



**Wallis Drilling**

**Standard Terms and Conditions**

**TABLE OF CONTENTS**

1. DEFINITIONS ..... 3

2. TERM OF AGREEMENT ..... 5

3. PROVISION OF SERVICES ..... 5

4. CONTRACTOR’S FEE ..... 6

5. CONTRACT FOR SERVICES ..... 6

6. REPRESENTATIVES ..... 6

7. CONTRACTOR’S EMPLOYEES ..... 6

8. CONTRACTOR’S PLANT AND EQUIPMENT ..... 6

9. INSURANCE ..... 7

10. TAX, SUPERANNUATION AND GOVERNMENT CHARGES ..... 7

11. COMPANY OBLIGATIONS ..... 7

12. CONTRACTOR’S OBLIGATIONS ..... 8

13. REPRESENTATIONS AND WARRANTIES ..... 8

14. LIABILITY AND INDEMNIFICATION ..... 9

15. SAFETY ..... 9

16. ENVIRONMENT ..... 11

17. CONFIDENTIALITY ..... 11

18. LOSS ..... 13

19. INDEMNITY AGAINST LOSSES, LIABILITIES ETC. .... 13

20. INDIRECT OR CONSEQUENTIAL LOSSES ..... 14

21. DEFAULT AND TERMINATION ..... 14

22. ENTIRE AGREEMENT ..... 15

23. ASSIGNMENT AND SUBCONTRACTING ..... 15

24. ALTERATIONS ..... 16

25. GOVERNING LAW AND JURISDICTION ..... 16

26. WAIVER ..... 16

27. LEGAL EXPENSES AND STAMP DUTY ..... 16

28. NOTICES ..... 16

29. GST ..... 16

30. EXCLUSION OF WARRANTIES ..... 17

32. TIME OF THE ESSENCE ..... 18

33. SURVIVAL OF INDEMNITIES ..... 18

34. ENFORCEMENT OF INDEMNITIES ..... 18

35. NO MERGER ..... 18

36. PPSA ..... 18

37. COUNTERPARTS ..... 19

**RECITALS**

- A. The Company desires to engage the services of the Contractor for the purpose of the Contractor providing the Services for the benefit of the Company. In consideration the Company agrees to pay the Fee to the Contractor in accordance with this Agreement.
- B. The Contractor here by agrees to perform the Services and the Contractor agrees to use its Equipment in connection with exploration and drilling purposes as set out in this Agreement for the benefit of the Company.
- C. The Company under Contractor agree to the rights, obligations, covenants and promises contained herein and as consideration to one another.

**THE PARTIES AGREE****1. Definitions**

In this Agreement the defined terms set out in this clause shall, unless the context otherwise require, have the following meanings:

**Affected Party** means the party whose performance obligations under this Agreement is affected due to commission and/or omission of actions, of the opposite party and/or Force Majeure.

**Agreement** means this Agreement and any schedules and annexures to it.

**Approvals** means and include all licenses, permits, consents and permission necessary under Applicable Law in respect of this Agreement for the performance of any obligation or exercise of any right by a Party herein.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Claim** means a claim, action, proceeding or demand however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes a claim for any Loss or any legal liability.

**Commencement Date** means the date this Parties obligations are due for performance obligations to commence under this Agreement.

**Company** means the Party as outlined in the Proposal Letter, Section 2, Company Details.

**Company Representative** means the person nominated by Contractor to be its representative in accordance with this Agreement.

**Completion** means the performance on the Completion Date by the parties of their respective obligations under this Agreement.

**Completion Date** means [Insert Date] or such other date as agreed between the Parties in writing.

**Confidential Information:** means all trade secrets, ideas, know-how, concepts, information, customer lists, supplier lists and Intellectual Property whether or not in writing or owned or used by the Contractor.

**Contractor means** the Party responsible for providing the Services in accordance with this Agreement, Wallis Drilling Pty Ltd, ABN 72 009 091 070 having its registered office at 54 Beaconsfield Avenue, Midvale Western Australia 6056 and shall include its legal representatives, successors.

**Effective Date** means the date when this agreement is signed by the Parties.

**End Date** means the date for completion of the parties obligations under this Agreement.

**Equipment** means the equipment owned or by the Contractor or otherwise used in connection with the Services.

**Fee** means the amount payable to the Contractor for the provision of the Services in accordance with this Agreement.

**Force Majeure** means an act, event, circumstance or cause, that adversely and directly renders the performance of obligations under the Agreement impossible in whole or in part and could not have been prevented including, but not be limited to, act of God, earthquake, volcanic, eruption, landslide, flood, cyclone, typhoon, tornado, war embargo, or exceptionally adverse weather conditions and any act of war.

**Government** means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**GST Act** means has the same meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property** means all intellectual property at any time protected or capable of being protected by statute or common law including copyright, trade marks, patents, registered designs and rights in and to designs and any application or right to apply for registration of any intellectual property rights including or in connection or owned by the Contractor.

**Loss** means any loss, damage, cost, interest, expense, fee, penalty, fine forfeiture, assessment, demand, action, suit, Claim, and proceeding, cause of action, liability or damage.

**Material Breach** means substantial failure in the performance of the obligations, terms and conditions of this Agreement by one Party, significant enough to have an adverse effect on the business, condition (financial or otherwise), liabilities, assets, operations (or the result of operations) or prospects of the other Party.

**Notice** means a notice given in accordance with the notice clauses of this Agreement.

**Party** means a party to this Agreement.

**PPSA** means the Personal Property Securities Act (Cth).

**Schedule** means a schedule to this Agreement.

**Security Interest:** means:

- (a) a security interest under the Personal Property Securities Act 2009 (Cth);
- (b) any other mortgage, pledge, lien or charge in relation to any property (whether or not it is personal property);
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (whether or not it is personal property);
- (d) an easement, restrictive covenant, caveat or similar restriction over property (except an easement or covenant whose burden is noted on the certificate of title to the land concerned);
- (e) a trust or other third party interest; and
- (f) an agreement to create any of the above or to allow any of them to exist.

**Services** means all activities, work, tasks and things described under this Agreement by the Contractor as specified in the Schedule.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government agency, except where the context requires otherwise. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

**Tax Act** means the *Income Tax Assessment Act 1936 (Cth)*, the *Income Tax Assessment Act 1997 (Cth)*, the *Taxation Administration Act 1953 (Cth)*, or other law, regulation or rule of a Government Agency imposing obligations in respect to taxation, as applicable.

**Term** means the period between the Commencement Date and the End Date.

**Warranties** means the warranties set out in this Agreement.

## 1.2. Interpretation

In this agreement unless the context otherwise requires:

- (g) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (h) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (i) words importing a gender include every gender;
- (j) a reference to “include”, “includes” or “including” means “includes but is not limited to”;
- (k) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (l) a reference to any legislation or provision of legislation or a policy includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (m) a reference to Party to a document includes that Party’s permitted successors, assignees, administrators and substitutes;
- (n) where a day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day;
- (o) a reference to a notice form, consent or approval of a Party and agreement between the Parties, means a written notice, consent, approval or agreement;
- (p) a “Recital”, a “Clause”, a “Section”, a “Schedule”, an “Attachment”, an “Annexure”, a “Paragraph” shall be construed to be a reference to a recital, a Clause, a section, a schedule, an attachment, an annexure and a paragraph respectively of this Agreement; and
- (q) a reference to any person includes any natural person, corporation, business trust, joint venture, association, company, partnership or government, or any agency, or political subdivision thereof.

## 2. Term of Agreement

This Agreement, unless terminated earlier in accordance with terms hereof shall continue to remain in force throughout the life of the Project starting on the Commencement Date and ending on the End Date.

## 3. Provision of Services

- 3.1 The Contractor has agreed to provide the services described in Schedule 1 (the “Services”) to the Company for the period (the “Period”) described in Schedule 1.

3.2 Subject to this Agreement the Contractor will use all reasonable endeavours to commence providing the Services at the Site on or about the Commencement Date (as defined in Schedule 1) and complete the Services by the End Date (as defined in Schedule 1).

3.3 The Contractor will not be held liable for and will not be in breach of this Agreement, for failure to commence the Services on the Commencement Date (as defined in Schedule 1) or complete the Services by the End Date (as defined in Schedule 1) due to circumstances beyond its reasonable control.

#### **4. Contractor's Fee**

4.1 In consideration of the Contractor providing the Services, the Company will pay the Contractor the Fee calculated at the rates described in schedule 4.

4.2 The Contractor shall invoice the Company for Services completed mid-month and end of month or at the completion of the job.

4.3 The Company will make payments to the Contractor within fifteen (15) days following the date of the invoices from the Contractor.

4.4 If any invoice submitted by the Contractor is disputed by the Company, the Company may withhold payment of the disputed portion pending determination of such dispute, provided that the Company shall pay the portion not in dispute and the Contractor shall continue to perform the Services.

4.5 If the Company does not dispute an invoice within 10 days after receipt of the invoice, then the Company cannot later dispute or refuse to pay any the invoice, except where a manifest error has occurred.

#### **5. Contract for Services**

5.1 The parties agree that this Agreement is a contract for services and nothing herein shall be interpreted so as to construe the Contractor as an employee, agent, joint venturer or partner of the Company.

5.2 The Contractor agrees to provide the Services in accordance with this Agreement.

#### **6. Representatives**

6.1 The Company shall appoint the Company Representative for the purposes of facilitation of communications and responsiveness on behalf of the Company for any queries and discussion within 30 days of the Commencement Date.

6.2 All directions on behalf of the Company to the Contractor shall be given by the Company Representative who, at all times, has the authority to act on behalf of and bind the Company.

6.3 The Company Representative must:

a) Attend site meetings and any other meetings with the Contractor, as reasonably necessary for the provision of the Services in accordance with this Agreement or as otherwise required by the Contractor;

b) Provide the necessary information and assistance to the Contractor;

#### **7. Contractor's Employees**

The Contractor shall employ such employees as are necessary for the proper performance of the Services and who are skilled, qualified and experienced in their respective trades.

#### **8. Contractor's Plant and Equipment**

Unless otherwise agreed with the Company, the Contractor shall supply all plant and equipment outlined in Schedule 5, for the performance of the Services. Subject to the terms of this Agreement, the cost of maintaining and replacing any plant and equipment shall be borne by the Contractor.

**9. Insurance**

9.1 At all times during the term of the Agreement, the Contractor must maintain the following insurance:

- a) Worker's compensation insurance in full compliance with applicable laws and regulations;
- b) Public liability insurance in respect of bodily injury (including death) and property damage howsoever caused with a limit of not less than ten million Australian dollars; and
- c) Insurance for Motor Vehicle Third Party Liability and Motor Vehicle Third Party Property Damage with a limit of not less than five million Australian dollars.

9.2 The Contractor must provide The Company with copies of insurance certificates (and any updates) relating to the insurance policies maintained pursuant to this Agreement upon request.

**10. Tax, Superannuation and Government Charges**

The Contractor shall be responsible for all compulsory superannuation, payroll Tax, income Tax and any other associated Government levies and charges relating to its employees and incurred in connection with providing the Services.

**11. Company Obligations**

11.1 The Company shall be responsible for:

- a) clearly marked hole coordinates and pads and access tracks to a standard that allows for safe positioning of the Contractor's rig and support equipment;
- b) ensuring all Contractor personnel working on the Site are inducted on The Company's site safety regulations;
- c) providing proper and sufficient permission, including all necessary licences, qualifications, registrations, authorisations, permits or certificates as required by all relevant authorities or by all relevant legislative requirements in order for the Contractor to provide the Services and for the Contractor to access and occupy the Site where required;
- d) clear instruction on required sampling procedures as listed in this Agreement;
- e) observing and ensuring material compliance with the provisions of all relevant State and Commonwealth mining acts, occupational health and safety acts, heritage and environmental protection acts and any other applicable laws, statutes, rules or regulations relating to the Site or the Company's obligations under this Agreement;
- f) all core trays, core blocks, sample bags and any other required sampling equipment;
- g) rehabilitation of the Site. For the avoidance of doubt, the Company assumes all responsibility for (including control and removal of the pollutant involved), and indemnifies and must protect defend and save the Contractor harmless from and against, all claims, demands and causes of action of every kind and character arising from all pollution or contamination, other than that described in this Agreement, which may occur during or after the term of this Agreement as a result of providing the Services, including but not limited to that which may result from fire, blowout, cratering, seepage or any other uncontrolled flow of oil gas water or other substance, as well as the use or disposition of oil emulsion, oil base or chemically treated drilling fluids, contaminated cuttings or carvings, lost circulation and fish recovery materials and fluids;
- h) Paying the Fee to the Contractor on the date specified by the Contractor or on the End Date as set out in the Schedule;
- i) Carry out its obligations and responsibilities under this Agreement and comply with the conditions of any Approvals and the requirements of any Applicable Law; and
- j) Give the Contractor sufficient access as available to enable the Contractor to execute the Services.

11.2 Prior to the Commencement Date, the Company must provide to the Contractor:

- a) all documentation regarding the Site; and
- b) any relevant documentation relating to the Services,

that is necessary to enable the Contractor to perform the Services. The Contractor:

- a) without investigation of the documentation, will be able to rely on; and
- b) will not be liable for any costs, losses, damages, expenses or liabilities arising out of, suffered or incurred by the Company resulting from the Contractor relying on, using, reviewing or commenting on, any documentation provided by the Company to the Contractor under in this Agreement.

11.3 It is recognised that the Company:

- a) has superior knowledge of the Site and access routes to the Site; and
- b) must, prior to the commencement of the Services, advise the Contractor of any known subsurface conditions or obstructions (including underground s, caverns, sink holes, streams, pipelines, powerlines and telephone lines) of which the Company should reasonably have knowledge and which the Contractor might encounter while en-route to the Site or during provision of the Services at the Site.

11.4 The Company accepts the sole risk of all delays and all costs, losses, damages, expenses and liabilities arising out of, suffered or incurred by the Company or the Contractor in respect of the physical conditions (including the below ground conditions, geological structure and geological conditions) of the Site, its near surrounds and any access roads to the Site, excluding gazetted roads.

## 12. Contractor's Obligations

12.1 The Contractor shall be responsible for:

- a) providing the Services daily rig inspections and drill reports to be completed, the reports then presented to the Company Representative on a daily basis for signing.
- b) keeping and maintain all necessary permits, licences and other approvals relating to the performance of the Services by the Contractor;
- c) for any material breach or non-observance by the Contractor of any permits, licences or approvals granted to the Contractor;
- d) using all reasonable endeavours to observe and ensure material compliance with the provisions of all relevant State and Commonwealth mining acts, occupational health and safety acts, heritage and environmental protection acts and any other applicable laws, statutes, rules or regulations relating to the performance of the Services as they relate to the Contractor and identified in Schedule 1 ("Relevant Law");
- e) exercising due skill, care and diligence in the performance of the Services;
- f) maintaining, at the Site, adequate supplies of consumables to ensure that delays are kept to a minimum;
- g) sampling according to the Company requirements in Schedule 1; and
- h) cleaning up and containing pollution or contamination which originates above the surface from the disposition of items wholly in the Contractor's possession and control and directly associated with the Contractor's Equipment.

12.2 If at any time the Contractor's actual progress falls behind the program, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Company Representative, prepare and submit to the Company a revised program, taking into account the prevailing circumstances, and shall notify the Company Representative of the steps being taken to expedite progress so as to attain Completion of the work within the scheduled time, any extension thereof may be agreed upon between the Company Representative and the Contractor.

## 13. Representations and Warranties

13.1 The Contractor warrants to the Company that:

- (a) It shall complete the Services in accordance with the terms of this Agreement using best industry practice and providing all appropriately qualified supervision at all time during the Term; and



- (b) It has the required skill and expertise to carry out the Services and that the Contractor's employees, agents, consultants shall have all the relevant qualification and experience necessary to perform the Services.

13.2 The Company warrants to the Contractor that:

- (a) It is a corporation duly incorporated, validly existing and in good standing under the applicable laws, with full corporate power and authority to own, lease and operate its business and properties and to carry on its business in the places and in the manner currently conducted or proposed to be conducted;
- (b) The execution, delivery and performance of this Agreement (1) has been duly authorised by all requisite corporate actions; (2) to the best of its knowledge will not conflict with any provisions of Applicable Law; and (3) will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (c) It holds all permits, certificates, licenses, clearances, approvals and other authorisations as are necessary for the conduct of its business and it is in compliance with the terms thereof and has not received any notice or claim pertaining to the failure to obtain, or the breach or violation of the terms of, any such authorisation;
- (d) The Company is not insolvent and no liquidator, receiver or administrator has been appointed over any part of its assets and no such appointment has been threatened; and
- (e) all information which has been given by or on behalf of the Company (or to any agent or adviser of the Company) with respect to the Agreement is true and accurate in all respects.

**14. Liability and Indemnification**

14.1 In addition to the Company's liability and obligations and the remedies provided elsewhere in this Agreement, the Company shall be solely responsible for any loss of or damage to the project, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by third parties in the following cases:-

- (a) Resulting from any act, omission or negligence of the Company or any other person claiming through or under it, and their respective employee, agents and representatives;
- (b) In connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Company or any other person claiming through or under it, or non-performance of any term, condition, covenant or obligation to be performed by the Company under this Agreement.

14.2 The Company shall be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with laws or regulatory requirements, specifications and standards or any other matter) for which the Company is liable or which is attributable to the Company.

14.3 The Company shall be responsible only to the extent the Company is responsible (in whole or in part) for the Loss to the Contractor's equipment, installations, materials, tools and supplies in the connection with the Services and the Company is liable for any damage, destruction, depreciation in value or theft of such equipment, installations, materials, tools and supplies.

**15. Safety**

15.1 The Contractor shall use all reasonable endeavours to ensure that its employees, agents, subcontractors and invitees, while on the Company's premises or the Site, comply with the Company's safety regulations, made known to the Contractor by the Company.

- 15.2 The Contractor shall provide all its employees, agents, sub-contractors and invitees with approved personal protection equipment and use all reasonable endeavours to ensure that the equipment is used. Any Contractor's employees, agents, sub-contractors and invitees who fail to comply with these requirements shall be denied access to the Company's premises including the Site and any mining and exploration tenements where services are being performed.
- 15.3 Subject to compliance by the Company with this Agreement, the Contractor shall not at any time leave any Services or partly completed Services in an unsafe condition, but shall continue that Services until it is at a safe stage.
- 15.4 The Contractor shall report, as soon as reasonably practical, to the Company Representative, any accident, injury or hazardous circumstances occurring or arising in the conduct of the Services and any damage to the Company's property or to the property of any third parties and the Contractor shall permit the Company Representative to make such reasonable and relevant inspections and interview and take such statements from the Contractor's employees for the purposes of determining the causes and effects of such accident, injury, damage or hazardous circumstances.
- 15.5 Nothing in this clause requires the Contractor or its employees to provide any information where to do so would, in the reasonable opinion of the Contractor, be likely to result in a waiver of client legal privilege or privilege against self-incrimination in relation to the particular information.
- 15.6 The Contractor shall ensure that all its employees have undertaken the contractor's general safety induction course. Evidence of this or equivalent induction course must be provided prior to commencing Services or travelling about the Company's premises
- 15.7 The Contractor shall ensure that all its employees have undertaken a general first aid course within the last three (3) years, conducted by a registered provider of first aid courses (e.g. St John's Ambulance). Evidence of this or equivalent first aid certificate must be provided prior to commencing Services or travelling about the Company's premises.
- 15.8 At the request of the Company, the Contractor shall ensure that all its employees, agents and invitees have undertaken a site safety induction conducted by the Company which is complementary to the general safety induction course, detailing any local issues of significance.
- 15.9 The Contractor shall ensure that all employees, agents and invitees of the Company undertake a Drill Rig induction prior to undertaking any work in the vicinity of the Contractor's drill rig. (Induction to occur at the location of the drill rig).
- 15.10 On the Company's request, the Contractor shall provide the Company with details of the Contractor's safety record for the previous twelve months, which may include TRIFR, and provide a copy of the Contractor's occupational health and safety management plan known as a SHEMP.
- 15.11 The Contractor shall provide the Company with reasonable evidence that safety/maintenance checks are conducted on all equipment on a regular basis and that such equipment is maintained in a safe condition. Such evidence shall include copies of all permits required for plant and equipment including pressure vessels, which may be used in the performance of the Services.
- 15.12 Material non-compliance with this clause will entitle the Company to suspend the provision of the Services at no cost to the Company, until the Contractor has ensured material compliance.
- 15.13 Contractor employees will undertake journey management planning for all travel with a duration of greater than 60 minutes.
- 15.14 The consumption of alcohol or being under the influence of alcohol (i.e. blood alcohol content of >0.00%) whilst working is prohibited. Any individual who, in the reasonable opinion of the Company

Representative, is under the influence of alcohol or drugs (illicit or prescribed) will be instructed to leave the Site for the day. Such an event will be recorded as a safety incident. Serious or multiple breaches will be cause for permanent removal of the individuals from Site.

- 15.15 Proven using or possession of illicit drugs of any kind will entitle the Company to stand down immediately and remove the offender from Site.
- 15.16 The Contractor agrees to obtain the prior consent of its employees and agents to alcohol and drug testing in such form as the Company reasonably requires.
- 15.17 Any suspension of the provision of the Services or removal of any individual from the Site pursuant to this clause shall not in any way relieve the Contractor from its obligation to ensure a timely completion of the Services.

## **16. Environment**

- 16.1 The Contractor shall ensure that the impact on the environment during the course of the Services as a result of the actions of its employees, agents and invitees is kept to the minimum necessary, and that:
- a) vehicular movement and travel is restricted to defined roads, tracks and the Site. These roads and tracks will be identified to the Contractor by the Company prior to commencing the Services;
  - b) any water escaping from drill holes is redirected away from roads, tracks, and natural drainage systems. Any such water must be contained within tanks or sumps and disposed of as reasonably directed by the Company;
- 16.2 The Contractor must handle and store all hydrocarbons in accordance with guidelines in Australian Standard AS 1940-2004.
- 16.3 The Contractor must supply and maintain spill kits at all times.
- 16.4 The Contractor must dispose of all waste in waste facilities licensed to accept each type of waste as generated by the Contractor's activities.
- 16.5 The Contractor must ensure that all equipment and vehicles entering the Company's property or Site are free from mud, soil and foreign debris to prevent the spread of weeds or plant disease.

## **17. Confidentiality**

- 17.1 Subject to this clause the Contractor must only use the Confidential Information of the Company for the sole purpose of providing the Services and must not use, whether directly or indirectly, or turn to its advantage in any way or profit from the use of, the Company's Confidential Information or any part thereof, whether during the term of the Agreement or any time thereafter.
- 17.2 Subject to this clause, the Company must only use the Confidential Information of the Contractor for the sole purpose of fulfilling the Company's obligations under this Agreement and must not use, whether directly or indirectly, or turn to its advantage in any way or profit from the use of, the Contractor's Confidential Information or any part thereof, whether during the term of the Agreement or any time thereafter.
- 17.3 A party (**Recipient**) may reveal Confidential Information of another Party (**Provider**):
- a) if required by law or by any stock exchange to disclose, in which case the Recipient must immediately notify the Provider of the requirement and must take lawful steps and permit the

Provider to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;

- b) if the Confidential Information is in or enters the public domain for reasons other than a breach of this Agreement;
- c) if the Confidential Information is disclosed to the Recipient by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the Provider; or
- d) to its professional advisers to obtain professional advice.

17.4 The Contractor will procure that its agents, employees and subcontractors abide by the provisions of this clause as if they were the Contractor.

17.5 The Company will procure that its agents, employees and subcontractors abide by the provisions of this clause as if they were the Company.

17.6 Each Party will immediately on demand deliver up to the other Party all copies of Confidential Information on any media that has been provided to it by the other Party.

17.7 Each Party will not, and will ensure that its employees, officers, contractors and agents do not, reverse engineer, decompile or disassemble any software or other products supplied to that Party by the other Party.

17.8 The Parties acknowledge that monetary damages may not be a sufficient remedy for any unauthorised disclosure of Confidential Information by a Party and that the other Party will be entitled, without waiving any other rights or remedies, to such injunctive or other equitable relief as may be deemed proper by a court of competent jurisdiction.

17.9 In this clause, "Confidential Information" means:

- a) in relation to both Parties, the valuable information, technical knowledge, intellectual property, financial data, rates, drilling program data, client contacts, databases and agreements, personnel contacts, data and employment records, research, development, business activities, services, processes or business or marketing plans, experience and data of a secret, commercially sensitive and confidential nature of each Party disclosed or provided in any form by any Party to any other Party in connection with the subject matter of this Agreement;
- b) in relation to the Contractor, the methods, machinery, plant, or any other information necessary or relevant to the drilling process or any other Intellectual Property Rights of the Contractor disclosed or provided in any form by the Contractor to the Principal in connection with the subject matter of this Agreement; and
- c) all information and documents generated by the Parties in connection with the provision of the Services or performance of either Party's obligations under this Agreement,

all of which are regarded as commercial assets of considerable value which if disclosed to a competitor or client or member of the public may have the potential to adversely affect the relevant Party's commercial operations and interests.

**18. Loss**

18.1 The Company is responsible at all times for:

- a) damage to or downgrading or destruction of the Contractor's equipment caused by:
  - i. a direction by the Company that the Contractor's equipment be operated at more than its rated capacity; or
  - ii. acts or omissions of the Company or any Company its employees, agents and invitees or the Company's contractors (other than the Company); and
- b) any damage to, no matter how caused, or loss of, the Contractor's drill string and down hole tools, provided this is not due to the negligence of the Contractor,

and must reimburse the Contractor at the landed replacement or repair cost, having due consideration for the age and condition of such damaged or lost item(s) at Site, as evidenced by invoices or receipts provided by the Contractor.

18.2 The Company acknowledges that the Contractor will not be liable to the Company for any delay in performance of the Services arising from any damage or loss of the Contractor's equipment.

18.3 In addition to the Company's responsibilities set out in this Agreement, the Company will pay to the Contractor:

- a) the relevant standby rate, specified in Schedule 4, during the period of any repair or replacement of such damaged Contractor's equipment; and
- b) the relevant rate, specified in Schedule 4, during any period in which attempts are made to recover any damaged or lost Contractor's equipment, including the drill string and down hole tools, provided that the Company may instruct the Contractor at any time in writing to cease attempts to recover any damaged or lost Contractor's equipment, provided this is not due to the negligence of the Contractor.

18.4 If a hole at the Site is lost or damaged due to other than the Contractor's default, the Company is:

- a) solely responsible for the damage or loss to the hole, including the casing; and
- b) responsible for the costs of repairing the loss or damage, including payment to the Contractor of the applicable rate specified in Schedule 2.

**19. Indemnity Against Losses, Liabilities etc.**

19.1 The Company in consideration to the Contractor for entering into this at all times before and after the Completion Date agrees to indemnify the Contractor against all Losses and Claims suffered or incurred by the Contractor or any subsidiary company, trust or related entity as a result of or arising from or in connection with and to the fullest extent of any Loss or Claim arising from or connected to any breach of any warranty or any other provision of this Agreement.

19.2 The Company indemnifies the Contractor against:

- a) loss of or damage to the Contractor's property and claims in respect of personal injury or death or loss of, or damage to, any other property arising out of or as a consequence of the Company

or its consultants, agents or other contractors (not being employed by the Contractor) carrying out or failing to carry out the Company's obligations under this Agreement;

- b) any and all claims against the Contractor arising out of or in connection with the provision of the Services and which cause:
  - i. the destruction of, or loss or impairment of, any property or equipment or right in or to any resource or similar geothermal anomalies; or
  - ii. any loss or damage to any formation strata or geothermal anomaly beneath the surface; and
- c) any other cost, expense, loss, damage or other liability suffered or incurred by the Contractor, including any third party claim, caused by a breach of this Agreement by the Company

but the indemnity will be reduced proportionally to the extent that any breach of this Agreement by the Contractor or any negligent act or negligent omission of the Contractor caused the injury, death, loss, damage, cost, expense or liability.

- 19.3 The total liability of the Contractor to the Company under this Agreement is limited to the total of the Contractor's Fee under this Agreement.

## 20. Indirect or Consequential Losses

Neither Party under this Agreement shall be responsible / liable to the other party in contract, tort, warranty, strict liability or any other legal theory for indirect, incidental, punitive, or consequential loss or damage or loss of profit resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

## 21. Default and Termination

### 21.1 If a Party:

- a) suffers an Insolvency Event; or
- b) breaches (in whole or in part) a material obligation under this Agreement and in the case of a breach capable of remedy has failed to remedy the breach within 14 days of receipt of notice from the non-defaulting Party requiring remedy of the breach,

it is a "**Defaulting Party**" and the non-defaulting Party may immediately terminate this Agreement by written notice to the Defaulting Party.

- 21.2 Termination of this Agreement is without prejudice to the accrued rights of either Party arising out of this Agreement prior to the date of termination and will not affect this Agreement which are intended to survive the expiry or termination of this Agreement.

- 21.3 In this clause "Insolvency Event" means:

- a) an administrator of the body corporate being appointed under the Corporations Act;
- b) the body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
- c) the entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or reconstruction;
- d) the body corporate being insolvent within the meaning of section 95A(2) of the Corporations Act;
- e) the appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- f) the making of a winding up order, or the passing of, or attempted passing of, a resolution for winding up, except for the purposes of reconstruction or amalgamation;
- g) an application being made (which is not dismissed within 10 days) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above, other than for the purposes of an amalgamation or reconstruction; or
- h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

21.4 If any event of default occurs which is set out in this Agreement the Contractor may by notice to the Company declare the Fee be immediately due and payable without further demand, notice or other legal formality of any kind. The Contractor may terminate this Agreement by delivering 3 months prior written notice to the Company in case of the occurrence of the event of default as mentioned in this clause.

21.5 All obligations hereunder incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such termination.

21.6 In the event of the termination of this Agreement under this clause, the Contractor shall remove from the machinery, goods and materials and be paid the Fee by the Company.

21.7 If a Party (the "Affected Party") by Force Majeure becomes unable to carry out an obligation under this Agreement strictly in accordance with this Agreement the Affected Party shall give notice to the other Party of such event of Force Majeure as soon as reasonably practicable, but not later than five(5) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure.

21.8 In the event of either Party giving a Force Majeure notice, the Parties must meet promptly or each party shall use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused by either Party as a result of the circumstances constituting the Force Majeure.

## **22. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.

## **23. Assignment and Subcontracting**

23.1 This Agreement is personal to each Party and neither Party may assign the rights or benefits of this Agreement to any person except:

- a) to a Related Entity; or
- b) to any other person,

with the prior consent of the other Party, which the other Party must not withhold if it is reasonably satisfied that the Related Entity or other person has sufficient assets, resources, expertise and the financial capability to perform all of the assigning Party's obligations under this Agreement.

23.2 In this Agreement, "Related Entity" means in respect of a Party, means each person:

- a) that is a Subsidiary of that Party;
- b) of which the Party is a Subsidiary; or
- c) that is a Subsidiary of a company of which the Party is also a Subsidiary.

23.3 In this Agreement, "Subsidiary" has the meaning given to it in the Corporations Act.

#### **24. Alterations**

This Agreement may be varied only by mutual consent given in writing.

#### **25. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed according to the laws of Western Australia and the Contractor and Client hereby submits to the jurisdiction of the Courts of Western Australia.

#### **26. Waiver**

A right created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

#### **27. Legal expenses and Stamp Duty**

27.1 Each Party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

27.2 The Company must pay all stamp duty assessed on or in respect of this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

#### **28. Notices**

28.1 A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or email. If it is sent by mail, it is taken to have been received 3 Business Days after it is posted. If it is sent by fax or email, it is taken to have been received if no rejection has been received by the sender and:

- a) if it is transmitted by 5.00 pm (EST) on a Business Day – on that Business Day; or
- b) if it is transmitted after 5.00 pm (EST) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

Notices to be addressed to parties as outlined in the Proposal Letter, Section 1 and 2.

#### **29. GST**

29.1 Words used in this Agreement that are defined in the GST Law have the meaning given in that legislation where used in this Agreement.

29.2 Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.



- 29.3 If a supply made under this Agreement is a Taxable supply, the recipient of that Taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the Taxable supply (Contractor) the amount of GST in respect of the supply.
- 29.4 The Recipient will only be required to pay an amount of GST to the Contractor if and when the Contractor provides a valid Tax invoice to the Recipient in respect of the Taxable supply.
- 29.5 If there is an adjustment to a Taxable supply made under this Agreement then the Contractor must provide an adjustment note to the Recipient.
- 29.6 The amount of a Party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses, losses, damages or other liabilities is reduced by the input Tax credits to which that Party is entitled in respect of those costs, expenses, losses, damages or other liabilities.
- 29.7 In this Agreement, "GST" means any form of goods and services Tax payable under the GST Law and "GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**30. Exclusion of Warranties**

- 30.1 Except for the express warranties set out in this Agreement and except to the extent that applicable law provides otherwise, the Contractor disclaims all warranties. To the maximum extent permitted by applicable law, all conditions and warranties that would be implied (by statute, general law, custom or otherwise) are expressly excluded.
- 30.2 If any condition or warranty is implied into this Agreement under the Competition and Consumer Act (Cth) or under any equivalent legislation, and cannot be excluded, the liability of the Contractor for breach of the condition or warranty is limited to one or more of the following, at the option of Contractor:
- a) in the case of goods:
    - i. the replacement of the goods or the supply of equivalent goods;
    - ii. the repair of the goods;
    - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - b) the payment of the cost of having the goods repaired; or
  - c) in the case of services:
    - i. the supplying of the services again; or
    - ii. the payment of the cost of having the services supplied again.

**31. Arbitration**

Disputes, which cannot be satisfactorily resolved by mutual negotiation between the Parties shall be

adjudicated by arbitration in accordance with applicable legislation by a sole arbitrator acceptable to the Parties.

**32. Time of the Essence**

Time is of the essence as regards all dates, periods of time and times specified in this document.

**33. Survival of Indemnities**

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

**34. Enforcement of Indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

**35. No Merger**

The warranties, undertakings, agreements and continuing obligations in this document do not merge on Completion.

**36. PPSA**

36.1 Where the Contractor advises the Company that it requires security for the payment of its Contract fees, the Company agrees that this document:

- a) is a security agreement; and
- b) creates a security interest,

36.2 The Company agrees that for the purpose of the PPSA, until the Contractor is paid in full, the Contractor has a security interest and the proceeds ("Proceeds") from any ("Proceeds") from any dealings with the Services (or part thereof) ("Security Interest").

36.3 The Company agrees that the Security Interest where possible, will enable but not oblige Us to register a Purchase Money Security Interest ("PMSI").

36.4 In this Agreement:

- a) PPSA means the Personal Property Securities Act 2009 (Cth);
- b) PPSR means the register established under section 147 of the PPSA; and
- c) The meaning of terms "security agreement" "security interest", "secured party", "perfected", "personal property", "possession", "collateral", "accession", "commingled" and "control" have the meanings given to them in the PPSA.

36.5 Whenever the Contractor requests that the Company does anything to ensure this Agreement and any security interest granted under it is fully effective, enforceable and perfected with the priority required by the Contractor, the Company must do it immediately at the Company's own cost. This may include:

- a) doing anything to make, procure or obtain any consent, authorisation, registration or approval in respect of anything, or to facilitate it;
- b) creating or executing (or procuring the creation or execution of) any document, including any form, notice, consent or agreement; and
- c) delivering documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.

36.6 The Company shall:

- a) ensure that the Contractor's security interest is enforceable against third parties, perfected (within the meaning of the term 'perfect' under the PPSA) or otherwise effective;
- b) ensure that the security interest has the appropriate priority required by the Contractor (including where applicable as a 'purchase money security interest' under the PPSA);
- c) not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest, other than one that has been consented to or granted by the Company;
- d) not give control of the collateral to a person other than the Contractor;
- e) not allow any collateral to become an accession to, or comingled with, any property that is not the collateral; and
- f) not give or allow any person to have an interest in or security interest over the collateral;
- g) not alter the collateral or do or omit to do anything else likely to diminish the value of the collateral.

36.7 To the extent this Agreement or the transactions contemplated by it create a security interest under the PPSA, the parties contract out of each provision of the PPSA which section 115 permits, other than sections 96, 117, 118, 120, 123, 126, 128, 129, 134(1) and 135, and any other provision of the PPSA notified by the Contractor to the Company.

36.8 Nothing in this Agreement or the provisions of the PPSA set out in above shall derogate from the terms of this Agreement. Where relevant, the Contractor may determine whether it exercises a particular right or power under a provision of this Agreement or under the PPSA.

36.9 The Company waives its right to receive:

- a) each notice which section 144 or 157 permits it to waive and, to the extent capable of being waived, notice under any other provision of the PPSA; and
- b) (anything from the secured party under section 275 and the Company agrees not to make any request of the secured party under that section.

36.10 For the purposes of section 275 of the PPSA, the parties agree that neither the Contractor nor the Company may disclose any information of the kind referred to in section 275(1) of the PPSA.

36.11 Despite this clause the Contractor may disclose Confidential Information:

- a) for the purposes of enforcing this Agreement, in a proceeding arising out of or connected with this Agreement or to the extent that disclosure is regarded by the Contractor as necessary to protect its interests under this Contract;
- b) as required by any government agency or any procedure for discovery in any proceedings;
- c) as required under Law (except that this clause does not require or allow the Contractor to disclose any information of the kind referred to in section 275(1) of the PPSA); or
- d) to its legal advisers and consultants.

36.12 This clause survives the expiry or termination of this Agreement.

### **37. Counterparts**

This Agreement may be executed in two counterparts. All counterparts when so executed shall be effective for the purpose of binding the Parties hereto, and both of which shall together constitute the same instrument.