

PURCHASE ORDER AND SERVICE ORDER

TERMS AND CONDITIONS

CONTENTS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context suggests otherwise:

Agreement means the agreement between the Principal and the Supplier consisting of the Purchase Order and these Purchase Order Terms and Conditions;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Perth, Western Australia;

Claim means action, suit, proceeding or demand of any kind and any actual or alleged entitlement or right of any kind arising out of the Agreement or a breach of it, or arising at common law, in equity or under any Law;

Commencement Date means the commencement date specified in the Purchase Order or if no commencement date is specified, the date the Supplier commences the supply of the Goods or performance of the Services;

Confidential Information means the Agreement and any information (in whatever form), object, document, data, programs, techniques, systems or processes (whether copy or original) of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Principal or its Related Bodies Corporate and which:

- (a) is disclosed to the Supplier or its Personnel by or on behalf of the Principal;
- (b) is generated by the Supplier or its Personnel in performing its obligations under the Agreement; or
- (c) otherwise comes to the knowledge of the Supplier or its Personnel;

Consequential Loss means any indirect loss of any kind whatsoever and includes loss of sales, loss of profit, loss of revenue, loss of goodwill or business opportunities and damage to reputation, even if a party knew or should have known of the possibility for such loss and damage;

Defects Liability Period means the period specified in the Purchase Order or, if no period is specified then:

- (a) in respect of Goods, the earlier of 12 months from installation and 24 months from the date of delivery of the Goods; and
- (b) in respect of Services, 12 months from the date on which a Service is last performed;

Delivery Date means the delivery date specified on the Purchase Order or such other date agreed between the parties in writing;

Delivery Point means the Site or other place identified in the Purchase Order for delivery of the Goods, or, if the Principal has nominated its carrier in the delivery instructions in the Purchase Order, the Delivery Point is the location where that carrier takes possession of the Goods;

Delivery Terms means the delivery instructions for the Goods specified in the Purchase Order or as otherwise notified to the Supplier by the Principal;

Electronic Trading Facilities means Supplier Relationship Management (SRM) or such electronic trading facilities nominated by the Principal;

Emergency Service has the meaning provided in clause 8.7;

Essential Terms are set out in clause 31.7;

Force Majeure Event means an event beyond a person's reasonable control which by the exercise of reasonable diligence could not have been prevented or reasonably foreseen by that party, including any:

- (a) act of God, earthquake, storm, fire, subsidence, flood, land slide, mud slide, wash-out, explosion or natural disaster;

(b) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or

(c) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbance, but does not include any inability (for any reason whatsoever) to pay or make payment.

Goods means the goods (if any) specified in the Purchase Order (including any part of the goods specified) and any goods provided as incidental to the Services;

Government Agency includes any federal, state, territory or local government, or any ministry, department, court, commission, statutory body, board, agency, instrumentality, political subdivision or similar entity;

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences or other requirements, that are required by or from any Government Agency for the Supplier to perform its obligations under the Agreement or any Service Order;

GST means goods and services tax levied in Australia pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or a similar value added or consumption tax levied or imposed in the relevant jurisdiction;

International Organization means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President of the United States through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in United States Code No. 22;

Invoice means a tax invoice which meets the requirements set out in clause 13;

IP Rights means all intellectual property rights and includes any:

(a) patent, trade mark (whether registered or common law), copyright (including future copyright), moral rights, registered design or other design right and any corresponding property or right under the laws of any jurisdiction;

(b) right under any Law or under the laws of any other jurisdiction to apply for the grant or registration of a patent, trade mark, copyright (including future copyright), moral rights, registered design or other design right and any corresponding property or right; and

(c) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, information (including Confidential Information), data, algorithm or formula;

Law means common law, principles of equity and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws, codes, bylaws and regulations and any other instruments under them);

Liability means liability, loss, damage (of any nature including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), Claim, suit, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown and howsoever arising including under any Law;

Official means any official or employee of any Government Agency; any political party or official thereof; any candidate for political office or any official or employee of any International Organization;

Material Safety Data Sheets means material safety data sheets complying with the *National Code of Practice for the Preparation of Material Safety Data Sheets* [NOHSC:2011(2003)];

Personnel means:

(a) in relation to the Supplier, any of its employees, officers, directors, subcontractors (including its subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Agreement;

(b) in relation to the Principal, any of its employees, officers, directors, agents and representatives; and

(c) in relation to a subcontractor of the Supplier, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Agreement;

Price means the amount payable by the Principal to the Supplier under this Agreement as set out in the Purchase Order and includes all costs and expenses incurred by the Supplier in relation to the Goods (if any) and Services (if any), including any applicable taxes, custom duties or fringe benefits payable in relation to the provision of the Goods (if any) and Services (if any) and whether present, unascertained, contingent or prospective;

Principal means the Newmont entity named on the face of the Purchase Order;

Principal Indemnified Parties means the Principal, the Principal's Related Bodies Corporate, the Principal's Personnel and Personnel of the Principal's Related Bodies Corporate;

Principal's Background IP means any Intellectual Property Rights of the Principal which:

(a) are in existence prior to the Execution Date; and

(b) come into existence after the Execution Date other than in connection with the Agreement;

Principal's Representative means the person appointed as such by the Principal;

Project 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 performance of the Services or the Agreement;

Purchase Order means the purchase order or service order issued by the Principal to the Supplier for an order of Goods and/or Services;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Services means the services or work to be performed by the Supplier as described in the Purchase Order;

Site means the Principal's area of operation specified in the 'Ship To' field in the Purchase Order or as otherwise specified in the Purchase order;

Site Rules means all rules, regulations, standards, procedures, directives and policies of the Principal which are intended to be of general application to any person at the Site and includes Newmont's Code of Conduct, which is available under the About Us/ Governance and Ethics tab at www.Newmont.com;

Specifications means the specifications and descriptions given in the Purchase Order;

Supplier means the entity named on the face of the Purchase Order;

Supplier's Background IP means any Intellectual Property Rights of the Supplier which:

- (a) are in existence prior to the Execution Date; or
- (b) come into existence after the Execution Date and other than in connection with the Agreement;

Supplier's Representative means the person appointed as such by the Supplier;

Tax means:

- (a) any tax, including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

Term has the meaning given in clause 3.3;

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; or
- (b) any personal injury or death of a person arising out of or caused by the supply or non-supply of the Goods or Services by the Supplier; and

Wilful Misconduct means any act or default by a party under the Agreement known by that party at the time of the act or default, to be wrong in the circumstances, or but intentionally persisted with by that party or persisted with in reckless indifference as to whether it is wrongful or the likely consequences of the act or default.

1.2 In the Agreement, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the words "includes" or "including" does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) a reference to a day, month or year is relevantly to a calendar day, calendar month or calendar year;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (h) a reference to a person or entity includes a natural person, partnership, corporation, trust, association, unincorporated body, authority or other entity and any Government Agency;
- (i) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (j) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- (k) headings and bold type are for convenience only and are not intended to affect interpretation;
- (l) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (m) a reference to a body, other than a party to the Agreement (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 - (iii) is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and

- (a) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement;
- (b) no provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision;
- (c) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (d) unless otherwise stated all monetary amounts are in the currency of Australia.

2. ACTING AS AGENT

If the Principal is Newmont Mining Services Pty Ltd (ACN 008 087 778) then for all purposes related to the formation and performance of the Agreement and irrespective of whether individual communications, correspondence and documentation specify or otherwise reflect such capacity, the Principal will be acting as agent for and on behalf of:

- (a) the owner of the Newmont Tanami Operations: Newmont Tanami Pty Ltd ABN 39 007 688 093; and
 - (b) the joint venture owners of the Newmont Boddington Operations: Newmont Boddington Pty Ltd ABN 32 062 936 547 and Saddleback Investments Pty Ltd ABN 96 134 978 224, and their joint venture manager, Newmont Boddington Gold Pty Ltd ABN 45 101 199 731; and
- its/their respective successors and assigns.

3. FORMATION OF AGREEMENT AND TERM

- 3.1 The Supplier must supply the Goods (if any) and provide the Services (if any) in accordance with the terms of the Agreement and in consideration of the payment of the Price by the Principal.
- 3.2 Nothing in the Agreement places any obligation on the Principal to obtain any minimum of the Goods and/or Services from the Supplier, nor does this Agreement confer upon the Supplier any exclusivity in respect of the supply of Goods or provision of Services.
- 3.3 The Agreement commences on the earlier of:
 - (a) the date that the Supplier acknowledges receipt of the Purchase Order; or
 - (b) the date the Supplier commences the performance of its obligations under the Agreement, and the Agreement terminates on the date that the Supplier completes its obligations under the Agreement, unless extended or terminated earlier in accordance with the Agreement (**Term**).
- 3.4 No amendment or variation of the Agreement is valid or binding unless made in writing and signed by the Principal and Supplier.
- 3.5 The Agreement contains the entire agreement between the Principal and Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Principal and Supplier in this regard, unless the parties have validly executed or validly execute a written agreement or instrument which varies this Agreement or provides otherwise.
- 3.6 No terms or conditions submitted by the Supplier (including in any form of tender, quote, purchase order, correspondence, order acknowledgement, acceptance or other instrument), that are in addition to or inconsistent with those contained in the Agreement will bind the Principal unless agreed to in writing by the Principal and Supplier.
- 3.7 If the Supplier requires changes to the Agreement, including these Purchase Order and Service Order Terms and Conditions, it must notify the Principal in writing prior to accepting the Purchase Order and the Principal may either accept the changes by issuing an amended Purchase Order or cancel the Purchase Order in part or in its entirety.

4. ELECTRONIC SWIPE CARD ENTRY

- 4.1 All Personnel entering Site are required to comply with the Principal's site entry requirements.
- 4.2 Personnel who have received approval to enter site will receive a swipe card (**Swipe Card**) and Personnel who do not have a Swipe Card are not authorised to enter site.
- 4.3 The Supplier must ensure that all Personnel tag in and tag out using the Principal's electronic swipe card system at the start and end of their shift.
- 4.4 If Personnel fail to bring their Swipe Card, the Principal may refuse access to Site. The Principal is not liable for any travel costs or other costs associated with the Supplier Personnel being unable to attend work on Site.
- 4.5 The Principal may use electronic swipe card access records (**Swipe Card Records**) to audit against amounts charged by the Supplier in respect to hours worked.
- 4.6 If the Swipe Card Records do not reconcile with the timesheets evidencing the amounts charged by the Supplier, the Swipe Card Records will be the definitive evidence of the actual hours worked. Any additional amounts charged that are not evidenced by Swipe Card Records will be treated as an overpayment (**Overpayment**) to the Supplier.
- 4.7 Any Overpayment will be treated as debt due and payable to the Principal and may be deducted from monies owing to the Supplier in addition to any other remedies the Principal has under the Contract.

5. SUPPLIER AS TRUSTEE

- 5.1** For the purposes of this clause, every reference to "Trustee" is a reference to each person who has entered into the Agreement on behalf of a trust. Every reference to "Trust" is a reference to each trust to which that person is the trustee.
- 5.2** Each Trustee enters into the Agreement both in its personal capacity and as trustee of the Trust.
- 5.3** The Trustee warrants to the Principal that:
- (a) it has full, complete, valid and unfettered authority and power to enter into and comply with the Agreement, and that entering into the Agreement by the Trustee is in the due and proper administration of the Trust, and is for the benefit of the beneficiaries of the Trust and does not constitute a conflict of interest or duty or breach of trust;
 - (b) the performance by the Trustee of its obligations under the Agreement as Supplier has been duly authorised in accordance with the terms of the Trust;
 - (c) it has a right to be fully indemnified, and no limitation or restriction exists in respect of the Trustee's rights to be indemnified, from the Trust assets in respect of the obligations incurred by the Trustee under the Agreement as Supplier and the Trust fund is sufficient to satisfy that right of indemnity and all other indemnified obligations of the Trustee; and
 - (d) it is the sole trustee of the Trust and no action has been taken or proposed to remove it as Trustee or to terminate the Trust.
- 5.4** The Trustee must not so far as it is able to do so, without the prior written consent of the Principal permit any of the following:
- (a) any variation, replacement or limitation of the terms of the deed constituting the Trust;
 - (b) its removal as Trustee or the appointment of another Trustee as Trustee of the Trust whether or not in conjunction with the Trustee; or
 - (c) any distribution, transfer or setting aside of any part of the income or capital of the Trust.

6. ACCURACY OF INFORMATION

- 6.1** In respect of the provision of Goods and or Services, the Supplier warrants and represents that it:
- (a) has informed itself of the nature of the work and Goods, materials, plant and equipment necessary for the supply of the Services and/or Goods, and of the conditions, facilities and services at the Site, bearing in mind that the Site is an operational mine site which, in the normal course of business, contains certain physical conditions which are, by their inherent nature, dangerous, including blasting operations, open pits, high walls, heavy machinery and equipment and chemical and industrial hazards (**Inherent Dangers**);
 - (b) is fully aware of and understands the risks associated with its performance of the Services and supply of Goods at the Site with the Inherent Dangers;
 - (c) has informed itself as to the availability of labour and accommodation required and all labour conditions and conditions of employment relevant to the performance of the Services and supply of Goods both on and off the Site;
 - (d) has informed itself of and understands the conditions and requirements imposed by Law that it must comply with (including such conditions and requirements imposed pursuant to relevant mining and environmental Law);
 - (e) has informed itself of the environmental conditions and constraints at the Site; and
 - (f) carefully and fully examined, before entering into this Agreement, all the documents which form part of this Agreement.
- 6.2** The Supplier's warranties and representations above continue for the duration of the Term.
- 6.3** The Principal is not liable for any Liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Principal.
- 6.4** Subject to the Agreement, the Supplier assumes all risks associated with the performance by the Supplier of the Services and the supply of the Goods and the presence of its Personnel on and off the Site.

7. ELECTRONIC TRADING FACILITIES

- 7.1** Unless otherwise agreed by the Principal, the Supplier must implement the Electronic Trading Facilities by no later than forty-five (45) Business Days after the Commencement Date, such Electronic Trading Facilities to include the following functionalities:
- (a) electronic transmission of Purchase Orders;
 - (b) Purchase Order acknowledgment (including Purchase Order variations and acceptance or rejection);
 - (c) Purchase Order status advice;
 - (d) advanced shipping notice (including agreement number, tracking (consignment) number, shipping date, quantity shipped, Delivery Terms, Delivery Date, Price and units of purchase);
 - (e) electronic invoicing; and
 - (f) remittance advice.

- 7.2 When the Principal implements any change to or updates versions of the Electronic Trading Facilities, the Supplier must promptly align its systems accordingly, at no additional cost to the Principal.
- 8. ORDERING GOODS AND SERVICES**
- 8.1 The Principal will order and accept the Goods and/or Services in accordance with and subject to this Agreement.
- 8.2 If and when the Principal wishes to obtain Goods and/or Services from the Supplier, the Principal must raise and send to the Supplier a Purchase Order using the Electronic Trading Facilities, such Purchase Order is to include the quantity, Delivery Terms and Delivery Date in respect of the Goods (if any) and a description of the Services (if any), provided that it is the responsibility of the Supplier to ensure that it obtains all necessary information from the Principal in order to ensure that the Supplier fulfils the Purchase Order (including the requirement that the Goods and/or Services meet the Specifications).
- 8.3 The Supplier must confirm receipt of the Purchase Order with the Principal within one (1) Business Day.
- 8.4 The Supplier must supply the Goods to the Principal at the Delivery Point on or by the Delivery Date in accordance with the Agreement and the Purchase Order.
- 8.5 The Principal may cancel or suspend a Purchase Order in whole or in part by giving written notice to the Supplier indicating the date of cancellation or suspension, following which the Supplier must cease the manufacture and supply of the Goods and/or provision of the Services (as applicable) and all other work related to the supply of the Goods and/or Services and must take all action in relation to the cancellation or suspension that the Principal may reasonably require. In no event will the Principal be obligated to pay any bonus, damage or other Claim asserted by the Supplier arising from or relating to the cancellation except as provided for in clause 22.
- 8.6 If, during the Term, either party identifies goods that may be or are being sourced from the Supplier which are not included as Goods in the Agreement (**Other Goods**) the parties may vary the Agreement to include the Other Goods. Upon such variation the rights and obligations of the parties in respect of the supply of the Goods under the Agreement apply mutatis mutandis to the Other Goods, including, for the avoidance of doubt, the application of relevant rise and fall pricing adjustments, unless otherwise agreed between the Principal and the Supplier.
- 8.7 The Supplier must provide to the Principal an emergency service, pursuant to which the Supplier must prepare the Goods for dispatch at the Supplier's premises to a nominated transporter of the Principal within three (3) hours of notification by the Principal (**Emergency Service**), such Emergency Service must be available seven (7) days a week (including Saturdays, Sundays and public holidays) and twenty-four (24) hours a day.
- 8.8 The Supplier must within seven (7) days of the Commencement Date supply to the Principal the name and telephone number of the Supplier's contact for the Emergency Service.
- 8.9 All costs associated with providing the Emergency Service will be borne by the Supplier.
- 9. DELIVERY, PACKAGING AND DELAY**
- 9.1 The Supplier must immediately notify the Principal of the date and time of each dispatch of Goods and include the Purchase Order, the quality and description of the Goods dispatched and the expected date and time of arrival at the Delivery Point.
- 9.2 Delivery of the Goods is complete when the Goods have been delivered to the Delivery Point nominated in the applicable Purchase Order and received by the Principal or its agent as evidenced by the receipt signed by the Principal or its agent.
- 9.3 The Supplier must ensure that each line item of Goods specified in the Purchase Order is delivered on the Delivery Date applicable to that line item or, with the Principal's prior written consent, on a date prior to the Delivery Date, during the opening hours of the Site or the location which is the Delivery Point.
- 9.4 All Goods must be packed, marked and transported as specified in the Delivery Terms, as required by Law and in accordance with any requirements pertaining to the transportation of dangerous goods (where applicable) and industry best practice.
- 9.5 The Supplier must ensure that the Goods are adequately protected from damage and deterioration during shipment and short term storage having due regard to the conditions and environment at the Site or other location which is the Delivery Point and areas through which the Goods will traverse. In packaging, marking and transporting the Goods, the Supplier must abide by applicable international and national Laws regarding the transportation of goods and the protection of safety, health and the environment.
- 9.6 All hazardous Goods must be clearly labelled. If the Goods include or constitute dangerous, hazardous or toxic items, the Supplier must include Material Safety Data Sheets and clearly mark or label the Goods with appropriate information, provide necessary shipping certification and otherwise comply with all applicable Laws and requirements of the Principal. Costs arising from failure of the

Supplier to follow proper packaging, marking and transporting procedures and instructions as specified in the Purchase Order will be for the account of the Supplier.

- 9.7** Each delivery of Goods must be accompanied by a delivery docket from the Supplier providing the:
- (a) Purchase Order;
 - (b) line item number;
 - (c) name of the Supplier as the shipper;
 - (d) name of the Principal as the consignee;
 - (e) date of dispatch;
 - (f) quantity and the unit measure of the Goods shipped;
 - (g) quantity of Goods on back order; and
 - (h) consignment note number and freight carrier.
- 9.8** Where the Supplier fails to deliver the delivery docket pursuant to clause 9.7, the Principal's count will be accepted as final and conclusive on shipments.
- 9.9** If the Supplier believes that the Goods may not be delivered by the Delivery Date, the Supplier must immediately give written notice to the Principal's Representative as soon as it forms, or ought to have formed, that belief.
- 9.10** The Supplier must after consultation with the Principal, and without limiting the Principal's rights under clause 9.12, take such remedial steps as are necessary to expedite and accelerate the delivery of the Goods so that the Goods are delivered on or as close to the original Delivery Date as reasonably practicable.
- 9.11** The Supplier will be responsible for all costs and expenses arising from the remediation of the delay, except to the extent that the Principal or its Personnel contribute to any such delay.
- 9.12** If the Goods are not delivered by the Delivery Date then without limiting any other right or remedy the Principal may have, the Principal may:
- (a) refuse to take any subsequent attempted delivery of the Goods;
 - (b) cause the Supplier to use another form of delivery (for example Air Express) nominated by the Principal at the Supplier's expense;
 - (c) cause the Supplier to obtain such Goods from a third party;
 - (d) cancel the relevant Purchase Order and obtain substitute Goods from a third party supplier and recover from the Supplier any costs and expenses reasonably incurred by the Principal in obtaining such substitute Goods;
 - (e) withhold payment and claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date provided that the Supplier will have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Principal's failure to comply with its obligations under this Agreement; or
 - (f) terminate the Agreement with immediate effect.
- 9.13** If the Principal fails to accept delivery of the Goods at the Delivery Point on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this Agreement:
- (a) the Goods will be deemed to have been delivered to the Delivery Point on the Delivery Date within the opening hours of the Site which is the Delivery Point; and
 - (b) the Supplier must store the Goods until delivery takes place, and charge the Principal for all related costs and expenses (including insurance).
- 9.14** All Goods received in excess of Purchase Order requirements will be subject to return for credit at the Supplier's cost.

10. INSPECTION AND TESTING

- 10.1** The Principal or the Principal's Representative will have:
- (a) full and free access at all reasonable times to inspect and discuss all work related to the supply of the Goods and/or provision of Services, including Goods in any stage of engineering, manufacture or installation at any premises, factories or other places or businesses of the Supplier or the subcontractors of, or suppliers to, the Supplier. The Supplier must make this a condition of any work which it subcontracts and of its supply arrangements; and
 - (b) the right to reject work performed or being performed that does not conform to the requirements of the Agreement whereupon the work rejected will be re-performed by the Supplier at no additional cost to the Principal.
- 10.2** Any inspection or lack of inspection under clause 10.1 will not relieve the Supplier of any obligations and the failure to reject any work performed or being performed does not constitute approval of that work.
- 10.3** All costs to rectify the Goods and/or Services must be borne by the Supplier. The costs of any incidental testing must be borne by the Principal or paid by the Principal to the Supplier unless:
- (a) the test shows that the Goods and/or Services are not in accordance with the Agreement; or

- (b) the test is consequent upon a failure of the Supplier to comply with a requirement of the Agreement.

Where such costs are not to be borne by the Principal, they must be borne by the Supplier or will be recoverable from the Supplier as a debt due and payable.

- 10.4** Acceptance of Goods by the Principal is subject to inspection and testing after delivery and unpacking and, if any of the Goods are to be installed or incorporated into plant or premises, subject to inspection and testing following such installation or incorporation and under operating conditions.
- 10.5** In every case inspection and testing must be carried out to the satisfaction of the Principal and the Principal will be the sole judge of whether Goods supplied are in accordance with the Purchase Order and are to the standard, quality and finish required.
- 10.6** If the Supplier delivers the wrong quality or quantity of Goods or delivers Goods that do not conform with the Specifications or description set out in the Purchase Order, the Principal may without prejudice to its other rights:
 - (a) accept or reject in part or whole the Goods so delivered; or
 - (b) if possible, convert the Goods into a condition acceptable to the Principal, at the Supplier's expense unless the changed quality, quantity, specification or description has been agreed to in writing by the Principal.

11. RISK AND ACCEPTANCE

- 11.1** Risk in the Goods will pass to the Principal once the Goods have been delivered to the Principal in accordance with clause 9.
- 11.2** Title in the Goods will pass to the Principal upon delivery as set out in clause 9 unless the Principal has already paid for the Goods prior to delivery in which case title will pass upon payment.
- 11.3** The Principal is not deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 11.4** If any Services Performed or Goods delivered to the Principal do not partially or wholly comply with the Specifications, clause 14 (as to manufacture and quality) or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Principal may have, the Principal may reject those Services and/or Goods and:
 - (a) require the Supplier to repair or replace the rejected Services and/or Goods at the Supplier's risk and expense within five (5) Business Days of being requested to do so or within a different timeframe agreed to by the parties;
 - (b) require the Supplier to repay the price of the rejected Services and/or Goods in full (whether or not the Principal has previously required the Supplier to repair or replace the rejected Goods); and
 - (c) withhold payment and claim damages for any other costs, expenses or losses resulting from the Supplier's performance of Services and/or delivery of Goods that are not in conformity with the terms of the Agreement.
- 11.5** The Principal's rights and remedies under clause 11 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to merchantable quality and fitness for purpose by the relevant sale of good or commercial Laws.
- 11.6** The terms of the Agreement will apply to any repaired or replacement Goods supplied by the Supplier.
- 11.7** If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 12(b), the Principal may, without affecting its rights under clause 11.4, obtain substitute goods from a third party Supplier, or have the rejected Goods repaired by a third party, and the Supplier must reimburse the Principal for the costs it incurs in doing so.

12. SUPPLIER'S PERSONNEL

- 12.1** The Supplier must provide prior written notice to the Principal's Representative of the full names and qualifications of all of the Personnel who will, or are likely to provide any Services on the Site or who may require access to the Site.
- 12.2** The Principal's Representative may reasonably object to the provision of the Services by, or refuse entry to the Site to any of the Personnel and may issue a notice of objection to the Supplier.
- 12.3** On receipt of a notice of objection from the Principal's Representative, the Supplier must, as soon as practicable, remove or cause to be removed the relevant Personnel from the Site and from the performance of the Services and must replace such Personnel within twenty-four (24) hours or as soon as practicable.
- 12.4** The Supplier's obligations will not be diminished, reduced or otherwise affected and the Supplier will not be entitled to any compensation because any Personnel is refused entry to the Site, required to leave the Site or removed from the performance of the Services.
- 12.5** Unless otherwise stated, the hours of work will not exceed fourteen (14) hours per day (including travel time) and fourteen (14) consecutive days without a twenty four (24) hour mandatory break.

13. PRICE AND PAYMENT

- 13.1** All amounts specified in the Agreement as being payable by either party to the other are exclusive of any GST.
- 13.2** In respect of Services, the Principal is not liable to make any payment to the Supplier unless:
- (a) the Supplier electronically submits a draft progress claim (using the format in Schedule A) accompanied by the relevant supporting documentation:
 - (i) within seven (7) days upon the completion of the Services; or
 - (ii) within (7) days of the end of the preceding month; and
 - (b) when the Principal's Representative has agreed to the amount of the draft progress claim in writing, the Supplier submits the agreed progress claim and a corresponding Invoice to the Principal as required under this clause 13.
- 13.3** If the Supplier receives the Purchase Order through the Electronic Trading Facilities, the Supplier must submit Invoices related to that Purchase Order electronically through the Electronic Trading Facilities. In all other cases, the Supplier must submit an Invoice to the Principal by email to: invoices@newmont.com.
- 13.4** The Invoice must be in a form acceptable to the Principal and must contain the following information:
- (a) the Purchase Order number;
 - (b) the Purchase Order item and quantity of the Goods that were supplied (in relation to the supply of Goods)
 - (c) a description of the Goods and or Services that were supplied;
 - (d) the Supplier's ABN;
 - (e) Principal approved Timesheets;
 - (f) any further information stipulated in any applicable GST legislation or by the Principal; and
 - (g) such other information requested by the Principal.
- 13.5** Subject to clause 13.7, payment will be made to the Supplier within forty-five (45) days of receipt of an Accepted Invoice, provided that if the Principal pays the Invoice within ten (10) days of receipt of an Accepted Invoice, the Principal will be entitled to a 2% (excluding GST) discount off the Price.
- 13.6** For the purpose of this clause 13, an Invoice will be an "Accepted Invoice" if:
- (a) where the Invoice relates to the supply of any Goods:
 - (i) the Goods have been delivered to the Delivery Point; and
 - (ii) the Goods have been receipted by the Principal; and
 - (b) where the Invoice relates to the supply of any Services:
 - (i) the Services have been provided to the Principal; and
 - (ii) the Principal accepts the progress claim referred to in clause 13.2; and
 - (c) where the Invoice relates to the supply of both Goods and Services, where clauses 13.6(a) and 13.6(b) have both been complied with.
- 13.7** If the Principal disputes any amount claimed by the Supplier to be due and payable, the Principal will notify the Supplier in writing specifying the reasons for dispute. Payment of the disputed amount will be withheld until settlement of the dispute.
- 13.8** Payments made are not evidence of acceptance of the Goods or Services or an admission of liability or evidence that the Services have been executed satisfactorily but are to be a payment on account only.
- 13.9** The Supplier acknowledges that taxation, prescribed payments and similar Laws may from time to time require that the Principal pay part of the Price to the Australian Tax Office to the credit of the Supplier unless the Supplier at the time of submitting the Invoice provides the Principal with written evidence of exemptions from such payments.
- 13.10** The Principal may deduct any debt or monies due from the Supplier to the Principal in relation to the Agreement from any monies due or becoming due to the Supplier under the Agreement. Nothing in this clause will affect the right of the Principal to recover from the Supplier the whole of such debt, money or claim, or any balance that remains thereof, after the deductions or set-off.
- 13.11** Unless stated otherwise, all of the rates, price mark-ups and other things that comprise the Price are fixed and are not subject to adjustment for rise and fall in the cost of labour, materials or any other items or for fluctuations in currency exchange rates.
- 13.12** Any changes to the Supplier's name or banking information must be advised in writing on company letterhead and emailed to MDM@newmont.com and supported by a copy of a blank deposit slip or cheque slip.
- ### **14. TAXES**
- 14.1** The Supplier is responsible (and shall not seek reimbursement from the Principal) for all Taxes and duties that any relevant taxation authority may assess or levy against the Supplier in respect of Goods or Services provided in accordance with this Agreement.
- 14.2** The Principal will withhold and pay to the relevant taxation authority any tax due on account of this Agreement based on written representations provided by the Supplier and accepted by the Principal.

The Principal will not reimburse the Supplier but will provide tax receipts for any withheld taxes upon request.

- 14.3** All amounts payable under this Agreement are inclusive of all Taxes except GST (unless indicated otherwise), which shall, if properly due, be payable by the Principal in addition to the Purchase Price, at the prevailing rate in the relevant jurisdiction.
- 14.4** The Supplier must provide the Principal with a valid tax invoice as required by A New Tax System (Goods and Services Tax) Act 1999 (Cth) or other document required by the relevant taxation authority for the Principal to obtain any tax reimbursement, credit, abatement or refund of any GST in the relevant jurisdiction which shall be provided to the Principal before the amount due is payable, and such documentation at all times shall specify the amount of GST charged for the supply of Goods or Services and the rate at which it is charged.
- 14.5** If an adjustment event occurs pursuant to the operation of any clause in this Agreement, the result of which gives rise to a GST adjustment, the party aware of the adjustment event must notify the other party immediately and the party which made the taxable supply shall issue a valid adjustment note to the recipient party to enable the additional GST payment to be made or GST refund claimed.
- 14.6** If either the Supplier or the Principal is entitled to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with any supply of Goods or Services under this Agreement, any reimbursement or indemnity payment will be limited to the total amount paid or payable less any input tax credit to which an entity (or the representative member of the GST group of which the relevant entity is a member) is entitled in respect of that liability or cost.
- 14.7** The Supplier shall apply at its own cost (where applicable) for any fuel tax credits for which it is, or may become, entitled to claim from the relevant taxation authorities. To the extent that any fuel taxes were passed onto the Principal by the Supplier, the Supplier shall reimburse the Principal to the extent of any credit or refund received by the Supplier.
- 14.8** Unless indicated otherwise, the Supplier shall be responsible for importation of the Goods into Australia and for paying all customs and import duties, taxes, levies and charges. The Principal shall not reimburse the Supplier for any customs and import duties or import GST incurred by the Supplier in respect of importation of the Goods or the Supplier's equipment.
- 14.9** Subject to agreement by both parties the Goods may be supplied to the Principal on Delivered Duty Paid (**DDP**) Incoterms 2010. Where the goods are supplied on DDP Incoterms 2010, the Supplier shall be responsible for the importation of the Goods into Australia and for paying all customs and import duties and import GST.
- 14.10** Where goods are provided on DDP Incoterms 2010, the Supplier shall itemise the expected customs and import duty in the price and take all reasonable steps to apply for any concessions and/or exemptions from customs and import duties and/or credits for import GST it may incur.
- 14.11** Where requested by the Principal, the Supplier shall provide evidence of applications to reduce customs and import duties and/or import GST and evidence of payment of customs duties on the particular Goods. Where customs and import duties are itemised in the price, and not paid, or are refunded to the Supplier, the Supplier shall immediately reimburse the Principal for the full amount of such duty, refund or credit.

15. WARRANTIES AND OBLIGATIONS

- 15.1** In consideration of the payment of the Price by the Principal, the Supplier must, and must ensure that its Personnel:
- (a) perform the Services and deliver the Goods as set out in the Agreement and the Purchase Order with due expedition in accordance with the terms of the Agreement;
 - (b) at its, or their cost, obtain all Government Authorisations required to perform the Agreement;
 - (c) strictly comply with all Laws, Standards and Government Authorisations;
 - (d) has read and understood and will strictly comply with the Principal's Standards and Procedures and directions;
 - (e) have read and understood Newmont's Supplier Code of Conduct, which is available under the About Us/ Governance and Ethics tabs at www.Newmont.com and, when the Supplier is engaged in activities on Site or on the Principal's behalf, the Supplier shall abide by the principles expressed in Newmont's Code of Conduct, to the extent applicable;
 - (f) furnish all equipment, facilities, Personnel, supervision and expertise necessary for the satisfactory performance of the Services and the delivery of the Goods in accordance with the Agreement;
 - (g) strictly comply with the Principal's pre-start requirements (if any);
 - (h) co-operate with the Principal, the Principal's Personnel, contractors and other persons providing goods or services to the Principal and immediately bring to the attention of the Principal any conflict which may arise in relation to the supply of Goods and Services between the Supplier and any other person;

- (i) make available to the Principal all relevant records, documents and Personnel as the Principal requests to allow the Principal to carry out a full investigation of any safety, environmental or other incident connected with the Agreement;
 - (j) only supply Goods that strictly comply with the Specifications unless otherwise agreed by the Principal in writing; and
 - (k) if requested by the Principal, obtain, at its cost, all usual manufacturer's or trade warranties and, on delivery of the Goods or completion of the Services, assign the benefit of these warranties to the Principal and provide copies of the warranties to the Principal.
- 15.2** The Supplier is not entitled to any Compensation, whether by way of damages, costs, losses, or expenses otherwise incurred as a result of complying with clause 15.1(g).
- 15.3** The Supplier warrants as follows in relation to each part of the Goods that the Goods will:
- (a) strictly comply with the Specifications, all applicable standards published by Standards Australia and all applicable Laws;
 - (b) be of merchantable quality within the meaning of the relevant sale of goods and commercial Laws and fit for the purpose for which they have been held out by the Supplier;
 - (c) be manufactured to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
 - (d) be free from defects in design, material and workmanship and will remain so for the duration of the Defects Liability Period;
 - (e) be in a good working order and condition in the manner for which they were intended;
 - (f) have a life expectancy commensurate with that which would be expected of the same or similar goods provided by a competent and reputable supplier;
 - (g) be free of defect, failure or malfunction and will remain so for the duration of the Defects Liability Period;
 - (h) be new unless specified otherwise; and
 - (i) be delivered in accordance with the Delivery Terms and the Agreement.
- 15.4** The Supplier warrants as follows in relation to each part of the Goods:
- (a) the Supplier has good, marketable title to such Goods and the Principal will receive title to the Goods free from all liens, restrictions, reservations, security interests, charges and encumbrances of any kind; and
 - (b) the Supplier will (if necessary) obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Principal and on delivery of the Goods assign the benefit of these warranties to the Principal and provide copies of the warranties to the Principal.
- 15.5** The Supplier warrants that it, and the Supplier's Personnel, will at all times during the Term, be suitably skilled, qualified, trained and experienced and will:
- (a) at all times exercise a standard of skill, diligence and care which would reasonably be expected from a skilled and experienced service provider in the performance of comparable work;
 - (b) perform their obligations in a safe, efficient and competent manner and in accordance with applicable Laws, Site Rules (if on Site), reasonable directions of the Principal, Government Authorisations and this Agreement;
 - (c) commission, operate and maintain all plant and equipment used at the Site in a safe working condition and at a standard prescribed by the Principal, or if no standard is prescribed, at a standard not less than the minimum original equipment manufacturer specifications;
 - (d) ensure that any items or works designed under the Agreement are fit for their intended purpose;
 - (e) perform the Services to a standard equal to or better than any applicable standards set by Standards Australia;
 - (f) not install or otherwise cause to exist on any of the Principal's computer systems (hardware or software components) any computer instructions, circuitry, or other technological means whose purpose or effect is to disrupt, damage, or interfere with any of the Principal's computer facilities or equipment, or to provide unauthorized access to the Principal's computer facilities or equipment, including without limitation any code containing viruses, Trojan horses, worms, traps, back doors, disabling devices or like destructive code or code that self-replicates.
- 15.6** Time is of the essence with regards to the provision of the Services and delivery of the Goods.

16. NATURE OF CONTRACT

- 16.1** The parties acknowledge and agree that the relationship between the Principal and the Supplier is that of principal and independent contractor.
- 16.2** Without limiting the foregoing, the Supplier and its Personnel must not be treated as an agent, employee, or servant of the Principal for the purpose of any Laws including workers' compensation and employment related taxes.
- 16.3** The Supplier does not have any right or authority to represent the Principal in any matter whatsoever, including entering into agreements on behalf of the Principal or otherwise binding the Principal in any manner.

17. SUPPLIER'S REPRESENTATIVE

- 17.1 Each party must appoint and provide to the other the respective name and contact details of the Principal's Representative and Supplier's Representative, and such person must:
- (a) have the power to bind the appointer in all matters pertaining to this Agreement;
 - (b) provide technical advice; and
 - (c) discuss and resolve contract issues.
- 17.2 Any communication given or document signed by a party's representative will be deemed to have been given by and binding upon the relevant appointer.

18. NON-CONFORMANCE AND DEFECTS

- 18.1 Upon receipt of a notice from the Principal of any defect or deficiency in the Goods and/or Services during the Defects Liability Period, the Supplier must re-perform the Services or redesign, repair or replace the affected items or parts at no cost to the Principal prior to the expiration of the reasonable time period specified in the notice.
- 18.2 If the Supplier fails to make the necessary redesign, repair or replacement to the Goods and/or Services within the time specified, the Principal may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and expense and any costs and expenses incurred by the Principal will be recoverable from the Supplier as a debt due and payable. If the Principal determines that the defect is likely to cause disruption to its operations, the Principal may rectify or cause the defect to be rectified under this clause, without prior notice to the Supplier.
- 18.3 The work of rectification in clause 18.1 will be subject to a separate and additional Defects Liability Period, commencing from the notification by the Principal of acceptance of the work of rectification and extending for the Defects Liability Period.

19. INSURANCE

- 19.1 The Supplier must at its own cost and expense procure and maintain, and must ensure that its subcontractors procure and maintain at their own cost, with an insurer or insurers acceptable to the Principal, for so long as it is supplying or causing to be supplied the Goods appropriate insurances, including:
- (a) **Public and Product Liability Insurance** covering Liability relating to death, bodily injury, loss of property and damage to property in the amount of ten million dollars (\$10,000,000) in respect of any one incident and a fifty thousand dollars (\$50,000) maximum deductible, such Public and Product Liability Insurance:
 - (i) must either include the Insured Parties as a named insured on the insurance policy (and then contain a waiver of the insurer's rights of subrogation to the Insured Parties' rights) or note the Insured Parties' interest on the policy;
 - (ii) must not exclude Supplier's Personnel where the claimant under the policy is the Insured Parties;
 - (iii) must (where applicable) provide an indemnity for activities underground or for the use of unregistered mobile plant and equipment; and
 - (iv) insure the Goods against loss or damage during manufacture, pending delivery and in transit to the Delivery Point and until accepted by the Insured Parties.
 - (b) **Workers' Compensation Insurance** covering Liability, including any applicable workers' compensation legislation, to the Supplier's Personnel engaged in doing anything for the purpose of the performance of the Services (if any) or executing the Supplier's rights or obligations under the Agreement, at the statutory limit required in the jurisdiction where the Services are performed and employer's liability of not less than ten million dollars (\$10,000,000);
 - (c) **Motor Vehicle Insurance** covering all motor vehicles, if any, operated by the Supplier in connection with the Services including Comprehensive Motor Vehicle Insurance and Compulsory Third Party Bodily Injury Indemnity Insurance of five million dollars (\$5,000,000) in respect of any one incident and a fifty thousand dollars (\$50,000) maximum deductible;
 - (d) **Professional Indemnity Insurance** where applicable, covering any Liability arising out of, or related to the Supplier giving the Principal professional advice or opinion in connection with the Services (if any), such cover to be for an amount not less than five million dollars (\$5,000,000.00);
 - (e) if the Supplier is a natural person and is providing Services, **Temporary and Permanent Disability, Personal Sickness and Accident Insurance** (including 85% Income Protection); and
 - (f) such other insurance as the Principal determines reasonably necessary.
- 19.2 Any policy undertaken by the Supplier must include a provision that the insured parties under the policy will be entitled to be indemnified by the insurer under that policy in respect of any claims arising out of or in connection with the Agreement for a period of not less than seven (7) years from the issue of the certificate of final payment.

- 19.3** If required by the Principal, at least five (5) Business Days prior to the Commencement Date the Supplier must provide the Principal with a copy of all certificates of currency or underlying insurance policy documents (as nominated by the Principal) to be effected in accordance with this Agreement.
- 19.4** The Supplier must not do or cause or allow any of the Supplier's Personnel to do any act or make any omission which may provide grounds for an insurer to refuse payment of any claim made under any insurance policy maintained in accordance with the Agreement.
- 19.5** If the Supplier subcontracts any part of the provision of the Services or the supply of the Goods with the Principal's prior written approval in accordance with clause 27, or pursuant to any other right or obligation under the Purchase Order, then the Supplier must cause the subcontractor to effect similar insurances (to the extent possible) to those specified in this clause 19 and must provide proof of such insurance in accordance with clause 19.3. The Supplier must not permit any of its subcontractor to enter upon the Site or continue to provide any Goods or Services unless it is insured as required by this clause 19.5.
- 19.6** If the Supplier fails to keep in force any of its insurances as required under this Agreement then the Principal may in addition to any other rights and remedies it may have:
- (a) procure and maintain in force any such insurances and pay any such premiums that may be necessary and recover the debt as due from the Supplier; or
 - (b) suspend payment of any monies due under this Agreement until the Supplier fulfils its obligations.
- 19.7** Any insurance required to be effected in joint names in accordance with this Agreement must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

20. INDEMNITY

- 20.1** The Supplier acknowledges that it enters the Principal's Site at its own risk and that it will make its Personnel aware of the same.
- 20.2** The Supplier must indemnify (and keep indemnified), defend and hold harmless all Principal Indemnified Parties from and against all Liabilities that any Principal Indemnified Party suffers, sustains or incurs (including Third Party Claims) arising from any one or more of the following:
- (a) the performance or non-performance or breach by the Supplier or its Personnel under this Agreement;
 - (b) the negligent act or omission or Wilful Misconduct by the Supplier or its Personnel arising out of or in any way connected or related to the performance or non-performance of this Agreement;
 - (c) the entry onto and the activities undertaken on and in, the Site, by the Supplier and its Personnel;
 - (d) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this Agreement;
 - (e) any Claim of infringement or violation of intellectual property rights arising out of or in any way related to this Agreement; and
 - (f) any Claim made against the Principal Indemnified Parties by any of the Supplier's Personnel.
- 20.3** The Supplier will not be obliged to indemnify, defend or hold harmless the Principal for any Liability pursuant to clause 20.2 to the extent that the liability arises directly from the Principal's Wilful Misconduct.
- 20.4** Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which the Principal is entitled will also be held by the Principal to the benefit of, and will extend to protect, each of its Personnel and Related Bodies Corporate.
- 20.5** The indemnities provided by the Supplier under the Agreement are continuing obligations separate and independent from the Supplier's other obligations.
- 20.6** Neither party will be liable to the other for Consequential Loss.
- 20.7** It is not necessary for the Principal or the Principal Indemnified Parties to incur expenses or make payment before enforcing the indemnity rights conferred by this Agreement.

21. TERMINATION AND BREACH

- 21.1** The Principal may at any time for any reason and without cause terminate this Agreement in whole or in part by giving the Supplier written notice of its intention to do so (**Termination Notice**).
- 21.2** In the event of termination pursuant to clause 21.1, the Principal will not be liable for any costs, losses or Consequential Loss suffered by the Supplier except for payment for Services properly performed and Goods properly supplied prior to the date of termination and for costs provided in clause 22.
- 21.3** If the Supplier breaches any of the terms or conditions of the Agreement (including any of the Supplier's warranties), the Principal may:
- (a) serve a notice of default (**Notice of Default**), such notice must:

- (i) identify itself as such a notice;
 - (ii) state the breach that has been committed and either require the Supplier to remedy the breach within ten (10) days after service of the Notice of Default (**Remedy Period**) or state that the breach is incapable of remedy;
 - (iii) state the action which may be taken under clause 21.4 in the event that the breach is not remedied within the Remedy Period or is incapable of remedy; or
 - (b) at its option and without prejudice to any of its other rights cancel the Purchase Order in respect of any undelivered Goods or Services which have not been performed.
- 21.4** If the breach referred to in a Notice of Default is not remedied within the Remedy Period or is incapable of remedy, then the Principal may by further notice to the Supplier do one or more of the following:
- (a) elect wholly or partly to suspend payment under the Agreement until such breach has been remedied;
 - (b) take such action as the Principal deems necessary to cure such breach (the cost of such action so taken by the Principal being recoverable from the Supplier as a debt due to the Principal by the Supplier); or
 - (c) terminate the Agreement either in whole or in part from a specified date.
- 21.5** Clause 22.4 does not apply to cancellation under clause 21.3. The Supplier will not be entitled to any payment if the Purchase Order is cancelled under this clause 21.3 except for payment of the Price in respect of the Goods which have been delivered and Services which have been performed.
- 21.6** Notwithstanding any other provision of this Agreement, the Principal may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier:
- (a) ceases to carry on a business;
 - (b) disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (c) ceases to pay its debts as and when they become due; or
 - (d) goes into liquidation or receives a winding up order or is appointed a receiver, manager, trustee in bankruptcy or liquidator; or
 - (e) breaches an Essential Term of the Agreement.
- 21.7** Upon termination of this Agreement, the Supplier must:
- (a) immediately cease supply of the Goods and/or Services (as applicable) in accordance with, but only to the extent specified in, the Termination Notice; and
 - (b) not place any further orders nor enter into any further contracts or other binding arrangements in respect of the Goods, unless directed to do so by the Principal;
 - (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
 - (d) take any other action reasonably required by the Principal in relation to the termination.
- 21.8** Notwithstanding the terms of any Notice of Default, no action taken by the Principal under this clause 21 will prejudice the existence of any rights and remedies the Principal may have as a result of the relevant breach.
- 21.9** The Supplier will not have any Claim for damages, expenses or costs, including loss of anticipated profits, loss of use and Consequential Loss, on account of or arising out of the termination of the Agreement by the Principal pursuant to this clause 21 other than specified in the Agreement.
- 22. CANCELLATION**
- 22.1** The Principal may cancel the Purchase Order in whole or in part by giving written notice to the Supplier indicating the date of cancellation (**Cancellation Date**).
- 22.2** As of the Cancellation Date:
- (a) the Supplier must:
 - (i) cease the manufacture and supply of the Goods and all other work related to the supply of the Goods;
 - (ii) not place any further orders or commitments; and
 - (iii) take all action in relation to the cancellation that the Principal may reasonably require;
 - (b) to the extent the Goods are standard or stock items and are not yet delivered or in transit, the Principal will have no further obligation to the Supplier; and
 - (c) if the Goods are manufactured exclusively for the Principal and have been delivered or are in transit or the process of being manufactured, the Principal must pay the Supplier:
 - (i) all direct costs and expenses incurred as a result of cancellation (as reasonably determined by the Principal); and
 - (ii) any other amounts otherwise due under the Agreement,
 provided that the Supplier must make all reasonable efforts to mitigate all costs and expenses incurred as a result of the cancellation.

- 22.3** In no event will the total amount to be paid under clause 22.2 (when added to previous payments to the Supplier made or becoming payable under the Purchase Order) exceed the Price specified on the Purchase Order. In no event will the Principal be obligated to pay any bonus, damage or other Claim asserted by the Supplier for the Supplier's expected profit on the incomplete portion of the order for the Goods.
- 22.4** The Supplier must provide to the Principal all documentation which the Principal requires to verify the Supplier's costs and expenses. Upon payment under this clause 22 any Goods and uncompleted portions of the work and materials acquired by the Supplier for incorporation into the Goods will be the property of the Principal and subject to its disposition.
- 22.5** Notwithstanding anything contained in this clause 22.4, the Supplier will not be entitled to any anticipatory profits or any damages caused by the cancellation.
- 22.6** Nothing contained in this clause 22 will affect the Principal's right to terminate the Purchase Order on account of a default by the Supplier under any of the terms and conditions applicable to the Purchase Order or to pursue remedies as provided by Law for such default.

23. BUSINESS ETHICS

- 23.1** The Supplier represents, warrants and covenants to the Principal, as of the date of any Purchase Order and the date that each invoice is submitted to the Principal, that in carrying out its responsibilities, neither the Supplier, nor any of its equity holders, beneficial owners, partners, officers, directors, employees or agents, shall, directly or indirectly, offer, pay, promise to pay, or authorise the payment of any money, or offer, give, promise to give, or authorise the giving of anything of value to:
- (a) any Official for the purpose of:
 - (i) influencing any act or decision of that Official;
 - (ii) inducing that Official to do or omit to do any act for the benefit of the Principal;
 - (iii) securing any improper advantage for the Principal; or
 - (iv) inducing such Official to use his or its influence with a Government Agency thereof to improperly or illegally affect or influence any act or decision of such Government Agency;or
 - (b) to an officer, employee, agent, or representative of another company or organisation, with the intent to:
 - (i) influence or reward the recipient's action(s) with respect to his company's or organisation's business;
 - (ii) gain a commercial benefit to the detriment of the recipient's company or organisation; or
 - (iii) induce or reward the improper performance of the recipient's duties.
- 23.2** The Supplier commits to respect human rights in line with the Universal Declaration of Human Rights (available at <http://www.un.org/en/universal-declaration-human-rights/> (or any successor page)). The Supplier represents, warrants and covenants to the Principal, as at the date hereof and the date that each invoice is submitted to the Principal, that no violation of Universal Declaration of Human Rights exists in any of its or its affiliates' own operations or, to its knowledge, within the operations of any of its or its affiliates' subcontractors and vendors.
- 23.3** Notwithstanding any other provision of this Agreement, the Principal may immediately suspend this Agreement in the event it should receive information which, in its sole discretion, it determines to be evidence of a breach by the Supplier of any undertaking in this clause 23. In the event of receipt of such evidence and/or such suspension, the Principal shall consult with the Supplier and may thereafter immediately terminate this Agreement if the Principal, in its sole discretion, is reasonably satisfied that such a breach has occurred. In the event of such termination, the Principal shall have no liability to the Supplier under this Agreement for any fees, reimbursements, or other compensation under this Agreement or for any other loss, cost, claim, or damage resulting, directly or indirectly, to the Supplier from such termination, other than for Goods already delivered or Services satisfactorily performed prior to the date of termination.

24. CONFIDENTIALITY AND THE MEDIA

- 24.1** At all times the Supplier must hold in strict confidence all Confidential Information and must:
- (a) not disclose to any person or company directly or indirectly any Confidential Information, other than:
 - (i) with the Principal's prior written approval;
 - (ii) to the Supplier's Personnel to the extent required to perform the Supplier's obligations under the Agreement;
 - (iii) to the Supplier's legal advisors, accountants and auditors, provided such parties have agreed to maintain the confidentiality of the information; or
 - (iv) where the disclosure is required by Law or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Principal with full particulars of the proposed disclosure;

- (b) not copy or reproduce or distribute any materials and documents containing Confidential Information except in fulfilling its obligations under the Agreement;
- (c) upon termination of this Agreement or by demand from the Principal return all materials containing any Confidential Information;
- (d) if it has any Confidential Information or other data owned by the Principal or its Related Bodies Corporate (**Sensitive Information**) on the Supplier's information technology systems, employ industry-standard firewall and encryption protection for its information technology systems and use commercially reasonable efforts to scan its information technology system for viruses and malware and promptly mitigate the effects of any viruses or malware detected;
- (e) immediately notify the Principal if it becomes aware, or has reason to believe, that any breach of this clause 24 has occurred, that any unauthorised access to or use of, or any security breach relating to or otherwise affecting, any Sensitive Information has occurred, or that any Supplier's Personnel who has had access to Sensitive Information has breached or intends to breach the terms of this Agreement; and
- (f) at its own expense, comply with all reasonable requests by the Principal regarding the protection of Confidential Information;
- (g) immediately notify the Principal if it becomes aware, or has reason to believe, that any breach of this clause 24 has occurred, that any unauthorised access to or use of, or any security breach relating to or otherwise affecting, any Sensitive Information has occurred, or that any Consultant's Personnel who has had access to Sensitive Information has breached or intends to breach the terms of this Agreement; and
- (h) at its own expense, cooperate with the Principal in investigating and responding to any breach of this clause 24.

24.2 Except as required by any applicable Law or as otherwise permitted by the Agreement, the Supplier may not make any public announcements or disclosures about the Agreement or its subject matter, without the prior written consent of the Principal. No media release or public announcement will be made in relation to the existence of the Agreement by the Supplier without the Principal's written approval and if approval is given, then the wording of the release and manner of publication must first be approved in writing by the Principal.

24.3 Without limiting clause 20, the Supplier indemnifies the Principal and each Principal Indemnified Party, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 24 by the Supplier or its Personnel.

24.4 The Supplier acknowledges that the Confidential Information is an important asset of the Principal and its Related Bodies Corporate and that there is not an adequate remedy at Law for a breach by the Supplier of this clause 24 and the Principal and its Related Bodies Corporate will suffer irreparable harm as a result of such a breach.

25. INTELLECTUAL PROPERTY (IP)

25.1 The Supplier Background IP is owned by or licensed to the Supplier.

25.2 The Supplier grants the Principal a non-exclusive, irrevocable, royalty free, perpetual, worldwide, transferable licence to exercise all rights in all Supplier's Background IP to the extent required to exercise all rights in the Project IP.

25.3 The Supplier must, if required by the Principal, do all further things and execute all documents to give effect to the licence granted in this clause.

25.4 All payments for royalties and Intellectual Property Rights which are used in connection with the Services or the Goods must be paid by the Supplier.

25.5 The Principal Background IP is owned by or licensed to the Principal.

25.6 The Supplier acknowledges and agrees that all Project IP automatically vests in the Principal as and when created and the Supplier agrees to do all things necessary to give effect to this, which for the avoidance of doubt, includes assisting the Principal in any enforcement proceedings or assignment of the Principal's rights arising under the Agreement.

25.7 The Principal grants the Supplier a non-exclusive, revocable, royalty-free, non-transferable licence) to use the Principal's Background IP and the Project IP to the extent required for the performance of the Agreement for the Term.

25.8 The Supplier warrants that:

- (a) it is able to licence the Supplier's Background IP as described in clause 25.2;
- (b) the Supplier's Background IP and the Project IP, and the use by the Principal (or by another person at the direction or with the permission of the Principal) of the Supplier's Background IP and Project IP in accordance with this Agreement will not infringe any Intellectual Property Rights or other rights of any third party;
- (c) the performance of the Services and the supply of the Goods will not infringe any Intellectual Property Rights or other rights of any third party;

- (d) it has, or will at the appropriate time, and at no cost to the Principal, have all appropriate licences of or title to, all IP Rights that are required to enable the Supplier to perform its obligations under the Agreement;
- (e) it has the right to ensure that the Project IP will automatically vest with the Principal as and when created and it will do all things necessary to give effect to this in accordance with clause 25.6; and
- (f) it will not use any Principal's Background IP or Project IP except as permitted under clause 25.7.

25.9 The Supplier indemnifies the Principal for any Liability arising from:

- (a) use of any design, materials, documents and methods of working provided or prepared by or on behalf of the Supplier;
- (b) any Claim that the Goods, the Services, the Project IP or the Supplier's Background IP or use of any of them infringes the Intellectual Property Rights, confidential information, moral rights or any other rights of any person; and
- (c) any Claim for breach of the warranties in this clause 25.

25.10 The Supplier must notify the Principal as soon as the Supplier becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP or the Principal Background IP and to provide all reasonable assistance in defending against such infringement.

25.11 The Supplier must provide all reasonable assistance requested by the Principal to protect the Project IP and the Principal Background IP.

26. RECORDS

The Supplier must:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Supplier seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia;
- (b) make them available at no cost to the Principal for audit, inspection, and copying by the Principal or its designated representative during the Term and for a period of two (2) years or as required by Law, whichever is the greater, following any termination or completion of the Agreement; and
- (c) make available any record relating to the Goods or the Services provided under the Agreement at the Principal's request.

27. SUBCONTRACTING AND ASSIGNMENT

27.1 The Supplier must not assign or subcontract all or any part of this Agreement without the Principal's prior written consent, such consent may be withheld at the Principal's absolute discretion. No assignment is effective until the assignee has agreed in writing with the Principal, in a form acceptable to the Principal, to perform all of the Supplier's obligations under this Agreement.

27.2 No agreement to subcontract, or the Principal giving or refusing or failing to give its consent under clause 27.1, will in any way relieve the Supplier from full and entire responsibility for the performance of its obligations under this Agreement. The Supplier will be liable for all acts, errors and omissions of its subcontractors or suppliers as if they were acts and omissions of the Supplier.

27.3 The Supplier must make any subcontract subject to the terms and conditions of this Agreement to the extent that they may be applicable.

27.4 The Principal may assign or transfer all or any of the Principal's rights and obligations under the Agreement to any third party without the consent of the Supplier.

28. FORCE MAJEURE

28.1 A party will not be liable for any delay or failure to perform any of its obligations under the Agreement where such a failure is caused by a Force Majeure Event if, as soon as reasonably possible after the beginning of the Force Majeure Event affecting the ability of the party to perform any of its obligations under the Agreement, it gives a notice to the other party which complies with clause 28.2:

28.2 A notice given under clause 28.1 must:

- (a) specify the obligations that the party cannot perform;
- (b) fully describe the nature of the Force Majeure;
- (c) estimate a time during which it is anticipated the Force Majeure Event will continue to prevent the affected party from performing its obligations under the Agreement; and
- (d) specify the measures that are to be adopted to remedy or abate the Force Majeure Event.

28.3 The party prevented from performing its obligations under the Agreement due to the Force Majeure Event must:

- (a) remedy the Force Majeure Event to the extent reasonably practicable (provided that the Principal is not obliged to settle any industrial disputes except in its absolute discretion) and resume performance of the obligations as soon as reasonably possible; and

(b) take all action reasonably practicable to mitigate any liabilities that may be suffered by the other party as a result of the failure to carry out the obligations imposed by this Agreement.

28.4 Where the Force Majeure Event prevents the Supplier from performing its obligations under the Agreement, the Principal may at any time during the Force Majeure Event obtain the Goods and/or Services from another source at its own cost.

28.5 An amendment to the Delivery Date is the Supplier's sole remedy for any delays resulting from a Force Majeure Event. The Supplier will not be entitled to payment of any damages, costs or expenses relating to the Force Majeure Event.

28.6 If the Force Majeure proceeds for a continuous period of thirty (30) days or for successive periods totalling more than thirty (30) days in a sixty (60) day period the Principal may, at its absolute discretion, terminate the Agreement, and in the event of such a termination the Principal will not be liable to the Supplier for any Claims of reimbursement or Liability or damage resulting directly or indirectly from the termination.

29. LIENS AND ENCUMBRANCES

29.1 The Supplier must in a timely manner pay all of its Subcontractors, vendors, and suppliers to ensure that such entities do not place a lien or similar encumbrance on any of the Principal's property or facilities.

29.2 The Supplier must indemnify and keep indemnified the Principal in respect of all claims, liens or other encumbrances in relation to wages due and payable by the Supplier to its Personnel or in respect of any claims, liens or other encumbrances made by the Supplier's Personnel, manufacturers and suppliers.

29.3 If the Supplier fails to indemnify the Principal in accordance with this clause 29, the Principal may treat the matter as a default in accordance with clause 21.

30. PRIVACY

30.1 The Supplier agrees that:

(a) it must not disclose personal information to the Principal regarding its Personnel without first obtaining that person's consent to the disclosure and their express agreement to the Principal's Privacy Statement (available from <http://www.newmont.com/legal>);

(b) by submitting personal information to the Principal relating to its Personnel or causing any such person to seek access to any site of the Principal, it has warranted and represented to the Principal that it has complied with this clause 30;

(c) it must ensure that its subcontractors comply with this clause 30 in respect of their Personnel as if they were the Supplier and will be liable for any failure of its subcontractors to comply with this clause 30; and

(d) without limiting clause 20, it must indemnify the Principal Indemnified Parties against any Liability, loss, damage, cost, expense, Claim, suit, action, demand, proceeding, penalty and fine of any nature suffered, imposed or incurred as a result of a breach of this clause 30.

30.2 Where the Supplier is a natural person or is a partnership, joint venture or other unincorporated association comprised of natural persons, the Supplier acknowledges that it has (or each of them have) read and agreed to the Newmont Asia Pacific Privacy Statement (available from <http://www.newmont.com/legal>).

31. GENERAL

31.1 The Agreement consists of the following documents:

(a) these Purchase Order and Service Terms and Conditions; and

(b) the Purchase Order.

31.2 Subject to clause 3.5, if there is any conflict, inconsistency, omission, ambiguity, disparity or inadequacy between the documents comprising the Agreement, these Purchase Order and Service Order Terms and Conditions will prevail.

31.3 Each provision of the Agreement is independent of each other provision. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability and the other provisions will remain in force.

31.4 The failure of the Principal to enforce any breach by the Supplier of the Agreement will not constitute a waiver of that or any subsequent breach, or of any other cause of termination.

31.5 This Agreement is governed by the laws of Western Australia, save that Part 1F of the *Civil Liability Act 2002 (WA)* is expressly excluded from this Agreement. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia in connection with matters related to this Agreement.

31.6 Other than taxes, levies, or duties assessed upon and attributable to the Principal, the Supplier has liability for and must pay all taxes, levies, duties, and assessments of every nature due in connection with the supply of the Goods and Services and Price received.

- 31.7** The following clauses in their entirety are essential terms of this Agreement: 7 (Electronic Trading Facilities) 9 (delivery, packaging and delay), 13 (Price and payment), 14 (taxes), 15 (warranties and obligations), 18 (non-conformance and defects), 19 (insurance), 20 (indemnity), 21 (termination and breach), 24 (confidentiality and the media), 25 (intellectual property), 29 (liens and encumbrances) and 31.5 (governing law).
- 31.8** The provisions in clauses 3 (formation of Agreement and Term), 6 (accuracy of information), 15 (warranties and obligations), 18 (non-conformance and defects), 19 (insurance), 20 (indemnity), 21 (termination and breach), 24 (confidentiality and the media), 25 (intellectual property), 26 (Records), 30 (Privacy) and 31.5 (governing law) as well as any other provision which, by its general terms may be reasonably intended to survive, survive the expiration or termination of the Agreement or any Purchase Order .
- 31.9** The Supplier must do all things reasonably required by the Principal to give effect to this Agreement.
- 31.10** A notice must be in writing and will be taken to have been given if it is in writing and signed by or on behalf of the party giving the notice and is:
- (a) delivered personally;
 - (b) sent by ordinary pre-paid post to the other party at the address set out in the Purchase Order or another address advised in writing;
 - (c) sent by facsimile transmission to the facsimile number specified in the Purchase Order or another facsimile number advised in writing; or
 - (d) sent by e-mail to the email address specified in the Purchase Order.
- 31.11** A notice is deemed given and received if:
- (a) personally delivered, upon delivery;
 - (b) mailed to an address in Australia, an actual delivery to the addressee as evidenced by Australia Post documentation or three (3) clear days after the date of posting (whether actually received or not), whichever is the earlier;
 - (c) sent by facsimile, on the date and time of receipt of the completed facsimile transmission by the party sending the facsimile but only if the sending facsimile machine reports that the notice was sent in its entirety to the correct facsimile number; or
 - (d) sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).

SCHEDULE A

SCHEDULE OF RATES CONTRACT, PROGRESS PAYMENT CLAIM STATEMENT					
Reminder, the Contractor is required to submit an E copy of this form and get it signed prior to issuing an Invoice.					
Contractor.....			PERIOD: to		Progress Payment Claim No.....
			CONTRACT NO: NAL XXXX		Contractor's Invoice No:
(NAL use Only)	NATURE OF CONTRACT: Schedule or Rates			Newmont Use only	
WORK ORDER	ITEM	DESCRIPTION	TOTAL PRICE \$	Original Not to Exceed value \$0	
	1	Total of all invoices issued from the start of the Contract	\$0.00		
	2	Current Invoice	\$0.00		
				Current Not to Exceed Value \$0	
				Comments;	
		Current invoiced value of Contract	\$0.00		
		Maximum PERMITTED further spend on this Contract	\$0.00		
Contractor's Representative			Date		
Review Newmont's Technical Representative.....			Date		
Approval Newmont's Contracts Administrator			Date		

LUMP SUM CONTRACT, PROGRESS PAYMENT CLAIM STATEMENT												
Reminder, the Contractor is required to submit an E copy of this form and get it signed prior to issuing an Invoice.												
CONTRACT:				CONTRACT NO: NAL		CLAIM PERIOD: to		Progress Payment Claim N				
CONTRACTOR.....						SHEET 1 of 1		Contractor's Invoice No				
(NAL use only)	NATURE OF CONTRACT LUMP SUM/UNIT PRICE				TOTAL CONTRACT EXTENSION		QUANTITY OR PERCENTAGE			AMOUNT CLAIMED		
WORK ORDER	PAY ITEM	DESCRIPTION	UNIT	UNIT PRICE \$	QUANTITY	TOTAL PRICE \$	% previously claimed	% claimed this claim	Total % claimed to date	PREVIOUS	THIS PERIOD	
	1	Mobilise	LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	2		LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	3		LS	0.00	3	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	4		LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	5		LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	6		LS	0.00	4	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	7		LS	0.00	2	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	8		LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	9	Demobilisation	LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
	10	As built	LS	0.00	1	0.00	0.0%	0.0%	0.0%	\$0	\$0	
					Sub Total LS Work	0.00	#DIV/0!	#DIV/0!	#DIV/0!	\$0	\$0	
		Total of approved variations to LS Work	LS	0.00		0.00				\$0	\$0	
		Current Not to Exceed value of Contract					\$0.00					
		Maximum PERMITTED further spend on this Contract					\$0					
									Totals	\$0	\$0	
Contractor's Representative							Date		LESS Retention @ % Difference Sub total LESS Previous Payments		5%	5%
Review Newmont's Technical Representative.....							Date				\$0	\$0
Approval Newmont's Contracts Administrator							Date				\$0	\$0
									NETT AMOUNT THIS CLAIM			