



Australasia Business Unit Guideline Service Agreement Terms

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GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract:

Affiliate	means a body corporate, which at any relevant time is a related body corporate, as defined in Section 9 of the <i>Corporations Act 2001</i> (Cth).
Approved	means approved in writing by the Company and “ Approval ” has a corresponding meaning.
Business Day	means a day on which banks are open for general banking business in Perth, Western Australia.
Associated Activity	means any training course, travel or other activity (other than provision of the Services) undertaken by any member of the Contractor Group in connection with the Services including activities undertaken: <ul style="list-style-type: none">(a) in order for the Contractor to comply with or better perform its obligations under any Contract;(b) at the discretion of the relevant members of the Contractor Group; or(c) at the request or suggestion of the Company.
Carbon Costs	means any costs of the Contractor relating to the provision of the Services which are attributable to a requirement imposed on any member of the Contractor Group by a mandatory carbon pollution reduction scheme, emissions trading scheme, or any similar scheme relating to the reduction or removal of greenhouse gases.
Claim	means any claim, action, investigation, suit, proceeding, demand, judgment, cost, loss (including Consequential Losses), damage, liability, fine, penalty, expense (including legal costs) or obligation of whatever nature whether present, unascertained, contingent or prospective and including any interest thereon.
Company	means the person named as such in the Order.
Company Group	means: <ul style="list-style-type: none">(a) the Company;(b) each Coventurer;(c) each Affiliate of the Company;(d) any joint venture or disclosed principal on whose behalf the Company is entering into the Contract as agent; and(e) the respective directors, officers and employees of all of the above persons (which for the purposes of this definition shall include all personnel engaged directly by the Company Group or engaged by the Company Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
Consequential Loss	means: <ul style="list-style-type: none">(a) indirect or consequential loss;(b) indirect purely economic loss;(c) loss and/or deferment of any production, revenue, profit or

	<p>anticipated profit (whether such losses are direct or indirect);</p> <p>(d) loss and/or deferment of any opportunity to derive revenue or profit (whether such losses are direct or indirect);</p> <p>(e) loss and/or deferment of any ability or opportunity to defer, reduce, avoid or recoup any costs (whether such losses are direct or indirect);</p> <p>(f) loss and/or deferment of contract (whether such losses are direct or indirect); and</p> <p>(g) loss of goodwill (whether such loss is direct or indirect).</p>
Contract	means an agreement for the provision of Services created between the Company and the Contractor and comprising the Purchase Order, these General Terms and Conditions and any other documents incorporated into the Contract by reference. Where the Services relate to or are to be performed in the JPDA then the Joint Petroleum Development Area Terms and Conditions in Schedule 1 are incorporated into the Contract.
Contract Currency	means the currency specified in the Order.
Contractor	means the person, firm or company to whom the Purchase Order is addressed.
Contractor Group	means: <ul style="list-style-type: none"> (a) the Contractor; (b) each subcontractor (of every tier) of the Contractor and its Affiliates; (c) each Affiliate of the Contractor; (d) each Affiliate of each subcontractor (of every tier) of the Contractor and its Affiliates; (e) where the Contractor is a joint venture, each of its participants and each of such participants' Affiliates; and (f) the respective directors, officers and employees of all of the above persons (which for the purposes of this definition shall include all personnel engaged directly by the Contractor Group or engaged by the Contractor Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
Coventurer	means any person whilst acting in its capacity as a participant with the Company in a joint venture on whose behalf the Services are being performed.
Diligence	means the exercise of the degree of skill, expertise, expedition, diligence and foresight which would from time to time be expected of skilled and experienced professional contractors engaged in undertakings performing Services of a similar type as that required in the Contract in accordance with best industry practices and professional standards current from time to time and Diligent shall be construed accordingly.
Intellectual Property	any industrial or intellectual property throughout the world, including any patent, copyright, trade or service mark, registered or unregistered trademark, registered design, moral right or any right in any trade secret, know-how, confidential information or any other proprietary right or right to registration of such rights whether protectable by statute, at common law or in equity.

Party	means a party to the Contract.
Policies and Procedures	means the policies and procedures of the Company, or its Affiliates, that are notified to the Contractor from time to time.
Purchase Order	means the order form for a specific scope of supply entitled 'Purchase Order' or 'Service Order' which is issued by the Company pursuant to the Order and which forms part of the Contract.
Requirements	includes: <ul style="list-style-type: none">(a) the laws of the Commonwealth of Australia;(b) Acts and ordinances of any country, state or territory in which the Contractor's obligations under the Contract are carried out; and(c) all other laws, regulations, conventions, orders and directions given by or on behalf of any governmental or semi-governmental authority or body which may apply to the Company Group's, the Contractor Group's or the Contractor's obligations under the Contract including anti-corruption laws, employment laws, export and re-export laws and regulations, health, safety and environment laws and competition laws.
Services	means the services to be performed by the Contractor under the Contract.
Wilful Misconduct	means a deliberate or reckless act or omission that deviates from a reasonable course of action or from any provision of the Contract and which is committed or omitted with knowledge of or conscious indifference to any potentially harmful consequences, including injury or death to persons and damage or loss to property and any other type of loss.

1.2 Interpretation

1.2.1 In the Contract:

- (a) the clause headings and sub-clause headings shall not form part of, and shall not be used in interpretation of, the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of context;
- (c) words importing a gender include every gender; and
- (d) the Contract is not intended to, and does not, create any partnership, joint venture, agency relationship or other business entity between the Company and the Contractor.

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

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

1.2.4 Where the Contract, expressly or impliedly:

- (a) allows the Company a discretion as to whether or not to do or not to do any act, matter, or thing of any kind, or as to how it may be done; or
- (b) confers a power of determination, or a right or obligation to form an opinion or the like; that discretion, power, right or obligation may be exercised or performed in the absolute discretion of the Company, unless expressly stated otherwise.

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

- (a) that Party was responsible for the preparation of the Contract or that provision; or
 - (b) the Contract or that provision favours the person relying upon that provision.
- 1.2.6 A reference to a Requirement, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, resolutions, ordinances or by-laws amending, consolidating or replacing any of them, and includes any changes to or new Requirement and a reference to a Requirement includes all regulations, proclamations, ordinances and by-laws issued thereunder.
- 1.2.7 In the Contract, “**including**” means “including without limitation” and other forms of the word “include” are to be interpreted similarly.
- 1.2.8 In the Contract, “**indemnify**” means to indemnify, save, defend and hold harmless against all Claims and “**indemnifies**” and “**indemnities**” shall be construed accordingly and where a person indemnifies another person against a Claim which may entitle the indemnifying person to bring a Claim against the indemnified person, then the indemnifying person shall waive and fully release the indemnified person from all such Claims. All indemnities in the Contract survive termination, expiry or completion of the Contract.

2. NATURE OF OBLIGATIONS AND PERFORMANCE

- 2.1 The Contractor must perform the Services in accordance with the terms and conditions of the Contract and in a safe, competent, professional and timely manner and with Diligence.
- 2.2 The Contractor must provide all necessary personnel, equipment, know how, skills and supplies to carry out and perform the Services in accordance with the Contract.
- 2.3 In the performance of the Contract, the Contractor must:
- 2.3.1 provide all things and take all measures necessary to protect people and property;
 - 2.3.2 avoid unnecessary interference with the passage of people, vehicles and ships;
 - 2.3.3 prevent damage, obstruction or other interference with services performed by any other person, including other contractors or any member of the Company Group;
 - 2.3.4 prevent nuisance and unnecessary noise and disturbance; and
 - 2.3.5 prevent environmental damage and pollution.
- 2.4 The Contractor must not impede or interfere with other work or operations conducted at the Company’s premises.
- 2.5 The Contractor must hold, and must procure that each member of the Contractor Group engaged in the Services holds, all licences, permits and registrations necessary or desirable in order to carry out the Services.
- 2.6 The Contractor must ensure that the Services meet any service levels or key performance indicators set out in the Contract.
- 2.7 The Contractor must keep the Company fully and immediately informed of all matters, affecting or likely to affect the Services which may come to the knowledge of the Contractor Group.
- 2.8 The Contractor must provide the Company with such information or access as the Company may from time to time require to monitor the conduct of the Services, including access to inspect and test equipment and supplies at any time.
- 2.9 No member of the Company Group owes or assumes any duty of care to any member of the Contractor Group to review, inspect, test or monitor, or in reviewing, inspecting, testing or monitoring, the Services and no review, inspection, testing or monitoring (or the absence of the same), acceptance or rejection of any aspect of the Services will relieve the Contractor Group from, or alter or affect, the Contractor Group’s liabilities or responsibilities or prejudice the Company Group’s rights in connection with the Contract.
- 2.10 All equipment, materials, goods and supplies provided for or in connection with the Contract will:

- 2.10.1 comply with all relevant standards or specifications stipulated by the Company and all relevant Requirements;
 - 2.10.2 be fit for the purpose for which they are intended; and
 - 2.10.3 remain at the risk of the Contractor until completion of the Services in accordance with the Contract.
- 2.11 Title to anything which is to be supplied by the Contractor to the Company under the Contract passes upon the earlier of delivery into the Company's possession and any payment under the Contract.
- 2.12 Anything the Company delivers into the Contractor's possession, custody or control is not the Contractor's property. As between the Company and the Contractor, such goods are the Company's property and the Contractor is the bailee. This remains the position even if the Contractor performs Services on the items or incorporates the Company's items into the Services.

3. TERM

- 3.1 The Contractor must begin the Services on the Commencement Date specified in the Order.
- 3.2 The Contract shall be effective from the earlier of the date of the Contract and the date that the Contractor commences the Services.

4. PERSONNEL

- 4.1 The Contractor must ensure that each member of the Contractor Group complies with all, and must not do anything that causes the Company Group to be in breach of any, of the Policies and Procedures as notified to the Contractor from time to time.
- 4.2 The Company may direct the Contractor to remove or withdraw a member of the Contractor Group from the performance of the Services in its absolute discretion and the Contractor must immediately replace such person at its cost and in accordance with the Contract. Unless otherwise agreed by the Parties, the Company must Approve the replacement.
- 4.3 If required by the Company, the Contractor must notify the Company: (a) quarterly of all leave schedules and other transfers of Contractor Group personnel; and (b) at least 14 days prior to any changes to those schedules, or transfers. The Company reserves the right to adjust leave schedules and other transfers of Contractor Group personnel as and when reasonably required. The Company must reimburse the Contractor for any increase in actual costs reasonably incurred for the costs of transportation of Contractor Group personnel where such costs are directly caused by adjustments of schedules or transfers as set out in this clause 4.3.

5. INVOICING, PAYMENTS & FINANCING

- 5.1 The Company must pay the Contractor for the Services provided in accordance with the rates and charges set out in the Contract, such rates and fees to remain fixed for the term of the Contract unless otherwise stated in the Contract or agreed between the Parties.
- 5.2 The Contractor must deliver to the Company an invoice covering the Services provided during the previous calendar month. Invoices shall be submitted in the number and form requested by the Company, accompanied by such certification and documentation as the Company may require.
- 5.3 Where the Company receives an invoice from the Contractor that is in compliance with clause 5.2 (**Conforming Invoice**) the Company must, unless a dispute is raised under clause 5.4 in respect of the Conforming Invoice prior to payment of the Conforming Invoice, pay the Conforming Invoice and must use reasonable endeavours to so pay within 30 days of receipt of the Conforming Invoice.
- 5.4 If the Company disputes any Conforming Invoice ("**Disputed Invoice**") in whole or in part, the Company must as soon as reasonably practicable thereafter notify the Contractor of the dispute.

- 5.5 Where a dispute is raised under clause 5.4, then the Contractor must issue a credit note ("**Credit Note**") to the Company for the disputed portion of the Disputed Invoice ("**Disputed Portion**") in the form requested by the Company. The Contractor must also immediately issue a new invoice in respect of the Disputed Portion ("**Disputed Portion Invoice**") in the form requested by the Company.
- 5.6 Where the Disputed Invoice had not already been paid by the Company prior to a dispute being raised under clause 5.4, then the Company must pay the undisputed portion of such Disputed Invoice and must use reasonable endeavours to so pay within 30 days of receipt of both a Credit Note and Disputed Portion Invoice in compliance with clause 5.5.
- 5.7 Where a dispute is raised under clause 5.4, the Company and the Contractor must discuss the dispute in good faith with the aim of determining the amount that should be paid under the Disputed Portion Invoice ("**Determined Amount**").
- 5.8 Where the Determined Amount is determined in accordance with clause 5.7 or clause 14:
- (a) the Contractor must promptly issue a credit note to the Company in the form required by the Company to the extent that the Disputed Portion Invoice is in excess of the Determined Amount; and
 - (b) the Company must pay such amount of the Disputed Portion Invoice that is equal to the Determined Amount and must use reasonable endeavours to do so within 30 days of such determination or, if later, of receipt of the credit note (if any) referred to in clause 5.8.(a).
- 5.9 Where the Contractor is not satisfied with the timeliness of payment of Conforming Invoices by the Company then it must notify the Company as such setting out full details of the reasons for its dissatisfaction and as well as full details of the dates on which all relevant Conforming Invoices were issued and the dates and amounts of any payments made by the Company under such Conforming Invoices. The Company must then meet with the Contractor to discuss its dissatisfaction in good faith and the Parties shall use all reasonable endeavours to satisfy the concerns of the Contractor.
- 5.10 The Company may set-off against payments due to the Contractor any amount claimed by any member of the Company Group from the Contractor.
- 5.11 No payment by the Company shall prejudice the Company's right to question or dispute an invoice or pursue or recover any claims against the Contractor.
- 5.12 Unless otherwise agreed by the Parties, invoices must be submitted and payable in the Contract Currency.

6. BUSINESS ETHICS

- 6.1 The Contractor must not, and must ensure that each member of the Contractor Group must not, directly or indirectly, (i) pay salaries, commissions or fees, or make payments or rebates to any member of the Company Group; (ii) favour members of the Company Group with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value; or (iii) enter into business arrangements with members of the Company Group, unless such members of the Company Group are acting as representatives of the Company Group. Contractor must comply, and must ensure each member of the Contractor Group complies, with the ConocoPhillips *Code of Business Ethics and Conduct*.
- 6.2 The Contractor must not, and must ensure that each member of the Contractor Group must not, offer, pay, arrange for a third party to pay, or agree to pay any payment, gift or other thing of value of any nature to any officials, employees or agents of any government, any department, agency or instrumentality of any government, any political party, or any candidate for political office or other person or entity, including a legislative, administrative or judicial office (including any person exercising a public function for a public agency, a public enterprise or a public international organisation) where such payment, gift or other consideration would violate applicable laws and regulations or the principles set forth in the *Convention for Combating Bribery of Foreign Public Officials in International Business Transactions*, signed in Paris on December 17, 1997 (and without limitation, must not perform any act which would constitute "bribery of a foreign official" as defined in Article 1(3) of such

Convention), or the United States *Foreign Corrupt Practices Act*, or other anti-corruption legislation applicable to any party to a Contract.

- 6.3** If the Company reasonably believes that the Contractor or any member of the Contractor Group has or will engage in improper conduct in breach of this clause 6, the Company may, at its sole discretion, suspend any further performance by the Contractor and withhold further payment to the Contractor or terminate a Contract with immediate effect.
- 6.4** The Contractor must ensure that each member of the Contractor Group complies with this clause and the Contractor indemnifies the Company Group against any Claim which arises from a breach of this clause by any member of the Contractor Group.

7. CONFIDENTIALITY

- 7.1** The Contractor must treat, and must ensure that each member of the Contractor Group treats, as confidential and must not (and must ensure that each member of the Contractor Group does not), without Company's prior Approval, divulge to any third party or, except to the extent necessary for the performance of the Services, make any use of any proprietary information owned or supplied by Company Group or representatives of Company Group which is disclosed or made available to Contractor Group by or on behalf of Company Group.
- 7.2** The Contractor must inform each member of the Contractor Group who receives any of the above described information of the provisions of this clause 7 and, the Contractor must procure that they comply with the provisions of this clause 7 in the same manner as the Contractor is bound.
- 7.3** Information which was in the Contractor's possession without restriction on use or disclosure prior to its disclosure by or on behalf of the Company Group to the Contractor, or which is or shall become part of the public knowledge from a source other than the Contractor Group, either directly or indirectly, shall not be subject to the provisions of this clause 7. Information which shall become available to the Contractor legitimately from a source other than the Company Group shall be released from the provisions of this clause 7 to the extent necessary to permit such use and disclosures as are authorised by such source.
- 7.4** The Contractor must ensure that no member of the Contractor Group takes advantage of any information which it is obliged to treat as confidential under this clause 7 for the purpose of buying, selling or otherwise dealing with shares or securities of the Company Group or for purposes of otherwise securing financial gain other than by means of the compensation provided for in the Contract.
- 7.5** The Contractor must ensure that no member of the Contractor Group releases or allows the release of any information to the press, any news disseminating agency or communications media, except as required by law concerning the details of the Services, or the terms of the Contract, without in each instance securing the prior Approval of the Company.
- 7.6** The Contractor must obtain the prior Approval of the Company Group to the text of any publicity that the Contractor proposes to issue in connection with the Contract.
- 7.7** If the Contractor enters into or has entered into a separate confidentiality agreement with the Company which conflicts with the confidentiality terms in the Contract and/or any Scope of Services for Services, then the terms of such confidentiality agreement shall take precedence over this clause 7 with respect to the information disclosed under such separate confidentiality agreement.
- 7.8** All documents and all copies thereof, furnished by the Company to the Contractor are the Company's property and the Contractor must return them to the Company upon completion of the Services. All documents (and their copyright) prepared by the Contractor in the performance of the Services are the property of the Company and must be turned over to the Company upon request or completion of the Services.
- 7.9** The Contractor must ensure that each member of the Contractor Group complies with this clause and the Contractor indemnifies the Company Group against any Claim which arises from a breach of this clause by any member of the Contractor Group.

8. PATENT INFRINGEMENT AND INTELLECTUAL PROPERTY

- 8.1** The Contractor indemnifies the Company Group from and against all Claims of whatsoever kind asserted by or arising in favor of any person or entity for or as a result of infringement, misappropriation or misuse of any Intellectual Property rights, based on or related to the Contractor Group's use or application of any material, equipment, article of manufacture, machine, computer software, composition of matter, or process or based on the Company Group's use or application of any material, equipment, article of manufacture, machine, computer software, composition of matter, or process (which is supplied or provided by the Contractor Group to the Company Group) for its intended purpose or in reliance on advice or instruction from any member of the Contractor Group or else is attributable to the Contractor Group in connection with the Services. Should the Contractor be prevented from performing under the Contract by reason of legal proceedings based upon such claim of infringement, the Company shall be relieved of its obligations to make payment for the Services not performed or for items of equipment, machinery or any materials.
- 8.2** All payments for royalties, patent rights, copyright or in respect of any Intellectual Property and fees due or payable for, or in connection with any matter or thing, used or required to be used in the performance of the Contract or to be supplied under the Contract whether payable in one sum or by instalments or otherwise, must be included or deemed to be included by the Contractor in the rates and prices payable under the Contract and must be paid by the Contractor to those persons to whom they may be due and payable.
- 8.3** The Contractor must ensure that, and warrants that, it has obtained from all authors and holders of moral rights in any part of the Services consent effective under all applicable law to the following acts and/or omissions by the Company Group and its successors and assigns, and that such consent is a genuine consent that has not been induced by duress or a false or misleading statement:
- (a) reproducing, publishing, adapting or communicating the Services to the public without attributing their authorship or otherwise identifying the author of the Services as, or attributing the authorship of the Services to, a person other than the author; and
 - (b) subjecting the Services to derogatory treatment, that is namely, a material distortion, mutilation or material alteration or the doing of anything else to the Services including adapting, reproducing, adding, deleting, editing or modifying in such a way as may be contrary to the author's moral right of integrity of authorship.

9. OWNERSHIP OF CONTRACTOR DEVELOPMENTS

- 9.1** Title to, all Intellectual Property rights in, possession of and free use of all ideas, concepts, techniques, inventions, processes, work of authorship, drawings, documents, calculations or any other documentation and Intellectual Property produced under the Contract ("**Work Product**") shall vest exclusively in the Company immediately upon commencement of the Contract for the Company to use and exploit in any way and for any purpose.
- 9.2** To the extent that any Work Product does not vest exclusively in the Company by operation of clause 9.1, the Contractor agrees to assign, and hereby assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title or interest the Contractor may have in such Work Product. Upon request of the Company, the Contractor must take such further actions, including execution and delivery of declarations, instruments of conveyance, and the like for any applications or registrations the Company may, at its expense, apply for and as may be appropriate to give full and proper effect to such assignments.
- 9.3** The Contractor further agrees that any and all ideas, improvements and inventions, whether patentable or not, that are based upon information provided to the Contractor by the Company and that are conceived, created or first reduced to practice during performance of the Services or within 1 year after completion of the applicable Services shall be the sole and exclusive property of the Company. The Contractor must promptly provide to the Company a full written disclosure of any such ideas, improvements and inventions. Both during the term of the Contract and after its termination or expiration, the Contractor agrees to execute all papers, including documents related to domestic and foreign patent applications and invention assignments, and otherwise assist the Company as reasonably requested to perfect in the

Company the rights, title and other interests in such ideas, improvements and inventions, as well as obtain and enforce patents derived from such applications.

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

10. REQUIREMENTS AND TAX

10.1 Compliance with Requirements

- 10.1.1 The Contractor must, and must procure that each member of Contractor Group shall, comply with all Requirements and not do or fail to do anything which would cause any member of the Company Group to be in breach of a Requirement. The Contractor must indemnify each of the Company Group against any Claim arising out of any failure by any member of the Contractor Group to comply with this clause.
- 10.1.2 The Contractor must, and must procure that each member of the Contractor Group shall, comply with all applicable environmental laws and regulations, including those pertaining to the use, application and/or handling of pesticides, plant regulators, defoliant and/or desiccants, and, without limitation to any other indemnity contained in this Contract, the Contractor must indemnify each of the Company Group against any Claim arising out of any failure by any member of the Contractor Group to comply with this clause. The Contractor must remove any debris or material related to its equipment, tools or other items which the Contractor Group brings onto Company Group sites or property.
- 10.1.3 The Contractor must give all notices, make all applications and pay all fees, Carbon Costs and expenses, including increased or new fees, Carbon Costs and expenses, necessary to ensure compliance with the Requirements.

10.2 Tax

- 10.2.1 The Contractor shall be solely liable, unless specifically stated elsewhere in the Contract, for payment of all taxes, licence and permit fees, import and export duty, harbour dues and pilotage fees, income, profit, payroll, fringe benefit, franchise and personal property taxes, duties and other similar imposts and all penalties or interest thereon.
- 10.2.2 The Contractor must indemnify and keep indemnified the Company Group from and against all liability for payment of all of the taxes, assessments and contributions, dues, costs and fees referred to in clause 10.2.1 and all liability arising in respect of the non-payment of them whether arising from the performance of the Services or under any contract or arrangement with any member of the Contractor Group.

10.3 Withholding Tax

- 10.3.1 The Company shall not be liable to the Contractor and the Contractor shall have no claim against the Company in respect of any sum which would otherwise be payable to the Contractor under the Contract:

- (a) which the Company has withheld from payment in accordance with any applicable income tax or other law, until the Company is released from, or relieved from all liability pursuant to the relevant law in respect of the amount so withheld and is lawfully entitled to pay the sum to the Contractor; or
- (b) which the Company has paid in accordance with the provisions of any applicable income tax or other law to the person, or authority legally entitled to accept payment.

10.4 Goods and Services Tax

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

11. AUDIT

- 11.1 The Contractor must, and must ensure that the Contractor Group:
 - (a) maintains a true and correct set of records pertaining to all activities relating to its performance of the Services and all transactions related thereto;
 - (b) retains all such records for a period of not less than four (4) years after final payment for the Services; provided however there shall be no obligation to continue to maintain records that have been audited and determined to be fully accurate by the Company;
 - (c) permits any representative or representatives of Coventurers authorised by the Company to audit any and all such records at any reasonable time or times and with reasonable notice during the term of the Contract and during the four (4) year period after final payment for the Services and all transactions related thereto;
 - (d) affords the Company and its representatives access to all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar

data pertaining to the Contract, or any other data deemed, in the sole opinion of the Company, necessary for the conduct of the Company's business during such audits;

- (e) co-operates fully with the Company during the audits performed hereunder, including furnishing the Company with copies of all requested documents. Company shall have the right to also obtain statements from the members of Contractor Group in the course of such audits; and
- (f) provides any and all information and documents relevant to the Services to the Company upon request, save where such information or documents are confidential and commercially sensitive and are not subject to any requirement of disclosure under Requirements.

11.2 The Contractor must maintain a complete log of all Services performed and must provide the Company with reports containing all information as required by the Company from time to time.

12. INDEMNITIES

12.1 Indemnities Relating to Workers Compensation liabilities

12.1.1 To the extent permitted by law, the Contractor indemnifies each of the Company Group against the payment of any compensation under the *Workers Compensation and Injury Management Act 1981* (WA) or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Services and relates to the personal injury, illness or death of:

- (a) any member of the Contractor Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Contractor Group.

12.1.2 To the extent permitted by law, the Company indemnifies each of the Contractor Group against the payment of any compensation under the *Workers Compensation and Injury Management Act 1981* (WA) or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Services and relates to the personal injury, illness or death of:

- (a) any member of the Company Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Company Group.

12.2 Indemnities Relating to People

12.2.1 The Contractor indemnifies each of the Company Group against any Claims (save for those Claims which are expressed to be the subject of clause 12.1.1), however arising and whosoever is the claimant, which Claim arises in connection with the Services and relates to personal injury, illness or death of:

- (a) any member of the Contractor Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Contractor Group.

12.2.2 The Company indemnifies each of the Contractor Group against any Claims (save for those Claims which are expressed to be the subject of clause 12.1.2), however arising and whosoever is the claimant, which Claim arises in connection with the Services and relates to personal injury, illness or death of:

- (a) any member of the Company Group; and
- (b) any third party to the extent that the injury, illness or death is caused by or contributed to by the Company Group.

12.3 Indemnities Relating to Property

- 12.3.1 The Contractor indemnifies each of the Company Group against any Claims, however arising and whosoever is the claimant, which Claim arises in connection with the Services and relates to loss of or damage to or environmental contamination of:
- (a) any property owned, hired or supplied by the Contractor Group; and
 - (b) any third party property to the extent the loss or damage is caused by or contributed to by the Contractor Group.
- 12.3.2 The Contractor indemnifies the Company against any Claims, save to the extent that a Claim is for Consequential Loss, however arising and whosoever is the claimant which Claim arises in connection with the Services and relates to loss of or damage to or environmental contamination of any property owned by the Company up to U.S.D 1,000,000 per occurrence, to the extent such loss or damage results from the failure to properly perform any of its obligations under the Contract or the failure to exercise care (whether the obligation to exercise care arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of Contractor Group.
- 12.3.3 The Company indemnifies each of the Contractor Group against any Claims however arising and whosoever is the claimant, which Claim, arises in connection with the Services and relates to any loss of or damage to or environmental contamination of:
- (a) any property owned by the Company above U.S.D 1,000,000 per occurrence;
 - (b) any property owned by the Company to the extent that the Claim is for Consequential Loss; and
 - (b) any third party property to the extent the loss or damage is caused by or contributed to by the Company Group.

12.4 Pollution

- 12.4.1 Subject to clause 12.3.3, the Contractor indemnifies each of the Company Group against any Claims, however arising and whosoever is the claimant, which Claim, (including clean up costs) results from the discharge or escape of any pollutant or waste material from any property owned, hired or supplied by the Contractor Group or any property that forms part of the Services arising in connection with the Services.
- 12.4.2 Subject to clause 12.3.1, the Company indemnifies each of the Contractor Group against any Claims, however arising and whosoever is the claimant, which Claim (including clean up costs) results from the discharge or escape of any pollutant or waste material from any property owned by the Company Group (except for any property that forms part of the Services), arising in connection with the Services.

12.5 Mutual Indemnity

- 12.5.1 Save to the extent covered by other specific indemnities set out in the Contract, the Contractor indemnifies each of the Company Group from any Claim for any Consequential Loss, whatsoever suffered by any member of the Contractor Group and arising in connection with the Contract and/or the Services, whether or not caused in whole or in part by the default, the failure to exercise care, breach of statute or breach of any duty (whether the obligation to exercise care or the duty (as applicable) arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of the Company Group.
- 12.5.2 Save to the extent covered by other specific indemnities set out in the Contract, the Company indemnifies each of the Contractor Group from any Claim for any Consequential Loss whatsoever suffered by the Company and arising in connection with the Contract and/or the Services, whether or not caused in whole or in part by the default, the failure to exercise care, breach of statute or breach of any duty (whether the obligation to exercise care or the duty (as applicable) arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of the Contractor Group.

12.6 Insurances

- 12.6.1 No indemnity in this clause 12 is waived by approval or acceptance of any insurance policy.

12.6.2 Given that the Contractor is providing certain insurances, the Contractor's indemnities in this clause 12 apply to the full extent of the loss and damage suffered by the Company Group and in respect of any shortfall in proceeds of insurance, deductibles or withholding under any insurance policy and any amount recovered from any member of the Company Group by an insurer of any member of the Contractor Group or any other party under any right whatsoever.

12.7 Civil Liability Act

12.7.1 The provisions of Part 1F (*Proportionate Liability*) of the *Civil Liability Act 2002* (WA) are excluded.

12.8 Exclusions

12.8.1 The indemnities, exclusions or limitations on liability contained in the Contract (except the indemnity contained in clause 12.5) shall not apply for the benefit of the Contractor Group to the extent any Claim is attributable to the Wilful Misconduct of the Contractor Group.

12.8.2 The indemnities, exclusions or limitations on liability contained in the Contract (except the indemnity contained in clause 12.5) shall not apply for the benefit of the Company to the extent any Claim is attributable to the Wilful Misconduct of the Company.

12.8.3 The indemnities contained in the Contract shall not include an obligation to pay awards or assessments of punitive or exemplary damages rendered against the Indemnified Party.

12.9 Application of Indemnities, Exclusions and Limitations of Liability

12.9.1 Save as expressly provided otherwise, in all other cases indemnities given by one Party to the other and exclusions or limitations on liability contained in the Contract shall apply regardless of the claimant and irrespective of cause and regardless of any negligence (sole, joint, concurrent or contributory), breach of duty (statutory or otherwise), strict liability or other fault of the indemnified party and include all damage, loss, cost, charge or expense including legal costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis and including any costs incurred in enforcement of the indemnity.

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

- (a) the Contractor intends to confer a benefit on each member of the Company Group in each indemnity, exclusion or limitation on liability given by the Contractor in favour of the Company Group in the Contract and the Company holds the benefit of each of those indemnities, exclusions or limitations on liability on trust for the benefit of each member of the Company Group; and
- (b) the Company intends to confer a benefit on each member of the Contractor Group in each indemnity, exclusion or limitation on liability given by the Company in favour of the Contractor Group in the Contract and the Contractor holds the benefit of each of those indemnities, exclusions or limitations on liability on trust for the benefit of each member of the Contractor Group.

12.10 Conduct of Claims

12.10.1 Where a party ("**Indemnified Party**") has the benefit of an indemnity under the Contract, the Indemnified Party must give written notice to the party giving the indemnity ("**Indemnifying Party**") of the nature and, to the extent reasonably known at the time, quantum of the claim as soon as reasonably practicable after the commencement of the circumstances giving rise to the Claim.

12.10.2 The Indemnified Party must provide reasonable information and documentation relating to such Claim to the Indemnifying Party on a continuing basis.

12.10.3 Upon service of a notice by the Indemnified Party, the Indemnifying Party must defend any Claim on behalf of the Indemnified Party and the Indemnified Party must, at the Indemnifying Party's cost, do all things necessary to assist the Indemnifying Party to defend, settle, or mitigate such Claim.

12.10.4 Except where the Claim or the quantum of the Claim is the subject of a bona fide dispute, the Indemnifying Party must pay the Indemnified Party in respect of the Claim within 30 days of a demand for payment of the Claim.

12.10.5 Where a Claim is disputed, the Indemnifying Party must pay to the Indemnified Party the undisputed amount within 30 days of a demand for payment of the Claim and the remainder within 30 days of the resolution of the dispute.

12.10.6 The Indemnified Party must do all things reasonably necessary to mitigate any Claim.

12.11 Contractor Group Claims

The Contractor must inform each member of the Contractor Group of the indemnities under the Contract and ensure that each member of the Contractor Group does not Claim against any member of the Company Group where the Contractor has indemnified the Company Group against that Claim.

12.12 Enforceability of Provisions

12.12.1 The indemnities in the Contract are given to the extent permitted by law, and to the extent that an indemnity is void, unenforceable or not permitted under law then the relevant indemnity shall remain in force in accordance with clause 23.6.

12.12.2 If any provision of an indemnity in this clause 12 in favour of a Party is determined to be void or unenforceable to any extent, in whole or in part, the similar provision in favour of the other Party shall be rendered void or unenforceable or shall be adjusted to the same extent where the same circumstances apply.

12.13 Associated Activities

12.13.1 The Parties agree that the provisions of this clause 12 apply to any Associated Activities as though such activities formed part of the Services, irrespective of the location of the Associated Activity or whether the Associated Activity is controlled or provided by a Party or a third party.

13. INSURANCE

13.1 Insurance Requirements

13.1.1 The Contractor agrees to maintain insurance of the types and with limits of liability not less than those set out below at its expense during the term of the Contract from insurers reasonably acceptable to the Company covering items, risks and operations required to fulfill the Contract:

- (a) Insurance that the Contractor is obliged by law to carry that covers all of the Contractor's personnel performing work under the Contract including coverage under applicable maritime law.
- (b) Employer's Liability Insurance, including coverage for marine operations if applicable, with a limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence or the Requirement, whichever is greater.
- (c) Commercial General Liability Insurance, including contractual liability coverage, with a limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence. Such insurance must include sudden and accidental pollution liability coverage.
- (d) Automobile Liability Insurance with a combined bodily injury and property damage limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence or the Requirement, whichever is greater, for all owned, non-owned and leased vehicles.
- (e) If aircraft are used in connection with the Contract, Aircraft Liability Insurance, including Passenger Liability insurance with a combined single limit for bodily injury and property damage of U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence and a limit of U.S.D 3,000,000 (or the equivalent in the Contract Currency) any one passenger.
- (f) If marine vessels are used in connection with the Contract, Protection and Indemnity insurance equal to the "agreed" value of each vessel or U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence, whichever is greater. This insurance (when required) must include coverage for the crew. If such insurance

contains an "as owner" clause or other language purporting to limit coverage to liability of an insured "as owner of the vessel," such limitation of coverage must not apply to the Company Group in their capacities as additional insureds or protective co-assureds under the policy.

- (g) If marine vessels are used in connection with the Contract, Hull and Machinery Insurance in an amount equal to the "agreed" value of each vessel.
- (h) Such other insurance in the types and amounts required by Requirements.

13.2 Marine Insurance

- 13.2.1 The policies under clauses 13.1.1(f) and 13.1.1 (g) above shall, separately or in combination, include coverage for collision liability, removal of debris of any vessel or property whether compulsory or voluntary, contractual liability, towing liability and admiralty benefits in an amount not less than U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence or the "agreed" value of the vessel, whichever is greater, and have appropriate navigational limits.

13.3 Primary Insurance

- 13.3.1 All insurance required above shall be primary to any insurance coverage available to the Company and each of its Affiliates and Coventurers. The above-stated minimum requirements are not intended to indicate the amounts and types of insurance that the Contractor needs or may ultimately need.

13.4 Waiver of Subrogation and Additional Insured

- 13.4.1 The policies under clauses 13.1.1 (c) through 13.1.1 (h) above must be endorsed to show the Company and each of its Affiliates, Coventurers and any disclosed principal on whose behalf the Company is entering into this Contract as agent as additional insureds.
- 13.4.2 All insurance policies obtained by the Contractor Group under the Contract must contain a waiver of subrogation in favour of the Company Group to the extent of the liabilities assumed by the Contractor under the Contract. The policies provided for under this clause 13.4 must contain a provision that any breach by the Contractor Group of any warranty, covenant, or representation in any of the policies shall not prejudice any claim by the additional insureds.

13.5 Certificates of Insurance and Policies

- 13.5.1 Upon the Company's request, the Contractor must furnish to the Company certificates of insurance demonstrating that the Contractor Group has obtained the insurance coverage set out above and containing a statement that the said insurance will not be materially changed or cancelled without at least 30 days prior written notice to the Company. All coverages must be written on forms reasonably acceptable to the Company. Neither review nor failure to review such certificates shall constitute approval thereto or be deemed to waive or diminish the Company's rights under the Contract. In the event of an accident or loss potentially resulting in an insurance claim by the Company in its capacity as an additional insured, the Contractor, at the Company's request, must provide the Company with certified copies of its insurance policies for which the Company is shown as an additional insured or otherwise make the policy information available as reasonably required by the Company. This obligation shall survive the termination of the Contract.

13.6 Failure to Comply

- 13.6.1 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor from its liability and/or indemnity obligations in the Contract. If the Contractor fails or refuses to comply with the obligations prescribed in this clause 13, the Company, without prejudice to any other rights or remedies available to it under the Contract or at law, may (a) treat the Contract as having been repudiated by the Contractor or (b) procure the required insurances and deduct the cost thereof from any amounts due hereunder or otherwise recover such amounts from the Contractor.
- 13.6.2 The Contractor represents and warrants to the Company that it has fully disclosed its indemnity and insurance obligations under the Contract to its insurers prior to entering into the Contract.

13.7 Subcontracting

- 13.7.1 The Contractor must ensure that each subcontractor shall maintain insurance which is required under any applicable laws or regulations, together with such other insurances of types and amounts necessary to cover risks inherent in the work of that subcontractor, as well as any other insurance that the Contractor may deem necessary.

14. CONFLICT RESOLUTION

14.1 Notice of Dispute

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

14.2 Parties to Confer

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

14.3 Escalation

- 14.3.1 If the Dispute has not been resolved within 20 days of the first meeting under clause 14.2.1 the matter shall be referred to a senior executive of each Party who shall have been delegated the authority to settle the Dispute ("**Senior Executives**"). The Parties must promptly prepare and exchange memoranda stating full particulars of the Dispute and their positions, summarizing the negotiations which have taken place, and attaching relevant documents ("**Position Memoranda**"). The Senior Executives will meet for negotiations within 14 days of the end of the 20 day period specified in this clause at an agreed time.
- 14.3.2 If the Senior Executives do not resolve the Dispute, then the Senior Executives may agree an alternative dispute resolution method (for example, mediation or expert determination).
- 14.3.3 If the Dispute is not resolved after compliance with this clause 14 then the Parties may by mutual agreement refer the Dispute to arbitration or, in the absence of such agreement, either party may commence legal proceedings.

14.4 Proceeding with the Services

Notwithstanding clause 14.2 if the Services have not been completed, at all times (subject as otherwise may be provided for in the Contract) the Contractor must proceed with expedition to continue to perform the Services and in so doing shall comply with all instructions of the Company pending resolution of the Dispute.

14.5 Urgent Court Application

Notwithstanding the provisions of clause 14 neither Party shall be prevented or restrained from applying to a Court of competent jurisdiction to seek urgent relief. The Parties must as soon as is practicable and in conjunction with the urgent court application, comply with the procedure in clauses 14.1 to 14.3.

15. EXPORT CONTROL COMPLIANCE

- 15.1 The Contractor agrees to comply, and shall ensure that each member of the Contractor Group complies, with all applicable export and re-export control laws and regulations, including Australian export and re-export control laws and regulations, the *Export Administration Regulations* ("**EAR**") maintained by the U.S. Department of Commerce, trade and economic sanctions regulations maintained by the Treasury Department's Office of Foreign Assets Control ("**OFAC**"), and the *International Traffic in Arms Regulations* ("**ITAR**") maintained by the Department of State. Notwithstanding anything to the contrary in this clause 15, neither the Company nor the Contractor shall be required to meet its obligations under the Contract in a way that violates any U.S. laws or regulations.

- 15.2** The Contractor is responsible for obtaining any authorisation required under any applicable export and re-export control laws and regulations (including under Australian laws and regulations, EAR, OFAC regulations or ITAR), including, without limitation, licences required for the transfer of any regulated technology to nationals of certain countries. The Contractor will identify in writing to the Company, those items, technology, and software for which an export authorisation is required and whether any licence or authorisation exceptions apply and provide export classification and licensing information necessary for export documents, including but not limited to the appropriate Export Control Classification Number (“**ECCN**”) from the Commerce Control List, licence numbers and copies of licences and any other information requested by Company to ensure or evidence compliance with applicable export and re-export control laws. The Contractor agrees to indemnify the Company Group for any fines, penalties, claims, losses, damages, costs (including legal costs), expenses and liabilities that may arise as a result of Contractor’s breach of this provision.
- 15.3** Contractor will not engage any member of the Contractor Group in the Services or otherwise engage any subcontractor that is listed on any US government or other applicable government list of parties with which Company is not permitted to do business without a licence.
- 15.4** The Company agrees that no item, technology, or software received from the Contractor is intended to be shipped, either directly or indirectly, to any country, company or person or for any end-use that is prohibited under any applicable export control regulations. The Company agrees to indemnify the Contractor from and against any Claims that may arise as a result of the Company’s breach of its obligations under this clause 15.4.

16. DEFAULT

- 16.1** This clause 16 applies without prejudice to any other remedy which the Company may have under the Contract or at law:
- 16.2** If the Contractor fails to comply with any term, condition or warranty in the Contract the Contractor must remedy defective Services immediately at no cost to the Company.
- 16.3** If the Contractor fails to comply with clause 16.2 then the Company may take one or both of the following actions:
- (a) the Company may engage third parties to reperform the Services or remedy the defective Services and the cost of doing so shall be a debt due and payable to the Company by the Contractor; and
 - (b) the Company may by notice terminate the Contract with immediate effect.
- 16.4** The Contractor must indemnify each of the Company Group against all Claims or any loss or damage which the Company Group may suffer or otherwise incur by reason of the Contractor’s failure to comply with the provisions of this Contract.
- 16.5** The Contractor must not invoice or claim from the Company Group any cost or expense that arises out of a delay, default, failure or fault of any member of the Contractor Group.

17. TERMINATION FOR CONVENIENCE

- 17.1** At any time for any reason or no reason at all, whether or not the Contractor is in default, the Company may terminate by written notice the whole or any part of the Services or the Contract without liability to Contractor save to pay for that part of the Services performed by the Contractor up to the date of termination. The Contractor acknowledges that the provision of the Services is a competitive business and that Company may terminate the Contract under this clause without considering the impact of such termination on the Contractor. Without prejudice to any other rights of the Company, the Company may, following termination of a Contract (including under this clause), perform the Services itself or procure a third party to perform the Services for reward in the place of the Contractor.

18. SURVIVAL OF OBLIGATIONS

- 18.1** The provisions in respect of confidentiality, insurance, audit rights, taxes and duties, conflict resolution, intellectual property, indemnities and governing law contained in the Contract shall survive the termination, expiry or completion of the Contract.

18.2 Termination of the Contract shall be without prejudice to any rights or remedies that the Parties may have arising prior to or in connection with such termination or the event that lead to such termination and any provisions necessary to give effect to such termination.

19. SUSPENSION

19.1 The Contractor must not suspend the whole or any part of the Services without a written direction from the Company. In particular, the Contractor must not cease or suspend or threaten to cease or suspend the whole or any part of the Services for convenience or on the basis that it is not making sufficient profit under the Contract or that it can make more profit working elsewhere. The Contractor must ensure that each member of the Contractor Group complies with this clause and the Contractor indemnifies the Company Group against any Claim which arises from a breach of this clause by any member of the Contractor Group.

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

20. COMPANY AS AGENT

20.1 If the Company enters into the Contract in its capacity as agent on behalf of Coventurers or any disclosed principal as set out in the Order or as otherwise notified to the Contractor by the Company:

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

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

21. GOVERNING LAW

21.1 Each Contract is governed by the laws of Western Australia.

21.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

21.3 Each Party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

22. NOTICES

22.1 A notice or other communication under the Contract must be in writing and delivered by hand or sent by pre-paid registered post or fax to a Party at the address or the fax number for that Party specified in the Order or as otherwise specified by a Party by notice.

22.2 Email or similar electronic means of communication must not be used to give notices under the Contract.

22.3 A notice sent by post is regarded as given and received on the date of delivery.

- 22.4** A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the notice is illegible or incomplete within 4 hours of it being transmitted.
- 22.5** A notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am (recipient's time) on the following Business Day and a notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am (recipient's time).

23. GENERAL

- 23.1** The Contract and each Purchase Order comprises the entire agreement of the Parties and supersedes all previous communications, representations and agreements with respect to the subject matter of the Contract except to the extent that the Company relies on representations made by the Contractor as to the Contractor's ability to perform the Services, the costs of performing the Services and the way in which the Contractor shall perform the Services.
- 23.2** The Contract is personal to the Contractor and the Contractor may not assign or purport to assign or transfer or sub-contract to any other party any of its rights or any of its obligations under the Contract without prior Approval. Approval may be withheld in the absolute discretion of the Company or given subject to conditions. Approval does not relieve the Contractor from responsibility for performance of the assigned or subcontracted Services or any of its other obligations under the Contract. Reasonable utilisation by the Contractor of personnel engaged directly by the Contractor Group or engaged by the Contractor Group through a personnel services agreement or similar arrangement for casual or ad hoc labour shall not be considered as subcontracts that require Approval. The Company and its Coventurers may assign their interests under the Contract without the consent to the Contractor and the Contractor must execute any documentation required to give effect to such assignment when directed to do so.
- 23.3** The Contractor is an independent contractor and in no event shall any member of the Contractor Group be considered employees or agents of the Company Group and the Contractor indemnifies the Company Group against any such claim from any member of the Contractor Group.
- 23.4** Any waiver by either party of a breach of any term of the Contract shall not be considered as a waiver of any subsequent breach of the Contract.
- 23.5** The Contractor must indemnify the Company Group from all liens and other encumbrances against the Company Group's property on account of debts or claims alleged to be due from any member of the Contractor Group to any person, including subcontractors, and on behalf of the Company Group, and in their names, shall defend at its own expense any claim or litigation in connection therewith.
- 23.6** If any provision of the Contract is invalid, illegal or unenforceable in any respect in any jurisdiction then in that jurisdiction the provision remains enforceable to the extent that it is not invalid, illegal or unenforceable, whether it is in severable terms or not, unless enforcement of the provision in accordance with this clause would materially affect the nature or effect of the Party's obligations under the Contract.
- 23.7** If any one or more of the provisions of the Contract is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Contract is not affected or impaired thereby in any way unless incapable of being operable in the absence of such provisions.
- 23.8** The Contractor expressly acknowledges and warrants that the Company entered into the Contract in reliance upon the skill and judgment of the Contractor as an experienced and safe designer, manufacturer, fabricator, supplier, transporter, installer, erector, constructor, tester, repairer and commissioner (to the extent that the Services includes those activities) of work the size, nature and standard of the Services and the Contractor's ability to carry out the Services in accordance with its tender.
- 23.9** No variation to the Contract shall be binding unless agreed in writing and signed by duly authorised representatives of both Parties.

- 23.10** The Contract may be executed in counterparts and will be deemed to have been fully executed once all Parties have executed a counterpart. For the purposes of assembling all counterparts into one document, the Company is authorised to detach the signed signature page from one or more counterparts and attach it to one single counterpart.
- 23.11** Where the Contractor comprises two or more persons, each of them shall be jointly and severally liable for all of the Contractor's obligations and liabilities under the Contract.

SCHEDULE 1 – JOINT PETROLEUM DEVELOPMENT AREA TERMS AND CONDITIONS

If the Contract is to be performed in or relates to the JPDA, this Schedule 2 shall apply to the Contract.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract:

Designated Authority	means the body established by the Treaty.
JPDA	means the Joint Petroleum Development Area described in the Treaty.
Petroleum Mining Code	means the <i>Petroleum Mining Code</i> referred to in the Treaty and includes the Interim Petroleum Mining Code.
Requirements	for the purposes of this Schedule 2 also includes: (a) the Treaty Legislation; and (b) laws of the sovereign state of the República Democrática de Timor-Leste.
Taxation Code	means the code referred to in the Treaty.
Treaty	means the terms of the <i>Timor Sea Treaty</i> between Australia and East Timor made on 20 May 2002 (including all annexures, attachments, schedules and exhibits).
Treaty Legislation	means the Treaty and any legislation (including interim legislation) issued under or pursuant to the Treaty, including the <i>Taxation Code</i> , the <i>Petroleum Mining Code</i> and any regulations or directions under the <i>Petroleum Mining Code</i> .

2. REQUIREMENTS FOR PERSONNEL IN JPDA

2.1 Details of Personnel

The Contractor must comply with and provide all details as required under the Treaty Legislation or any other Requirement to the Company at least 15 days prior to the date on which any members of the Contractor Group are to be mobilised into the JPDA. This information must include, but is not limited to, the names, passport particulars, copies of passports, copies of visas and evidence of residency status of all personnel.

2.2 Approval of Personnel

The Contractor Group are subject to review and approval for entrance into the JPDA by both Australian and Timor-Leste authorities. Any person deemed unacceptable by such authorities must be immediately replaced by the Contractor. No appeal by the Contractor regarding such acceptability shall be allowed. All members of the Contractor Group must have in their possession their passports and other valid travel documents when travelling to or from the JPDA. The Company will use reasonable endeavours to assist the Contractor to the extent possible to obtain such approvals in a timely fashion.

2.3 Movement of Personnel

Unless otherwise authorised in writing by the Designated Authority, any member of the Contractor Group bound for the JPDA must first enter Australia or Timor-Leste.

3. JPDA

3.1 Permanent establishment and Withholding Taxes

- 3.1.1 Unless the Contractor provides written notification to the contrary, the Company shall assume that the Contractor has a "Permanent Establishment" in Timor-Leste and will withhold tax accordingly.
- 3.1.2 The Contractor must notify the Company before starting the Services whether it has or does not have, a "Permanent Establishment" for taxation purposes in Timor-Leste. The Contractor must immediately inform the Company if its Permanent Establishment status changes at any time during the term of the Contract.
- 3.1.3 The Contractor authorises the Company to make withholdings for tax from payments to the Contractor and pay amounts withheld to the relevant taxing authority.
- 3.1.4 The Contractor indemnifies the Company Group against any assessment of withholding tax, plus related penalties and interest related to the Company's failure to properly make and remit withholding tax due to the Company's reliance upon a notification provided to the Company Group by or on behalf of the Contractor.

3.2 Taxation Code

Where any work is to be performed in the JPDA, it is acknowledged that the calculation and imposition of tax due and payable by any member of the Contractor Group in relation to the Services is subject to applicable provisions of the *Taxation Code*.

3.3 JPDA Tax Information

- 3.3.1 The Company Group and their respective advisers make no representation or warranty in relation to the application of taxes to the Contractor Group for the performance of the Services in the JPDA.
- 3.3.2 The Company Group and their respective advisers do not represent or warrant that any information provided to the Contractor Group in relation to taxes is correct, complete or relevant to the Contractor Group, the Contract or the Services.
- 3.3.3 The Company will not be liable to the Contractor as a result of the Contractor's reliance on information supplied by or on behalf of the Company in relation to the application of taxes in the JPDA.

3.4 Timor-Leste Value Added Tax ("VAT")

- 3.4.1 Where the Contractor is required by law to collect and pay any VAT amount to the relevant taxing authority, the Company must pay to the Contractor the amount of any VAT the Contractor is liable to pay in relation to the Services. The Company may withhold payment of any VAT until the Contractor issues the Company with a valid VAT Invoice.
- 3.4.2 Where the Company is required by law to collect and pay any VAT amount to the relevant taxing authority, the Company indemnifies the Contractor in respect of such VAT. The Contractor must issue the Company with an invoice that includes the applicable VAT calculated and shown in the manner requested by the Company.

3.5 Designated Authority Requirements

- 3.5.1 In accordance with the Treaty Legislation, notwithstanding:

- (a) any negligence of the Contractor or its employees, servants or agents;
- (b) defects in or unfitness of any equipment, building or structure;
- (c) the place where any loss, damages, destruction or injury occurs; or
- (d) the negligence of the Designated Authority or any other member of the Company Group,

the Contractor must protect, defend, indemnify and hold harmless the Designated Authority from and against any and all claims, liabilities and damages arising out of:

- (a) illness or injury to, or death of the employees, servants, agents or any member of the Contractor Group; or
- (b) loss of, or destruction of property, owned or hired, or equipment, materials and supplies of the Contractor Group or its employees, servants or agents,
where such loss or injury is occasioned by, incidental to, or arises out of or in

conjunction with the Contract.

- 3.5.2 The Contractor must, and must ensure that each member of the Contractor Group, complies with the requirements of the Treaty Legislation, and the requirements of the Designated Authority and the Contractor must, and must ensure that each member of the Contractor Group must, not do or fail to do anything that would cause any member of the Company Group to be in breach of the Treaty Legislation, or the requirements of the Designated Authority.
- 3.5.3 All insurance policies required under the Contract must be endorsed to show the Designated Authority as an additional insured and all insurance policies obtained by Contractor Group must contain a waiver of subrogation in favour of the Designated Authority.

4. TIMOR-LESTE CONTENT

4.1 Where Contractor:

- 4.1.1 gave undertakings with respect to Timor-Leste content that induced the Company to accept the Contractor's tender for the Services; and
- 4.1.2 fails to comply with the whole or a discrete portion of the given undertakings,
THEN the Company shall, at its absolute discretion and in addition to any other remedy available to it, have unlimited recourse under this provision to:
- (a) recover from the Contractor the whole or any part of payments made by the Company to the Contractor in respect of the undertakings;
 - (b) require the Contractor to use or provide goods, materials, services or facilities in accordance with the Contractor's tender undertakings;
 - (c) request that the Contractor provide alternative remedies approved by the Company in order to satisfy the Contractor's tender undertakings;
 - (d) require Contractor to take any steps requested by the Designated Authority; and/or
 - (e) terminate the Contract.
- 4.2 Upon request by the Company, the Contractor must certify that it has complied with all or any undertakings given in its tender for the Services and provide the Company with adequate evidence to demonstrate compliance.
- 4.3 The existence and extent of the Contractor's failure to comply with undertakings given in its tender for the Services shall be determined wholly by the Company and the Company's determination in this regard shall be binding on the Contractor.
- 4.4 The Contractor releases the Company Group from, and indemnifies the Company Group against, any Claim arising out of or in connection with the Contractor's failure to comply with the undertakings as referred to in this clause.