

Terms and Conditions: Provision of Engineering Services, Goods and/or Equipment Hire

1. Definitions and Interpretation

1.0 Definitions

The following words have these meanings in these Conditions unless the context provides otherwise:

“Agreement” means the agreement between the Contractor and the Company consisting of the Proposal, these Conditions and any applicable addendum;

“Additional Goods and Services” means any Goods and/or Services requested by the Company in addition to those set out in the Proposal;

“Australian Consumer Law” means the Australian Consumer Law set out in schedule 2 of the Competition and Consumer Act 2010 (Cth);

“Authorisation” means an approval, consent, declaration, direction, exemption, notarisation, license, permit, certificate, waiver or other authorisation, however described, required by any Law and includes any renewal or amendment;

“Business Day” means Monday through Friday (inclusive) excluding gazetted public holidays in the State or Territory where the Site is located;

“Change of Law” means the enactment, adoption, promulgation, modification, determination, Authorisation or repeal (including any change in interpretation or application by competent authorities), of, or in respect of, any Law which occurs after the date of Contractor’s Proposal;

“Commencement Date” means the earlier of the commencement date set out in the Proposal, or if none is stated, then the date that Contractor confirms the Company’s order or the date that Contractor commences provision of the Services or the Supply of the Goods or Equipment;

“Conditions” means the Terms and Conditions for the provision of Engineering Services, Goods and/or Equipment Hire set out in this document and associated Addendums;

“Confidential Information” means information (in any form) which is by its nature confidential, is designated by a party to be confidential, the recipient knows or ought reasonably to know is confidential, information comprised in or relating to IP Rights, information relating to the business, computer systems or affairs of either party, the content of any correspondence, discussions, negotiations, and agreements between any of the parties and the existence of such correspondence, discussions, negotiations and agreements;

“Consequential Loss” means any special, punitive, exemplary, incidental, indirect, or consequential damages or losses under Law; any loss, delay, or interruption of business, profits, revenue, production, or opportunity; loss of product, use, or equipment; loss and costs associated with change to mine plans; cost of capital; cost of substitute equipment, facilities, or services; or overhead; whether any of the foregoing are direct or indirect, and whether or not foreseeable at the time of entering into the Agreement or at the time of commencing performance; and claims of a party’s customers for any of the above losses, costs or damages;

“Contractor” means Lucas Drilling Pty Limited (ABN 98 093 489 671) that submits the Proposal

“Contractor’s Personnel” mean all persons engaged by Lucas Drilling Pty Ltd to perform the work under the Agreement;

“Contract Price” means the price payable by the Company to Contractor for the Goods,

Equipment or Services as specified in the Agreement as may be varied in accordance with the Agreement and where applicable may be calculated using the Schedule of Rates;

- (a) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority;
- (b) by contract; or
- (c) otherwise.

"Company" means the person or entity for whom or which work under the Agreement is performed;

"Company Representative" means the person who has authority to represent the Company under the Agreement;

"Consumer" has the meaning given in Section 3 of the Australian Consumer Law. The Company will be acquiring the goods/services as a Consumer if:

- (a) the amounts paid or payable for the goods does not exceed \$40,000, or
- (b) the goods are of a kind ordinarily acquired for personal domestic or household use or consumption;

Notwithstanding the above, the Company will not be acquiring goods and/or services as a Consumer if the Company acquires the goods and/or services:

- (a) For the purposes of re-supply; or
- (b) For the purposes of using them up and transforming them, in trade or, commerce
 - (i) In the course of a process of production or manufacture; or
 - (ii) In the course of repairing or treating other goods or fixtures on land;
- (c) The goods and/or services are of a kind ordinarily acquired for personal domestic or household use or consumption;

"Defect" means an error or defect in the Goods and Services, due to faulty material or workmanship for which Contractor is responsible;

"Defects Liability Period" has the meaning set out in clause 16;

"Delivery Date" means the final date by which the Services must be performed and the Goods must be delivered under the Agreement;

"Emergency Breakdown Equipment" means equipment owned by Contractor for temporary replacement of non-functioning equipment;

"Force Majeure Event" means any event beyond the reasonable control of a party including the following events:

- (a) Acts of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or terrorism;
- (b) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) Contamination caused by any hazardous or toxic materials or waste (including asbestos) existing on the Site prior to the date of the Agreement or brought onto the Site after this date by or on behalf of the Company (other than contamination caused by Contractor or Contractor's Personnel);
- (d) Shipping congestion at port of loading/unloading, blockages, embargos, shortage of transport, import restrictions or currency restrictions;
- (e) Act (or failure to act) of authorities (unless such act is the requirement of authorities to either party to comply with any mandatory Law in force at the time of signature of the

Agreement), or epidemic;

(f) Sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance; and

(g) Acts of God including all severe weather conditions, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis and lightning strikes;

“Goods” means the goods and/or services to be supplied by Contractor under this Agreement, as specified in the Proposal (including any Additional Services and On Site Spares) as may be varied by the parties in writing from time to time;

“GST” has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any regulations made pursuant to the Act.

“Hired Equipment” means any equipment rented to the Company by the Contractor;

“Insolvency Event” means:

(a) in relation to a company, that the company:

(i) is insolvent;

(ii) has an administrator, controller, liquidator, provisional liquidator; receiver, receiver and manager, mortgagee in possession or other like Proposal appointed to it or over all or any of its assets;

(iii) experiences any analogous event having a substantially similar effect; and

(b) in relation to an individual, that he or she:

(i) is insolvent;

(ii) enters into a debt agreement or personal insolvency agreement; or

(iii) commits an act of bankruptcy or is bankrupt;

“IP Rights” means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how and confidential information and all other rights of a proprietary nature created as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

“Law” means any applicable statute, rules, regulations, by-laws, codes, standards, ordinances, licenses, orders, official policies, directions, requests, requirements, Authorisations and guidelines in force from time to time, whether made by a State, Territory, the Commonwealth or local government or by regulatory departments, bodies, instrumentalities, Ministers, agencies, or statutory authorities;

“Order” means a written order for Goods and Services from the Company in accordance with a Proposal, in the form required by Contractor from time to time;

“On Site Spares” means those spares held on Site by the Company including those held on consignment from Contractor

“PPSA” means the Personal Property Securities Act 2009 (Cth);

“Proposal” means a written Proposal by the Contractor to perform the work under this Agreement;

“Related Person” means, for a party:

(a) its Personnel;

(b) Related Bodies Corporate (as that term is defined in section 9 of the Corporations Act);

(c) an associate of the party (within the meaning of section 15 of the Corporations Act);

(d) an entity (such as a natural person, body corporate, partnership or trust) which the party

controls, or which is controlled by the party (within the meaning of section 50AA of the Corporations Act); or

- (e) a director, secretary or officer of the party or a body corporate referred to in paragraphs (a), (b), (c) or (d) above.

"Response Times" means the response times if any set out in the Proposal;

"Restricted Site Access" refers to the situation where Contractor is not able to access the Site to commence work or deliver the Goods or perform the Services;

"Schedule of Rates" means Schedules of charging rates calculated on an hourly or other basis as set out in the Proposal and varied in accordance with the Agreement;

"Services" means the Services to be provided by Contractor to the Company under the Agreement, as specified in the Proposal (including any Additional Services) as may be varied by the parties in writing from time to time;

"Services Materials" means material and equipment brought onto Site by Contractor for use in performing work under this Agreement and includes, without limitation service manuals, schematics, diagnostics software, tools and parts;

"Site" means the premises at which Contractor is to perform the work under this Agreement.

"Taxable Supply" has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Taxes" means all taxes including without limitation GST, excise duties, stamp duties, customs duties and other government charges, imposts and levies; and **"Term"** means the term of the Agreement as set out in the Proposal, (or if no term is stated, 12 months) as extended or terminated in accordance with the Agreement

"Term" means the term of the Agreement as set out in the Proposal, (or if no term is stated, a period of 12 months or until all Goods and/or Services have been delivered, whichever is earlier), as extended or terminated in accordance with the Agreement.

1.1 Interpretation

In the Agreement, unless otherwise indicated to the contrary:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including" without limitation;
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a reference to "\$" or "dollars" is to Australian dollars;
- (f) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (g) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- (h) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (i) if a payment or other act is required to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day; and

- (j) a reference to a 'person' includes a firm, partnership, joint venture, association, unincorporated body, corporation or other entity.

2. Proposal, Acceptance and Variations

2.1. Proposal and acceptance

These Terms and Conditions form part of the Proposal in which they are referred to or to which they are attached. Notwithstanding any acceptance by Contractor of any order from the Company that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from any such acceptance shall be subject to these Conditions unless and to the extent only that Contractor expressly agrees in writing to any variation.

Unless previously revoked by written notification to the Company, the Proposal shall remain valid for the period stated in the Proposal or, if no period is stated, for thirty (30) days from its date.

2.2. Variations

The Company may request Contractor to vary the work to be performed by Contractor under the Agreement to an extent contemplated by, and capable of being carried out under, the provisions of the Agreement. Contractor shall as soon as practicable after receiving such a request notify the Company

- (a) whether it can be effected; and
- (b) if it can be effected:
 - (i) Contractor's Proposal including its quote for the cost of performing the proposed variation, including any delay or disruption costs and payment terms; and
 - (ii) Contractor's estimate of the impact of the variation on the Delivery Date

If the Company accepts Contractor's Proposal for the proposed variation, Contractor shall perform the variation and the cost shall be added to or deducted from the Contract Price. The Delivery Date shall be extended as a result of any delays or additional time incurred by Contractor due to the performance of the requested variation.

3. Specifications and Drawings

3.1. Not Part of Agreement

Unless expressly agreed in writing all descriptions, specifications, drawing, dimensions and weights submitted with Contractor's Proposal are approximate only. All descriptions, illustrations and data contained in catalogues, price lists and other promotional material are only intended to present a general idea of the products described and do not form part of the Agreement.

3.2. Provision of necessary information

The Company shall, within 7 days from the date of the Company's order, provide Contractor with all information and other things reasonably required by Contractor from the Company to enable work under the Agreement to start and be carried out without delay or interruption, otherwise clause 18(e) shall apply.

3.3. Approval of Drawings

Drawings or other information requiring the Company's approval shall be approved, amended or rejected and returned to Contractor within 7 days of the date of receipt (or within such other time period as may be agreed in writing by Contractor), otherwise clause 18.2 shall apply.

3.4. Incorrect Information

The Company shall be responsible for and bear the cost of any alteration to the Goods and Services necessitated by any discrepancy, error or omission in any drawings, specification or other information supplier or approved by the Company.

3.5. Responsibility for Authorisations

In the absence of any agreement to the contrary, the Company shall be responsible for obtaining and providing all Authorisations necessary for performance of the Agreement at the Company's cost.

4. Services

4.1. Performance

- (a) Contractor will perform the Services during the Term, commencing on the Commencement Date.
- (b) Hours of service are as described in the Proposal or are otherwise Contractor's normal working hours. If Contractor performs Services outside its normal working hours, then it may charge the Company for any additional costs in accordance with the Schedule of Rates or, if no Schedule of Rates applies then at reasonable rates and prices.
- (c) Contractor will use reasonable endeavours to provide the Services within the Response Times (if any).

4.2. Addenda

- (a) If the Contractor provides Directional Drilling or Logging services, the terms of the annexed Directional Drilling and Logging Services Addendum shall apply
- (b) If the Contractor provides Hire Equipment, the terms of the annexed Rental Equipment Addendum shall apply.
- (c) If there is any conflict between these Terms and Conditions and the terms of any applicable addendum, the terms of the applicable addendum shall prevail.

5. Company Goods and Works

5.1. Company's Goods

- (a) Where goods (including equipment and materials) are supplied or are to be supplied by the Company, the Company is solely responsible for the insurance of those goods for the duration of the works (including transit to and from the site)
- (b) Paragraph 5.1 applies irrespective of where the works are to be conducted.

5.2. Company's Works

- (a) Where Contractor is required to provide the Services in conjunction with, as part of, in respect of, on the basis of or in addition or supplementary to work carried out by the Company or by other persons or parties on behalf of the Company including without limiting the generality thereof design, documentation, resources, validation, project management and/or resource co-ordination (the "Company's works"), whether or not the Company's works are subject to review by Contractor, Contractor shall not be liable to the Company in respect of the accuracy, correctness or suitability of the Company's works, and the Company shall indemnify and keep indemnified Contractor from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the Company's works including claims for Consequential Loss and shall reimburse Contractor for all Fees and expenses incurred as a result of or arising from or, relating to any delay or failure to perform the Company's works, including Fees and expenses incurred in rectifying, remedying or making good the Company's works.
- (b) Where the Services provided by Contractor comprise the provision of personnel who will work either in whole or in part at premises owned or occupied by the Company or any of its subsidiaries, or a subcontractor thereof, or who is subject to direction either complete or partial by the Company or any of its subsidiaries, or a subcontractor thereof as to the performance of his duties, the Company shall indemnify and keep indemnified Contractor

from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to actions of such personnel including claims for Consequential Loss.

6. Information and Communication

- (a) The Company must at such times as reasonably advised by Contractor, furnish to Contractor sufficient information to enable the work under the Agreement to proceed promptly and without interruption.
- (b) The Company must be responsible for the accuracy and completeness of the information supplied by the Company and its representatives. In the event of any error or omission in this information supplied, the Company shall be responsible and shall bear the cost of any alteration or variations required to the work under the Agreement.

7. Ownership of Intellectual Property Rights

7.1. Ownership of Intellectual Property Rights

Ownership of all Intellectual Property Rights developed, subsisting or created by Contractor in connection with the Goods and Services (including without limitation any training materials, sketches, designs, reports, plans, drawings, specifications, samples, models, patterns, photographs, graphics, logos, artworks, documents, patents or records) shall remain the exclusive property of Contractor or Contractor's third party suppliers or licensors. Contractor grants to the Company a non-transferable and non-exclusive license to use such Intellectual Property Rights for the sole purpose of operation and maintenance of the specific Company facility or Goods (as the case may be and including any Additional Goods) that are the subject of this Agreement. The Company shall promptly execute, at the request of Contractor, all documents and do all such other acts as may be necessary to give effect to this clause.

7.2. Indemnity

- (a) Contractor shall indemnify the Company against any claims which the Company is legally liable for, in respect of any infringement of a third party's copyright or registered design, trademark or patent, the specification of which is published prior to the date of Contractor's Proposal, relating to any part of the work supplied by Contractor. Contractor's obligation to indemnify the Company against claims is subject to the Company:
 - (i) giving Contractor prompt written notice of the claim;
 - (ii) not making any admission or prejudicing Contractor's defense of claim or Contractor's ability to negotiate a satisfactory settlement;
 - (iii) allowing Contractor the opportunity to control (at Contractor's expense) the conduct of the defense and any negotiations for the settlement of the claim; and
 - (iv) giving Contractor (at Contractor's expense) such assistance and information as may reasonably be required by Contractor to assist Contractor with the conduct of the defense and any negotiations for the settlement of the claim.
- (b) Contractor's obligation to indemnify the Company under the Agreement shall be reduced to the extent that:
 - (i) an act or omission of the Company (or of the Company's employees, officers, agents, consultants or other contractors), has contributed to the loss or damage; and
 - (ii) the Company has failed to mitigate its loss;and shall cease two years after the earlier of termination or expiry of the Agreement or completion of work under the Agreement

7.3. Warranty by Company

The Company warrants that use by Contractor of any design materials, documents and methods of working provided or directed by the Company to enable Contractor to perform work under the Agreement, will not cause Contractor to infringe any third party's intellectual property rights and

the Company will indemnify Contractor upon request for any loss or damage incurred by Contractor in connection with such infringement.

8. Contract Prices and Payment

8.1. Contract Price

The Contract Price quoted by Contractor is based on the quantity and scope of work specified in Contractor's Proposal and any minimum order values stated in Contractor's Proposal shall apply. If there is any variation in the quantity or scope ordered from that Proposal, Contractor may adjust the Contract Price accordingly. If Contractor's Proposal states that any portion of the Contract Price is subject to adjustment after a specified reference date due to foreign exchange variation, rise and fall or any other circumstance and the provision sets out the mechanism for calculating such adjustment, then Contractor may adjust the Contract Price in accordance with such provision.

8.2. GST and Taxes

- (a) Unless otherwise stated in the Proposal, the Contract Price is strictly net. The prices contained in a Proposal are exclusive of Taxes, which the Company must pay in addition to the payment of other amounts due and owing under the Agreement. If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply will be the amount payable in accordance with the Agreement plus GST. Contractor and the Company must provide each other with all documentation, including a Tax Invoice required to claim any Input Tax Credit, set-off, rebate or refund for or in relation to any GST included in any payment made under the Agreement
- (b) In this clause, "GST", "Input Tax Credit", "Tax Invoice" and "Taxable Supply" have the meaning given them in the GST Law

8.3. Change of Law

If after the Commencement Date, the cost to Contractor of performing the works under this Agreement is varied due to any Change of Law, the amount of such variance shall be added to or deducted from the prices charged under the Agreement, whichever the case may be. If the Change of Law causes delay to Contractor, then the time for performance of Contractor's obligations shall be extended by a period of time equal to the period of the delay.

8.4. Invoicing

- (a) Unless otherwise agreed between the parties in writing, Contractor may issue milestone or periodic invoicing to the Company upon delivery of the Goods to Site and/or performance of the Services.
- (b) Contractor may invoice the Company for any variations or additional work requested by the Company at the times agreed in writing between Contractor and the Company or any other reasonable time.
- (c) Where any other amount are payable by Contractor pursuant to the Agreement, Contractor may invoice such amounts as and when they occur.

8.5. Payment terms and credit facilities

- (a) Unless otherwise agreed between the parties in writing, the Company shall pay all amounts invoiced by Contractor as specified in the Proposal
- (b) Payment shall become due immediately upon the Company suffering an Insolvency Event

8.6. Delay or default in payment

Contractor may charge interest on amounts (at the rate of 3% above the 90-day Bank-accepted bills daily rate published by the Reserve Bank of Australia for the next Business Day after payment becomes due), calculated daily from the next Business Day after payment become due until the

date of full and final payment of the overdue amounts. Any payment by the Company shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the Contract Price

9. Company's Obligation

The Company must:

- (a) give reasonable prior notice of the time when Contractor is required to be on Site.
- (b) promptly answer all queries and provide to Contractor complete and accurate information and documents that are necessary to enable it to provide the Goods and Services;
- (c) provide customs clearance and obtain and maintain any approvals, licences or permits that are necessary for the Goods and Services;
- (d) provide Contractor with access to Site and take all necessary measures (including scheduling of planned Services) to ensure that Contractor personnel are able to safely commence the work under the Agreement immediately upon their arrival at Site;
- (e) ensure that Contractor personnel have sufficient access to the equipment or Site to perform the work under the Agreement in an uninterrupted manner;
- (f) supply all necessary information with regard to the location of underground cables and pipes together with static data for structures;
- (g) ensure that Contractor is provided with adequate secure storage space, free from condensation, dust and heat, for the storage of any Goods and tools;
- (h) maintain the Site in a safe secure condition to ensure compliance with the requirement of all applicable Laws, and Australian Standards for occupational, health, safety, environment and to properly induct all Contractor personnel to the Site;
- (i) provide adequate power supply, lighting of work areas and ventilation for the performance of the work under the Agreement;
- (j) provide Contractor with details of the Company Representative; and
- (k) ensure the Company Representative issues Contractor purchase orders confirming any verbal directions to proceed in respect of any Additional Services.
- (l) If the Company does not comply with its obligations under this clause, then the Delivery Date and the time for performing the Services shall be extended until such time as the Company's obligations are fulfilled and the Company shall pay Contractor the reasonable costs incurred by Contractor due to such delays.

10. Services Materials

- (a) Unless otherwise stated in the Proposal all Services Materials, with the exception of On Site Spares, retained or brought onto the Site under the Agreement are the property of Contractor.
- (b) The Company acknowledges that the Services Materials may only be used by Contractor's personnel and are to be returned to Contractor upon termination of the Agreement but that Contractor has the right to remove such materials from the Site at any time.
- (c) The Company acknowledges and agrees that parts replaced during performance of the work under the Agreement shall become the property of Contractor and it may dispose of such parts as it deems fit unless otherwise agreed in writing. Replacement parts used in the Services may be new or refurbished.
- (d) If Emergency Breakdown Equipment is made available by Contractor to the Company, Contractor may at a later time replace the Emergency Breakdown Equipment with a permanent replacement or the repaired original Equipment or part.

11. Title and Risk

11.1. Passing of risk

Risk to the Goods shall pass to the Company upon receipt at the delivery point (refer to Incoterm) and from then the risk of damage, deterioration or loss of or to the Goods from any cause whatsoever shall pass to the Company. On Site Spares shall be at the Company's risk at all times

11.2. Passing of title

Title and property in the Goods shall remain with Contractor, and the Company holds the Goods as bailee and fiduciary agent, until such time as full payment is made to Contractor of all amounts due and owing by the Company to Contractor

11.3. Right of recovery

If the Company fails to make payment of any amounts due and owing to Contractor, or an Insolvency Event occurs with respect to the Company, then Contractor may recover the Goods. For that purpose Contractor's representatives may enter upon the premises where Contractor reasonably suspects the Goods are located in order to effect recovery. Contractor shall have the right to resell or otherwise dispose of the Goods so recovered without reference to the Company

12. Delivery Terms

12.1. Incoterm

Unless otherwise stated in the Agreement, the Goods are supplied Ex works Contractor according to INCOTERMS 2010 (as amended from time to time) and delivery shall take place when the Goods are delivered at the delivery point. The Company shall do everything necessary to take delivery of the Goods at the delivery point.

12.2. Storage

If after a period of 7 days from the date of notification that the Goods are ready for delivery, delivery is delayed for any reason beyond Contractor's reasonable control, Contractor may arrange for storage of the Goods at Contractor's premises or elsewhere. The Company shall pay all associated costs including all applicable storage, insurance, demurrage and handling costs.

12.3. Partial deliveries

Contractor reserves the right to make partial deliveries and to separately invoice them unless otherwise agreed between the parties in writing

13. Performance, Inspection and Tests

13.1. Performance

- (a) Contractor shall supply the Goods and perform the Services in accordance with the Agreement.
- (b) Any performance figures given by Contractor are based on Contractor's experience and are such as Contractor expects to obtain on testing. Subject to recognised tolerances applicable to such figures, Contractor shall not be liable if such figures are not attained unless Contractor has specifically guaranteed them in writing.

13.2. Inspections and acceptance tests

- (a) If Contractor has agreed to perform any inspections or acceptance tests under the Agreement, they will be performed in accordance with Contractor's standard inspection and acceptance testing procedures and will be carried out at the place of manufacture or at another location at Contractor's option. Contractor shall bear the cost of performing any inspections and acceptance tests which Contractor specifies will be borne by Contractor in Contractor's Proposal.
- (b) Contractor may agree to carry out additional inspections or acceptance tests requested by

the Company. If Contractor does so, the Company shall bear the cost of such additional inspections and acceptance tests and the time for performance of Contractor's obligations shall be extended by a period equal to the time required to perform such additional inspections or acceptance tests.

- (c) If Contractor agrees to perform inspections or acceptance tests witnessed by the Company, the Company must arrange for a representative to attend the designated test site at the designated time. If the Company does not do so, Contractor may proceed with carrying out the witnessed inspections and acceptance tests in the absence of the Company's representative and such inspections and acceptance tests shall be deemed to have been made in the Company's presence.
- (d) Contractor shall not be responsible for any expenses incurred by the Company or the Company's representative arising out of or in connection with any inspections or acceptance tests.
- (e) If during any such inspections or acceptance tests, Goods are found to have any Defect, Contractor shall make good such Defect (as if it had occurred during the Defects Liability Period) in accordance with clause 15. Contractor's liability, if any, shall be limited as provided in clause 16.
- (f) Goods will be deemed to have passed any inspections and acceptance tests and to have been accepted by the Company if the Goods are put into commercial use.

14. Term

The Agreement shall be effective for the Term commencing on the Commencement Date. The Term shall be extended automatically for further periods of twelve (12) months on each anniversary of the Commencement Date, unless either party gives the other party 90 days' notice in writing prior to expiry of the term that it does not wish the Agreement to be renewed.

15. Suspension and Termination

15.1. Right to terminate

With immediate effect, by notice to the other party if the other party suffers an Insolvency Event; or Commits a material breach of the Agreement and fails to diligently pursue a proper course of action to remedy the breach within 21 days (or such longer period as is reasonable given the nature of the breach) after receipt of a notice from the non-defaulting party specifying the details of the breach and requesting remedy of same. Without limiting the foregoing, Contractor may also terminate the Agreement with immediate effect, by notice to the Company, if the Company has not paid the amount due and owing under the Agreement.

Any action taken by Contractor under this clause shall not invalidate the Agreement or prejudice any of the rights, powers and remedies of Contractor, whether under the Agreement or otherwise at law.

15.2. Right to suspend

If any of the events referred to in clause 15.1 happen to the Company, Contractor may elect to suspend the performance of the whole or any part of the remaining work to be performed under the Agreement. This suspension right is in addition to any other rights and remedies available to Contractor at Law. The Delivery Date shall be extended by a period equal to the period of any such suspension. The Company shall pay Contractor all additional costs and expenses which are suffered or incurred by Contractor by reason of any such suspension.

15.3. Termination by the Company for Contractor default

In case of termination by Company for Contractor default under this clause, Contractor is only entitled to be paid the Contract Price for any Goods delivered and Services performed to the date of termination, and for any Goods or Services that have been ordered where the order cannot be

cancelled. This clause sets out the sole and exclusive rights and remedies of the Parties in such circumstances.

15.4. Termination by Contractor

In the event of termination by Contractor, the Company shall pay to Contractor the Contract Price for any Goods delivered and Services performed to be date of termination, and for any Goods or Services that have been ordered where the order cannot be cancelled (including demobilisation costs and the cost of any Contractor's Personnel who become redundant because of the termination).

16. Defects Liability

16.1. Defects Generally

The Contractor shall rectify any Defects which occur during the Defects Liability Period, at its option, by repair, replacement or supply of equivalent Goods and Services (or by payment of the cost of doing so), provided always that:

- (a) the Company notifies Contractor of the Defect in writing as soon as the Company becomes aware of or should have become aware of the Defect;
- (b) the Goods and the Hired Equipment or system in respect of which the work under the Agreement have been carried out have been properly handled, used, operated and maintained in accordance with instructions issued by Contractor or if no instructions have been issued, in accordance with good industry practice;
- (c) such Defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, unsuitable soil conditions or any other chemical, electrochemical and/or electrical influences which have not been provided for in the Agreement;
- (d) the Goods are not a consumable, not liable to deterioration or do not have a low rated service life;
- (e) no unauthorised repair or alteration to the Goods has been made (as applicable)
- (f) such Defects are not caused by the use of equipment and/or material supplied by the Company; and
- (g) such Defects are not due to fair wear and tear, improper storage, excessive heating, mechanical vibration, overloading or contravention of prevailing standards and regulations applicable to electrical work

16.2. Company's obligations with respect to repair or replacement

Where the Company has notified Contractor of an alleged Defect in accordance with clause 16.1, the Company shall, at Contractor's request:

- (a) promptly return the Defective Goods to Contractor for repair; or
- (b) do those things necessary to enable Contractor to repair or replace the Defective part on behalf of the Company (including giving Contractor access to any premises or sites where the Defective Goods or Services are located).
- (c) Unless otherwise agreed between the parties, the removal of Defective Goods and the installation of any repaired, replacement or equivalent Goods shall be performed by the Company at the Company's risk and expense. Where any Defective Goods have been replaced, that Defective Goods shall become the property of Contractor upon its removal. All replacement Goods shall become the property of the Company upon installation

16.3. Exclusive remedy

To the extent permitted by Law and subject to clauses 16.4:

- (a) Contractor's obligation to rectify Defects in accordance with this clause shall be the Company's sole and exclusive remedy and represents the full extent of Contractor Liability

for Defects; and

- (b) all representations, warranties and conditions of any kind, whether express or implied (including any warranties and conditions of merchantability and fitness for a particular purpose or arising from a course of dealing or usage or trade) relating to the Goods and Services that are not contained in the Agreement are excluded

16.4. Defects Liability Period

The Defects Liability Period:

- (a) for Services shall be 90 days from the date the Services is performed;
 - (b) for Goods shall be 12 months after risk in the Goods has been transferred to the Company;
- and

16.5. Implied conditions, warranties and consumer contracts

Nothing in this clause is intended to exclude any conditions, guarantees or warranties implied into the Agreement, or any remedies made available to the Company, by provisions of the Australian Consumer Law or by any other Federal, State or Territory Laws to the extent that such implied conditions, guarantees, warranties or remedies may not be excluded by express agreement

17. Liability and Insurance

17.1. Limitation of Liability

- (a) Notwithstanding any other provision of the Agreement and except to the extent that liability cannot be legally limited or excluded:
- (b) Contractor's total aggregate liability arising out of or in connection with the Agreement, shall be limited to the value of the Goods provided and/or Services provided within the preceding 12 months, per event and in the aggregate and
- (c) Contractor shall under no circumstances be liable for indirect or Consequential Loss or damage.
- (d) This limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or indemnity, under statute, in equity or otherwise. Any and all liability of Contractor under or in connection with this Agreement shall cease with the expiry of the defects liability period specified in clause 16.4

17.2. Third Party Benefit

Contractor holds the rights under clause for itself in its own capacity, and as agent of and trustee for its Related Persons, other contractors, subcontractors, consultants, agents and suppliers ("Associates") respectively. For the purpose of this clause, each of the entities comprising the Associates must be treated to this extent as a party to the Agreement and may plead the Agreement as a bar to any claims by the other party under the Agreement.

17.3. Insurance

- (a) Contractor must maintain during the term of this agreement:
 - (i) public liability insurance for an amount not less than \$10,000,000 in respect of any claim and in the aggregate; and
 - (ii) worker's compensation insurance in respect of its employees and subcontractors to cover the maximum liability which may be imposed by law from time to time in each jurisdiction in which the services are to be provided.
- (b) should Contractor's insurance policy conditions change at any time during or after the completion of the services, and in particular with respect to retrospective exclusions, the Company will be required, upon written notification of the exclusion, to indemnify Contractor from any claims relating to the excluded work type (s) for the service conducted in retrospect.

18. Force Majeure and Delays

18.1. Force Majeure

- (a) If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Agreement (other than payment obligations) then that party shall not be obliged to perform those obligations until it is no longer prevented from doing so and the time for performance of those obligations shall be extended by a period of time equal to the period of the delay.
- (b) If Company suspends its obligations in this Agreement the Company shall pay Contractor for all work performed until the giving of the suspension notice as well as for all additional cost reasonably incurred due to such suspension including but not limited to waiting time, demobilisation and remobilisation cost as well as cost for protecting the work. Contractor shall be entitled to take back the work and Company shall be obliged to return the work upon Contractor's request. The taking back, the assertion of the retention of title or of a security interest or the taking possession through legal right or process of the work by Contractor shall not mean termination of the Agreement and restitution, unless expressly stated by Contractor.
- (c) If a party is prevented by the Force Majeure Event or suspension from carrying out its obligations for more than 180 days, either party may terminate the Agreement by giving written notice to the other party.
- (d) If a party terminates the Agreement under this clause, the rights and obligations of the parties will cease; and the accrued rights or remedies of each party will not be affected. Upon such termination, the Company shall pay to Contractor:
 - (i) all amounts due to Contractor for work carried out under the Agreement;
 - (ii) the cost of materials and equipment reasonably ordered by Contractor for the work under the Agreement and which Contractor is liable to accept (including profit and overheads);
 - (iii) Contractor's reasonable demobilisation costs including profits and overheads (if any).

18.2. Delays

- (a) If an act or omission of the Company (or the Company's agents, consultants, employees, officers, representatives or other contractors), a Change of Law, or Restricted Site Access, causes delay to Contractor:
 - (i) the time for performance of Contractor obligations shall be extended for a period of time equal to the period of delay; and
 - (ii) the Company shall pay to Contractor all additional costs including profits and expenses incurred by Contractor as a result of such delay including expenditure resulting from Contractor's Personnel being idle or standing by, Contractor's Personnel having to be retrenched or re-employed and Contractor's Personnel being required to perform work under the Agreement outside of Contractor's normal working hours or undertake additional travel

19. PPSA

- (a) The Company acknowledges that the Agreement constitutes a security agreement for the purposes of the PPSA. Contractor takes a security interest in all Goods supplied to the Company under the Agreement securing the performance by the Company of its obligations under the Agreement.
- (b) The Company shall not create or cause to be created a security interest over, or in respect of its rights in, the Goods or Hired Equipment other than the security interest arising under the Agreement.

- (c) The parties contract out of the provisions of the PPSA allowed by section 115 of the PPSA to the following extent:
 - (i) An exercise by Contractor of any right, power, or remedy, will be taken not to be under a provision mentioned in that section to the extent that the right, power or remedy is granted under any other Law or Statute or under these conditions unless Contractor so elects.
 - (ii) Any restrictions on the exercise by Contractor of a right, power or remedy or any obligation of Contractor to give notice, will not apply to the extent that the section so allows.
- (d) The Company waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- (e) The Company waives its rights to receive anything from Contractor under section 275 of the PPSA and agrees to not make any request of Contractor under that section.
- (f) For the avoidance of doubt, Contractor's security interest referred to in clause 19(a) also constitutes a security interest for the purposes of section 52(2) and 53 of the Competition and Consumer Act 2010 (Cth).

The Company consents to Contractor perfecting its interest in any Goods or Hired Equipment provided by Contractor to the Company by registration under the PPSA and agreed to do anything reasonable by Contractor to enable it to do so.

20. Non-Solicitation

The Company shall not, during the term of Agreement (and for a period of 12 months after expiry of the Term) directly or indirectly solicit or entice away (or attempt to solicit or entice away) for employment any person who is engaged by Contractor to perform works under this Agreement. The Company shall indemnify Contractor upon demand against all loss, costs and expenses of any nature incurred by Contractor arising out of or in connection with a breach of this clause (including all costs incurred by Contractor to replace such person).

21. Dispute Resolution

21.1. Notice of Dispute

Any dispute of difference between the parties arising out of or in connection with the Agreement ("a Dispute") shall be notified to the other party by written notice of that Dispute, giving details of the subject-matter of the dispute ("Notice of Dispute").

21.2. Escalation of dispute

Upon the giving of a Notice of Dispute, the following shall apply:

- (a) The Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the parties (or their delegates);
- (b) If after twenty-one (21) days of the giving of the Notice of Dispute, the subject-matter of the Dispute has not been resolved between the Chief Executive Officers (or their delegates) to the satisfaction of both parties, the Dispute may be referred by either party to mediation. Mediation shall be conducted in accordance with the Rules for the conduct of commercial arbitrations of the Institute of Arbitrators & Mediators Australia. The mediator shall be a lawyer chosen by the parties and give his or her decision in writing and based on legal substance.
- (c) If the parties cannot agree on the choice of mediator within forty- two (42) days of the giving of the Notice of Dispute, the President for the time being of the Victorian Chapter of the Institute of Arbitrators & Mediators Australia shall appoint the mediator.

21.3. Award, seat and language

The award of such arbitration shall be final and binding on both parties in accordance with legislation applying to Commercial Arbitration and judgement thereon may be entered in any court having jurisdiction. The seat of arbitration shall be Brisbane, Queensland. The language to be used in the arbitration shall be English.

21.4. No relief from performance of other obligations

A reference to arbitration under this clause shall not relieve either party of any other obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained.

22. Confidential Information

Each party must not, and must ensure that its Related Persons do not, without the prior written approval of the other party, either during the Term or after the expiry or earlier termination of this Agreement, disclose or give to any third party any Confidential Information of the other party, except:

- (a) as required by statutes and regulations, or the stock exchange listing rules applying to a party (or any of its Related Persons); or
- (b) as necessary to obtain professional or financial advice or assistance from a third party (provided such third party is under an obligation to keep the relevant information confidential and secure).

23. Notice

23.1. Form of Notice

Any notice to be given under the Agreement shall be given in writing and delivered personally or sent by pre-paid post (airmail if to or from a place outside Australia) or emailed addressed to the other party at such address or emailed number as a party notifies the other for the purposes of this clause.

23.2. Service of notices

Any notice shall be deemed to be served:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, 3 days (7 if to or from a place outside Australia) after the date of posting; and
- (c) in the case of delivery by email read receipt.

24. General

24.1. Precedence

If there is any inconsistency between the documents comprising the Agreement, the following order of precedence shall apply (with the document referred to in clause 26.1(a) having the highest priority);

- (a) Addendum terms and conditions
- (b) any amendments to Contractor's Proposal or these Conditions which have been agreed between the parties in writing;
- (c) these Conditions.

24.2. Severance

If the whole or any part of the Agreement is or becomes or is held to be illegal, invalid or unenforceable, then the whole and each part of the clauses of the Agreement shall (to the extent necessary to avoid such illegality, invalidity or unenforceability) be interpreted read down or

severed without affecting the operation of the remaining clauses.

24.3. Assignment

Each party shall not assign, pledge or transfer its interest in the Agreement (or any part of it) without obtaining the other party's prior written consent. Contractor may assign to any person all or part of any debt owing by the Company to Contractor.

24.4. Amendment

- (a) The Agreement may only be varied by written agreement between the parties;
- (b) No documentation, correspondence, verbal agreement or conversation shall part of, affect or modify any aspect of Contractor's Proposal or the Agreement unless accepted and confirmed by Contractor in writing;
- (c) These Conditions shall apply to any separable portion of Contractor's Proposal.

24.5. Governing Law and Jurisdiction

The Agreement, and to the extent permitted by law, each security interest (as defined by the PPSA) under it, shall be governed and shall be interpreted in accordance with the Laws of the State of Queensland, Australia (subject to clause 21) the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and to the appeal courts from them. The application of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna Convention) is excluded.

24.6. Entire Agreement

The Agreement constitutes the entire agreement between the parties as to its subject matter and the parties acknowledge that there are no other understandings, agreements, or representations whether express or implied in any way relating to the Agreement.

24.7. Waiver

No consent or waiver by a Party to or of any breach of any provision of the Agreement shall be construed as consent or waiver to or of any other breach of a provision of the Agreement.

24.8. Survival

Any indemnity or any other obligation of confidence under the Agreement is independent and survives termination of the Agreement. Any other term by its nature intended to survive termination of the Agreement will do so.

Terms and Conditions: ADDENDUM – DIRECTIONAL DRILLING AND LOGGING SERVICES

1. Additional Definitions

The following words have these meanings in these Addendum Conditions unless the context provides otherwise:

“Hazardous Materials” means any chemical, substance, material, waste, or emission defined, classified, or regulated as hazardous or toxic, or as a pollutant, contaminant, or threat or potential threat to human health, safety, or the environment under Applicable Law, including but not limited to naturally occurring radioactive material, hydrocarbons, asbestos, lead, hydrogen sulphide, or polychlorinated hydrocarbons, including biphenyls and biphenols. “

“Tools” means the Contractor’s equipment, instruments, and tooling used in connection with the Directional Drilling or Logging Services.

2. General

This Directional Drilling and Logging Services Addendum is made part of the Agreement between the Company and Contractor as an addendum to the Terms and Conditions: Provision of Engineering Services, Goods and/or Equipment Hire and any defined terms therein shall have the same meaning herein

3. Services

3.1. Directional Drilling Services

- (a) Company shall furnish Contractor with a certified well location plan setting out the surface location of the well, the lease, license, or property boundary lines, and the bottom hole location of Company’s directionally drilled well. If, in the course of drilling the well, it becomes evident to Contractor that the plan is in error, Contractor shall notify Company of the error, and Company shall be responsible to regulate all directional drilling factors so that Company’s bottom hole location will be situated on Company’s property, license, or leasehold at total depth of the well being drilled.
- (b) Company shall also notify Contractor of the presence of any other wells that are or may be located within Company’s property, license, or leasehold in order to avoid any potential collision of wells.
- (c) Notwithstanding clauses 3(a) and 3(b), Company shall indemnify Contractor from and against any claims arising out of or related to subsurface trespass or wellbore collision arising out of or in connection with the Agreement, regardless of cause or action.

3.2. Logging Services

- (a) Where the Services include interpretation of logging survey results or data logged or otherwise provided by, or to, the Contractor, the Company acknowledges and agrees that:
- (b) the Contractor is providing the Company with its best judgement as to the interpretation of that survey data;
- (c) the interpretations are based on interferences from electrical or other logs, and other empirical factors which are not necessarily infallible, and interpretations may vary between individuals undertaking the interpretation, as a result, the Contractor cannot guarantee the accuracy or correctness of those interpretations;
- (d) the Contractor’s interpretation of any survey results or other data logs is not intended to form a recommendation to the Company about a particular course of action; and
- (e) the Contractor will not be liable to the Company or any third party in connection with the interpretation of survey data, and the Company will indemnify and hold harmless the Contractor from such Claims.

3.3. Electronic Data Collection and Interpretation

- (a) Contractor shall undertake pre-job preparation and surface testing of data collection Tools, however Contractor does not guarantee the presence of information in data collection Tools, and does not warrant the accuracy, correctness or completeness of data collected.
- (b) Interpretations, research, analysis, recommendations, advice or interpretational data including, without limitation, any seam models or drilling production optimization or management programs furnished by the Contractor are opinions based upon inferences from measurements, empirical relationships and assumptions which with respect to geologists, engineers, drilling consultants and analysts may differ. Accordingly, Contractor does not guarantee and does not warrant the accuracy, correctness or completeness of any such interpretations or recommendations, or that the Company or any third party's reliance on such interpretations or recommendations will accomplish any particular results. Company assumes full responsibility for the use of such interpretations or recommendations and for all decisions based thereon (including, without limitation, decisions based on any coal seam evaluations, degasification forecasts, and reserve estimates). The Company shall indemnify the Contractor from any claims arising out of the use of such interpretations or recommendations, regardless of cause or action.

4. Downhole Loss

- (a) If Tools become lost or damaged in the well or hole when performing or attempting to perform the services hereunder for any reason whatsoever (including the fault of the Contractor), it is understood that Company shall make every effort to recover the Tools at its sole cost.
- (b) Company shall assume the entire responsibility for fishing operations in the recovery or attempted recovery of any such lost or damaged Tools. none of Contractor's employees are authorized to do anything whatsoever, nor shall any of Contractor's employees be required by Company to do anything, other than consult in an advisory capacity with company in connection with such fishing operations.
- (c) Should Company fail to recover any Tools lost in the well, or should any Tools become damaged in the well, or damaged during recovery, Company shall reimburse the Contractor for the cost of repairing any Tools so damaged, or the replacement value of any such Tools that are lost or not repairable, regardless of cause or action.

5. Radioactive Sources

- (a) Radioactive sources that may be used by Contractor in performance of the Services are potentially dangerous. Company agrees to comply with all applicable governmental regulations governing the use and handling of radioactive sources.
- (b) In the event a radioactive source becomes stuck in a well, Company, at Company's sole risk and expense will make a reasonable attempt to recover such radioactive source in accordance with applicable regulations and use special precautions to prevent damaging the source during recovery operations.
- (c) If the source cannot be recovered, Company, at Company's sole risk and expense, will isolate the radioactive material by cementing it in place or by other means consistent with applicable statutes or regulations.
- (d) The Company releases the Contractor from all liability which may be suffered or incurred by reason of any radioactive source becoming stuck in a well for any reason whatsoever (including the fault of the Contractor).

6. Warranty and Indemnity

6.1. Company's Warranty

- (a) If Company is not the sole owner of the mineral interests, the well, or the field, Company's request for Services shall constitute Company's warranty that it is the duly constituted agent

of each and every owner and has full authority to represent the interests of the same with respect to all decisions taken throughout the provision of any Services hereunder.

- (b) Company shall indemnify Contractor from and against all claims resulting from the allegation by any person or entity that Company has misrepresented or lacked sufficient authority to represent such person or entity as warranted by Company in clause 6.1(a).

6.2. Indemnity

The provisions of this Clause 6.2 shall apply to the maximum extent permitted by Applicable Law and, unless otherwise expressly stated, prevail over any conflicting clauses.

- (a) Contractor agrees to indemnify Company from and against any and all claims for personal injury, illness, or death suffered by any member of Contractor group, or for damage to or loss of any property of any member of Contractor group (whether owned, hired, or leased, but excluding equipment and tools lost or damaged in accordance with clause 3) arising out of or in connection with the Agreement, regardless of cause or action
- (b) Company agrees to indemnify Contractor from and against any and all claims for personal injury, illness, or death suffered by any member of Company group, or for damage to or loss of any property of any member of Company group (whether owned, hired, or leased, and including the Goods after delivery, the site, and any facilities or property thereon), arising out of or in connection with the Agreement, regardless of cause or action
- (c) In the event the injury or damage to third parties is caused by the joint or concurrent negligence of the parties or their respective groups, each party shall bear such injury or damage proportionally to its group's negligence.
- (d) Notwithstanding anything else to the contrary in the Agreement, Company assumes sole responsibility for and shall indemnify the Contractor (to the maximum extent permitted under applicable law) from and against any and all claims asserted by or in favor of any person or entity arising out of or related to:
 - (i) loss of or damage to any well or hole (including but not limited to the costs of re-drill and sidetrack);
 - (ii) blowout, fire, explosion, cratering, or any uncontrolled well condition (including but not limited to the costs to control a wild well and the removal of debris);
 - (iii) damage to any reservoir, geological formation, or underground strata;
 - (iv) the loss of or impairment of any property right in and to any oil, gas, water, or other mineral substance;
 - (v) the use of Contractor's radioactive tools or any contamination resulting therefrom (including but not limited to retrieval or containment and clean-up);
 - (vi) pollution or contamination of any kind including, without limitation, the cost of control, removal, clean-up, and remediation, or
 - (vii) damage to, or escape of any substance from, any pipeline, vessel, or storage or production facility, arising out of or in connection with the Agreement. the above indemnity applies regardless of cause or action.
 - (viii) the transportation, storage, treatment, disposal, or handling of Hazardous Materials, cuttings, or waste related to or arising from the performance of services at the Site, including, without limitation, contamination of, or adverse effects on the environment or any form of property, or any violation or alleged violation of any applicable laws, regardless of cause or action.
 - (ix) any loss of profit, loss of revenue, loss of business opportunity or any other form of indirect or consequential loss that may be suffered or incurred by the Company due to any act or omission of the Contractor (including the Contractor's breach of this Agreement or any negligent act or omission of the Contractor).