

Purchase Order Standard Terms and Conditions

1. Definitions

In the Agreement unless the contrary intention appears:

Agreement means the agreement between the Principal and the Contractor comprised of the Purchase Order, these Goods & Services - Standard Terms and Conditions and all other documents annexed to this document or specifically incorporated by reference (which in the event of any inconsistency, are to be construed in this order);

Background IP means the Intellectual Property Rights of the Contractor or Principal (as applicable) which:

- (a) are in existence prior to or at the date of the Purchase Order; or
- (b) come into existence after the date of the Agreement otherwise than in connection with the Agreement;

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Confidential Information means the terms of this Agreement and all commercial, technical and other information in any form whatsoever in the possession or knowledge of a Party which is disclosed to the other Party at any time in connection with the Agreement which is confidential in nature, including any information of that sort which is provided verbally to a Party by any Personnel of the other Party and includes any information received or obtained by the Contractor in the course of providing the Services in relation to the Warrawoona Gold Project or the Principal;

Conflict of Interest means a conflict of interest between the Principal or its Personnel, and the Contractor or its Personnel, whether that conflict of interest is perceived or actual;

Contractor means the person, firm or company named in the Purchase Order as the supplier of Goods and/or Services;

Contractor's Representative means the person appointed by the Contractor to act on its behalf in relation to the Agreement as notified to the Principal;

Defective Goods and/or Services means Goods and/or Services which are not in conformity with the Agreement, or are of inferior quality or workmanship;

Delivery Date means (where relevant) the date the Goods must be delivered or the Services must be completed by the Contractor as specified in the Scope of Work;

Delivery Term means the terms of delivery (where relevant) as set out in the Scope of Work;

Employee Claim means any claim in respect of any death, injury or occupational disease of any Personnel of the Contractor which is caused or contributed to by the Contractor or arises out of or in connection with the Agreement;

Equipment means the plant, equipment, tools, machinery, vehicles, appliances, items, consumables and other property supplied by the Contractor for the purpose of supplying and performing the Goods and/or Services;

Excluded Loss means loss of revenue and profit (or anticipated profit); loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; increased overhead costs; any failure to achieve any actual or anticipated saving in respect of any cost or expense, whether or not such losses, damages, costs, expenses or liabilities were foreseeable at the date of this Agreement; and all other loss which is indirect, remote or unforeseeable loss;

Expiry Date means the date on which the Goods and/or Services have been delivered and commissioned or the Contractor has demobilised all of its Personnel and Equipment from Site as required under the Agreement (as applicable);

Fees means the fees payable for the Goods and/or Services as set out in the Purchase Order;

Force Majeure means any event or circumstance beyond the control of the Party claiming Force Majeure and which by the exercise of a standard of care and diligence consistent with that of a reasonable and prudent operator, the affected party could not reasonably have been expected to have prevented, avoided or overcome. Notwithstanding the foregoing, it is expressly agreed that the following matters shall not constitute Force Majeure:

- (a) lack of or inability to use funds for any reason; or
- (b) any occurrence which results from the wrongful act or omission of the Affected Party or the failure by the Affected Party to act in a prudent and proper manner and in accordance with Good Industry Practice;

Good Industry Practice means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced professional contractors engaged in the same type of undertaking under the same or similar circumstances and conditions and in accordance with generally accepted industry and professional standards and practices;

Goods and/or Services means all goods to be supplied and/or services to be performed by the Contractor in accordance with the Agreement including:

- (a) all goods and/or services set out in any applicable Purchase Order including any items to be supplied by the Contractor in the performance of the services;
- (b) other services, functions, responsibilities and obligations that the Agreement provides that the Contractor has or will perform; and
- (c) all responsibilities and functions not specifically described in the Agreement

but which are incidental to, or otherwise necessary for the Contractor to provide the Goods and/or Services under the Agreement;

GST has the same meaning as in the GST Law.

GST Law means has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

HSE means healthy, safety and environment;

HSES Legislation means all relevant written laws relating to health and safety, including the *Mines Safety and Inspection Act 1994* (WA), the *Occupational Safety and Health Act 1984* (WA) and any other applicable legislation relating to health and safety on the Site, and all relevant health and safety regulations, codes of practice of safety standards made pursuant to those Acts or any other legislation dealing with workplace health and safety that may apply from time to time;

Insolvency and Insolvent has the meaning given to it in the *Corporations Act 2001* (Cth);

Intellectual Property Rights and Intellectual Property 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 any Goods and/or Services or the Agreement (including without limitation all intellectual property rights developed by the Contractor in providing the Goods and/or Services);

Legislation means:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and/or

performance of Services under the Agreement;

Modern Slavery is as defined in the *Modern Slavery Act 2018 (Cth)*

Party means the Contractor or the Principal and Parties means both of them;

Personal Information means any information relating to an identified or identifiable natural person;

Personnel means:

- (a) in relation to the Principal, any of its directors, officers, employees, contractors, agents or representatives; and
- (b) in relation to the Contractor, any of its directors, officers, employees, suppliers, Subcontractors, their subcontractors, agents and representatives involved either directly or indirectly in the provision of the Goods and/or Services;

Principal means Calidus Resources Limited (ACN 006 640 553) or its Related Body Corporate specified on the Purchase Order;

Principal's Associates means any:

- (a) Related Body Corporate of the Principal;
- (b) employee, director or officer of the Principal; or
- (c) agent, adviser, contractor, subcontractor, supplier or consultant of the Principal acting in that capacity,

to the extent involved in any activity, function or task related to the Warrawoona Gold Project or the Principal's obligations under this Agreement and provided that the Contractor and all of the Contractor's Personnel are not a Principal's Associate.

Principal's Policies and Procedures means the Principal's policies, standards, procedures and rules of conduct and operation applicable to the Services or the Site and includes the Site Safety Rules, as updated from time to time and notified and provided to the Contractor;

Principal's Property means any plant, equipment, tools, appliances or other property and items that the Principal provides to the Contractor to enable it to perform its obligations under the Agreement;

Principal's Representative means the person appointed by the Principal to act on its behalf in relation to the Agreement as notified to the Contractor;

Purchase Order means the document entitled 'Purchase Order' issued by the Principal to the Contractor for the supply of Goods and/or Services in accordance with the Agreement and includes any schedules attached;

Registered Mine Manager means the person appointed from time to time as the registered mine manager at the Site for the purposes of section 33 of the *Mines Safety and Inspection Act 1994 (WA)*;

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

Sanctioned Country or Territory means any country or territory against which comprehensive sanctions are imposed by the United States, the United Kingdom, the United Nations, the European Union, any European Union member states, Australia, Switzerland or any other country with jurisdiction over the activities in connection with the Agreement, and currently includes Cuba, Iran, North Korea, South Sudan, Syria and the Crimea.

Sanctioned Party means any person or entity or vessel that is listed on, or owned, or controlled by a person (including an entity that is 50% or more controlled or owned, directly or indirectly by a Restricted Party) listed on the U.S. of Specially Designated Nationals and Blocked Person List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or sanctions list maintained by the United States, the United Kingdom, the United Nations and the European Union, Australia, Canada or any other relevant government.

Scope of Work means the scope of the Services to be performed or the Goods to be supplied as specified in the Purchase Order;

Site means the Principal's Warrawoona Gold Project site or other location specified in the Purchase Order or the location where the Services are performed;

Site Safety Rules means the Principal's rules in respect of health and safety, drug and alcohol use, fire prevention, security, emergencies at the Project and other matters, as in force from time to time;

Subcontractor means any person engaged by the Contractor to perform all or any portion of the Services or supply under the Agreement on behalf of the Contractor, and includes their employees, agents, consultants and invitees;

Tax Invoice has the same meaning as in the GST Law;

Term means the period from the date of the Purchase Order until the Expiry Date (unless extended by the agreement of the Parties);

Third Party Claim means any claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; and/or
- (b) any personal injury to or death of any person arising out of, or caused by, any act or omission, or the supply or non-supply of the Goods and/or Services, by the Contractor or its Personnel.

Variation means any addition, reduction or change to the Scope of Work;

Variation Proposal means a written proposal provided by the Contractor addressing the particulars of any Variation; and

Warranty Period means 12 months after the Expiry Date, unless stated otherwise in the Purchase Order.

2. Nature of Agreement

- (a) In consideration for the payment of the Fees, the Contractor agrees to diligently commence the supply of the Goods and/or performance of the Services from the date of receipt of the Purchase Order

to ensure it supplies the Goods to the Site and/or completes the Services:

- (1) by the Delivery Date (as applicable);
 - (2) in accordance with the Delivery Term (as applicable); and
 - (3) in accordance with the terms of this Agreement.
- (b) The Agreement does not confer upon the Contractor any exclusivity in respect of any Goods and/or Services at the Site or otherwise and does not oblige the Principal to procure any minimum level of Goods and/or Services from the Contractor.
 - (c) The Contractor agrees to notify the Principal if it finds any errors, omissions or inconsistencies in information provided by the Principal. Except as prescribed by Legislation, the Principal gives no representation or warranty of accuracy, sufficiency or otherwise in relation to information provided to the Contractor and disclaims all responsibility for such information.
 - (d) Any of the Contractor's terms and conditions supplied to the Principal in respect of the Goods and/or Services, are of no legal effect and will not constitute part of this Agreement.

3. Representations and Warranties

- (a) The Contractor represents and warrants that:
 - (1) all information and communications it provides in connection with the performance of this Agreement are complete and accurate;
 - (2) the Goods and/or Services will:
 - (A) be provided in an efficient manner and will match the description and

- specification in the Agreement;
 - (B) be supplied in accordance with Good Industry Practice; and
 - (C) comply with all applicable Legislation;
 - (3) all Goods supplied will be:
 - (A) of merchantable quality, free of defects and fit for the purpose set out in the Agreement;
 - (B) manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions supplied to the Contractor by the Principal; and
 - (C) free from any encumbrance, lien, mortgage, security or charge in favour of a third party or any other third party interest, from the time of delivery to the Principal;
 - (4) where Goods are procured from a third party, the Contractor will obtain all manufacturer's warranties that may be applicable to those Goods for the benefit of the Principal; and
 - (5) all Equipment used by the Contractor in the supply of the Goods and/or Services will be maintained in safe working condition, complies with all Legislation applicable to such Equipment, and is maintained and operated by suitably qualified and competent Personnel.
- (b) If the Contractor breaches clause 3(a), the Principal may, in its sole discretion:
- (1) instruct the Contractor to suspend performance of the Agreement immediately;
 - (2) instruct the Contractor to leave the Site immediately;
 - (3) instruct the Supplier to remove any or all of its Equipment from the Site immediately;
 - (4) terminate the Agreement; and/or
 - (5) claim damages from the Contractor.
 - (c) These warranties remain unaffected notwithstanding any information which the Principal provides to the Contractor.

4. Site Access and Safety

- (a) The Principal grants to the Contractor a non-exclusive and non-assignable licence to access the Site during the Term to perform its obligations under the Agreement.
- (b) The Contractor must obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to perform the Goods and/or Services.
- (c) The Contractor must, and must ensure its Personnel, in supplying the Goods and/or Services:
 - (1) perform in a safe manner that does not prejudice safe working practices, safety and care of property and continuity of work, and use best endeavours to achieve zero classified injuries;
 - (2) not interfere with the Principal's activities or the activities of any other person at the Site;
 - (3) provide all information and assistance reasonably required by the Principal in connection with any statutory or internal health and safety, environment or community investigation in connection with the Agreement; and

- (4) be aware of and comply with, and ensure that its Personnel are aware of and comply with, all:
 - (A) applicable Legislation (including HSES Legislation);
 - (B) the Principal's Policies and Procedures (to the extent they are applicable to the Agreement); and
 - (C) all lawfully given directions from the Principal's Representative and the Registered Mine Manager.
- (d) Without limiting the Contractor's other obligations under the Agreement, the Contractor must notify the Principal's Representative and the Registered Mine Manager as soon as practicable but in any event within 12 hours of any accident, injury, loss or damage which occurs at the Site.
- (e) The Contractor must leave the Site secure, clean and orderly and fit for immediate use having regard to the condition of the Site immediately prior to the supply of the Goods and/or Services.
- (f) If the Contractor breaches clause 4(b) or 4(c), the Principal may, in its sole discretion:
 - (1) instruct the Contractor to suspend performance of the Agreement immediately;
 - (2) instruct the Contractor to leave the Site immediately;
 - (3) instruct the Supplier to remove any or all of its Equipment from the Site immediately;
 - (4) terminate the Agreement; and/or
 - (5) claim damages from the Contractor.

5. Contractor's Personnel

- (a) The Contractor must engage all personnel necessary for the supply of the Goods and/or Services under the Agreement.
- (b) The Contractor must employ or cause to be employed only personnel that are trained (including in HSE), skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services.
- (c) No Contractor's Personnel may commence work on Site unless she/he has attended the induction courses required by the Principal to be attended by all persons engaged at the Site.
- (d) To the extent permitted by Legislation, during the Term and extending for a period of 6 months after the Expiry Date, the Principal's Personnel are not to be engaged or offered employment by the Contractor, without prior written approval of the Principal.

6. Industrial Relations

- (a) The Contractor is responsible for conducting its industrial and employee relations with its Personnel in a manner conducive to preventing any delay or disruption in the provision of the Goods and/or Services, including by taking all prudent steps to maintain harmonious and productive relations with its Personnel.
- (b) The Contractor must ensure that the terms and conditions of employment of all of its Personnel engaged in the supply of Goods and/or Services under the Agreement are at all times regulated by an agreement made under the *Fair Work Act 2009* (Cth).
- (c) The Principal may, at any time in its absolute discretion, request the Contractor to withdraw any of its Personnel from providing any part of the

Goods and/or Services and the Contractor must promptly arrange for the person to cease being involved in any way in the provision of the Goods and/or Services notwithstanding any provision in any other contract. If requested by the Principal, the Contractor must replace the person with a person of suitable ability, experience and qualifications within a reasonable time period specified by the Principal.

7. Equipment

- (a) The Contractor agrees to supply the Equipment at its own risk and expense and to maintain such on Site and in safe, operable, good working condition throughout the Term.
- (b) The Principal may reject any item of the Equipment which it determines is unsuitable for the purposes of the Agreement. If any Equipment is so rejected then it must be either repaired, removed or replaced to the reasonable satisfaction of the Principal promptly after notification by the Principal. If the Contractor does not remove the Equipment by the date required by the Principal, the Principal may remove the Equipment at the Contractor's cost and risk.
- (c) The Contractor must provide all spare parts and consumable items for the Equipment.
- (d) The Contractor agrees the Principal's Property may only be used for the purposes of fulfilling the Contractor's obligations under the Agreement, and the Contractor is liable to the Principal for any loss or damage to the Principal's Property by the Contractor's Personnel.

8. Inspection

- (a) The Contractor must keep the Principal's Representative fully informed of all aspects of the provision of the Goods and/or Services.

- (b) Subject only to providing reasonable notice, at any time during the supply of the Goods and/or Services the Principal may inspect, examine, review and witness tests on the Goods and/or Services or their results at the Site, the Contractor's premises or at the premises of a Subcontractor.
- (c) If, as a result of any review, inspection, examination, or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply in all respects with the Agreement, the Principal may exercise its rights to terminate under clause 16(c).

9. Records and Audits

- (a) The Contractor must keep and maintain an accurate and reasonably detailed record of all documents relating to the supply of Goods and/or Services and retain copies of them for a period of 6 years, or any longer period required by any applicable law, following the expiry or termination of the Agreement.
- (b) The Principal may request an audit of the Contractor's compliance with the Agreement for any reason. The Contractor must provide the Principal with access to its premises and Personnel to conduct any audit under clause 9(b).

10. Defective Goods and/or Services

- (a) If upon inspection or testing during the Term and until the end of the Warranty Period, the Principal identifies Defective Goods and/or Services, it may give the Contractor a notice requiring the Contractor to rectify any defects identified (**Defect Notice**).
- (b) The Contractor must, at its own cost and risk, rectify the defect to the Principal's satisfaction, by the date specified in the Defect Notice.

- (c) If the Contractor fails to comply with clause 10(b), the Principal may:
- (1) reject the Defective Goods and/or Services by notifying the Contractor that it is rejecting them; or
 - (2) make good the Defective Goods and/or Services itself;

and the Contractor must:

- (3) refund to the Principal any payments made by the Principal in respect of any Defective Goods and/or Services that the Principal rejects; or
 - (4) reimburse the Principal for any expenses the Principal incurs in making good any Defective Goods and/or Services itself.
- (d) The remedies provided in this clause do not exclude any other remedies provided by law.

11. Fees

- (a) In consideration for the supply of the Goods and/or Services, the Principal will pay the Contractor the Fees.
- (b) The rates set out in the Agreement will be the sole consideration payable to the Contractor under the Agreement, and are deemed to include all risks, liabilities and obligations expressed or implied in the Agreement or incurred in the course of the supply of the Goods and/or Services.
- (c) The Contractor will pay all costs, taxes, expenses and liabilities incurred by the Contractor in the course of the supply of Goods and/or Services under the Agreement.

12. Invoicing and Payment

- (a) The Contractor must submit a Tax Invoice to the Principal following the end of each calendar month for the Goods and/or Services supplied in the previous month.

- (b) The Tax Invoice must set out particulars of all Goods and/or Services supplied by the Contractor and the amount payable by the Principal under the Agreement in respect of those Goods and/or Services, and how the amount of the Tax Invoice was calculated. The Tax Invoice must include:

- (1) the Purchase Order Number and any line item numbers on the Purchase Order;
- (2) the date of issue of the Tax Invoice and the period it covers;
- (3) a description of the Goods and/or Services supplied;
- (4) the Site and Delivery Date;
- (5) if Services are charged by time, the time spent by the Contractor's Personnel;
- (6) any other information required by any applicable law or as the Principal reasonably requires.

- (c) Subject to clause 13, the Principal will pay all Tax Invoices submitted by the Contractor within 30 days after the end of the month in which the Tax Invoice was received (or such other period required by Legislation).

13. Withholding Fees

- (a) The Principal may deduct from any money due or becoming due to the Contractor under the Agreement, including but not limited to:
 - (1) all debts, damages, costs, expenses or any other moneys due from the Contractor or its Subcontractors to the Principal under or by virtue of any provision of the Agreement, the supply or non-supply of the Goods and/or Services, or the Contractor's presence on the Site; and
 - (2) all costs, losses, charges, damages, liquidated sums and

expenses which the Principal may have paid or incurred and which, or for which, the Contractor or its Personnel is or are liable to bear, pay or make reimbursement to the Principal.

- (b) The remedies provided in this clause do not exclude any other remedies provided by law.

14. Representatives

- (a) Unless expressly provided otherwise, all directions or any permission given on behalf of the Principal to the Contractor will be given by the Principal's Representative (or the Principal's Representative's delegate notified to the Contractor).
- (b) The Contractor must comply, and ensure its Personnel comply, with the lawful directions of the Principal's Representative and Registered Mine Manager in relation to the Contractor providing the Goods and/or Services at the Site. In any matter pertaining to the safety of persons or property or the proper compliance with any Legislation which it is the Registered Mine Manager's duty to enforce, the Registered Mine Manager's decision will be final and any directions he may give must be obeyed in the manner directed.
- (c) The Contractor's Representative will represent and act for the Contractor at all times during the Term. The Contractor is bound by the actions of the Contractor's Representative. Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

15. Extension of Time

- (a) The Contractor must immediately give the Principal written notice of all incidents, circumstances or events of any nature affecting or likely to affect the Contractor's ability to deliver the Goods

and/or perform the Services by the Delivery Date.

- (b) Within 10 days after the date of the notice issued under clause 15(a), the Contractor must give a further notice to the Principal which must include all material details of the event and mitigating actions taken by the Contractor.
- (c) The Principal may grant an extension of time to the Delivery Date if the supply of the Goods and/or Services has been delayed by:
 - (1) Force Majeure; or
 - (2) any other act or omission of the Principal's Representative, the Principal or its Personnel, but excluding acts or omissions authorised or permitted under the Agreement and which are done or omitted in accordance with the Agreement.
- (d) If the Principal grants the Contractor an extension of time to the Delivery Date under clause 15(c)(2) only, the Principal will reimburse the Contractor for its direct costs actually, reasonably and properly incurred as a direct consequence of the delay (evidenced on an open book basis).
- (e) The Principal may, in its absolute discretion at any time by written notice to the Contractor, unilaterally extend the Delivery Date. The Principal is not required to exercise its discretion under this clause for the benefit of the Contractor.

16. Default and Termination

- (a) If at any time a Party becomes Insolvent, the other Party may terminate the Agreement with immediate effect by giving written notice.
- (b) The Contractor may terminate the Agreement by notice in writing to the Principal if the Principal fails to make a

payment due to the Contractor under the Agreement, in respect of which there is no bona fide dispute as to the Principal's liability to make the payment, and provided the Contractor has delivered a notice of default to the Principal and the Principal fails to remedy the non-payment within the time specified in the notice of default (which must be no less than 10 Business Days).

- (c) The Principal may, at any time, terminate the Agreement in whole or in part without cause at its absolute discretion by giving the Contractor no less than 7 days' written notice.
- (d) The Principal may terminate the Agreement in whole or in part and with immediate effect, by notice to the Contractor, if:
 - (1) the Contractor or any of its Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter in connection with the Agreement;
 - (2) the Contractor is in breach of any provision of this Agreement and the Principal reasonably determines that the breach is not capable of remedy;
 - (3) the Contractor is in breach of any provision of the Agreement which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of the Principal within 14 days after receipt of a notice from the Principal specifying the breach; and
 - (4) the Principal is expressly entitled to exercise a right of termination under any other provision of the Agreement.
- (e) If the Principal terminates the Agreement pursuant to 16(d)(1), 16(d)(2) or 16(d)(3), the Principal is entitled to recover from the Contractor any costs, losses, damages and liabilities incurred or suffered by it or its Related Entities as a result of, arising out of or in any way connected to the termination or any preceding breach.
- (f) Without prejudice to any other rights of the Principal under the Agreement, in the event of termination under clause 16(c) only, the Principal will pay to the Contractor:
 - (1) the Fees for Goods and/or Services provided to the Principal prior to the effective date of termination and not included in any previous payment by the Principal;
 - (2) the cost of materials reasonably ordered by the Contractor for the purpose of providing the Goods and/or Services prior to the date of termination, which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of the Principal upon payment;
 - (3) reasonable and substantiated costs of demobilisation from Site; and
 - (4) reasonable costs of complying with any directions given by the Principal upon, or subsequent to, termination.
- (g) Except as set out in this clause 16, the Contractor will not be entitled to make and the Principal will not be liable for, any further cost, claim, expense or liability in relation to the termination of this Agreement, including any loss caused by the termination of this Agreement.
- (h) On the expiration or earlier termination of the Agreement, the Contractor must:
 - (1) cease supply of the Goods and/or performance of the Services;
 - (2) take such action as necessary or as the Principal directs, for the

transfer, protection and preservation of the Principal's Property;

- (3) do its best to minimise the cost of termination to the Principal;
- (4) immediately cease using all items of applicable Principal's Property and Intellectual Property; and
- (5) within 14 days after termination or expiration, return to the Principal (or if requested, erase and/or destroy) all copies in any form of the applicable Intellectual Property and Confidential Information in the possession or control of the Contractor and/or its Personnel.

17. Variation to the Scope of Work

- (a) The Principal may by written notice direct a Variation and the Contractor must perform and be bound by such Variation. The Principal is not obliged to request a Variation Proposal in accordance with this clause.
- (b) The Principal may request that the Contractor prepare a Variation Proposal in accordance with this clause. The Contractor must as soon as practical (but no later than 7 days) after receiving such request, submit the Variation Proposal to the Principal addressing the effect on and value of the proposed Variation.
- (c) The Contractor may initiate and submit a Variation Proposal to the Principal. Following receipt of a Variation Proposal under this clause, the Principal may either:
 - (1) direct the Contractor to perform the Variation in accordance with the Variation Proposal; or
 - (2) advise that it does not wish to proceed with the Variation.
- (d) If under clause 17(c) the Principal directs the Contractor to perform a Variation, the

Principal will reimburse the Contractor for its costs actually, reasonably and properly incurred as a result of the Variation.

18. Suspension

- (a) The Principal has the right, at any time and for any reason, to suspend the Agreement or any part of the Agreement immediately. When the Contractor receives a notice of suspension from the Principal, it must suspend the performance of its obligations until such time as the Principal directs that the Agreement is no longer suspended.

19. Insurance

- (a) The Contractor must, before commencing the supply of Goods and/or Services, effect and maintain at its expense, the following insurances:
 - (1) Workers Compensation insurance for an amount of not less than \$50,000,000 that must:
 - (A) comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits;
 - (B) provide common law liability as required by law in Western Australia;
 - (C) provide a Principal's indemnity extension for Act Benefits and at Common Law including a waiver of subrogation in favour of the Principal, and their Related Bodies Corporate; and
 - (D) extend to include industrial diseases, common law supplied on an "A" and "B" class mine under the applicable Legislation,

and if the provision of Goods and/or Services requires any of

- the Contractor's Personnel to attend any Site, then the Contract must also effect and maintain an Industrial Disease workers compensation policy for Act Benefits in accordance with the applicable legislation.
- (2) Public and Product Liability insurance that must:
- (A) provide cover for general public and products liability to a limit not less \$20,000,000 in respect to any one occurrence arising out of the same or original cause and unlimited in the aggregate for public liability as to the number of claims but limited in the aggregate to \$20,000,000 for products liability; and
- (B) extend to include a Principals indemnity extension including a cross liabilities clause and waiver of subrogation in favour of the Principal and the Participants, and their Related Bodies Corporate .
- (3) if the Purchase Order requires the Contractor to use or provide for use of motor vehicles the Contractor must provide motor vehicle insurance. The Contractor must ensure that all motor vehicles used or brought onto the Site are kept licensed in accordance with any Legislation and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. This policy must include a Principal's indemnity extension, with a cross liability clause and a waiver of subrogation in favour of the Principal and the Participants, and their Related Bodies Corporate. The limit of liability must be not less than \$20,000,000 for any one occurrence and unlimited as to the number of occurrences;
- (4) if the Services include professional services as nominated in the Agreement, the Contractor must take out professional indemnity insurance in respect of the supply of the Services to cover for liability to a limit of not less than \$10,000,000 (max \$100,000 excess) in relation to any one claim and \$10,000,000 in the aggregate;
- (5) the Contractor must insure all items of the Contractor's Equipment that the Contractor brings onto Site for an amount of not less than its full replacement value (unless otherwise insured) to the satisfaction of the Principal. This policy must include a Principal's indemnity extension, with a cross liability clause and a waiver of subrogation in favour of the Principal;
- (6) if the Agreement requires the Contractor to be responsible for transport of property owned by the Principal, the Contractor must provide marine transit and property damage insurance for loss or damage to such property in transit or loading/unloading for 110% of the replacement value; and
- (7) any other insurances required by Legislation or regarded as Good Industry Practice.
- (b) The Contractor must provide evidence of the currency of insurance to the Principal at any time upon request.
- (c) The Contractor must ensure any Subcontractor engaged by the Contractor in relation to the Goods and/or Services

effects and maintains the equivalent insurances nominated in this clause 19.

- (d) If the Contractor fails to effect or maintain any of the insurances, or have any Subcontractor effect or maintain any insurances, as specified in this clause, then the Principal may at the Contractor's cost:

- (1) effect and maintain that insurance;
- (2) pay the necessary premiums; and
- (3) recover from the Contractor the amount paid by the Principal under this clause.

20. Title and Risk

- (a) Title in any Goods passes to the Principal when the Principal pays for the relevant Goods or when such Goods are applied in the course of provision of the Services, whichever is the first to occur.
- (b) To the extent permitted by law, the Contractor enters onto the Site and supplies the Goods and/or Services under the Agreement at its own risk. Risk in any Goods remains with the Contractor until delivery to the Principal.

21. Liability and Indemnities

- (a) The Contractor is liable for and must indemnify and hold harmless the Principal, the Principal's Associates and its and their officers, employees, agents, contractors or invitees on or about the Site (Indemnified Parties) from and against any loss, cost, expense, claim or liability whether arising under any statute or at common law in respect of:

- (1) the negligence or any act or omission of, or misconduct by the Contractor or Contractor's Personnel;
- (2) personal injury, illness, disability or death of any and all persons whomsoever;

- (3) loss or destruction of or damage to any and all property real and personal;
- (4) any Claims brought against the Indemnified Parties by a third party; and
- (5) any breach of third party Intellectual Property,

arising out of or in the course of or in connection with the performance or non-performance of the Goods and/or Services or other obligations under this Agreement by, or the presence on or about the Site of, the Contractor or the Contractor's Personnel, provided that the Contractor is not liable under this indemnity to the extent that such loss, cost, expense, claim or liability arises from any negligent act or omission of the Indemnified Parties or breach of this Agreement by the Principal.

- (b) Notwithstanding anything in the Agreement to the contrary but subject to clause 21(c), neither Party will be liable to the other for any Excluded Loss.

- (c) The exclusion of liability in clause 21(b) does not apply in relation to liability of the Contractor:

- (1) in respect of the injury or death of any person;
- (2) in respect of any Third Party Claims;
- (3) in respect of any Employee Claims;
- (4) for any act or omission of fraud, dishonesty, wilful misconduct or misrepresentation of the Contractor and/or any of its Personnel;
- (5) any penalty imposed for breach of Legislation in connection with the supply of the Goods and/or Services by the Contractor;
- (6) for breach of clause 22, 23 or 24; or

- (7) any loss arising from an occurrence which should be covered by a policy of insurance in the name of the Contractor required under the Agreement.

correspond with the relevant regulatory body or individual without the Principal's prior written consent, unless required otherwise by law;

22. Data Protection

- (a) Where the Contractor processes Principal Personal Information in connection with the activities under the Agreement, the Parties agree that the Principal will be the controller and the Contractor will be the processor for the purposes of any applicable law.
- (b) The Contractor must:
- (1) comply with all applicable law and not process Principal Personal Information in a manner that will or is likely to result in the principal breaching its obligations under any applicable data privacy law;
 - (2) only process Principal Personal Information for the purposes of performing its obligations under the Agreement and as directed by the Principal unless required to do otherwise by an applicable law in which case the Contractor must notify the Principal of the legal requirement before processing the relevant data;
 - (3) put in place and maintain technical and organisational measures to protect Principal Personal Information including against accidental loss, destruction, damage, alteration or disclosure and unlawful or unauthorised processing.
 - (4) promptly inform the Principal of any complaint received from any regulatory body or individual regarding the way his or her Principal Personal Information has been processed and advise and assist the Principal in relation to such complaints and not

- (5) cooperate and provide information required by the Principal to meet its obligations under the applicable law;
 - (6) return or destroy any Principal Personal Information after the expiry or Termination of the Agreement or as directed by the Principal;
 - (7) not engage a subcontractor to process Principal Personal Information without the prior written consent of the Principal; and
 - (8) not disclose the Principal Personal Information without the prior written consent of the Principal.
- (c) The Contractor must indemnify the Principal against all claims, losses, damages, liabilities, costs and expenses arising out of or in connection with any breach by the Contractor of clause 22(b).

23. Intellectual Property

- (a) Each of the Parties grants the other a non-exclusive, royalty free licence to use its Background IP to the extent necessary to enable it to perform its obligations under the Agreement.
- (b) The Contractor acknowledges and agrees that all Intellectual Property created by the Contractor for the benefit of the Principal (whether existing or created prior to the date of the Agreement or otherwise) will vest in the Principal, and the Contractor hereby assigns all rights, title and interest in and to the Intellectual Property to the Principal.

- (c) The Contractor must not disclose, reproduce or otherwise deal with the Intellectual Property, or allow any other person to do the same, for any purpose other than to provide Goods and/or Services under the Agreement.
- (d) The Contractor warrants that:
 - (1) it owns the Background IP and that the use of the Background IP does not and will not infringe any Intellectual Property Rights of third parties;
 - (2) the provision of the Goods and/or Services does not and will not infringe the Intellectual Property Rights of any third party;
 - (3) it will, at no further cost to the Principal, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Goods and/or Services;
 - (4) the Intellectual Property created in connection with this Agreement does not and will not infringe any Intellectual Property Rights; and
 - (5) the Contractor has the right to assign all Intellectual Property to the Principal in accordance with clause 23(b).

24. Confidential Information

- (a) The Contractor must not advertise or issue any information, publication, document or article (including photograph or film) for publication or media releases or other publicity relating to this Agreement or the Principal's Confidential Information without the prior written approval of the Principal.
- (b) Each Party must ensure that all Confidential Information is kept confidential and is not disclosed directly or indirectly to a third party without prior written approval of the other Party, unless the Confidential Information:
 - (1) is used for the purposes of fulfilling the Party's obligations under the Agreement, including disclosure to Personnel of the Party;
 - (2) is disclosed to the Contractor's legal advisors, accountants or other professional advisers who are bound by an obligation of confidentiality;
 - (3) is disclosed to any current or prospective banker or debt or equity financier of the Party or its Related Bodies Corporate who are bound by an obligation of confidentiality; or
 - (4) is disclosed to direct or indirect investors, limited or general partners, or potential direct or indirect investors, limited or general partners of the Party or its Related Bodies Corporate, who are bound by an obligation of confidentiality;
 - (5) was in the Party's possession prior to the date of the Purchase Order (other than any information that was provided directly or indirectly by the other Party or which is the subject of a confidentiality obligation between the Parties)
 - (6) becomes generally available to the public or is in the public domain through no fault of the Party;
 - (7) is required to be produced by order of a court or under the requirements of any Legislation or stock exchange listing rule; or
 - (8) was obtained from a third party without an obligation of confidentiality.
- (c) This clause 24 survives termination of the Agreement for a period of 2 years.

25. Conflict of Interest

- (a) The Contractor must, and must ensure its Personnel, declare any Conflict of Interest prior to entering into any agreements with the Principal, and in any event as soon as a Conflict of Interest comes to the attention of the Contractor.

26. Taxes

- (a) If GST has application to any supply made by the Contractor under or in connection with the Agreement, the Contractor may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from the Principal an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Principal for the supply by the prevailing GST rate.
- (b) Should any taxes (other than GST) be levied on, in respect of, or in relation to, the Goods and/or Services these will be to the Contractor's account. The Contractor will be responsible for the payment of those taxes and will provide documentary evidence of the payment of those taxes if made on the Principal's behalf.
- (c) The Contractor must do everything necessary to ensure that both the Contractor and Principal are eligible for any exemptions, credits, set-offs or deductions in respect of any applicable taxes.
- (d) If either Party is required by applicable legislation to make a deduction or withholding from a payment to the other Party for or on account of any Taxes, the paying Party may make that deduction or withholding.
- (e) If a payment is made without a deduction or withholding for or on account of taxes and such a deduction or withholding was required by any applicable law then:

- (1) the payee must reimburse the paying Party for the amount that should have been withheld or deducted; and
- (2) reimbursement must be made within 14 days of receiving a copy of a receipt evidencing the amount that was required to have been withheld or deducted.

27. Assignment and Subcontracting

- (a) The Contractor must not assign, transfer, charge or otherwise dispose of any part or the whole of its rights or obligations under the Agreement except with the prior written consent of the Principal (which must not be unreasonably withheld). If required by the Principal, the Contractor must enter into any document reasonably required to effect the assignment, delegation or novation.
- (b) The Contractor must not subcontract any part or the whole of its obligations under the Agreement except with the prior written consent of the Principal, and must enter into a subcontract that contains terms that oblige the subcontractor to perform its obligations under the subcontract in a way that ensures that the Contractor complies with its obligations under the Agreement.
- (c) The Contractor is liable to the Principal for the acts and omissions of any subcontractor as if they were acts and omissions of the Contractor.

28. Force Majeure

- (a) If a Party is prevented from carrying out the whole or any part of its obligations under the Agreement by reason of Force Majeure, that Party must immediately give written notice to the other Party. A notice must:
 - (1) specify the obligations the Contractor cannot fulfil;

- (2) fully describe the Force Majeure;
- (3) estimate the period during which the Force Majeure will continue; and
- (4) specify the measures the Contractor proposes to adopt to remedy or mitigate the Force Majeure.

The affected Party must keep the other Party informed of any changes in the circumstances causing the Force Majeure or the effects of the Force Majeure.

- (b) The obligations of the affected Party, so far as they are affected by Force Majeure, will be suspended for the period that the Force Majeure persists and the affected Party will not be in default under the Agreement. The affected Party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under the Agreement.
- (c) Notwithstanding any provision of the Agreement, if the Force Majeure causes the suspension of the Contractor's obligations for a continuous period of 60 days or a cumulative period of 60 days in any 120 day period, either Party may terminate the Agreement by written notice to the other Party.

29. Modern Slavery

- (a) The Principal works to comply with the requirements of the *Modern Slavery Act 2018* (Cth) and expects the same of its contractors.

The Contractor warrants that:

- (1) it investigates the risk of modern slavery within its operations, and those of its supply chain;
- (2) it assesses and addresses risks regarding modern slavery, including implementing appropriate due diligence and remediation programs;

- (3) it will notify the Principal as soon as possible of any confirmed instances of modern slavery and the actions undertaken by the Contractor to remedy the issue;
- (4) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in this clause 29(a);
- (5) upon request, the Contractor will provide evidence to the satisfaction of the Principal which validates the Contractor's compliance with this clause;
- (6) upon request, the Contractor will permit the Principal's Personnel or its nominated representative/s to undertake verification activities to validate the Contractor's compliance with this clause, including access to the Contractor's premises and records as required; and
- (7) it will include a clause similar to this clause 29(a) in all contracts it enters into with its suppliers.

- (b) In the event that the Contractor does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time frame specified by the Principal, the Principal reserves the right to terminate this Agreement in accordance with clause 16(d).

30. Bribery and Corruption

- (a) The Contractor and its Related Entities must not, and must procure that its Personnel do not:
 - (1) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the Principal or its Related Bodies Corporate, or favour any of those persons with gifts or

entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to the Principal or is contrary to fair dealing; and

- (2) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.

- (b) The Contractor must, and must ensure that its Personnel, immediately report to the Principal, and in any event within 5 Business Days, any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 30(a).
- (c) The Contractor will implement and maintain appropriate internal controls to ensure that any payments made pursuant to or in connection with the Agreement, or transactions which relate to the Agreement or performance of it, are properly and accurately recorded.

31. Trade Controls

- (a) The Contractor must not, without the prior written consent of the Principal, provide to the Principal any:
- (1) Goods that have been imported by a Sanctioned Person or sourced (including but not limited to any Goods that have been grown, produced, manufactured extracted or processed) in whole or part from a Sanctioned Country or Territory, or Sanctioned Party and any Goods that have entered into commerce in a Sanctioned Country or Territory;
- (2) Services from a Sanctioned Country or Territory origin, including but not limited to any services performed in a Sanctioned Country or Territory or

outside of a Sanctioned Country or Territory by an entity organised under the laws of a Sanctioned Country or Territory or a person ordinarily a resident of a Sanctioned Country or Territory, or Services that involve a Sanctioned Party in any respect.

- (b) A Party may terminate the Agreement by written notice to the other Party if that other Party breaches clause 31(a). If the Principal terminates this Agreement pursuant to this clause 31(b) the Principal will be under no obligation to return any Goods, make any payments or pay any compensation to the Contractor unless the Principal has received all government authorisations required to do so.

32. Dispute Resolution

- (a) Where a dispute arises between the Parties, either Party may give to the other Party a dispute notice specifying the nature of the dispute and requiring its resolution under this clause 32.
- (b) The Parties must promptly meet and negotiate in good faith with a view to resolving the dispute. If the dispute has not been resolved within 14 days after the notice of the dispute is given to the other Party, each Party must nominate one representative from its senior management to negotiate and try and settle the dispute, who must negotiate in good faith with a view to resolving the dispute.
- (c) If the dispute has not been resolved within 30 days after the date of receipt of the dispute notice, either Party may commence legal proceedings in connection with that dispute in any Western Australian court of competent jurisdiction.
- (d) Despite the existence of a dispute, the Contractor must continue without delay to perform its obligations under the Agreement.

- (e) Nothing in this clause prevents either Party from applying to a court for urgent interlocutory, injunctive or declaratory relief.

which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of the next Business Day in that place.

33. Notices

- (a) Any notice, approval, consent or other communication in relation to the Agreement must:
- (1) be in writing and signed by the Party sending it (or on that Party's behalf);
 - (2) be marked for the attention of:
 - (A) in the case of a notice to the Principal, the Principal's Representative;
 - (B) in the case of a notice to the Contractor, the Contractor's Representative; and
 - (C) be left at or sent by prepaid ordinary post to the last notified address of the Party, or sent by email to the last notified email address of the Party.
- (b) A notice, approval, consent or other communication is taken to be received by the addressee:
- (1) upon actual receipt, when hand delivered;
 - (2) in the case of email, 4 hours after the date of sending provided that a transmission error report is not received by the sender within 24 hours of sending the email; or
 - (3) in the case of posting, five Business Days after posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside of Australia,
- 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 in the place to

34. Other Matters

- (a) Survival – Clauses 1, 16, 21, 22, 23, 24, 32, 33, and this clause 34 survive the expiry or earlier termination of the Agreement.
- (b) Notification of claims - The Principal will not be liable for any claim made by the Contractor unless, within 21 days (or such other time as is expressly provided for in this Agreement) after the first day on which the Contractor could reasonably have been aware of the matters giving rise to the Claim, the Contractor has given to the Principal a notice setting out, in summary, the details of the Claim
- (c) Agreement terms – This Agreement may only be varied by a document signed by or on behalf of each Party.
- (d) Severance - If any provision or part of a provision of this Agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
- (e) Waiver – Waiver of any right arising from a breach of the Agreement must be in writing and executed by the Party granting the waiver. Failure by the Principal to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Agreement as a whole.
- (f) Governing law and jurisdiction – The Parties accept the laws of the State of Western Australia as the governing law

of the Agreement submit to the exclusive jurisdiction of the Courts of the State of Western Australia.

- (g) Entire Agreement – The Agreement as amended or varied from time to time represents the entire agreement between the Parties and supersedes all prior arrangements whether written or oral in relation to the Services.
- (h) Relationship between the Parties –
 - (1) The Principal and the Contractor are independent contracting parties and nothing in the Agreement will make either Party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either Party any authority to assume or to create an obligation on behalf or in the name of the other Party.
 - (2) The Principal is not responsible to the Contractor or any of its Personnel for any payments in respect of any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, payroll tax, accidents, sickness, or lift insurance.
- (i) Ipsos Facto Amendments - For the purpose of this clause 34(i), ipso facto amendments means:
 - (1) the amendments to the Corporations Act set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017* (Cth); and
 - (2) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the Corporations Act (Ipsos Facto Amendments).

Clause 16(a) is subject to the Ipsos Facto Amendments to the extent that they apply to this Agreement. In the event the Ipsos Facto Amendments apply, the Principal may withhold or deny any advance payment or other form of credit the Contractor would otherwise be entitled to.