

CST COAL CANADA LIMITED STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES

1. Definitions

1.1 Definitions

In this Agreement:

"Authorisations" means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Authority.

"".

"Agreement" means the applicable Purchase Order, together with these Agreed Standard Terms and any other policies and documentation incorporated by reference in such Purchase Order, as each may be amended, restated or supplemented from time to time.

"Contractor" means the party supplying the Goods and/or performing the Services to CST hereunder.

"Company" means the legal entity CST Coal Canada Ltd. Whose name appears on the front or cover page of this Purchase order.

"Business Day" for the purposes of this Agreement means Monday to Friday inclusive, excluding statutory holidays in Alberta.

"Compensation" means the compensation that the Company must pay the Contractor for the Services provided and the Price of the Goods supplied in accordance with this Agreement,

"Confidential Information" means, in respect of a party, information which:

- (a) is by its nature confidential;
- (b) is designated by the disclosing party as confidential; or
- (c) the other party knows or ought to know is confidential.

"Consequential Loss" means any and all indirect or consequential loss howsoever caused or arising, including but not limited to:

- a) loss or damage arising out of any delay, postponement, interruption or loss of production, any inability to produce, deliver or process any product or substance;
- b) loss or damage incurred or liquidated or pre-estimated damages of any kind whatsoever borne or payable, under any contract for the sale,

- exchange, transportation, processing, storage or other disposal of any product or substance;
- c) losses associated with business interruption including the cost of overheads incurred during business interruption;
- d) loss of bargain, contract, expectation or opportunity;
- e) any other loss or anticipated loss or damage whatsoever in the nature of or consequential upon any of the foregoing;

"Contractor Personnel" means directors, officers, sub-contractors, agents, representatives and employees of the Contractor involved in performing the Services and supplying the Goods.

"Defective Goods" means any Goods which do not comply with the Specifications, are not of Merchantable Quality or are not Fit for Purpose.

"Delivery Location" means the location for the delivery of Goods as specified in the Purchase Order

"Delivery" means delivery of the Goods by the Contractor to the Point of Delivery.

"Delivery Date" means the schedule for the delivery of goods as specified in the Purchase Order,

"Document" includes correspondence, notes, memoranda, plans, drawings, designs and all other documents of any type.

"Fit For Purpose" means the Goods are suitable for the Company's purposes, which purposes are known by the Contractor or capable of being reasonably inferred by the Contractor in the circumstances.

"Force Majeure Event" means any event or circumstance or combination of events and circumstances which prevents a party from performing its obligations under this Agreement and which is (are) beyond the reasonable control of or could not have been reasonably avoided (by the taking of any precaution which might reasonably be expected to have been taken) by the relevant party including acts of God, epidemics, floods, fire or adverse weather conditions, acts of public enemy, war or civil disturbances. For the avoidance of doubt, no industrial disruption of any kind, including secondary boycotts shall constitute a Force Majeure Event. The mere shortage of labour, materials or utilities shall not constitute a Force Majeure Event unless caused by circumstances which are themselves Force Majeure Events.

"Goods" means the goods to be supplied to the Buyer by the Seller at set forth in the Purchase order.

"GST" means the goods and services tax required to be paid for the Services and Goods pursuant to the *Excise Tax Act* (Canada) and any

similar tax under provincial legislation, each as amended, restated, replaced, or re-enacted from time to time.

"Government Authority" means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

"Hazardous Goods" means any Goods classified by the Company or by any applicable law as dangerous or hazardous.

"Intellectual Property Rights" means all trademarks, designs, patents and copyrights, whether Canadian or foreign, and all customer listings and other industrial and intellectual property exclusively subsisting in, used in or relating to this Agreement.

"Inventions" includes programs, systems, procedures, processes, formulae and all other inventions or discoveries.

"Key Milestone Date" means the deadline or deadlines which the Contractor has agreed to meet in connection with its obligations under this Agreement.

"Latent Conditions" means physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially from those physical conditions which should reasonably have been anticipated by a skilled, experienced and competent contractor at the date of this Agreement. Notwithstanding the above, where a condition, which would otherwise be a Latent Condition, may be overcome by the application of good engineering practice and procedures, then it will not be a Latent Condition, provided that the extra cost or time in doing so is not unreasonable.

"Liquidated Damages" means payment at the rate set out in Item **Error! Reference source not found.** of Exhibit "B" for the Contractor's failure to meet the Key Milestone Dates.

"Laws" means all laws, statutes, acts, codes, regulations, bylaws, ordinances, rules, restrictions, regulatory policies, common law principles, equitable principles, treaties, conventions (except as provided in section 12.10) and international laws and any and all other lawful requirements from whatever source, of or applicable in any national, federal, state, provincial, municipal, regional or other jurisdiction now or hereafter in force, including any and all directions, orders, judgments, decrees, awards or writs of any court, tribunal or governmental authority having jurisdiction

which are applicable to the Seller and the Buyer or either of them in respect of the transactions contemplated in this Agreement

"Merchantable Quality" means that the Goods are of a level of quality and performance which would be reasonably expected having regard to their Price and description.

"Person" includes an individual, corporation or partnership, trust, joint venture, unincorporated organization, body corporate, personal representative, co-operative association or governmental or regulatory authority, agency, commission or board.

"Price" means the price to be paid by the Company to the Contractor for Goods purchased pursuant to an Agreement;

"Project" means the development and operation of the CST Coal Mine at or near Grande Cache in the Province of Alberta

"Purchase order" means a written or electronic purchase order agreed to by the Company and Contractor for the purchase of Goods and/or Services, which specifies a purchase order number and includes other schedules, exhibits or other documentation attached thereto or incorporated by reference
"Records" has the meaning given in Clause 7.1(e).

"Relevant IP Rights" has the meaning specified in Clause 13.1.

"Contractor Document" means confirmations, invoices and all other documents issued by the Contractor in connection with the sale of Goods to the Contractor;

"Service" means installation, modification, maintenance, repair or other services to be performed by the Contractor in respect of Goods purchased or proposed to be purchased by the Company from the Contractor as may be provided in the Purchase Order, and/or other professional services set out in the Purchase Order, including any ancillary services reasonably necessary for the Company to receive and benefit from the Goods and services purchased

"Term" has the meaning given in Clause 2.1.

"Unit" means one unit or item of the Goods.

2. Term

2.1 Term

"Terms" means the terms and conditions set forth in an Agreement

Entire Agreement

The Agreement constitute the entire agreement between the Company and the Contractor in respect of the purchase of Goods and/or Services specified in a Purchase Order, and supersede any prior or contemporaneous oral or written agreements or communications between the Parties relating to the subject matter thereof.

Contractor Documents

The Parties anticipate that Goods may from time to time be delivered by the Contractor to the Company pursuant to Contractor Documents and that such Contractor Documents may contain terms or conditions that are different from, or in addition to, the Terms (the "Proposed Terms"). Unless otherwise provided herein or as may be agreed in writing by the Company and the Contractor no Proposed Terms in the Seller's order acknowledgment or invoice forms or in any other Contractor Documents that are inconsistent with the Terms shall be of any force or effect; and (b) the Company expressly rejects all Proposed Terms contained in any Contractor Document, regardless when the Contractor Document containing Proposed Terms is received by the Company.

2.2 Nature of Relationship

- (a) The parties expressly acknowledge and agree that:
- (i) the relationship between the Company and the Contractor is that of a principal (in the case of the Company) and independent contractor (in the case of the Contractor);
 - (ii) the Contractor retains full responsibility for its acts and omissions under this Agreement;
 - (iii) nothing expressed or implied in this Agreement may be deemed or treated by the parties or by any third party as creating the relationship of partnership, employer and employee, or joint venture between the parties;
 - (iv) Contractor Personnel are and are intended to be and remain sub-contractors, agents or employees (as the case may be) of the Contractor and not of the Company and the Contractor retains full responsibility for the acts and omissions, and the

employment, of the Contractor Personnel; and

- (v) nothing in this Agreement constitutes either party as the agent or legal representative of the other party or creates any fiduciary relationship between the parties.
- (b) Neither party may:
 - (i) bind or commit or purport to bind or commit the other party in any way; or
 - (ii) pledge the credit of the other party for any purpose.

3. Provision of Services

3.1 Application of this Clause

This Clause **Error! Reference source not found.** shall apply if the Contractor is required to provide the Services to the Company

3.2 Services

The Company engages the Contractor, and the Contractor agrees, to provide the Services during the Term on the terms of this Agreement.

3.3 Ordering Services

- (a) If the Company requires the Contractor to provide the Services, prior to the date on which the Services are required, it will provide the Contractor with a written Order.
- (b) The Contractor must inform the Company in writing within three (3) Business Days of the receipt of an Order if it is unable to perform the Services set out in that Order.
- (c) The Company is under no obligation to order any Services during the Term and the Contractor acknowledges that the Company makes no representation or warranty that the Company will place any Orders for the Services.
- (d) Each Order shall be deemed to be an offer from the Company to have the Contractor provide the Services specified in such Order which, if accepted by the Contractor, shall be subject to the terms of this Agreement. The Contractor may accept the Order by promptly signing such Order and returning such signed Order to the Company. If the Contractor commences provision of the Services specified in such Order to the Company, in whole or in part, the Contractor will be deemed to have accepted such Order.

3.4 Completion of Services

- (a) The Services shall not be deemed completed until the Company has accepted the Services in writing. Any

acceptance by the Company shall in no way prejudice its rights and remedies hereunder.

- (b) When the Contractor has finished providing the Services it shall provide written notice to the Company within one (1) Business Day of completion.
- (c) Within ten (10) Business Days of receipt of the Contractor's written notice contemplated by Clause 3.4(b), the Company will advise the Contractor of any errors, defaults or omissions in the provision of any or all of the Services.
- (d) In the event the Company advises the Contractor of any error, default or omission in accordance with Clause 3.4(c), the Contractor shall promptly re-supply any or all of those Services at no additional cost to the Company.

3.5 Variation of Services

The Company may, at any time during the Term, instruct the Contractor to alter, amend, omit, add to or vary any of the Services by the issuance of a written change order to the Contractor. The Contractor must carry out such change order, which shall be incorporated into this Agreement.

3.6 Support Services

The Company must during the Term provide the Contractor with the Support Services on the basis

4. Supply of Goods

4.1 Application of this Clause

This Clause 4 shall apply if the Contractor is required to supply the Goods to the Company

4.2 Goods

The Company engages the Contractor, and the Contractor agrees, to provide the Goods during the Term on the terms of this Agreement. "Goods" include any machinery, plant, equipment, merchandise, apparatus, goods, materials or products provided to CST by the Supplier as set forth in the Purchase Order.

4.3 Ordering Goods

- (a) If the Company requires the Contractor to supply Goods, prior to the date on which the Goods are required, it will provide the Contractor with a written Order.
- (b) The Contractor must inform the Company in writing within three (3) Business Days of receipt of an Order if it is unable to supply the Goods set out in that Order.

- (c) The Company is under no obligation to order any Goods during the Term and the Contractor acknowledges that the Company makes no representation or warranty that the Company will place any Orders for the Goods.

- (d) Each Order shall be deemed to be an offer from the Company to have the Contractor supply the Goods specified in such Order which, if accepted by the Contractor, shall be subject to the terms of this Agreement. The Contractor may accept the Order by promptly signing such Order and returning such signed Order to the Company. If the Contractor commences supply of the Goods specified in such Order to the Company, in whole or in part, the Contractor will be deemed to have accepted such Order.

(e) Purchase of Goods

A Purchase Order may be placed by the Company either (a) orally and followed by a written or electronic Purchase Order; or (b) by delivery of a written or electronic Purchase Order. The quantity of Goods to be purchased under the Purchase Order, the delivery requirements specific to the Delivery Location (including days of week and times of day that deliveries will be accepted and packaging and delivery system requirements), the Delivery Schedule and shipping instructions and directions applicable to shipments to the Delivery Location and any other specifications for the Goods, as applicable, shall be as set out in the Purchase Order. No Purchase Order and/or any addition, waiver, alteration or modification thereto shall be valid unless made in writing and signed by authorized representative of each Party specifically referencing the relevant Purchase Order. The Contractor may request changes to the Purchase Order, by written notice to the Company, in response to which the Company may issue a changed Purchase Order to be signed by authorized representative

Of each Party. If the Company is unable to accept the requested changes, the Company will cancel the Purchase Order without any cost or liability

Price

- (f) The Price to be paid for Goods and the Compensation to be paid for Services by the Company to the Contractor shall be as set forth in the Purchase Order. The Price and Compensation

shall remain in effect regardless of any changes in currency rates, revenue Laws, treasury regulations or tariffs, increases in the appraisal of the value of the Goods or Services by customs authorities of any country or other variables, unless otherwise provided in the Purchase Order. Such Prices and Compensation are inclusive of: (a) all charges for packaging, packing, insurance, equipment, materials or tools used in the delivery of the Goods and/or Services, as applicable; and (b) the cost of any miscellaneous services of any kind which are commonly provided with the Goods and any miscellaneous items of any kind which are commonly used or supplied in the performance (and in conjunction with) the Services.

4.4 New and Varied Goods

- (a) If either party identifies an additional product of benefit to the Company and supplied by the Contractor, the Company may request from the Contractor a quotation for the price of the additional product.
- (b) The Contractor must provide to the Company in relation to any additional product:
 - (i) a price quotation, as referred to in Clause 4.4(a), no greater than current retail market rates; and
 - (ii) any other information requested by the Company.
- (c) If the Company agrees to purchase from the Contractor any additional products, the Contractor will supply to the Company such additional products as the Goods on the terms and conditions of this Agreement.
- (d) The Company may, at any time during the Term, instruct the Contractor to alter, amend, omit, add to or vary any of the Goods by the issuance of a written change order to the Contractor. The Contractor must carry out such change order, which shall be incorporated into this Agreement.

4.5 Completion of Delivery

- (a) The Delivery shall not be deemed completed until the Company has accepted the Goods in writing. Any acceptance by the Company shall in no

way prejudice its rights and remedies hereunder.

- (b) When the Contractor has completed the Delivery of the Goods in accordance with each Order it will provide written notice to the Company within one (1) Business Day of Delivery.
- (c) Within ten (10) Business Days of receipt of the Contractor's written notice contemplated by Clause 4.5(b), the Company must advise the Contractor of:
 - (i) any errors, defaults or omissions in relation to the supply of any or all of the Goods;
 - (ii) any delay in Delivery; or
 - (iii) any inadequate or inappropriate packaging or labelling of any or all of the Goods.

Delivery

The Contractor shall deliver the Goods specified in an Agreement in accordance with the Delivery Schedule provided therein. Unless otherwise specified in the applicable Purchase Order, the Contractor shall be solely responsible for transporting and delivering the Goods to the Delivery Location. The Contractor shall comply with all requirements under applicable Laws relating to the production, handling, loading, transporting, delivery and unloading of the Goods in and to each jurisdiction in which the Goods are transported and delivered and shall comply with such other requirements as may be specified in the Purchase Order.

(d) Excess Goods

If the Contractor delivers Goods that is more than the quantity specified in the applicable Purchase Order or otherwise do not conform to the specifications set out in the applicable Purchase Order, the Company may return any excess quantities or non-conforming Goods to the Contractor at the Contractor's sole risk and expense.

Change Order

The Company may modify a Purchase Order so long as such modification is given in advance of shipment of Goods or the performance of Services by the issuance of a Change Order. If modifications contained in the Change Order can reasonably be expected to necessitate an adjustment to the Price, Compensation or Delivery Schedule, as the case may be, the Parties shall endeavour to reach an equitable adjustment as soon as practicable so as not to adversely

affect the Price, Compensation or Delivery Schedule. Unless otherwise agreed, the amount of any Price adjustment shall be equal to the amount of the increase or decrease in the costs incurred by the Contractor directly resulting from the Change Order. The Contractor will not implement and will not be compensated for any change that adversely affects the Company, increases safety or security risks, increases the Price, Compensation or causes delays in Delivery Schedule, or will result in a breach of applicable Law, without the Company's prior written consent specifically agreeing to such impact.

- (e) In the event the Company advises the Contractor of any circumstance as provided for in Clauses 4.5(c) or 4.8, the Company may, at its election and without limiting its other rights and remedies under this Agreement or applicable laws:
- (i) require the Contractor to re-supply at no additional cost to the Company any or all of those Goods that have been identified by the Company under Clauses 4.5(c) or 4.8;
 - (ii) require the Contractor to provide a credit to the value of any or all of the relevant Goods the subject of the Order; or
 - (iii) purchase any alternative or equivalent goods to the Goods from alternative Contractors.

4.6 No Delivery

In the event the Contractor fails to deliver the Goods to the Company as specified in an Order, the Company may:

- (a) cancel the relevant Order and purchase any alternative or equivalent goods to the Goods from alternative Contractors at the Contractor's sole cost and expense; or
- (b) direct the Contractor to deliver the Goods the subject of the Order by any method of delivery nominated by the Company.

4.7 Inspection and testing

- (a) The Contractor must, prior to Delivery, inspect the Goods for any defects or errors and, upon the request of the Company, provide written confirmation of such inspections.
- (b) The Company may, prior to acceptance of the Goods, conduct random

Goods testing to ensure compliance with the Specifications.

- (c) In the event any Defective Goods are detected, the costs of the random Goods testing conducted by the Company shall be paid by the Contractor.

4.8 Defective Goods

In the event any Goods are found to be Defective Goods in accordance with Clause 4.7, the Company may at any time during the Term seek relief under Clause 4.5(c).

4.9 Title and Risk

- (a) Title to and risk in the Goods shall pass from the Contractor to the Company on Delivery.
- (b) The Contractor shall execute and deliver such bills of sale and other documents as the Company may require to give effect to the Delivery.

5. Contractor's Obligations

5.1 Supply of Goods and Services

The Contractor must during the Term:

- (a) on five (5) days' written notice from the Company, provide all information, access and assistance necessary for all inspections, examinations or audits by the Company relating to the Goods and the Services including but not limited to access to the Contractor's facilities and plants relating to the provision of the Goods and Services;
- (b) supply at its own cost all labour, supervision, equipment, staff, materials and supplies necessary for the provision of the Goods and the Services;
- (c) in respect of the Contractor's equipment which is used in providing the Goods and the Services:
 - (i) ensure that the equipment is maintained in a safe, serviceable and clean condition;
 - (ii) maintain complete and accurate records of equipment maintenance schedules, breakdowns and repairs; and
 - (iii) ensure that all of the equipment and the materials provided or used in connection with the Goods and the Services conform to generally accepted industry standards.
- (d) supply Goods of Merchantable Quality, which are Fit For Purpose and in respect of which good and marketable title to the Goods passes to the Company in accordance with Clause 4.9;

- (e) proceed with the provision of Services and supply of Goods with due expedition and without delay, except where any suspension is due to the actions of the Company under Clause 15 or a Force Majeure Event;
- (f) ensure that it and the Contractor Personnel have no conflict of interest preventing them from properly and confidentially performing the Services or supplying the Goods in accordance with this Agreement. Should a conflict of interest or a potential conflict of interest exist or arise, the Contractor must immediately advise the Company;
- (g) use its best efforts on behalf of the Company to identify the best practice in the use of any Goods, including the use of any alternative goods, which may lead to cost savings for the Company;
- (h) clearly label any Hazardous Goods as such and comply with, and implement the requirements of, any applicable laws and the Company in relation to the Delivery of Hazardous Goods; and
- (i) at its own cost, provide the Company, or its nominated transporter, with an emergency supply of any of the Goods within twelve (12) hours of the Company's request. Such emergency supplies must be provided by the Contractor to the Company seven (7) days a week, twenty four (24) hours a day, including public holidays.

5.2 Compliance with Laws and Policies

The Contractor must during the Term:

- (a) acquire and maintain all Authorisations necessary for the provision of the Services and the supply of the Goods and provide copies to the Company on request;
- (b) ensure that the Goods and the Services comply with all applicable laws of Alberta and laws of Canada applicable therein, regulations, by-laws and standing orders relating to the provision of the Services and supply of the Goods including all relevant occupational health and safety legislation;
- (c) ensure that the Goods and the Services comply with all applicable professional requirements and codes of practice relating to the provision of the Goods and the Services;
- (d) comply with all applicable policies, procedures and standards of the Company

notified to the Contractor in writing from time to time;

- (e) observe all reasonable and applicable directions made by or on behalf of the Company in relation to the provision of the Services and supply of the Goods;
- (f) not give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the Services or the Goods or enter into any business arrangement with any personnel of the Company, without the Company's prior written approval;
- (g) participate in and comply with quality assurance and quality improvement programmes established by the Company; and
- (h) conduct itself on Site in an orderly and tidy manner and repair any damage caused by the Contractor when on Site.

5.3 Standards

The Contractor must during the Term:

- (a) provide the Services in accordance with the Services Performance Criteria;
- (b) use only appropriately qualified Contractor Personnel to perform the Services; and
- (c) be responsible for the management, direction and control of the Contractor Personnel.

5.4 Reporting

(a) The Contractor must, during the Term, give the Company such reports on such matters relevant to this Agreement as the Company reasonably requires from time to time.

(b) The Contractor shall provide the Company with written notice if, at any time during the performance of this Agreement, the Contractor believes it will be unable to provide the Goods and Services in accordance with the time-periods specified in any Order. The Contractor shall specify the reasons for such delay. Such written notice shall be promptly provided to the Company, but no later than five (5) calendar days after the Contractor becomes aware of such delay.

(c) During the Term the Company may seek to implement various electronic information transfers and/or trading facilities including but not limited to remote monitoring of product stock levels, electronic transmission of Orders and remittances and electronic receipt of

Orders acknowledgements and invoices ("**Facilities**"). If the Company implements any of the Facilities the Contractor must modify or adapt its own systems in order to comply with the Company's requirements, and such modification or adaptation will be at the Contractor's sole cost.

5.5 Packaging

- (a) The Contractor must ensure that any Goods supplied under this Agreement are properly packaged and labelled in accordance with any applicable laws, regulations, by-laws and standing orders relating to the packaging and labelling of the Goods including all relevant occupational health and safety legislation.
- (b) The Contractor must, prior to Delivery, inspect the packaging of the Goods and, upon the request of the Company, provide written confirmation of such inspections.
- (c) The Goods shall be packaged in accordance with all applicable Laws and any Buyer specifications set forth in an Agreement and in such manner as may be required for the protection of the Goods from damage or destruction by any hazard prior to acceptance of the Goods by the Buyer. All packages shall include labels and tags containing adequate and accurate information with respect to use, safety and treatment of the Goods. The Seller shall ensure that the Goods are properly contained, secured, labelled, safety marked, documented and inspected at all times during the course of handling,

loading, transporting, delivery and unloading so as to comply with all applicable Laws. No separate or additional charges for containers, crating, boxing, bundling or other packaging materials shall be payable unless specified in the Purchase Order. The Contractor shall be responsible for any Goods that is damaged during shipment or requires additional handling because packaging and/or labelling did not comply with the required specifications. A packing list showing the Purchase Order number and release number if applicable shall be included with each shipment. The

shipping label on the shipping container shall be marked to show the Purchaser Order number of all Purchase Orders contained within the container and each interior container shall be marked to show the Purchase Order number.

(d)

5.6 Latent Conditions

- (a) If, in course of providing the Services under this Agreement, the Contractor becomes aware of a Latent Condition, the Contractor must immediately, and where possible before the Latent Condition is disturbed, provide written notice to the Company. If required by the Company, the Contractor will provide to the Company a report in writing in relation to the additional work necessary to deal with the Latent Condition.
- (b) Delay caused by a Latent Condition may justify an extension of the completion date(s) set out in any applicable Order, in the Company's reasonable opinion, if a Latent Condition causes the Contractor to:
 - (i) carry out additional work; and
 - (ii) incur extra cost,which the Contractor could not reasonably have anticipated at the time of entering into this Agreement.

6. Personnel

6.1 Competent Personnel

The Contractor represents and warrants that the Contractor Personnel, and any replacement or additional Contractor Personnel, will be competent and have the necessary knowledge, skills and experience to perform the Services. For the avoidance of doubt, the Company shall in no way be liable for any payments required to be made to any of Contractor Personnel who become redundant as a result of termination of this Agreement.

6.2 Personnel to be Approved

The Contractor is to only use those Contractor Personnel approved in advance by the Company. If requested to do so by the Company, the Contractor will provide a list of the Contractor Personnel.

6.3 Notice to Cease

The Company may at any time by notice in writing to the Contractor require that the Contractor cease to permit any Contractor Personnel to be engaged in performing the Services for the Company. Upon receipt of such notice, the Contractor will, as soon as practicable, replace such Contractor Personnel

with alternative personnel as may be acceptable to the Company.

6.4 Work Permits

The Contractor must obtain for the Contractor Personnel all necessary work permits and visas and comply with any other immigration requirements required by the laws of Canada (whether national, provincial or local), including, where required to do so by such laws and regulations, registration of the Contractor Personnel with the applicable Government Authority.

6.5 Local Labour

The Contractor must employ local employees and use local subcontractors to the maximum extent that it is practical for the efficient performance of the Services and supply of the Goods.

6.6 Workers' Compensation

The Contractor shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the applicable workers' compensation laws of each jurisdiction in which the Contractor Personnel are engaged or employed and upon failure to do so the Company in addition to any other rights reserved to it under this Agreement or any applicable laws, may retain the amount of such assessment or contribution from any payment then due or payable to the Contractor under this Agreement.

7. Payments

7.1 Payments

- (a) During the Term, the Company will pay the Contractor the Compensation in consideration for the supply of the Goods and/or performance of the Services in the manner specified in the Purchase Order.
- (b) The Company has no obligation to pay the Contractor any Compensation unless the Company receives a correctly rendered invoice from the Contractor in accordance with the Purchase Order for the relevant period:
 - (i) in which the specified Compensation is correctly calculated and due for payment including any applicable GST;
 - (ii) which references this Agreement by number, the applicable Order number, specifies the Contractor's GST registration number, has relevant, complete and accurate supporting information including, where relevant, accurate and complete time sheets from each of

the Contractor Personnel, and gives full details of the Goods and Services provided to the Company by the Contractor in the relevant period in the form specified by the Company.

- (c) The Company will notify the Contractor of any defect in any invoice within ten (10) days of receipt.
- (d) Where only part of the Compensation is disputed by the Company, the Company will pay the undisputed portion of that Compensation in accordance with Clause 7.1(a).
- (e) The Contractor shall keep books, accounts, records and documentation (the "**Records**") for the purpose of verifying the proper performance by the Contractor of its obligations under this Agreement. The Company may audit all such Records for the purpose of verifying the proper performance by the Contractor of its obligations under this Agreement. The Company's audit rights shall exist at all times during the Term and for thirty six (36) months from the last day of the calendar year in which the Delivery and/or Services are completed.
- (f) The Contractor must refund to the Company any overpayment disclosed by any audit contemplated by Clause 7.1(e) within thirty (30) calendar days of such finding.

7.2 Security

- (a) The Contractor shall provide the Company with any Security in accordance with the Agreement to ensure the due and proper performance of the Contractor's obligations under this Agreement.
- (b) The Security must be in cash or an unconditional undertaking in a form specified by the Company and lodged with the Company within seven (7) days following execution of this Agreement.
- (c) Whenever the Company becomes entitled to exercise a right or remedy under this Agreement, the Company may have recourse to all or part of the Security without derogating from any other of its rights and remedies under this Agreement or applicable laws.

7.3 Rise and Fall

all the Compensation payable by the Contractor under this Agreement shall be fixed for the Term.

7.4 Payment for Support Services

The Company will invoice the Contractor for the Support Services. Any amount invoiced to the Contractor under this Clause will be considered as a debt due and payable by the Contractor to the Company and may be set-off by the Company.

7.5 Set off, Hold Backs and Back Charges

The Company may withhold any sum due to the Contractor under this Agreement and apply such sum against the Contractor's obligations to third parties connected with this Agreement or as a set off against the Contractor's indebtedness to the Company either under this Agreement or under any other agreement between the parties.

7.6 Liens

(a) All Goods shall be free and clear of liens and other encumbrances. The Contractor shall promptly pay all debts incurred by the Contractor for labour, services, equipment, materials and supplies used in the performance of this Agreement. The Contractor shall forthwith remove any lien which may be placed against the Goods. The Contractor shall not be entitled to receive payment from the Company at any time any lien or encumbrance is registered against the Goods.

(b) If any lien or encumbrance is not removed within ten (10) days after the Contractor receives notice of such lien or encumbrance from the Company, the Company may take steps to remove or satisfy such lien or encumbrance and the Contractor shall immediately reimburse the Company for all costs and expenses incurred by the Company (including legal fees on a solicitor, client basis) removing or satisfying such lien or encumbrance.

8. Taxes

8.1 Taxes

Except as provided in this Agreement, the Contractor shall be responsible for, shall bear and shall pay any and all taxes other than GST of any Government Authority and other charges imposed upon, arising out of or related to the Contractor's property, operations or provision of the Goods and Services under this Agreement, which are levied and assessed at any time, and whether under laws and regulations in effect at the effective date of this Agreement or enacted subsequent thereto by any Government Authority, and indemnify the Company from all claims and liabilities arising from the

Contractor's failure to do so. Such taxes and other charges shall include, by way of illustration and not limitation, income taxes, social security taxes, social insurance charges, property taxes, tariffs, fees, levies, charges and duties whatsoever, including any penalties or interest related thereto.

8.2 GST

The Compensation shall be exclusive of any GST applicable to the provision of the Goods and Services. The Company shall pay to the Contractor or otherwise remit such GST as required by applicable laws. The Contractor agrees to provide the Company with any documents that the Company may require to claim all input tax credits/reimbursements in respect of such GST paid to the Contractor.

9. Force majeure

9.1 Notice

If a party is prevented from or impeded in performing any of its obligations under this Agreement due to a Force Majeure Event, it must promptly give notice to the other party stating the circumstances constituting the Force Majeure Event and the extent and likely duration of those circumstances and specifying the measures proposed to be adopted to remedy or abate the Force Majeure Event

9.2 Suspension

If a party gives a notice under Clause 9.1, the relevant obligations of such party under this Agreement will be suspended for as long as the Force Majeure Event may continue.

9.3 No Liability

Neither party will be liable to the other for any failure or delay in the performance of its obligations under this Agreement which is due to a Force Majeure Event.

9.4 Affected Party's Obligations

(a) If there is a Force Majeure Event, the affected party must:

- (i) make every reasonable effort to minimise the effects of the Force Majeure Event; and
- (ii) promptly resume performance of its obligations under this Agreement as soon as reasonably possible after cessation of the Force Majeure Event.

(b) If the affected party is the Contractor, the Contractor must, in addition to the obligations under Clause 9.4(a), report regularly to the Company in relation to the status of the Force Majeure Event, the progress of the action plan and the

performance of the alternative service provider or providers.

9.5 Alternative Contractor

The Company may appoint an alternative contractor in connection with provision of any of the Goods and the Services for the duration of any Force Majeure Event at its own cost and expense.

10. Representations and Warranties

10.1 Contractor's Representations and Warranties

The Contractor represents and warrants to the Company that:

- (a) the Contractor has full power and authority to enter into and give effect to this Agreement and to perform its obligations under this Agreement and all steps required to authorise the execution and performance of this Agreement by the Contractor have been properly taken;
- (b) this Agreement constitutes its legal, valid and binding obligations, and is enforceable against it in accordance with its terms;
- (c) on the Commencement Date, all Authorisations required in connection with the performance by it of this Agreement are in full force and effect, and there has been no material default by it in the performance of any of the terms and conditions of any of those Authorisations;
- (d) it is and will be capable of supplying the Services and the Goods as ordered by the Company in accordance with this Agreement;
- (e) all work undertaken by the Contractor under this Agreement will be undertaken with due care, skill and diligence and in a proper and workmanlike manner, and the Goods will be supplied in accordance with the Specifications and the Services will be performed in accordance with the Services Performance Criteria;
- (f) the Goods will be of Merchantable Quality, Fit For Purpose, free from any defects and the Company's use of them will not infringe upon, or contribute to, the infringement of any Intellectual Property Rights;
- (g) it will obtain, at its cost, and assign to the Company the benefit of all usual trade warranties and any other warranties requested by the Company;
- (h) it has good and marketable title in the Goods;

- (i) it will deliver the Goods free and clear of any defects in title or any claims, liens, restrictions, reservations, security interests, charges or encumbrances whatsoever or howsoever thereon;
- (j) it will not supply to the Company any alternative or equivalent goods to the Goods without the Company's prior written approval (in the Company's absolute discretion); and
- (k) the Price of each Unit is inclusive of all costs of production and supply to the Point of Delivery, including any fees, levies, taxes and duties of Government Authority.

10.2 Survival of Warranties

The representations and warranties given in Clause 10.1 survive the termination or expiry of this Agreement.

11. Indemnities

11.1 Contractor's Indemnity

The Contractor is liable for and shall hold harmless and indemnify the Company, its directors, officers, employees and agents against any and all liabilities, losses, claims, damages, costs, expenses or proceedings whatsoever arising out of or in the course of or in connection with the provision of the Services or the Goods including but not limited to:

- (a) any breach of this Agreement;
- (b) any damage to property, real or personal, including any infringement of the Intellectual Property Rights of any third party;
- (c) any injury to persons (including economic loss), including injury resulting in death;
- (d) the application of any applicable law, including any workers compensation law, which deems the Company an employer of the Contractor Personnel or otherwise makes the Company liable for any loss arising out of the death, illness or injury to any of the Contractor Personnel which would, but for that applicable law, be the responsibility of the Contractor;
- (e) any wages and salaries due and payable by the Contractor to the Contractor Personnel;
- (f) any acts or omissions of the Contractor Personnel;
- (g) any Defective Goods or non-conformance with the Specifications; and
- (h) any amounts payable and due to the Contractor's manufacturers and Contractors,

except to the extent that such liabilities, losses, claims, damages, costs, expenses or proceedings are due or contributed to by any gross negligent act or wilful omission of the Company or of any director, officer, employee or agent of the Company.

11.2 Limitation on Liability

Neither party will be liable to the other party for any consequential, immaterial, special, contingent, penal, indirect or punitive loss, damage, cost or expense whatsoever.

11.3 Survival of Obligations

The indemnity in Clause 11.1 and the limitations in Clause 11.2 survive the termination or expiry of this Agreement.

12. Insurance

12.1 Insurance

The Contractor must for the Term maintain all insurance policies that a reasonably prudent contractor would maintain, including, but not limited to, the insurances as listed in Items **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.** and **Error! Reference source not found.** of Exhibit "B". Upon written request by the Company, the Contractor shall ensure the Company is named as an additional insured under the comprehensive general liability insurance and the insurance covering loss or damage to the Goods required herein and shall ensure that such insurance policies contain a waiver of subrogation in favour of the Company.

12.2 Evidence

Upon written request by the Company, the Contractor must produce documentary evidence that the insurances required by this Clause are current and in force.

12.3 Notice

The Contractor must notify the Company:

- (a) if it becomes aware that any of the conditions to the validity of the insurances are not, or no longer, satisfied;
 - (b) if it has made or is making a claim under any of the insurances which may materially affect the coverage provided by the insurances; or
 - (c) if it becomes aware that the insurance coverage has been, or is about to be, cancelled.
-

13. Intellectual Property

13.1 Ownership

All Intellectual Property Rights in all Documents, Materials and Inventions generated, created or acquired (excluding use under licence

from a third party) by the Contractor or Contractor Personnel during the performance of the Services (the "**Relevant IP Rights**") shall be the Company's exclusive property absolutely for its own use and benefit in any manner the Company sees fit without any further fee payable to or consent required from the Contractor.

13.2 Proprietary Marks

The Contractor shall not use or display the Company's name, trademarks, logos or any other of the Company's proprietary marks or designations for any purpose or in any medium (including internet or other means of electronic or wireless communications) without the Company's prior written consent.

13.3 Assignment

The Contractor will assign or transfer and will make sure that the Contractor Personnel assign or transfer all Relevant IP Rights to the Company, and do all such things necessary in order to give effect to Clause 13.1 including to procure the registration of any relevant Intellectual Property Rights in the name of the Company. The Contractor hereby grants an irrevocable power of attorney in favour of the Company to undertake any acts in the name of the Contractor to procure the registration of such Relevant IP Rights in the name of the Company. The power of attorney granted herein is irrevocable, is a power coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is hereby acknowledged), shall indefinitely survive and shall extend to the successors and permitted assigns of the Contractor.

14. Confidentiality

14.1 Confidentiality

Subject to Clause 14.2, no party may, and each party must use its best efforts to ensure that none of its directors, officers, employees or agents:

- (a) disclose any Confidential Information to any third party;
- (b) use any Confidential Information for any purpose other than the performance of this Agreement; or
- (c) make any public announcement or issue any press release regarding this Agreement or the transactions contemplated hereby.

14.2 Permitted Disclosure

A party may disclose, and may permit its directors, officers, employees and agents to disclose, any Confidential Information:

- (a) with the prior written consent of the other party to the form and substance of the disclosure;
 - (b) if it is required to do so by law or by any recognised stock exchange on which its shares or the shares of or any of its related entities are listed;
 - (c) if the Confidential Information has come within the public domain, other than by a breach of this Clause 14 by a party, or has come within the possession of that party otherwise than in the course of dealing with the parties as contemplated by this Agreement;
 - (d) to the party's professional advisers; and
 - (e) if it required to do so by a Government Authority,
- provided that in the case of disclosure under Clauses 14.2(b) and (e), the disclosing party must first provide written notice of the form and content of the proposed disclosure to the other party and provided in the case of Clause 14.2(d) that a party shall be responsible for any breach by its professional advisors.

14.3 Return of Confidential Information

- (a) Upon the termination of this Agreement, either party may demand the other party to return all material documents and other things comprising the Confidential Information that it has disclosed to the other party and any copies thereof,
- (b) A party must comply with a demand under Clause 14.3(a) as soon as practicable after receipt of the demand.

14.4 Privacy

The Contractor agrees that:

- (a) it, and it will ensure that its subcontractors, agents and representatives, will not disclose personal information to the Company regarding any of the Contractor Personnel without first obtaining that person's consent to the disclosure, and by submitting such personal information to the Company or causing any such person to seek access to any site of the Company, it has warranted and represented to the Company that it has complied with this Clause; and
- (b) it will indemnify the Company and the directors, officers, employees, agents and representatives of the Company against any liability, loss, damage, cost, expense, claim, suit, action, demand, proceedings, penalty and fine of any

nature suffered, imposed or incurred by the Company as a result of the Contractor's breach of this Clause.

14.5 Survival of Obligations

The parties' obligations under this Clause 14 survive termination or expiry of this Agreement.

15. Suspension of Supply

- (a) If the Company considers that the suspension of the whole or part of the supply of the Goods or the Services is necessary during the Term then the Company may direct the Contractor to suspend the progress of the whole or part of the supply of the Goods and the Services for such time as the Company thinks fit.
- (b) The Contractor must suspend immediately the whole or any portion of the supply of the Goods and the Services upon receipt of written notice by the Company to do so. The Contractor must do all things possible to reduce or mitigate any expenses or costs resulting from the suspension.
- (c) The Contractor must during the suspension contemplated this Clause properly protect and secure the Goods to the satisfaction of the Company.
- (d) Any suspension contemplated by this Clause 15 will not terminate this Agreement.
- (e) The Company may direct the Contractor to recommence work on the whole or on the relevant part of the supply of the Goods or the Services.
- (f) Each party will bear its own costs incurred in relation to the suspension of the supply of the Goods and/or Services.

16. Liquidated Damages

The Contractor acknowledges and agrees that:

- (a) it has represented to the Company that it has the capability to perform the Services (and provide the Goods) in accordance with the Key Milestone Dates and otherwise in accordance with the requirements set out in this Agreement;
- (b) the performance of the Services (and provision of the Goods) in accordance with the Key Milestone Dates is critical to the Company's operations;
- (c) subject to Clause 16(d), it will pay to the Company the Liquidated Damages for every day that the commencement or performance of the relevant Services (or provision of Goods) extends beyond the Key Milestone Dates until the day that the

relevant Services (or provision of Goods) are completed to the Company's reasonable satisfaction;

- (d) where a Key Milestone Date is not achieved by the Contractor by reason of an event of Force Majeure or as a result of the act or direction of the Company, the affected Key Milestone Date will be extended by the Company, acting reasonably;
- (e) the parties have agreed to specify rates of Liquidated Damages to be payable to avoid the difficulty of proving the precise loss suffered by the Company if the Contractor fails to meet the Key Milestone Dates;
- (f) the rates of Liquidated Damages are not a penalty and represent a reasonable, fair, genuine, and accurate pre-estimate of the loss that will be suffered by the Company arising out of the delay and resulting inefficiencies should the Key Milestone Dates not be met;
- (g) the specified rates of Liquidated Damages are separate and cumulative for each Key Milestone Date; and
- (h) if the Company's entitlement to, and the Contractor's liability for, Liquidated Damages under Subclause 16(c) is or becomes void, voidable or unenforceable for any reason or there is no amount specified in this Agreement, then the Company will be entitled to recover from the Contractor, and the Contractor will indemnify the Company against, any and all costs, losses, damages and liabilities incurred or suffered by the Company arising out of or in connection with the Contractor's failure to perform the Services (or supply the Goods) by the Key Milestone Dates.

17. Termination

17.1 Termination by the Company

The Company may, on 14 days written notice to the Contractor terminate, in whole or in part, this Agreement for any reason. The Contractor shall not have any claim for damages, losses, expenses or costs, including loss of anticipated profits, loss of use and consequential loss, on account of or arising out of the termination of this Agreement by the Company pursuant to this Clause. Further, the termination of this Agreement shall be without prejudice to the Company's rights and remedies accrued prior to termination.

The Company also may cancel a Purchase Order or the delivery of some of the Goods or Services referred to therein at any time prior to shipment/performance for its sole convenience. Upon written notice of such cancellation, the Contractor shall use all reasonable efforts to mitigate all costs or expenses incurred up to the date of cancellation, including immediately stop all production and shipment of any Goods and any Services referred to in the notice of cancellation and shall cause any applicable Contractor Personnel to do the same. The Contractor shall invoice (in accordance with the billing method set out herein) and the Company shall pay for the cost of Goods and/or Services delivered prior to the date of any such cancellation. The receipt of such payment from the Company is the Contractor's sole and exclusive remedy in respect of the Contractor cancelling the Purchase Order in accordance with this section. No other payment of any kind whatsoever shall be due from the Company to the Contractor including, without limitation, payment for: (a) any loss of anticipated profits; (b) any direct, indirect, special, consequential or other forms of damages; (c) expenses of the Contractor or Contractor Personnel incurred after receipt of notice of cancellation, or for costs incurred by the Contractor or Contractor Personnel that the Contractor or Contractor Personnel could reasonably have avoided; (d) losses on other contracts, agreements or arrangements however arising; (e) any other costs, loss or expenses of the Contractor or Contractor Personnel from any other sources whatsoever, whether arising directly or indirectly under or from an Agreement.

17.2 Termination for Force Majeure Event

Either party may terminate this Agreement immediately by notice to the other party if a Force Majeure Event continues for at least three (3) consecutive months.

17.3 Consequences of Termination

If this Agreement is terminated:

- (a) the Company shall be relieved of all further obligations under this Agreement except for the payment of the balance outstanding for the Goods satisfactorily Delivered and Services satisfactorily completed as of the effective date of termination, as determined by the Company.
- (b) the Contractor must complete the supply of any of the Goods or the Services which it has started but not completed as

at the date of termination and provided that such Goods and the Services have been performed to the satisfaction of the Company, the Company must pay for these Goods and Services in accordance with the terms of this Agreement;

- (c) the Company may remove from the Contractor's possession all Goods, materials, supplies and equipment for which the Company has paid without hindrance by the Contractor or anyone claiming through the Contractor; and
- (d) the Contractor must comply with any other action reasonably requested by the Company.

Remedies

17.4 Without prejudice to any other right or remedy which the Company may have, if any Goods and Services are not provided in accordance with, or the Contractor fails to comply with any of the provisions of this Agreement, the Company may avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and Services have been accepted by the Company:

- (a) terminate this Agreement or the provision of any of the Goods and Services under any Order;
- (b) reject all or some of the Goods and Services or the deliverables related thereto;
- (c) provide the Contractor with the opportunity at the Contractor's sole expense either to remedy any deficiency in the Goods and Services or to provide any other necessary goods or services to ensure that the terms of this Agreement are fulfilled;
- (d) refuse to accept any further Goods and Services without any liability to the Contractor;
- (e) take any action at the Contractor's sole expense to make the Goods and Services comply with this Agreement;
- (f) claim such damages as may have been sustained by the Company in connection with the Contractor's breach of this Agreement;
- (g) withhold any sum due to the Contractor under this Agreement and apply such sum against the Contractor's obligations to third parties connected with this Agreement on the Contractor's account, or as a set-off against the Contractor's indebtedness to the Company

either under this Agreement or under any other contract; or

- (h) any other remedy available to the Company under any applicable laws.

18. Assignment and Subcontracting

18.1 Assignment or Subcontracting by the Contractor

The Contractor must not:

- (a) assign, novate or otherwise transfer any of its rights or obligations under this Agreement; or
- (b) sub-contract the performance of all or any of its obligations under this Agreement,

without the prior written consent of the Company, which consent will not be unreasonably withheld by the Company. If the Company is reasonably satisfied that the proposed assignee, novatee, transferee or subcontractor is a respectable and solvent person, capable of performing the Contractor's obligations under this Agreement, then the parties and the proposed assignee, novatee, transferee or subcontractor shall enter into a deed of covenant agreeing to be bound by the terms of this Agreement.

18.2 Assignment by the Company

The Company may assign, novate or otherwise transfer any of its rights or obligations under this Agreement at any time without the consent of the Contractor.

19. General

19.1 Notices

- (a) Notices under this Agreement must be in writing and delivered personally, by pre-paid letter, by facsimile or by electronic mail addressed to the relevant party as set out in the cover page of this Agreement.
- (b) Notice shall be deemed given on the date of personal delivery, within three (3) days of mailing, on receipt by the sender's facsimile machine of notification of transmission or upon receipt of a successful delivery notification of an e-mail.

19.2 Governing Law and Jurisdiction

This Agreement shall be governed and construed according to the laws of Alberta and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Alberta and the courts of appeal therefrom

19.3 Amendments

No amendments to this Agreement shall be valid unless they are in writing and executed by each party.

19.4 Waiver

No waiver by a party of one breach of any obligation contained or implied in this Agreement operates as a waiver of another breach of the same or of any other obligation contained or implied in this Agreement.

19.5 Indemnities

(a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

(b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

19.6 Severability

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal, the remainder of this Agreement continues to have full force and effect.

19.7 Paramountcy

If there is any inconsistency between this Agreement and any Orders issued by the Company to the Contractor for time to time, this Agreement shall prevail to the extent of such inconsistency.

20. Dispute Resolution

20.1 Notice of Dispute

If any dispute between Contractor and the Company:

- (a) arises out of or in connection with this Agreement; or
- (b) arises in connection with a claim at law or in equity in connection with this Agreement;

then either party may give a notice of dispute to the other party, in writing, identifying and providing details of the dispute. The parties shall make reasonable efforts to resolve the dispute by amicable negotiation. If the parties are unable to resolve the dispute within thirty (30) days following delivery of the notice of dispute, then the dispute shall be decided in accordance with Clause 19.2.

20.2 Conduct Pending Resolution

Pending the resolution of any Dispute:

- (a) the parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in

accordance with the resolution or decision; and

- (b) subject to the rights of set-off contained herein, the Company shall continue to pay the undisputed portion of the Compensation to the Contractor in accordance with the provisions of this Agreement.

20.3 Survive Termination

This Clause 20 shall survive the termination of this Agreement

