement in accordance with Clause 8.3, the relevant Good must be tested again at the cost of the Supplier.

#### 27.6 Consequences of failure to test

- (a) If the Supplier fails to carry out any test within the time prescribed in the Contract or if no time is prescribed, a reasonable time, then the Company Representative may, at the Supplier's cost:
  - (i) conduct the test; or
  - (ii) give the Supplier 7 days' Notice of the Company's intention to use the Goods.
- (b) If the Company elects to use the Goods at the end of the period referred to in a Notice issued under Clause 27.6(a)(ii), the relevant Goods will remain at the Supplier's risk until the expiration of the Defects Liability Period (as provided in Clause 8).
- (c) The Supplier acknowledges that even if the Company Representative tests the Goods before use in accordance with this Clause 27 the Company Representative's actions in this regard will not relieve the Supplier of its responsibility to carry out any test which it is required to conduct.
- (d) The approval of any of the Goods following any test in no way relieves the Supplier from any of its obligations under the Contract.

#### 27.7 Test results

The Supplier must prepare and submit to the Company Representative test results immediately upon completion of a particular test.

#### 27.8 Supplier responsible for Commissioning

- (a) The Supplier is responsible, unless otherwise provided in the Contract, for the supervision of any Commissioning required in accordance with the Contract to be performed to the satisfaction of the Company Representative.
- (b) Prior to the Commissioning, the Supplier must supply to the Site adequate spare parts for the purposes of Commissioning.
- (c) In addition to the requirements of this Clause 27, any other specific requirements, or acceptance tests, or other requirements for Commissioning, may be specified in the applicable EPF.

#### 27.9 Supplier Personnel for Commissioning

If pursuant to the Contract, the Supplier is required to provide the Company with the services of one or more of its Personnel to supervise Commissioning then those Personnel must be provided as directed by the Company Representative, and those Personnel must ensure that the relevant Good is being Commissioned in the manner and to the standard required pursuant to the Contract which is deemed to be approved by the Supplier.

#### 27.10 Report

The Supplier must maintain a diary of all relevant events occurring during Commissioning and record all test results. On the completion of Commissioning, the Supplier must prepare and submit a report to the Company Representative advising on the performance of the Good so Commissioned.

#### 27.11 Prior notice of commencement

The Supplier must advise the Company at least 12 hours before the time of Commissioning any Good and must at all times comply in full with the recommendations of the manufacturer of any Goods in relation to such Commissioning.

### 28. Health, safety and environment

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#### 28.1 Application of Clause

This Clause 28 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Supply.

#### 28.2 Supplier acknowledgement

The Supplier acknowledges that there is a direct relationship between the Supplier's health, safety and environmental performance and the success of the Company's business.

#### 28.3 Compliance with health, safety and environmental laws, policies and standards

The Supplier agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 30, the Company's health, safety and environmental policies and associated standards applicable from time to time (a copy of which has been provided to the Supplier) (**HSE Policies and Standards**);
- (b) without limiting Clause 31, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 28.

#### 28.4 Health, Safety and Environmental Management Plan

- (a) If it has not already been finalised as part of the submission of the Supplier's Tender (if any), the Supplier must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Supplier with any request for amendments.
- (c) The Supplier and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Company Representative.

- (d) The Company Representative may at any time direct the Supplier to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Supplier must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

## 28.5 Induction Courses

- (a) Each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Supplier's Personnel are required to have specific skills for the performance of the Supply (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
  - (i) be included in the HSE Management Plan(s);
  - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
  - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
  - (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Supplier Personnel attending the Company Induction Courses; and
  - (ii) the Supplier will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Supplier Personnel attending such training courses.
- (d) Any person visiting the Supplier on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

## 28.6 Supplier to remain liable

Nothing in this Clause 28 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Supplier or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

## 28.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 28, the Company may:

- (a) require the Supplier, Supplier's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its own cost, ensure such request is immediately complied with and take all

possible action to ensure the protection and safety of all works, personnel and the environment.

## 29. Access to Site

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### 29.1 Access

Without limiting Clause 34.10(e) or this Clause 29, the Company will grant to the Supplier access to the Site on and from the date of the Contract and the Supplier must give the Company Representative at least 7 days' Notice before commencing the Supply on the Site.

### 29.2 Supplier obligations

- (a) Prior to commencement of the Supply on the Site, the Supplier must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' Notice of any alteration in its working hours or periods of work.
- (b) The Supplier must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

### 29.3 Delayed or suspended access

If there is any delay in giving the Supplier access to the Site, or if access is suspended or inadequate, the Supplier may apply for an amendment to the Supply Timetable in accordance with Clause 9.2.

### 29.4 Right to deny access

If the Supplier or its Personnel fail to comply with any of the requirements of Clause 28 or this Clause 29, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

### 29.5 No exclusive possession

The Supplier acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Supply.

## 30. Company policies and Site Specific Terms

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### 30.1 Rio Tinto Group policies generally

During the Term, the Supplier shall, and shall ensure that its Personnel, comply with each of the internal policies, standards and controls of the Rio Tinto Group in relation to the performance of the Supply, access to any Site and the conduct of any work at the Site, as notified to the Supplier in writing by Company from time to time.

### 30.2 The Way We Work

In performing the Supply, the Supplier shall, and shall ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Rio Tinto Group's code of business conduct, "*The way we work*", a copy of which is available at: [http://procurement.riotinto.com/ENG/supplierregistration/34\\_the\\_way\\_we\\_work.asp](http://procurement.riotinto.com/ENG/supplierregistration/34_the_way_we_work.asp) or [www.riotinto.com](http://www.riotinto.com);
- (b) report all actual, alleged or suspected non-compliance with *The way we work* to Rio Tinto or

the Relevant Company or through Rio Tinto's *Speak-OUT* program;

- (c) cooperate promptly and fully with Rio Tinto and the Relevant Company in any investigation of an alleged or suspected breach of *The way we work*; and
- (d) The Supplier acknowledges and agrees that: (i) under the *Rio Tinto Supplier Compliance Standards*, the Company may identify certain of the Supplier's Personnel as "core contractors"; (ii) the Supplier shall ensure that any such Personnel identified as "core contractors" register for, and successfully complete, the compliance risk reduction training described in the *Rio Tinto Supplier Compliance Standards*; and (iii) this Clause 30.2 is a material condition of this Contract.

### 30.3 Site Specific Terms

To the extent that the Company has developed Site Specific Terms for use and implementation at its Site(s), the Supplier agrees that the Site Specific Terms, if any, are incorporated into this Contract by reference and agrees to adhere to such terms. The Company reserves the right to monitor and/or audit the Supplier's adherence to the Site Specific Terms and to amend the Site Specific Terms in its reasonable discretion by written notice to the Supplier.

## 31. Laws

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### 31.1 Compliance with laws

During the Term, the Supplier must:

- (a) comply, and ensure that its Personnel comply, with all Applicable Laws relating to their respective obligations under Contract. and
- (b) in relation to the provision of the Supply, at its cost:
  - (i) obtain and give all necessary notices;
  - (ii) pay all necessary fees, deposits and Taxes,
  - (iii) and, if requested by the Company, must provide evidence of the matters referred to in this Clause 31.1(b).

### 31.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 30 or this Clause 31, the Company may require the Supplier and/or its Personnel:

- (a) to leave the Site immediately; and
- (b) to remove any material or substance from the Site,

and the Supplier must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

## 32. Co-operation with third parties

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### 32.1 No interference

The Supplier must not impede or interfere with the work of any other suppliers or their personnel (whether employed or engaged by the Company or not) on-Site during the Term.

### 32.2 No compensation

The Supplier is not entitled to any increase in the Contract Price, damages, costs or any other financial or

other compensation as a result of any interference on-Site from other suppliers, contractors or personnel.

### 32.3 Amendment to Supply Timetable

If, through no fault of its own, the Supplier suffers delay through interference by other suppliers, contractors or their personnel on the Site, the Supplier may apply for an amendment to the Supply Timetable in accordance with Clause 9.2.

## 33. Force Majeure

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### 33.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a Notice to the other Party that complies with Clause 33.2.

### 33.2 Force Majeure Notice

A Notice given under Clause 33.1 must:

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

### 33.3 Obligation to remedy and mitigate

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

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

### 33.4 No compensation

Any amendment to the Supply Timetable in accordance with Clause 9.2 is the Supplier's sole remedy for any delays resulting from Force Majeure where the Supplier is the affected Party and the Supplier is not entitled to any increase in the Contract Price or any damages, costs or expenses in connection with the Force Majeure.

## 34. Insurances

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### 34.1 Supplier Insurances

Without limiting any of Supplier's obligations under the Contract, Supplier shall purchase and maintain in full force and effect, at Supplier's sole expense, the types and limits of insurance coverage specified in this Clause **Error! Reference source not found..** The insurance shall be underwritten by reputable insurers that have a rating from A.M. Best Company of at least A-/VII, and that are authorized to do business in each state, province, or territory where the Goods are to be delivered and the Services are to be performed.

### 34.2 General and Product Liability Insurance

- (a) Supplier shall carry comprehensive general liability or commercial general liability insurance covering operations by or on behalf of Supplier

(including coverage for explosion, collapse and underground hazards) and all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property however caused, with limits of liability of no less than \$10,000,000 for each occurrence and in the aggregate.

#### **34.3 Workers' Compensation and Employer's Liability Insurances**

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.
- (b) The insurance outlined in this Clause 34.3 must, unless prohibited by law, be endorsed to:
  - (i) indemnify the Company against any liability which it may incur to the Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
  - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
  - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.

#### **34.4 Automobile Liability Insurance**

If the performance of the Contract requires Supplier to use or provide for use motor vehicles, Supplier shall carry or require the owners or operators of such motor vehicles to carry automobile (motor vehicle) insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of all owned, non-owned, leased or hired vehicles, with limits of liability of no less than \$5,000,000 for each occurrence and in the aggregate.

#### **34.5 Professional Liability (Errors and Omission) or Professional Indemnity Insurance**

If the performance of the Contract includes or relates to the provision of professional advice or services, Supplier shall carry for the Term of the Contract and for a period of not less than three (3) years after termination of the Contract or completion of Supplier's obligations under the Contract (as determined by the Company in its discretion, acting reasonably), whichever is later, professional liability insurance or errors and omissions insurance in respect of any negligent acts, errors or omissions in the advice or professional services provided by Supplier under the Contract, with limits of liability of no less than \$5,000,000 for each claim and in the aggregate.

#### **34.6 Supplier's Plant and Equipment**

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company or a member of the Rio Tinto Group) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

#### **34.7 Goods in transit**

If the performance of the Contract requires the Supplier to transport Goods to or from the Site, unless otherwise advised by the Company in writing, the Supplier will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as a party insured under the policy.

#### **34.8 Hazardous Substances (and Transportation of Hazardous Substances) Insurance**

- (a) If the performance of the Contract requires Supplier to perform any operations using or involving Hazardous Substances, Supplier shall carry Hazardous Substances (pollution) liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of or the operations using or involving Hazardous Substances, with limits of liability of no less than \$5,000,000 for each occurrence and in the aggregate.
- (b) If the performance of the Contract requires Supplier to transport or haul Hazardous Substances, Supplier shall carry insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from transporting or hauling Hazardous Substances (specifically including MCS 90 coverage), with limits of liability of no less than \$5,000,000 for each occurrence and in the aggregate.

#### **34.9 Aviation Insurance**

If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Supplier must maintain or require owners of such aircraft to maintain:

- (a) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
- (b) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of: (i) \$10,000,000, or (ii) \$2,000,000 for each seat, whichever is greater, for each and every occurrence and in the aggregate.

#### **34.10 Excess Liability (Umbrella) Insurance**

If Supplier is unable to obtain the applicable insurance coverage required in this Clause 34, Supplier may carry excess liability insurance and/or umbrella insurance that, when combined with Supplier's primary coverage in a given category of insurance, brings the total coverage in such category to be no less than the required amount for that category of insurance. For the avoidance of doubt, in the event that third parties have made claims against Supplier's excess liability and/or umbrella insurance such that the amount of insurance coverage available hereunder has been reduced below the minimum required limits above, Supplier must obtain additional excess liability and/or umbrella insurance coverage, with a carrier meeting the same criterion as outlined in Clause 34.1, so that the insurance coverage requirements of this Clause 34 are met.

#### **34.11 Insurance terms**

- (a) The insurance to be maintained pursuant to this Clause 34 shall be on the following terms:
- (b) coverage shall begin no later than the Commencement Date and shall continue

- throughout the Term and for a period of two (2) years following termination of the Contract (except in the case of the insurance described in Clause 34.5, which shall be carried for three (3) years following termination of the Contract or completion of Supplier's obligations hereunder, whichever is longer). If a warranty period is identified in the Contract that will survive for more than two (2) years, then the required insurance shall be maintained until the expiration of the warranty period plus twelve (12) months;
- (c) if any of the insurance referred to in this Clause 34 is subject to the application of any self-insured retention or deductible, the amount of the self-insured retention or deductible will be declared to the Company. The Company reserves the right to require Supplier to reduce the amount of any self-insured retention or deductible where such amount is considered unreasonable in the circumstances of the Contract;
- (d) Supplier will provide to the Company (or its designate) certificates of insurance and endorsements consistent with Clause 34.11(e) as evidence of the insurance required under the Contract as follows:
- (i) before providing any Goods or Services, and in no event any later than fourteen (14) days after the Commencement Date
  - (ii) within fourteen (14) days after each time the policies are renewed or varied; and
  - (iii) annually following termination of the Contract until insurance is no longer required pursuant to the terms of the Contract.
  - (iv) For the avoidance of doubt, the term "endorsement" as used in this Contract means an additional piece of paper, not part of the original insurance policy, which cites relevant terms thereof and which, when attached to the original insurance policy, becomes a part of that insurance policy. Company may terminate this Contract if Supplier fails to perform its obligations under this Clause 34.11(d);
- (e) all insurance arranged by Supplier pursuant to this Contract shall not be varied to the detriment of the Company, cancelled or allowed to lapse, except upon written consent of the Company; and
- (f) unless prohibited by Applicable Laws, Supplier shall provide coverage endorsements for each category of insurance required in this Clause 34 as follows:
- (i) except in the case of the insurance described in Clauses 34.3 and 34.5, an endorsement including the Company, its Affiliates and their respective Personnel as additional insureds;
  - (ii) an endorsement providing that it is primary to similar insurance, if any, that may be carried by the Company;
  - (iii) except in the case of the insurance described in Clauses 34.3 and 34.5, an endorsement, which includes a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iv) an endorsement waiving all express or implied rights of subrogation against the Company, its Affiliates and their respective

Personnel which waiver shall also be reflected in the certificate of insurance;

- (v) in the case of the insurance described in Clause 34.2, an endorsement covering "Goods in the physical and legal control of the insured" for an amount not less than the value of the "Goods" held by Supplier; and
- (vi) an endorsement providing a severability clause to the effect that a breach by one insured will not adversely affect the coverage of the other insureds.

#### **34.12 Notification under Supplier's policy**

If the Supplier becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Supplier as required by this Clause 34, the Supplier must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

#### **34.13 Sub-contractors' insurance**

The Supplier must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Supplier Insurances required to be effected by the Supplier under this Contract.

#### **34.14 Insurance claims and payment of insurance excess**

- (a) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier and the Supplier will not be entitled to recover from the Company any excess or deductible so paid by the Supplier.
- (b) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier where the Company makes a claim under such policy, to the extent that the Company determines that the Supplier or any of its Personnel were responsible for the loss or damage.

### **35. Indemnities**

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#### **35.1 Acknowledgement**

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

#### **35.2 Indemnity**

- (a) Subject to this Clause 35, Supplier assumes all liability for and will indemnify and hold harmless the Indemnified Parties from and against all Claims and Liabilities or assertion of Liabilities or potential Liabilities by any person which:
  - (b) are caused or are alleged to be caused by any act or omission of Supplier or its Personnel and relate to, arise out of or in connection with:
    - (i) the illness, injury or death of any employees, agents, contractors, or Subcontractors of Supplier or Supplier's Personnel suffered or incurred while at, or in transit to or from, the Site;
    - (ii) damage to any property;
    - (iii) any breach by Supplier or Supplier's Personnel of any of Supplier's obligations, covenants, undertakings, representations or warranties under the Contract or any Purchase Order;

- (iv) the Goods or Services; or
  - (v) the entry onto and the activities undertaken on and in any Site by Supplier or Supplier's Personnel, including, without limitation, any release or discharge, whether or not intentional, of any Hazardous Substances, arising from the matters or activities referred to in (i) through (iv) above (which release, discharge, pollution or contamination Supplier will promptly investigate and remediate at its sole expense to the satisfaction of the Company and relevant governmental officials);
- (c) are made against an Indemnified Party by any Government Agency or any Personnel of Supplier, its Subcontractors or their respective Affiliates, on account of or in any way arising from or related to employment with or engagement by Supplier, its Subcontractors or their respective Affiliates, including, without limitation, claims relating to income tax, workers compensation, unemployment compensation, overtime, compensation, salary, benefits (including, without limitation, annual or long service leave), discrimination, harassment, retaliation, breach of implied or express agreement, breach of implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, libel, slander, interference with economic relations, wrongful discharge or termination or infliction of emotional distress arising under any federal, state or provincial statute, local ordinance or common law;
- (d) result from any violation or breach of any Applicable Laws by Supplier or Supplier's Personnel in connection with the performance of any of the Services or supply of the Goods; or
- (e) result from Supplier's failure to procure or maintain the insurance required by this Contract.

### 35.3 Exclusions

The Supplier will not be liable under Clause 35.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's or its Personnel's negligent acts or omissions or wilful misconduct.

### 35.4 Indemnity held for benefit of Company, End User and Rio Tinto Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company, an End User or a member of the Rio Tinto Group is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Company's, each End User's and each Rio Tinto Group member's Personnel.

### 35.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

### 35.6 No requirement for expense before enforcing indemnity right

It is not necessary for the Company, a member of the Rio Tinto Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

## 36. No fault termination

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### 36.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Supplier not less than 30 days' notice of its intention to do so (**Termination Notice**).

### 36.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

### 36.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Supplier must:

- (a) immediately cease performance of the Supply in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation to the Supply performed up to and including the date of receipt of the Termination Notice;
- (c) return to the Company any items issued to the Supplier by the Company during the Term;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action relating to the termination of the Contract as the Company may reasonably require.

### 36.4 Supplier compensation

(a) Following termination of the Contract by the Company pursuant to this Clause 36, the Supplier is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):

- (i) removing the Supplier's plant and equipment from the Site; and
- (ii) transporting Supplier Personnel back to their place of engagement.

(b) The amounts outlined in Clause 36.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Company in accordance with this Clause 36.

## 37. Supplier Default and insolvency

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### 37.1 Supplier Default Notice

If the Supplier breaches any term of the Contract, the Company may serve a notice of default (**Supplier Default Notice**) on the Supplier containing the information specified in Clause 37.2.

### 37.2 Supplier Default Notice requirements

A Supplier Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further Notice to the Supplier do one or more of the following:
  - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
  - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
  - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

### 37.3 Obligations upon termination

If the Company gives Notice pursuant to Clause 37.2(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- (a) cease performance of the Supply in accordance with, but only to the extent specified in, the Supplier Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Company in relation to the termination.

### 37.4 No prejudice

Notwithstanding the terms of any Supplier Default Notice or Termination Notice, no action taken by the Company under this Clause 37 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

### 37.5 Supplier insolvency or bankruptcy

If the Supplier:

- (a) being a company:
  - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
  - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
  - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
  - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
  - (v) has an administrator appointed over all or any of its assets or undertaking, or any step

preliminary to the appointment of an administrator is taken;

- (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
  - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; or
- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors,
- the Company may either:

- (i) terminate the Contract by notice to the Supplier or any other person in whom the Contract has been vested; or
- (ii) give the person in whom the Contract has been vested, the option to perform the Supply in accordance with the Contract, subject to that person providing a guarantee satisfactory to the Company up to the value (as certified by the Company Representative) of the Supply remaining to be performed pursuant to the Contract.

## 38. Default by Company

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### 38.1 Company Default

If the Company fails to make a payment of any amount due to the Supplier under the Contract in accordance with Clause 15 where the Company is not entitled to exercise any of its rights under Clauses 15.4, 17, 21.4, 34.10(e) or 37.2(b) (**Company Default**), then this Clause 38 will apply.

### 38.2 Company Default Notice

If a Company Default is not remedied within 30 days of the Company Default arising, the Supplier may serve a notice of default (**Company Default Notice**) on the Company.

### 38.3 Company Default Notice requirements

A Company Default Notice must:

- (a) require the Company to pay to the Supplier the amount owing the subject of the Company Default within a specified period of not less than 30 days' after service of the Company Default Notice on the Company; and
- (b) state that if the Company Default is not remedied within the period specified in the Company Default Notice, then the Supplier may either:
  - (i) cease performance of all or any part of the Supply until such time as the Company Default is remedied; or
  - (ii) terminate the Contract by Notice to the Company.

### 38.4 Costs recoverable by Supplier

- (a) Following termination of the Contract by the Supplier pursuant to Clause 38.3(b)(ii), the Supplier is entitled to recover from the Company:

- (i) the amount owing the subject of the Company Default;
- (ii) out-of-pocket expenses which the Supplier has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
  - (A) removing the Supplier's plant and equipment from the Site; and
  - (B) transporting Supplier Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 38.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Supplier in accordance with Clause 38.3(b)(ii).

### 38.5 Company access to Supplier records

For the purposes of Clause 38.4(a), the Supplier must provide the Company with such access to its records, books and (subject to confidentiality restrictions) contracts as the Company may require in order to verify the amounts claimed by the Supplier.

## 39. Dispute Resolution

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### 39.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Supplier arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 39.

### 39.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If a negotiated resolution to the dispute, controversy or claim is not forthcoming after thirty (30) days (or such other period of time to which the Parties may agree), Supplier and Company agree that such dispute shall be submitted to binding arbitration in the Singapore International Arbitration Centre under the UNCITRAL Arbitration Rules. The language to be used in the arbitral proceedings shall be English and the place of arbitration shall be Singapore. The arbitration will be conducted by one (1) impartial arbitrator to be mutually agreed upon by the Parties, or a panel of three (3) arbitrators if the Parties are unable to agree upon a single arbitrator within thirty (30) days after the first demand for arbitration by one Party to the other (where each Party will appoint one arbitrator and the appointed arbitrators will select an additional arbitrator). The arbitrators, the Parties, their representatives and participants shall hold the existence, contents and result of any arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement, to obtain enforcement of the arbitrators' decision and award, or as otherwise required by Applicable Law. The arbitrators shall be bound by, and shall strictly enforce the terms of, this Contract and shall not limit, expand or otherwise modify its terms. The arbitrators shall endeavour to conclude the proceedings and issue their award within 6 months from their appointment. Each Party will bear its own expenses for any such binding arbitration proceedings. The decision and

award shall be conclusive and binding upon all Parties and judgment upon the award may be entered in any court of competent jurisdiction.

### 39.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

### 39.4 Urgent interlocutory relief

Except in relation to Clause 21.6(c), nothing in this Clause 39 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

## 40. Confidentiality

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### 40.1 Obligation of confidentiality

The Supplier undertakes and agrees:

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

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

### 40.2 Exceptions

Clause 40.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 40 or any other obligations of confidence imposed on the Supplier; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Supplier gives Notice to the Company with full particulars of the proposed disclosure.

### 40.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 40.1 will be deemed to be a breach of the Contract.

### 40.4 Supplier acknowledgment

The Supplier acknowledges that this Clause 40 is for the benefit of not only the Company but also any End User and any member of the Rio Tinto Group that has any interest in any Confidential Information.

### 40.5 Additional obligations

The obligations in this Clause 40 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.



#### 40.6 Return of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Supplier must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Supplier or any of its Personnel.

#### 41. Public announcements

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

#### 42. Intellectual Property Rights in Supply

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##### 42.1 Supplier IP

- (a) The Company acknowledges that the Supplier remains the owner of all Supplier IP and that nothing in the Contract prevents, limits or restricts the Supplier's subsequent use or exploitation of Supplier IP.
- (b) The Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Supplier IP necessary for the Company to use the Contract IP for the purposes of or in connection with the Company's business.

##### 42.2 Contract IP

- (a) The Supplier agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Supplier assigns all rights, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Company.
- (b) On the Company's request, the Supplier must execute any formal assignment or other document required to give effect to this Clause 42.2.

##### 42.3 Sub-licence of Supplier IP

The Company may sub-licence the Company's rights to the Supplier IP to any person where that person has been granted use of the Contract IP by the Company.

##### 42.4 Rio Tinto IP

- (a) The Supplier acknowledges and agrees that the Company or any member of the Rio Tinto Group (as the case requires) remain the owner of all Rio Tinto IP and that nothing in the Contract prevents, limits or restricts their subsequent use or exploitation of Rio Tinto IP.
- (b) The Company grants to the Supplier, or where the relevant Rio Tinto IP is owned by a member of the Rio Tinto Group other than the Company, the Company will procure the grant to the Supplier of, a non-exclusive, non-transferable, revocable licence to use the Rio Tinto IP and the Contract IP for the sole purpose of providing the Supply.
- (c) The Supplier must not use, register or attempt to register any interest in or otherwise deal with the Rio Tinto IP and the Contract IP, or allow any

other person to do the same, for any purpose other than to provide the Supply.

##### 42.5 Supplier warranty

The Supplier warrants that:

- (a) the Supplier has the right to grant to the Company the licence under Clause 42.1(b); and
- (b) the Supplier has the right to assign all Contract IP to the Company in accordance with Clause 42.2.

##### 42.6 General Supplier obligations

The Supplier agrees to:

- (a) disclose to the Company all Contract IP as and when it is created;
- (b) ensure that any sub-contract the Supplier enters into in relation to the Contract contains an assignment by the Sub-contractor to the Company of all Intellectual Property Rights in any Contract IP created by the Sub-contractor for the purposes of the Contract;
- (c) notify the Company as soon as the Supplier becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Company may request to protect, perfect enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP). The Supplier must also ensure that its employees provide all reasonable assistance to the Company as set out in Clause 42.2.

#### 43. Third party Intellectual Property Rights

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##### 43.1 Third party Intellectual Property Rights

The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 43.1(a).

##### 43.2 Indemnity

- (a) Without limiting Clause 35, the Supplier indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
  - (i) the performance of the Supply by the Supplier;
  - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or
  - (iii) the use and enjoyment of the Supply by the Company.

- (b) The Supplier must notify the Company immediately the Supplier becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 43.2(a).
- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 43.2(b) and all negotiations for settlement of that Claim. However, the Supplier must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and

- (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.

- (b) Where the Company reasonably believes that the Supplier has not complied with its obligations set out in this Clause 43.5, the Supplier must procure that each of the Personnel of the Supplier or any third parties engaged in the provision of the Supply do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to any of the matters stated in this Clause 43.5.

#### 43.3 Procurement of Intellectual Property Rights

If the Company is prevented from (as the case requires) operating or using the Goods and/or any Services or any part of the Goods and/or any Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Supplier must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) operate or use the Goods and/or any Services or the relevant part of the Goods and/or any Services for the purpose for which it was intended.

#### 43.4 Procedure where Intellectual Property Rights cannot be procured

If the Supplier cannot procure the rights referred to in Clause 43.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Supplier to immediately (at the Supplier's cost):

- (a) alter the Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Goods affected or the relevant part of the Goods with work or Goods which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Goods and reimburse the Company any compensation and other moneys already paid to the Supplier and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Goods.

#### 43.5 Moral rights

- (a) The Supplier must (at its cost) procure from each of the Supplier's Personnel or any third parties engaged in the provision of the Supply an irrevocable and unconditional consent, in favour of the Supplier (for the benefit of the Supplier and its customers, including the Company), which is legally enforceable by the Company, for the Company to:
  - (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Supply to the Company (together the **Materials**) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form the Company thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof (or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
  - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any

### 44. Notices

#### 44.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "the Company Secretary" for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Supplier, be signed or authorised by either the Supplier Representative, a director or company secretary of the Supplier, or a duly authorised representative of the Supplier; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

#### 44.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## **45. Conflict of interest**

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### **45.1 Warranty**

The Supplier warrants that, as the Commencement Date, it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Supply by the Supplier and/or its Personnel under the Contract.

### **45.2 Conflicts of interest**

The Supplier shall ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of a Supply by the Supplier and/or its Personnel under the Contract without prior written consent of the Company.

## **46. Business Standards**

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### **46.1 Illegal Information Brokering**

The Supplier recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by the Company and the Supplier represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

### **46.2 Establishment of procedures**

Each Party must maintain procedures, policies, and precautions to prevent its Personnel from making, receiving, providing or offering illegal or improper gifts, entertainment, payments, loans or other consideration to Personnel of the other Party and its Affiliates for the purpose of influencing such Personnel to act contrary to the best interests of such Party. This obligation will apply to the activities of Personnel in their relations with the other Party's Personnel arising from the Contract.

### **46.3 Improper advantage or benefit to Official**

- (a) Each Party or any of its Personnel, in connection with this Contract, must not directly or indirectly, offer, promise, give, demand or accept any bribe or other undue advantage in order to obtain, retain or direct business or secure any other improper advantage in the conduct of business. This applies whether dealing with government or with private individuals or enterprises.
- (b) Each Party represents and warrants that neither it nor any of its Personnel has, in connection with the negotiation and execution of this Contract, directly or indirectly, offered, promised, given, or demand or accepted any bribe or other undue advantage in order to obtain, retain or direct business or secure any other improper advantage in the conduct of business. This applies whether dealing with government or with private individuals or enterprises.

### **46.4 Notification regarding change of interests**

Each Party agrees that the provisions of this Clause 46 are material terms and conditions to this Contract, and to notify the other Party promptly upon discovery of any instance where the first-mentioned Party or any of its Personnel fail to comply with this Clause.

### **46.5 Clause to apply to Sub-contractors**

The Supplier must require its Sub-contractors to agree to and comply with contractual provisions substantially identical to those contained in Clause 46.

## **47. Hazardous Substances and other prohibited substances**

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Without limiting any other Clause of these General Conditions or this Contract, the Supplier warrants that:

- (a) all Goods supplied to Rio Tinto or a Relevant Company and all material used for packing and shipping the Goods (including, without limitation, temporary or replacement fittings such as transport gaskets, packaging and strapping or protective materials) will be free from Hazardous Substances and any other substance which is prohibited under any Applicable Laws; and
- (b) the Supplier has applied and will at all times continue to apply due diligence and surveillance in its design, material specification, material selection and manufacture and in respect of its suppliers and Sub-contractors to ensure Hazardous Substances and any other substance which is prohibited under any Applicable Laws have not been incorporated into the Goods or any material used for packing and shipping the Goods.

## **48. Indigenous/Community relations**

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The Supplier recognises that the Rio Tinto Group has a foundation for indigenous people and, in the performance of the Contract and subject to Clause 49, the Supplier undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

## **49. Mongolian content/community relations**

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It is a requirement of this Contract that local and regional content be maximised. Upon request by the Company, Supplier will, within fifteen (15) days of such request, issue to Company a detailed plan for meeting their local and regional content obligations addressing, at a minimum, the following:

- (a) investment in local enterprise;
- (b) participation of local contractors and / or suppliers in the Supply,
- (c) skills training of Mongolian nationals,
- (d) employment of Mongolian nationals,
- (e) investment in local infrastructure or community,
- (f) South Gobi regional development; and
- (g) any additional requirements specified in Schedule A, Schedule B or any SOW or EPF.
- (h) The Company shall have the right to audit the Supplier in order to ensure compliance with this Clause.

## **50. Costs**

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### **50.1 Each Party to bear its own costs**

Each Party must bear its own costs arising out of:

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

### **50.2 Stamp duty**

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any EPF, SOW or Purchase Order or other document

related to the Contract (including any Security) will be borne by the Supplier.

## 51. Status of Supplier

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### 51.1 Independent contractor

At all times during the Term, and in the provision of the Supply, the Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

### 51.2 Partnership and joint venture suppliers

Where the Supplier comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

## 52. Assignment and sub-contracting

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### 52.1 Consent required

The Supplier is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

### 52.2 Obligations survive assignment or sub-contract

The Supplier acknowledges that no permitted assignment or sub-contract in any way relieves the Supplier from the performance of any of its obligations under the Contract.

### 52.3 Status of Sub-contractor

As between the Supplier and the Company, the Sub-contractor will be considered the agent and employee of the Supplier. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Supplier.

## 53. Privacy and data protection

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### 53.1 Personal Data

Each Party agrees to comply with its obligations under all Applicable Laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to the Contract.

### 53.2 Warranty

Each Party warrants to the other Party that in its collection use, disclosure and handling of Personal Data pursuant to the Contract, it has complied with, and will continue to comply with all Applicable Laws, including the execution of European Union (EU) [model contracts](#) for the transfer of Personal Data to data controllers or data processors established in non-EU countries (if required to comply with such laws).

### 53.3 Data protection

In addition to its obligations under the Privacy Act, the Supplier agrees to:

- (a) only collect, use or disclose Company's Personal Data for the purposes of the Contract;

- (b) not disclose the Company's Personal Data to any other person (including the subject Personnel) without Company's prior written consent, unless the disclosure is required by Applicable Law;
- (c) immediately notify the Company that the disclosure of the Company's Personal Data is or may be required by Applicable Law;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised or unlawful collection, use, disclosure or handling of Company's Personal Data;
- (e) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Data; and
- (f) take all necessary steps to ensure that its collection, use, disclosure and handling of Company's Personal Data will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Company as to the manner in which the Company collected Company's Personal Data.

### 53.4 Individual complaints

- (a) If an individual complains to the Company that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Company must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Supplier must:
  - (i) promptly inform the Company of the complaint; and
  - (ii) provided the individual has consented, provide the Company with the Personal Data that is the subject of the complaint.

## 54. Waiver

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A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

## 55. Further assurances

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Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

## 56. Severability

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### 56.1 Severability

Any provision of the Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

## **56.2 Negotiation in good faith**

Where a provision is prohibited or unenforceable, the Parties will negotiate in good faith to replace the invalid provision by a provision which is in accordance with the Applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

## **57. Governing law and rights of third parties**

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### **57.1 Governing Law**

The Contract is governed by the laws of England and Wales without giving effect to principles governing choice or conflict of law rules thereof. For any matters for which Court action is permitted, subject to Clause 39, each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in England.

### **57.2 UN Convention – International Sale of Goods**

The United Nations Convention on Agreements for the International Sale of Goods, as well as any other similar Applicable Law, is hereby disclaimed to the maximum extent permitted by Applicable Laws.

### **57.3 Rights of third parties**

No person who is not a Party to the Contract, SOW or EPF (as the case may be) shall have any rights under the Contracts (Rights of Third Parties) Act 1999, except in relation to: (a) Company's right to provide to an End User services and/or goods comprising or derived from (in whole or in part) the Supply; and (b) the Company's right to enter into the Contract on behalf of another entity or entities as set forth in the Key Terms.

## **58. Survival of terms**

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The following Clauses will survive expiration or termination of the Contract: Clause 7 (except 7.2) (Supplier Warranties), 12 (Liens), 14 (Taxes), 17 (Withholding of Payment), 34 (Insurances), 35 (Indemnities), 39 (Dispute Resolution), 40 (Confidentiality), 42 (Intellectual Property), and 53 (Privacy and Data Protection).

## **59. Counterparts**

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This Contract may consist of a number of copies, each signed by one or more of the Parties. If so, the signed copies are to be treated as making up the one document, and the date on which the last counterpart is executed will be the date of this Contract.

**APPENDIX A**

**Bank Guarantee**

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To: [Note: relevant Business Unit name and address to be inserted in specific General Conditions.]

[**Relevant Business Unit name**] (ABN [#]) of [**address**] (**Company**) and [NAME OF SUPPLIER] of [REGISTERED ADDRESS OF SUPPLIER] (**Supplier**) are parties to a contract in respect of [BRIEF DESCRIPTION OF SUPPLY] being Contract No. [CONTRACT NO.] (**Contract**).

In consideration of the Company, at the request of [NAME OF BANK] (**Bank**), accepting this bank guarantee in lieu of requiring the Supplier to provide the Company with a deposit security in another form pursuant to the Contract, the Bank hereby undertakes that on demand in writing by the Company at any time after the date of this Guarantee (until such time as the Company by notice in writing to the Bank executed by its Company Representative, advises the Bank that it is released from its obligations under this undertaking), the Bank will pay to the Company a sum or sums not exceeding [\$ ] in total (**Guaranteed Sum**).

Payment will be made by the Bank immediately without any reference by the Bank to the Supplier and irrespective of:

- (a) any notice to the Bank by the Supplier not to pay any moneys under this bank guarantee to the Company; or
- (b) the performance or non-performance by either the Supplier or the Company of the Contract or of any variation to, or of any contract substituted for, the Contract.

The Bank may at any time terminate this undertaking by payment to the Company of the Guaranteed Sum (less any amount the Bank may previously have paid to the Company pursuant to this Guarantee). Upon termination, the Bank will no longer be liable under this Guarantee.

DATE:

**The Common Seal** of [**Name of Bank**] was affixed in the presence of:

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name

**APPENDIX B**

**Release**

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This Release is executed pursuant to the provisions of Contract No. [CONTRACT NUMBER] dated [DATE] (**Contract**) between [**Relevant Business Unit name**] (ABN [#]) (**Company**) and [NAME OF SUPPLIER] (**Supplier**).

In consideration of the return of the Security (as that term is defined in Contract) less any deductions the Company is entitled to make pursuant to the Contract, and the payment of all moneys due upon that return, the Supplier hereby:

- (a) waives, releases and forever discharges the Company from all claims, demands, debts, accounts, expenses (whether known or unknown) which the Supplier has or might have against the Company arising under the Contract or out of its performance of the Contract; and
- (b) indemnifies and holds harmless the Company, its officers, employees, agents, advisers, contractors, sub-contractors and representatives from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any kind arising from, or incidental to, the Contract or the Supplier's performance of the Contract.

DATE:

Executed as a deed

**The Common Seal** of [**Name of Supplier**] was affixed in the presence of:

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name

[or]

**Executed** in accordance with section 127 of the Corporations Act 2001 (Cth) by [**Name of Supplier**]:

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name