

Purchase Order General Conditions for the Supply of Services

1 Evidence of Contract and precedence of documents

1.1 This **Contract** consists of the following documents:

- (a) Purchase Order;
- (b) Special Conditions (if any);
- (c) these General Terms and Conditions; and
- (d) any other attachments to the Purchase Order,

1.2 If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 1.1.

1.3 (a) This Contract contains the entire agreement between the Company and the Contractor with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Contractor in this regard, unless those communications expressly form part of this Contract.

(b) If at any time in relation to the Services or Associated Products, the Contractor provides, refers to, submits or otherwise uses terms and conditions other than those included in this Contract (including as part of the submission of a Tax Invoice) such terms and conditions will not form part of, or be incorporated into, this Contract.

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

2 Term

This Contract commences on the earlier of the date of acknowledgment of receipt of the Purchase Order by the Contractor or the date the Contractor commences to perform the Services, and will remain in force, unless terminated earlier in accordance with this Contract, until the completion by the Contractor of all of its obligations under this Contract (**Term**).

3 Supply arrangements

3.1 The Contractor will supply the Services to the Company in accordance with this Contract.

3.2 The Company may order Services by completing and forwarding a Purchase Order to the Contractor.

3.3 When supplying the Services, the Contractor must at all times comply with and ensure that the Contractor's Personnel comply with all:

- (a) applicable Laws and industrial awards and agreements, including those relating to drugs and alcohol, health, safety and the environment; and
- (b) alcohol and other drug, safety, health and environment guidelines, policies, standards and procedures (as amended or replaced from time to time) provided to the Contractor by the Company Representative including the Company's Contractor Health, Safety and Environment Standards.

3.4 If the Contractor or its Personnel enter the Site, the Contractor must ensure that the Contractor and its Personnel:

- (a) comply in all respects with the Site Conditions;
- (b) cooperate with all Persons at the Site and do not interfere with any of the activities conducted by the Company or any other Person at the Site; and

(c) ensure that any rubbish or refuse brought by the Contractor onto the Site is removed, and any damage to the Site repaired.

3.5 The Contractor agrees that the Company or its designated agent may inspect and carry out testing of the work performed under this Contract at any premises where the Services are being performed or relevant records are kept and the Contractor will ensure that the Company or its agent is provided with reasonable access to such premises and records for this purpose. The Contractor must make this a condition of any subcontracted work.

3.6 Any inspection and expediting done by the Company or its designated agent will not relieve the Contractor of any obligations contained in this Contract.

3.7 The Contractor or the Contractor's Personnel must, at the Contractor's or their cost, obtain all Government Authorisations required to perform this Contract.

3.8 The Contractor will be responsible for identifying any Government Authorisations that must be obtained by the Company and will:

(a) prepare and submit to the Company Representative the draft applications for such authorisations (as well as all other relevant material required to be provided in support of the application) for approval and execution by the Company;

(b) after receipt of the signed application from the Company, attend to lodgement of the application with the relevant Government Instrumentality; and

(c) do all other things necessary to obtain such authorisations.

4 Provision of Services

4.1 Unless otherwise agreed, the Contractor will provide the Services to the Company at the Site.

4.2 The Contractor will furnish, undertake or provide (or cause to be furnished, undertaken or provided) all services, supervision, testing, labour, personnel, personnel transport, materials, supplies and equipment necessary to provide the Services in accordance with Applicable Codes and Standards and this Contract.

4.3 Except as otherwise provided in this Contract, the Contractor will be solely responsible for all means, methods, techniques, sequences, procedures and controls in connection with the performance of the Services.

4.4 The Contractor agrees that the Services include any incidental work that can be reasonably inferred as necessary or appropriate to complete the Services in accordance with Applicable Codes and Standards and this Contract.

4.5 The Contractor will provide the Services at the time, at such rate and in such a manner as is necessary and appropriate to comply with the requirements of the Company (including but not limited to those requirements set out in this Contract). Time is of the essence in the performance of the Contractor's obligations under this Contract.

5 Key Personnel and objection to Personnel

5.1 The Contractor must:

(a) ensure that the Key Personnel perform the Services;

- (b) not replace any Key Personnel without the Company's prior written consent; and
- (c) promptly fill any vacancy of Key Personnel at its cost with personnel approved by the Company.
- 5.2 The Company may instruct the Contractor to remove any person engaged in supplying any of the Services if, in the reasonable opinion of the Company or the Company Representative, such person is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Contractor must remove such person immediately from the Site. The Contractor must, at its own cost, provide a suitable replacement for any such person within 24 hours or such longer period as may be agreed by the Company.
- 6 Provision of information and records**
- 6.1 The Contractor will keep the Company fully informed of its progress in relation to the performance of the Services.
- 6.2 The Contractor must respond promptly and accurately to all reasonable requests by the Company for information relating to the performance of the Services and must provide the Company on request with a copy of all correspondence, letters of approval, certificates or other documents in relation to Government Authorisations.
- 6.3 The Contractor must maintain accurate records of the Services provided to the Company, including any plans, specifications and other details relating to the Services, the Contractor Personnel, the Contractor Personnel's hours of work, the dates on which the Services were provided, any materials used and any additional work required.
- 7 Directions in respect of Services**
- 7.1 The Company may from time to time give reasonable directions to the Contractor to provide the Services in a particular manner, at a particular time or for a specified duration or at or from a particular location, including any directions amending or cancelling any previous direction given by the Company. The Contractor must make all reasonable efforts to comply with any such direction provided that the Contractor shall be fairly compensated in the event that it incurs significant additional cost or delay as a consequence of complying with such directions.
- 7.2 The Contractor must comply immediately, and must ensure that all Contractor Personnel comply immediately, with all directions given by the Company in relation to the health or safety of any person at the Site.
- 7.3 The Company may direct the Contractor to suspend the progress of the whole or any part of the Services for such time or times as the Company in its discretion may think fit, and the Contractor will be entitled to its reasonable direct costs of standing down relevant Contractor Personnel (provided such suspension does not relate to any act or omission by or on behalf of the Contractor and is not for the protection or safety of any person or property and the Contractor takes all possible action to mitigate those costs).
- 8 Plant and equipment and Associated Products**
- 8.1 The Contractor must supply all plant and equipment and other incidental items and materials required for the performance of the Services, including any particular plant and equipment as specified in the Purchase Order.
- 8.2 Without limiting Clause 8.1, the Company may agree to provide certain equipment and facilities for use in connection with performance of the Services, as specified in the Purchase Order. At the end of the Term, the Contractor must return any such equipment and facilities to the Company in the same condition as they were in when provided to the Contractor, subject to fair wear and tear. If the Contractor is authorised in writing by the Company to take Company equipment off Site for repair, maintenance or some other purpose, such equipment remains the property of the Company, must be insured by the Contractor for its full replacement value while off Site, must not be encumbered by the Contractor, and must be returned to the Company in a good state of repair.
- 8.3 The Contractor must obtain the Company's approval for all plant and equipment that the Contractor proposes to use on the Site. To obtain that approval, the Contractor must present all plant and equipment to the Company's Representative for inspection before using that plant and equipment on the Site.
- 8.4 The Contractor must ensure that all plant and equipment supplied by the Contractor in connection with the Services is:
- (a) suitable for the Services; and
 - (b) maintained to a high standard to ensure safe operation and to avoid unnecessary disruption to the Services.
- 8.5 The Contractor must replace any plant and equipment that can no longer be maintained to the standard required to ensure safe operation or that is causing disruption to the provision of the Services.
- 8.6 The Contractor is solely responsible for maintaining, repairing, replacing and securing, at the Contractor's cost, all materials, plant and equipment supplied by the Contractor in connection with the Services.
- 8.7 The Company Representative has the right to inspect any of the Associated Products at any time to determine whether the Associated Products are in accordance with the Contract and are to the standard provided for in the Contract
- 8.8
- (a) The Contractor must deliver the Associated Products (if applicable) to the delivery point identified in the Purchase Order (and if none is specified, the delivery point will be the Site).
 - (b) The Contractor is responsible, at its cost, for packing and transporting the Associated Products to the delivery point.
 - (c) The Contractor must pack and protect all Associated Products ready for despatch in accordance with best practice having regard to methods of carriage and handling and to weather conditions through which they will pass while being transported to the Site.
- 8.9 Full unencumbered title to each Associated Product will pass to the Company upon the earlier of:
- (a) the Company making payment in full to the Contractor for that Associated Product; or
 - (b) the Associated Product being delivered to the applicable delivery point and (if applicable) inspected in accordance with Clause 8.7 and accepted by the Company Representative.
- 8.9 Risk in each Associated Product will remain with the Contractor until its delivery to, and acceptance by the Company Representative.
- 9 Health, safety and environment**
- 9.1 Prior to supplying the Services, the Contractor must:
- (a) have in place adequate risk assessment and risk management systems to address any safety, health and environmental issues that are likely to be relevant to the Services; and
 - (b) submit to the Company a safety plan that identifies the risks to health, safety and the environment associated with the Services and states the control measures proposed by the Contractor to eliminate (so far as possible) or mitigate those risks.

- 9.2 The Contractor and all Contractor Personnel must attend and complete such induction training programs as the Company reasonably requires, at the Contractor's cost, before entering the Site to perform the Services.
- 9.3 The Contractor must ensure that all Contractor Personnel observe safe work practices that comply with:
- generally accepted industry standards relevant to the performance of the Services;
 - all Laws (including the *Resource Management Act 1991* (NZ), the *Health and Safety in Employment Act 1992* (NZ) and the *Hazardous Substances and New Organisms Act 1996* (NZ)), codes of practice, Government Instrumentality guidelines, and industry guidelines or Applicable Codes and Standards relevant to the performance of the Services or to the Company's activities;
 - the conditions of any Government Authorisations held by the Contractor in connection with the performance of the Services; and
 - the Company's reasonable requirements in relation to safe work practices, including the requirements of relevant Company policies, procedures and guidelines, which the Contractor acknowledges that it has received.
- 9.4 The Contractor must comply with all work practices directed by the Company in accordance with Clause 9.3(d) in preference to the work practices ordinarily adopted by the Contractor, if there is any inconsistency between the Company's requirements and the Contractor's ordinary work practices. The Contractor will raise any inconsistencies with the Company Representative.
- 9.5 The Contractor must notify the Company as soon as reasonably practicable, and in any event within 24 hours, of any incident or occurrence involving the Contractor or Contractor Personnel that results in, or has the potential to result in, injury or damage to any person or property or a breach of any Law or licence condition applicable to the Company's operation.
- 9.6 The Contractor will promptly report to the Company the presence, release or discharge of Pollution caused or contributed to by the Contractor or its Personnel in connection with the Contractor's performance or non-performance of this Contract, or the activities conducted by the Contractor or its Personnel at the Site.
- 9.7 The Contractor will, without delay, clean up and remediate, at its own cost and expense, all Pollution referred to in Clause 9.6 to the complete satisfaction of the Company in its sole discretion, whether such Pollution was intentional, accidental or otherwise.
- 10 Contractor Personnel**
- 10.1 The Contractor must ensure that Contractor Personnel:
- are appropriately trained to perform the Services and deliver any Associated Products competently, with due care and skill and in compliance with all relevant Laws;
 - are familiar with such of the Company's policies, procedures, guidelines and work instructions as are relevant to the performance of the Services; and
 - are familiar with the layout, conditions and processes relevant to the Site;
 - comply when on the Site with the *Health and Safety in Employment Act 1992* (NZ) and promptly notify the Company:
 - if any hazard exists at the Site due to the Contractor's activities; and
 - of any accident or serious harm that occurs to the Contractor's employees or subcontractors, or is caused by the Contractor's employees or subcontractors, at the Site.
- 10.2 On the reasonable request of the Company, the Contractor must provide the Company Representative with a detailed organisational chart containing details of the positions and reporting relationships within the Contractor's organisation in relation to Contractor Personnel associated with the provision of the Services from time to time.
- 10.3 The Contractor must provide adequate supervision for, and maintain appropriate lines of communication with, Contractor Personnel who perform Services at the Site.
- 10.4 The Contractor must:
- regularly inspect the Site to satisfy itself that the working environment for Contractor Personnel is safe and that risks to their health are being minimised, so far as is reasonably practicable; and
 - notify the Company immediately if it becomes aware of a risk to the safety or health of any person on the Site posed by the Contractor's Site-based Personnel.
- 10.5 The Contractor shall ensure that:
- it observes the provisions of any industrial relations directive that the Company may issue to the Contractor;
 - any requests by trade union officials to access the Site are immediately referred to the Company, and the Contractor undertakes not to grant access to the Site to any trade union official without express written consent of the Company.
- 11 Non-Conformance**
- 11.1 Without limiting the Company's rights under Clause 23 or otherwise, if a Non-Conformance arises the:
- Contractor must immediately advise the Company in writing and provide details of how the Contractor intends to rectify the Non-Conformance;
 - Company may:
 - direct the Contractor to rectify the Non-Conformance in a manner and period acceptable to the Company in its sole discretion; or
 - notify the Contractor that the Company accepts the Services as performed and reduce the amount payable to the Contractor by the greater of:
 - fair compensation to the Company for the existence of the Non-Conformance; or
 - the saving enjoyed by the Contractor by reason of the Company accepting the Services as performed; or
 - after non-compliance by the Contractor with a direction under Clause 11.1(b)(i), engage others to rectify the Non-Conformance; and
 - Contractor is liable for the entire cost (including legal costs) of rectifying the Non-Conformance.

12 No exclusivity

The Contractor acknowledges that:

- (a) the Company is not obliged to acquire any minimum quantity of the Services from the Contractor; and
- (b) nothing in this Contract will be construed as limiting the Company's right to acquire Services or services similar to the Services from a third party at any time in any circumstances.

13 Existing supply arrangements

The Contractor acknowledges that the Company has no obligation to the Contractor to seek to alter, modify or terminate any supply arrangements between the Company and third party contractors of Services or services similar to the Services.

14 Variations

- 14.1 (a) During the Term, the Company or the Company Representative may by written notice direct the Contractor to vary any aspect of the Services (**Variation**) on and from the date specified in the notice (**Variation Date**).
- (b) Provided the Variation is within the general scope of this Contract, the Contractor must comply with and execute the Variation.
- 14.2 (a) If a Variation causes an increase in the costs of the Services (excluding GST), an amount equal to the increase will be added to the Fee.
- (b) If a Variation causes a decrease in the costs of the Services (excluding GST), an amount equal to the decrease will be deducted from the Fee.
- (c) To the extent that it is reasonable to use the rates or prices specified in this Contract, such rates or prices may be used by the Company Representative to calculate the cost of a Variation. Otherwise, the cost of a Variation will be estimated by the Company Representative at the lowest reasonable cost consistent with sound industry practices.
- 14.3 (a) Within 10 Business Days after a Variation Date, the Contractor must submit to the Company Representative a statement advising whether, in its opinion, a difference in the cost of Services (excluding GST) will arise as a result of the Variation and, if so, the approximate value of the cost difference.
- (b) Within 20 Business Days of a Variation Date, the Contractor must provide a detailed statement to the Company Representative of the cost, or estimated cost, of the Variation.
- (c) The Company Representative must use all reasonable endeavours to make a decision in relation to Variation claims as soon as is practicable after the claim is made.
- (d) As soon as practicable after the Company Representative makes a decision in regard to the Contractor's claim, the Company Representative must prepare a formal document to be signed by the Company Representative and the Contractor Representative setting out the details of the Variation to the Services directed by the Company Representative and any consequent adjustment to the Fee in accordance with Clause 14.2.

15 Subcontractors

- 15.1 If the Contractor wishes to subcontract any of the Services to a Subcontractor it must first obtain the written approval of the Company. The Contractor will submit a

written request to the Company that provides details of the proposed Subcontractor and the work to be performed by the Subcontractor.

- 15.2 The Contractor must properly manage and supervise its subcontractors and ensure that they provide the Services in accordance with this Contract including, in particular, Clause 9.
- 15.3 The Contractor will be as fully responsible to the Company for the acts, errors and omissions of its Subcontractors and of Persons directly or indirectly employed by them, as it is for the acts or omissions of persons directly employed by the Contractor.

16 Fee

- 16.1 The Services will be supplied by the Contractor to the Company for the Fee.
- 16.2 The Fee will be fixed for the period of the supply of the Services.
- 16.3 Subject to Clause 17, the Fee is inclusive of all Taxes (excluding GST).
- 16.4 The Company will pay the Contractor for a Reimbursable Item, provided the:
 - (a) Company approved the Reimbursable Item in writing before it was incurred by the Contractor; and
 - (b) Contractor provides the Company with appropriate Documentation to enable the Company to verify the amount of the Reimbursable Item.
- 16.5 The Company is not liable for any cost, liability or expense incurred by the Contractor in performing its obligations under this Contract, except as provided in this Contract.
- 16.6 Unless otherwise provided for in this Contract, the Fee and any Reimbursable Item to which the Contractor is entitled under this Contract will be the Contractor's sole remuneration for the supply of the Services and the performance of the Contractor's obligations under this Contract.

17 Taxes and GST

- 17.1 Subject to Clauses 17.2 to 17.5 (inclusive), amounts in this Contract are inclusive of all Taxes (excluding GST).
- 17.2 For the purposes of Clauses 17.3 to 17.5 inclusive, capitalised words and expressions that are not otherwise defined have the meaning given in the GST law.
- 17.3 (a) The Parties acknowledge that unless otherwise specified, all Consideration to be provided under this Contract is expressed to be exclusive of GST.
- (b) Subject to Clause 17.3(c), If GST is payable on a Taxable Supply, the Consideration to be provided for that Taxable Supply will be the Consideration expressed in this Contract plus GST.
- (c) Clause 17.3(b) does not apply to the extent that the Consideration is expressed to be inclusive of GST.
- 17.4 If Consideration to be provided under this Contract is calculated by reference to or relates to a cost, expense, liability or similar amount (**Liability**) incurred by a Party, then the Liability will be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of that Liability. The Party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment will be made.
- 17.5 (a) If GST is payable on a Taxable Supply made by one Party (**Contractor**) to another (**Recipient**), then the Recipient will not be required to pay any amount to the Contractor in respect of that

- Taxable Supply unless it has first received a Tax Invoice from the Contractor.
- (b) The Contractor will provide the Recipient with an Adjustment Note / Tax Invoice as soon as it becomes aware of an adjustment to the price in relation to this Contract.
- (c) If payment is required in any other currency than New Zealand dollars, then the Contractor must state the New Zealand dollar equivalent of the GST amount on the Tax Invoice / Adjustment Note.

17.6 Notwithstanding any other provision of this Contract, the Contractor is not entitled to be reimbursed by the Company for any amount that the Contractor pays or is liable to pay as a result of the Contractor, or a Related Company of the Contractor, being required by a Law to surrender tradeable permits or to pay any tax, levy, duty or other impost under the *Climate Change Response Act 2002* (NZ), or related legislation or other legislation relating to greenhouse gas emissions as a consequence of:

- (a) the emission of greenhouse gases in the course of performing the Services or producing any Associated Products under this Contract; or
- (b) performing the Services.

18 Payment

- 18.1 The Contractor will invoice the Company for payment on the basis and in the form determined by the Company. However, all invoices must be in the form of, or accompanied by, a valid Tax Invoice and must specify the amount due to the Contractor and the basis of its calculation, including the Purchase Order number.
- 18.2 All invoices, Fees, Reimbursable Items and payments must be stated and made in the Currency or as agreed in writing between the Parties.
- 18.3 Unless specified elsewhere in this Contract, the Company must pay by electronic funds transfer to the Contractor's nominated bank account the amount shown on the Contractor's Tax Invoice by the Payment Date.
- 18.4 In the event that any invoice or any part of any invoice is disputed, the Company must pay that part of the invoice (if any) that is undisputed, and the Parties must settle the disputed invoice or part in accordance with Clause 33.
- 18.5 Subject to Clause 18.4, the Company may set off against any amount owing to the Contractor any amount owing, or claimed by the Company to be owing, by the Contractor to the Company, whether under this Contract or otherwise.
- 18.6 (a) Notwithstanding any other provision to the contrary contained in this Contract, if the Contractor is in material breach of this Contract then the Company may withhold payment of all or part of any amount due to the Contractor until the failure has been remedied, provided that:
 - (i) the Company has given at least 5 Business Days prior written notice to the Contractor of its intention to withhold payment; and
 - (ii) the Contractor has been given a reasonable period (as determined in the Company's sole discretion) in which to remedy the breach before payment is withheld.
- (b) The total amount that may be withheld by the Company under this Clause 18.6 must not exceed the amount that is adequate to compensate the Company for:

- (i) the Contractor committing the material breach of this Contract; and
- (ii) costs, damages, losses, charges or expenses incurred by the Company in connection with the breach or the rectification of it.

19 Representations and Warranties

19.1 The Contractor represents and warrants to the Company that each of the following warranties is true and accurate and not misleading as at the date of the Purchase Order and on each day during the Term:

- (a) it will perform the Services with the skill, care and diligence reasonably to be expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
- (b) the Contractor and its Personnel will at all times be suitably qualified, trained and experienced to perform the Services;
- (c) the Contractor:
 - (i) is not aware of any actual or threatened claim for infringement of Intellectual Property Rights, or for the breach of any obligation of confidence, in respect of the Services; and
 - (ii) has taken all reasonable measures to ensure it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of its obligations under this Contract;
- (d) any tools and equipment used on Site by the Contractor or its Personnel will be in safe working condition, will be compliance checked (if applicable), will comply with all Laws applicable to such tools and equipment and will be operated by suitably qualified and competent persons, to the satisfaction of the Company;
- (e) the Services, and any materials supplied in connection with the Services, will:
 - (i) be fit for their stated purpose, and the Contractor acknowledges that it has actual knowledge of the purpose for which the Services are required; and
 - (ii) comply with all the requirements of this Contract (including, without limitation, the Specifications), industry standards and all Laws and Government Authorisations;
- (f) it has good and marketable title to any Associated Products and materials supplied in connection with the Services and the Company will receive title to the Associated Products and material free of any security, charge or encumbrance;
- (g) in relation to the provision of any Associated Products as part of the Services:
 - (i) the Associated Products will be of merchantable quality;
 - (ii) the Associated Products will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Associated Products; and
 - (iii) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Services it will assign the benefit of any such unexpired warranties to the Company including any

(h) it has inspected the Site and has examined and considered all information made available by the Company to the Contractor for the purpose of providing the Services;

(i) it has represented that it can comply with all of its obligations under this Contract and acknowledges and agrees that the Company has relied upon such representation in entering into this Contract;

(j) it is not, or under threat or proposal of, bankruptcy or insolvency, or any form of insolvency, administration (by whatever name it is known and in whatever jurisdiction it occurs, including having a provisional liquidator, liquidator, trustee, receiver or receiver and manager appointed) nor has any step been taken in relation to the Contractor (including the making of a court order, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing;

(k) it has full power and authority to execute and deliver this Contract and the execution, the delivery of this Contract and the Supply will not:

(i) violate any Law or any existing judgment, injunction, order or decree of any court of law or Government Instrumentality having jurisdiction over it;

(ii) result in or constitute a breach or default under any covenant, contract, other commitment or restriction to which it is a party or by which it is bound; or

(l) require any consent, vote or approval which has not been taken, or at the time of the Supply will not have been given or taken; and

(m) it has made all efforts to become aware of the subject matter of the representations and warranties set out in this Clause 19.1.

The Contractor must notify the Company in writing promptly upon becoming aware at any time during the Term of any claim referred to in Clause 19.1(c)(i).

The warranties in Clause 19.1 given by the Contractor in relation to the Services are in addition to:

(a) any service guarantee separately provided by the Contractor;

(b) warranty or service guarantee supplied by the manufacturer of any Associated Products; and

(c) any warranty implied by Law.

Without limitation to any other remedy available to the Company under this Contract or otherwise, if the Contractor is in breach of any of the Warranties, then the Contractor must, at the election of the Company, and at the Contractor's cost (including any relevant transportation and labour costs), either re-perform the Services and replace or repair the Associated Products, to the Company's satisfaction.

Each of the Warranties:

(a) will not be read down by reason of the existence or absence of any other warranty; and

(b) is repeated when each invoice is delivered,

20.1 Upon receipt of a notice from the Company Representative during the Term of any deficiency in the Services (except for a defect in any Associated Product, in respect of which Clauses 20.2, 20.3 and 20.4 apply), the Contractor must correct such deficiency (including by

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

20.4 Upon receipt of a notice from the Company Representative of any defect in any Associated Product during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Contractor at no cost to the Company prior to the expiration of the time specified in the notice.

20.5 If the Contractor fails to (as the case requires):

- (a) correct any deficiency in the Services identified by the Company pursuant to Clause 20.1; or
- (b) rectify any defect in any Associated Product identified by the Company pursuant to Clause 20.4, the Company may correct any deficient Services or rectify any defect in any Associated Product (as the case may be) at the Contractor's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Contractor as a debt due and payable.

21.1 A Party will not be liable for any delay or failure to perform any of its obligations under this Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under this Contract, it gives a notice to the other Party that complies with Clause 21.2.

21.2 A notice given under Clause 21.1 must:

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

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

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

21.4 The Company will make an equitable adjustment to the Contractor's program (if any), however this is the Contractor's sole remedy for any delays resulting from Force Majeure where the Contractor is the affected Party.

22.1 The Company may, at any time and for any reason whatsoever, terminate this Contract or any part of it by giving the Contractor not less than 30 days' notice of its intention to do so (**Termination Notice**).

- 22.2 Upon receipt of a Termination Notice, the Contractor must:
- (a) immediately cease the Services in accordance with, but only to the extent specified in, the Termination Notice;
 - (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Associated Products;
 - (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
 - (d) take any other action required by the Company in relation to the termination.
- 22.3 On the date of termination specified in the Termination Notice, the Contractor must:
- (a) provide the Company with a detailed report in such form as the Company may require in relation to the Services performed up to and including the date of receipt of the Termination Notice;
 - (b) return to the Company any items issued to the Contractor by the Company during the Term; and
 - (c) take any other action relating to the termination of this Contract as the Company may reasonably require.
- 22.4 (a) Following termination of this Contract by the Company under Clause 22.1, the Company will pay the Contractor for all Services properly provided to the Company as at the date of termination, less any payments previously made by the Company in respect of those Services.
- (b) The amounts outlined in Clause 22.4(a) represent the only amounts or Liabilities recoverable from the Company by the Contractor following a termination of this Contract by the Company in accordance with this Clause 22.
- 23 Contractor default and insolvency**
- 23.1 If the Contractor breaches any term or condition of this Contract, the Company may serve a notice of default (**Contractor Default Notice**) on the Contractor.
- 23.2 (a) If a Contractor Default Notice is given in accordance with this Clause 23 the Contractor must remedy the breach (or, in the case of a breach which is incapable of remedy, make alternate arrangements acceptable to the Company) within seven days of receipt of the Contractor Default Notice.
- (b) If the Contractor does not remedy the breach (or make alternate arrangements acceptable to the Company, as applicable) within seven days of receipt of the Contractor Default Notice, the Company may terminate this Contract by notice to the Contractor setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 23.3 If the Contractor:
- (a) becomes bankrupt or insolvent or is placed under any form of insolvency or administration (by whatever name it is known and in whatever jurisdiction it occurs, including having a provisional liquidator, liquidator, trustee, receiver or receiver and manager appointed) or any step is taken in relation to the Contractor (including the making of a court order, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing;
 - (b) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (c) takes any analogous step or action to those listed in paragraphs (a) and (b) above,
- the Company may immediately terminate this Contract by written notice to the Contractor setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 23.4 If there is a change in the control of the Contractor's issued voting capital (or the Contractor's holding company (if any)) resulting in an existing shareholder increasing its holding to 50% or more, or a new shareholder obtaining a holding of 50% or more, of the Contractor's issued voting capital or that of the Contractor's holding company (as the case may be), other than for the purpose of internal reconstruction, the Company may immediately terminate this Contract by written notice to the Contractor setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 23.5 If the Company gives notice under Clause 23.1, 23.3, or 23.4 (**Notice**), this Contract is terminated from the Cancellation Date specified in the Notice and Clauses 21.2, 21.3 and 21.4 apply as if a reference to a 'Termination Notice' was a reference to the Notice.
- 24 Insurance**
- 24.1 The Contractor is required, at its cost, to effect and maintain throughout the Term each of the insurances described in this Clause 24 (**Contractor Insurances**).
- 24.2 Insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property however caused. Such insurance must provide cover to an amount of not less than \$20,000,000 in respect of each and every claim and be unlimited as to the number of claims that can be made under the policy and extend to cover liability to any injured worker other than liability for the Contractor's own employees (**Extension**). Insurance in relation to the Extension must also provide cover to an amount of not less than \$20,000,000 in respect of each and every claim and be unlimited as to the number of claims that can be made under the policy).
- 24.3 (a) Employers' liability insurance covering all Liabilities, whether arising under statute or common law, in relation to the death of, or injury to, any employee of the Contractor.
- (b) The insurance required by Clause 24.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.
- 24.4 If the performance of this Contract requires the Contractor to use or provide for use plant, equipment and materials that will be used at the Site in connection with this Contract, the Contractor must maintain or require the owner of such plant, equipment and materials (except where the owner of such plant, equipment or materials is the Company or a member of the Group) to maintain insurance covering all loss and damage to such plant, equipment and materials for its market value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.
- 24.5 (a) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Services, which insurance must (unless prohibited by law) provide cover for market value and in respect of third party property damage of not less than \$20,000,000 in respect of any one accident or series of accidents arising out of one event.
- (b) Any insurance that is compulsory under relevant laws for the time being in force governing the use of motor vehicles used at any time in connection with the Services.

- 24.6 If the performance of this Contract includes or is related to the provision of professional advice or services, the Contractor must effect and maintain throughout the Term and for a period of not less than 3 years after termination of this Contract or completion of the Contractor's obligations under this Contract, professional indemnity insurance in respect of all Liabilities resulting from any negligence or breach of professional duty by the Contractor arising from any act, omission or error in the performance of its obligations under this Contract. Such insurance must provide cover to an amount of not less than \$5,000,000 in respect of each and every claim.
- 24.7 If the performance of this Contract requires or involves the use of aircraft (including helicopters), the Contractor must maintain, or require the owners of aircraft (including helicopters) used in the performance of the Services, to maintain:
- aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.
- 24.8 If the performance of this Contract requires or involves the use of watercraft, the Contractor must maintain, or require the owners of watercraft used in the performance of the Services, to maintain:
- marine hull & machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
 - protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.
- 24.9 The Contractor will maintain insurance covering loss of or damage to any Associated Products during transit, regardless of whether the Company has paid for those Associated Products.
- 24.10 (a) If the Contractor Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the excess or deductible must be declared to the Company. The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered unreasonable in the circumstances of this Contract.
- The Contractor Insurances must be underwritten by a reputable insurer with a security rating from Standard & Poor's of not less than "A".
 - No provision contained in this Clause 24 will limit the Contractor's liability in relation to the indemnities in this Contract.
 - Before commencing to perform its obligations under this Contract, and each time the policies are renewed or varied during the Term, the Contractor must provide the Company with such evidence as the Company may reasonably require that the Contractor and its Subcontractors are insured in accordance with this Contract.
 - In the event that the Contractor fails to effect or maintain any of the Contractor Insurances required under this Contract the Company may do one or more of the following:
 - effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Contractor;
 - refuse the Contractor and its Personnel access to all or any part of the Site; and
 - treat the failure to insure as a default under this Contract.
- (f) All Contractor Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Contractor has received a written consent from the Company Representative.
- 24.11 If the Company consents to the Contractor subcontracting any of its duties and/or obligations under this Contract, the Contractor must ensure that its Subcontractors have the benefit of or effect and maintain insurances similar to the Contractor Insurances required to be effected by the Contractor.
- ## 25 Indemnities
- 25.1 Subject to Clause 25.2, the Contractor will indemnify (and will keep indemnified) the Company, End Users and their Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:
- the breach by the Contractor or its Personnel of any term or condition of this Contract (including any Warranties);
 - any negligent act or omission or wilful misconduct by the Contractor or its Personnel arising out of the performance of this Contract; or
 - any Claim made against the Company by any of the Contractor's Personnel in respect of relevant legislation concerning income tax, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.
- 25.2 The Contractor will not be liable under Clause 25.1 to the extent that the Liability was directly caused by the Company's negligence or wilful default.
- ## 26 Compliance with Company policies
- During the Term, the Contractor must, and must ensure that its Personnel, comply with each of the rules and policies of the Company and the Group, as notified by the Company from time to time by notice to the Contractor in writing.
- ## 27 Business Practices Standard
- The Group has developed a policy entitled '*The Way We Work*'. The Contractor acknowledges that it has received a copy of that policy which can also be found at: http://procurement.riotinto.com/documents/The_way_we_work_-_English_-_Final.pdf or www.riotinto.com
- The Contractor is required to read, understand and adhere to the '*The Way We Work*' policy, and the Company reserves the right to monitor and/or audit the Contractor's adherence to such policy.
- ## 28 Illegal Information Brokering
- 28.1 Prohibition
- The Contractor recognises that the practice of Illegal Information Brokering or any other corruption of the award process for this Contract is not permitted by the Company and the Contractor represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with this Contract.

28.2 Notification

- (a) The Contractor must immediately notify the Company Representative if any person approaches the Contractor for the purpose of Illegal Information Brokering concerning this Contract or any other related business interest of the Group or the Company.
- (b) After receiving a notice under Clause 28.2(d):
 - (i) such notice and any related information provided by the Contractor will be treated by the Group and the Company with the utmost discretion; and
 - (ii) the Group and the Company will handle this Contract with extra security measures, as appropriate, in order to prevent any contractor, subcontractor or other supplier from gaining any unfair advantage subsequent to such notice.

29 Personal Data protection**29.1 Personal Data**

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

29.2 Warranty

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all Laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling) under this Contract.

29.3 Data protection

In addition to its obligations under Clauses 29.1 and 29.2, the Contractor agrees to:

- (a) only collect, use, disclose or process Company Personal Data for the performance of its obligations under this Contract, and as directed by the Company;
- (b) not disclose Company Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by Law;
- (c) immediately notify the Company that the disclosure of Company Personal Data is or may be required by Law;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse modification, disclosure or damage to Company Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of Company Personal Data will be fair and lawful and, for this purpose, the Contractor may reasonably enquire of the Company as to the manner in which the Company collected Company Personal Data; and
- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data with:
 - (i) the Company or any other member of the Group; or
 - (ii) any or all of the Contractor's related companies or subcontractors.

For clarification, such a request may be made if the Company considers it necessary or appropriate for the

purposes of the Company's compliance with its global data privacy obligations. This Clause operates in addition to Clause 29.2.

29.4 Individual complaints

- (a) If an individual complains to the Company that the Contractor (or any of its Personnel) has, in the performance of this Contract, handled his or her Company Personal Data inappropriately, or the Company must promptly give the Contractor sufficient details about the complaint to enable the Contractor to take steps to address the subject of the complaint promptly. The Contractor must provide a written response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven days after the complaint is notified to the Contractor. The response must identify the steps that the Contractor has taken to address the complaint and if relevant, to minimise any further misuse.
- (b) If an individual complains to the Contractor that the Contractor (or any of its Personnel) has, in the performance of this Contract, handled his or her Company Personal Data inappropriately, the Contractor must:
 - (i) promptly inform the Company of the complaint;
 - (ii) provide the Company with the Company Personal Data that is the subject of the complaint; and
 - (iii) provide a written notice to the Company about how the Contractor has addressed the complaint, and what steps the Contractor has taken to minimise further complaints.

29.5 Contractor Indemnity

Without limiting Clause 25, the Contractor must indemnify the Company and each End User from and against any and all Liabilities arising from the Contractor's actual or alleged breach of this Clause 29.

29.6 Return of Company Personal Data

The Contractor must, on termination of this Contract, return, destroy, store or dispose of the Company Personal Data as directed by the Company.

30 Intellectual Property Rights in Services

- 30.1 (a) The Parties acknowledge that each Party remains the owner of its Background IP and that nothing in this Contract prevents, limits or restricts a Party's subsequent use or exploitation of its Background IP.
- (b) The Contractor grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use its Background IP for the purposes of or in connection with the business of the Group to the extent such use is necessary to use the Services. The Company may sub-licence the Company's rights to use the Contractor's Background IP to any member of the Group provided such use is in connection with the business of the Group.
- (c) The Company grants to the Contractor, or where the Company's Background IP is owned by a member of the Group other than the Company, the Company will procure the grant to the Contractor of, a non-exclusive, non-transferable, revocable licence to use the Company's Background IP and the Contract IP for the sole purpose of providing the Services.

- (d) The Contractor must not use, register or attempt to register any interest in or otherwise deal with the Company's Background IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Services.
- 30.2 (a) The Contractor agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Contractor assigns and must ensure that all of its Personnel assign all of their respective rights, title and interest in and to the Contract IP (whether created before, on or after the commencement of the Term) to the Company.
- (b) On the Company's request, the Contractor must execute any formal assignment or other document required to give effect to this Clause 30.2.
- 30.3 The Contractor warrants that:
- (a) the Contractor has the right to grant to the Company the licence under Clause 30.1(b);
- (b) the Contractor has the right to assign all Contract IP to the Company in accordance with Clause 30.2.
- 30.4 The Contractor agrees to:
- (a) disclose to the Company all Contract IP as and when it is created;
- (b) ensure that any sub-contract the Contractor enters into in relation to this Contract contains an assignment by the Sub-contractor to the Company of all Intellectual Property Rights in any Contract IP created by the Sub-contractor for the purposes of this Contract;
- (c) notify the Company as soon as the Contractor becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Company may request to protect, perfect enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP). The Contractor must also ensure that its Personnel provide all reasonable assistance to the Company as set out in Clause 30.2.
- 31 Third party Intellectual Property Rights**
- 31.1 The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Services, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Services:
- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 31.1(a)).
- 31.2 (a) The Contractor indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
- (i) the performance of the Services by the Contractor;
- (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Contractor; or
- (iii) the receipt of the Services by the Company.
- (b) The Contractor must notify the Company immediately the Contractor becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 31.2(a).
- (c) The Company may require the Contractor to conduct any litigation that may arise from a Claim referred to in Clause 31.2(b) and all negotiations for settlement of that Claim. However, the Contractor must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.
- 31.3 If the Company is prevented from (as the case requires) operating or using the Services or any part of the Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Contractor must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) utilise the Services or the relevant part of the Services for the purpose for which it was intended.
- 31.4 If the Contractor cannot procure the rights referred to in Clause 31.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Contractor to immediately (at the Contractor's cost):
- (a) alter the Services or the relevant part of the Services to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) re-perform or replace the Services affected or the relevant part of the Services with work or Services which do not infringe or violate the Intellectual Property Rights; or
- (c) discontinue the Services and reimburse the Company any compensation and other moneys already paid to the Contractor and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the discontinued Services.
- 31.5 (a) The Contractor must, at its cost, procure from each of its Personnel and any other relevant third party author or originator, an irrevocable and unconditional consent, in favour of the Company, which is legally enforceable by the Company, for the Company and if requested, a member of the Group or the Contractor's Personnel, to:
- (i) reproduce, adapt or publish any materials in relation to the Services, anywhere in the world, in whatever form the Company thinks fit, without making any identification of the author or originator of the materials; and;
- (ii) do anything in relation to the materials that, except for these consents, would infringe any moral rights or similar rights (being non-assignable rights which are otherwise excluded from Intellectual Property Rights) of the author or originator of the materials in relation to the Services, anywhere in the world.

- (b) Where the Company reasonably believes that the Contractor has not complied with its obligations under this Clause 31.5, the Contractor must procure that each of its Personnel and any other relevant third party author or originator do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to the provisions of this Clause 31.5.

32 Assignment and delegation

- 32.1 The Contractor may not assign or transfer its rights under this Contract without the prior written consent of the Company.
- 32.2 If the Contractor delegates, subcontracts or outsources any of the Contractor's duties and/or obligations under this Contract at any time, the Contractor will remain liable to the Company for the performance and discharge of the delegated and/or subcontracted and/or outsourced duties and/or obligations under this Contract.
- 32.3 The Company may delegate, subcontract or outsource any of its duties and/or obligations under this Contract to any Group member without the Contractor's consent, but will inform the Contractor following any such delegation, subcontracting or outsourcing.
- 32.4 The Company may assign, charge, encumber, novate or otherwise deal with any of its rights or obligations under this Contract at any time. At the request of the Company, the Contractor must execute all documents necessary to give effect to such assignment, charge, encumbrance or novation, including executing a novation deed.

33 Dispute resolution

- 33.1 The Parties acknowledge that while disputes may arise from time to time, their common intent is to ensure that any dispute is resolved in a timely and cost effective manner.
- 33.2 Subject to Clause 33.12, a Party must not start court proceedings unless it has complied with this Clause 33.
- 33.3 A Party claiming that a dispute, difference or question arising out of this Contract has arisen (**Dispute**) must give the other Party notice of the details of the Dispute (**Dispute Notice**).
- 33.4 The Parties must attempt to resolve any Dispute by negotiations using the following escalation procedure:
- (a) When a Dispute Notice is given, refer any Dispute initially to a representative nominated by the Company, and a representative nominated by the Contractor, who will in good faith endeavour to resolve the Dispute within 10 Business Days after the Dispute Notice is given by a Party.
 - (b) If they cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given, each Party must refer the Dispute to representatives of senior management who must then attempt to resolve it.
- 33.5 If the senior management cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given, the Parties must refer the Dispute to:
- (a) binding expert determination, if the Parties agree to resolve the Dispute by expert determination; or
 - (b) mediation, if the Parties:
 - (i) are unable to agree on submitting the Dispute to expert determination in accordance with Clause 33.5(a); or
 - (ii) agree to resolve the Dispute by mediation.
- 33.6 The Parties will attempt to agree upon an appropriate expert or mediator within 15 days after the Dispute Notice

is given. If the Parties are unable to agree the expert or mediator will be a person nominated, at the request of either Party, by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc or his or her nominee.

- 33.7 The Parties must promptly supply the expert or mediator with any information, assistance and cooperation requested in writing by the expert or mediator in connection with the Dispute. All correspondence between the expert or mediator and a party must be copied to the other parties.
- 33.8 If an expert is appointed:
- (a) the expert must be instructed to finish its determination no later than 20 Business Days after the expert's appointment (or another period agreed by the Parties); and
 - (b) the expert must act as an expert and not as an arbitrator and its written determination will be final and binding on the parties in the absence of manifest error.
- 33.9 Each expert determination and mediation conducted in accordance with this Clause 33 will be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc or such other rules and procedures agreed between the Parties.
- 33.10 Each Party must bear its own costs of complying with this Clause 33.
- 33.11 Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this Contract, subject always to its rights of termination under this Contract.
- 33.12 A Party may commence court proceedings relating to any Dispute at any time where that Party seeks urgent or interim declaratory or injunctive relief.

34 Confidentiality

- 34.1 The Contractor must not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Services (and the Contractor must ensure those Personnel do not disclose or permit or cause the Confidential Information to be disclosed) unless it has obtained the prior written consent of the Company to do so.
- 34.2 Clause 34.1 does not apply to:
- (a) information after it becomes generally available to the public (other than as a result of the breach of this Clause 34 or any other obligations of confidence imposed on the Contractor);
 - (b) disclosure to professional advisors who are under a duty of confidentiality; or
 - (c) the disclosure of information in order to comply with any applicable Law or legally binding order of any court, Government Instrumentality or recognised stock exchange, provided that prior to such disclosure the Contractor gives notice to the Company with full particulars of the proposed disclosure.
- 34.3 The obligations in this Clause 34 are in addition to and do not diminish the obligations of the Contractor in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

35 Delay and disruption

- 35.1 The Contractor must work cooperatively and must not delay or disrupt the work or activities of the Company or any other contractors or their Personnel (whether

employed or engaged by the Company or not) on the Site during the Term.

35.2 The Contractor is not entitled to any increase in the Fee or damages or any other financial compensation in respect of any delay or disruption suffered by the Contractor that was caused by the Company, any other contractors or their Personnel.

35.3 If, through no fault of its own, the Contractor is delayed or disrupted by the Company or any other contractors or their Personnel, the Company may (in its discretion) make an equitable adjustment to the Contractor's program (if any).

36 Notices

36.1 A notice, approval, consent or other communication in connection with this Contract must be:

- (a) in writing;
- (b) marked to the attention of the Company Representative or Contractor Representative (as the case may be);
- (c) signed by:
 - (i) a director, company secretary, or duly authorised representative of the Party giving the notice, approval, consent or other communication;
 - (ii) the Company Representative in the case of the Company; or
 - (iii) the Contractor Representative in the case of the Contractor; and
- (d) delivered personally or sent by facsimile, post or email to the address specified in this Contract or to the last advised address of the addressee.

36.2 A letter, email or facsimile is deemed to be received:

- (a) in the case of a posted letter, on the fifth day (seventh if posted to or from a country other than the country from which it was sent);
- (b) in the case of an e-mail, on receipt of a successful delivery report by the system from which the e-mail was sent; and
- (c) in the case of a facsimile, on production of a successful transmission report.

37 Governing law and jurisdiction

37.1 This Contract and the transactions contemplated by this Contract are governed by the Laws of the Relevant Jurisdiction.

37.2 Each Party submits to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction and the courts of appeal from them.

38 Miscellaneous

38.1 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

38.2 Except where this Contract expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

38.3 Any indemnity or any obligation of confidence under this Contract is independent and survives termination of this Contract. Any other term by its nature intended to survive termination of this Contract survives termination of this

Contract, including Clauses 17, 19, 20, 21, 24, 25, 29, 30, 31, 33, 34, 36, 37, 38, 39 and 40.

38.4 A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy created under this Contract must be in writing and signed by the Party giving the waiver.

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

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

38.6 None of the terms of this Contract, or anything done under or by virtue of this Contract or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding will operate as a merger of any of the rights and remedies of the Parties under this Contract and those rights and remedies will at all times continue in force.

38.7 Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

38.8 The Contractor acknowledges and agrees that:

(a) in entering into this Contract, the Contractor does not, except to the extent expressly stated in this Contract, rely on any representation, warranty, condition or other conduct which may have been made by the Company, any member of the Group, or any person purporting to act on behalf of the Company or any other member of the Group;

(b) the Contractor has had the opportunity to make, and has made, all necessary and independent inquiries in relation to all matters relevant to the entry into this Contract; and

(c) subject to any Law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Company disclaims all liability in relation to these to the maximum extent permitted by Law.

38.9 The Contractor performs the Services for the Company as an independent contractor. Nothing in this Contract is or will be taken as constituting the relationship of employment, trust, agency, partnership or joint venturers between the Parties or otherwise sharing risks or rewards or constituting any Party the agent, servant, employee or representative of another Party.

38.10 Except as required by any applicable Law or as otherwise permitted by this Contract, no Party may make any public announcements or disclosures as to this Contract, or otherwise in relation to the existence or subject matter of this Contract, without the prior written consent of the other Party. Should such approval be given then the wording of such release and the manner or publication of such release must first be approved in writing by both Parties.

39 Interpretation

39.1 In this Contract unless the contrary intention appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a Person or a Party includes a reference to the Person's or Party's executors, administrators, successors, substitutes (including but not limited to, persons taking by a novation) and assigns;
- (d) a reference to time is a reference to the time where the Site is located;
- (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) a reference to a recital, annexure, appendix, attachment or schedule is a reference to a recital, annexure, appendix, attachment or schedule to this Contract, and a reference to this Contract includes a recital, annexure, appendix, attachment or schedule;
- (g) a gender includes all genders;
- (h) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (i) the meaning of general words is not limited by specific examples introduced by "including" or "for example";
- (j) a reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification, consolidation, replacement or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) where it is provided that the Contractor will perform any act or provide any thing at its cost, this means the Contractor will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Fee;
- (l) a reference to a clause is a reference to a clause in this Contract;
- (m) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it;
- (n) a reference to a third person or a third party is a reference to a person who is not a party to this Contract;
- (o) a reference to "dollar", "\$" or a currency is a reference to the Currency, unless expressly stated to be otherwise in this Contract;
- (p) any agreement, representation, warranty or indemnity by two or more parties (including where two or more Persons are included in the same defined term) binds them jointly and severally;
- (q) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more Persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (r) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed

or the event must occur on or by the next Business Day.

39.2 Headings are inserted for convenience and do not affect interpretation of this Contract.

39.3 If this Contract specifies that the Company enters into, and is a party to, this Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to this Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Contractor are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Contractor assign its rights and obligations under this Contract to an incoming agent or manager on behalf of the Joint Venturers;
 - (iii) the rights and remedies in and under this Contract may be exercised by the Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of the Contractor under this Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
 - (v) all notices to be given or made pursuant to this Contract relating to the Joint Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
 - (vi) in dealing with the Joint Venturers, for all purposes under or in connection with this Contract (including, for the avoidance of doubt, the Purchase Order), the Contractor must deal only with the Company; and
 - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under this Contract.

40 Definitions

40.1 The following words have these meanings in this Contract unless the contrary intention appears:

Accumulation Period means the period commencing on the first day of a calendar month ending on the last day of the calendar month.

Applicable Codes and Standards means the current editions of all codes, standards, regulations and requirements set forth or implied in any Law and applicable Government Authorisations which are relevant to the Services and in the event of an inconsistency or conflict between any of those codes or standards, the more rigorous performance standard will apply.

Associated Products means the goods (if any) identified in the Purchase Order that are to be supplied by the Contractor.

Background IP means the Intellectual Property Rights of a Party which:

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

Business Day means every day, ending at 5.00pm other than a Saturday, a Sunday or a statutory public holiday at the Site.

Claim means any claim, demand, action, suit, proceeding or demand of any kind arising out of any cause of action of a Party or an End User including for breach of this Contract or under any indemnity, in tort (including negligence) and any other common law, equitable or statutory cause of action in connection with the operation of this Contract.

Company is defined in the Purchase Order.

Company Personal Data means the Personal Data that the Company transfers to the Contractor from time to time in connection with this Contract.

Company Representative is, initially, as stated in the Purchase Order, and includes:

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

Confidential Information means any information (in whatever form) or Documentation of a confidential nature (or which the Contractor or its Personnel ought reasonably to know to be confidential) that relates to the business, affairs or activities of the Company, an End User or members of the Group (including in relation to the Services) and which:

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

Contract is defined in Clause 1.1.

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

Contractor is defined in the Purchase Order.

Contractor Health, Safety and Environment Standards means the Company's Contractor health, safety and environment standards or otherwise provided to the Contractor, as replaced or amended by the Company from time to time.

Contractor Representative is, initially, as stated in the Purchase Order, and includes:

- (a) such other person as the Contractor may, in writing, substitute for that representative; or

- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Companies Act means the *Companies Act 1993* (NZ).

Currency is defined in the Purchase Order.

Day or day means a calendar day of 24 hours from 12.00am and includes Saturdays, Sundays and holidays.

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following the receipt of a particular Associated Product by the Company.

Documentation includes contracts, plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, invoices and any other material specified in this Contract (and whether embodied in tangible or electronic form).

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

Fee means the prices for the Services as specified in the Purchase Order.

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

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood, earthquake; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Government Authorisations means all approvals, consents, accreditations, authorisations, permits, clearances, licences or other requirements that are required from any Government Instrumentality for the Contractor to perform its obligations under this Contract.

Government Instrumentality means any governmental, semi-governmental, administrative, municipal, fiscal or judicial body, ministry, department, court, commission, board, authority, tribunal, commission, agency, institution or similar entity of any such government.

Group means:

- (a) the dual listed company structure incorporating Rio Tinto plc (**RT**) and Rio Tinto Limited (**RTL**) (**Rio Group**), for so long as the Company is part of the Rio Group including:
 - (i) any Related Company of RT or RTL;
 - (ii) any unincorporated joint venture in which RT or RTL or any Related Company of RT or RTL has a participating interest of not less than 50%;
 - (iii) any body corporate or unincorporated joint venture managed by RT or RTL or any Related Company of RT or RTL; and
 - (iv) such other entities as the Parties agree in writing;
- (b) if the Company ceases to be part of the Rio Group:
 - (i) any Related Company of the Company;

- (ii) any unincorporated joint venture in which the Company or any Related Company of the Company has a participating interest of not less than 50%;
- (iii) any body corporate or unincorporated joint venture managed by the Company or any Related Company of the Company; and
- (iv) such other entities as the Parties agree in writing.

GST means 'tax' as defined in the GST Act.

GST Act means the *Goods and Services Tax Act 1985* (NZ).

Illegal Information Brokering means the practice by which certain parties approach contractors, subcontractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

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

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Company is a Party to this Contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Key Personnel means the persons specified in the Purchase Order.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

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

Non-Conformance includes:

- (a) anything done by the Contractor that is not in accordance with this Contract;
- (b) anything that is required to be done as part of the Services that has not been done; or
- (c) any loss of or damage to any property or material of the Company for which the Contractor is responsible.

Official includes:

- (a) any officer or employee of any Government Instrumentality, or any person acting in an official capacity on behalf of any such Government Instrumentality;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or

any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Party or Parties means either the Company, the Contractor or both of them as the context may require.

Payment Date means, unless otherwise specified in the Purchase Order, the fifteenth day (or next Business Day) of the second month following the end of the Accumulation Period in which the Contractor's Tax Invoice is received by the Company (for the avoidance of doubt, the term '15th of 2nd month following EOAP' when used in the Purchase Order has the same meaning as 'Payment Date').

Person includes an individual, corporation, partnership, joint venture, trust, unincorporated organisation, association, or Government Instrumentality.

Personal Data means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where the:

- (a) individuals are located; or
- (b) data relating to those individuals is processed.

Personnel means:

- (a) in relation to the Contractor, any of its employees, Subcontractors, agents and representatives involved either directly or indirectly in the supply of the Services under this Contract;
- (b) in relation to the Company, an End User or a member of the Group, any of its past or present officers, employees, agents or representatives;
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the supply of the Services under this Contract; and
- (d) in relation to any other party, any of its employees, agents or representatives.

Pollution means any hazardous substance, pollutant or contaminant regulated by any applicable Government Instrumentality and also any other contamination or pollution.

Purchase Order means the individual purchase orders as may be issued by the Company to the Contractor for the supply by the Contractor to the Company of the Services or the provision of any Associated Products.

Reimbursable Item means an item of expense incurred by one Party in respect of which, under this Contract, that Party is entitled to be reimbursed by the other Party for the cost of the item, including the Contractor's Reimbursable Items listed in the Purchase Order.

Related Company has the meaning given to it in the *Companies Act 1993* (NZ).

Relevant Jurisdiction means New Zealand.

Rio Tinto Limited means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000 Australia.

Rio Tinto plc (ARBN 007 488 486) means Rio Tinto plc (Company No. 719885) of 6 St James's Square, London SW1Y 4LD, United Kingdom.

Services means the services specified in the Purchase Order and includes any supply of Associated Products.

Site means the site stated in the Purchase Order.

Site Conditions means the conditions relating to the Site specified in the Purchase Order.

Special Conditions means the special conditions (if any) as specified in or attached to the Purchase Order.

Specifications means the specifications (if any) as specified in the Purchase Order.

Subcontractor means any Person engaged or employed by the Contractor to perform any of the Services.

Taxes or Tax means any and all sales, use, personal, property, real property, value added, goods and services, consumption, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on the Company's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the Services.

Tax Invoice has the meaning given in sections 24 and 24BD of the GST Act.

Term means the term of the Agreement as contemplated by Clause 2.

Warranties means the warranties set out in Clause 19.