Terms and Conditions of Supply to Easternwell (Transport)

1. Engagement

Subject to the terms and conditions of the Agreement, Easternwell agrees to engage the Contractor on a non-exclusive basis to provide, and the Contractor agrees to provide, the Services for the Term.

2. Term

(a) Subject to any earlier termination provided for under the Agreement, the Agreement commences on the Commencement Date and continues for the Initial Term and any Renewal Term (**Term**).

(b) During the Term, the Contractor must be available to perform the Services on any Day, including weekends and public holidays.

(c) The parties may agree in writing to extend the Agreement for a further period of up to one year or as otherwise agreed in writing by the parties on the same conditions of the Agreement, subject to a review and agreement of the Fees.

3. Authorised representatives, liaison and co-operation

(a) The Easternwell Representative is Easternwell's interface with the Contractor in relation to the Agreement and, except as otherwise specified in the Agreement or notified by Easternwell, the Easternwell Representative has full authority to act on behalf of Easternwell in connection with the Agreement.

(b) The Services must be performed in accordance with the Agreement and any directions of the Easternwell Representative given under the Agreement.

(c) The Easternwell Representative may delegate to another person any of its powers, duties, discretions or authorities.

(d) The Contractor must ensure that:

(i) if directed by Easternwell, the Contractor Representative (or a delegate approved by the Easternwell Representative) is present as required at all times during the performance of the Services;

(ii) the Contractor Representative has full authority to execute the directions of the Easternwell Representative without delay and is responsible for ensuring the Services are performed in accordance with the Agreement;

(iii) notices to Easternwell are only issued by the Contractor Representative or persons who are duly authorised to do so by the Contractor; and

(iv) the Contractor Representative is only removed or replaced with the approval of the Easternwell Representative.

(e) the Easternwell Representative and the Contractor Representative must liaise with one another and hold a meeting on Site at least once a Month during the Term in relation to the performance of the Services.

(f) Where any of the Contractor's Personnel, by any act or omission:

(i) has breached any Law or any approval, consent, permit or requirement for the Site or the Services;

(ii) is carrying out the Services in an unsafe or unsatisfactory manner; or

(iii) has been incompetent or negligent in the performance of the Services,

the Easternwell Representative may give the Contractor a direction requiring the removal of that person from the Site and the Contractor must ensure that such person is immediately removed from the Site and does not return to the Site without Easternwell's prior written consent.

4. Force Majeure

(a) In the event of an interruption to the provision of the Services to Easternwell that the Contractor attributes to Force Majeure, the Contractor must notify Easternwell immediately of the circumstances, likely duration and impact on the provision of Services.

(b) The Contractor will not be responsible for any failure to fulfil any term or condition of the Agreement if, and to the extent that fulfilment has been delayed or temporarily prevented by a Force Majeure occurrence, notification has been given in accordance with this clause 4 and the occurrence is beyond the control and caused without the fault or negligence of the Contractor.

(c) Easternwell's obligations to make any payments under the Agreement are suspended to the extent that an event of Force Majeure prevents the Contractor from providing Services under the Agreement while the event of Force Majeure persists.

(d) Easternwell may elect at any time to terminate the Agreement by written notice to the Contractor if an event of Force Majeure persists for 20 Days or more.

5. Acceptance

(a) The acceptance of an Order by the Contractor includes acceptance of these terms and conditions as the sole basis of the provision of the Services to the exclusion of any terms and conditions of supply appearing on any other document of the Contractor. Modification of these terms and conditions expressed in any document of the Contractor will not apply unless expressly accepted in writing by Easternwell.

(b) For the avoidance of doubt, any references in an Order or elsewhere to any offer or quotation given by the Contractor to Easternwell will not be evidence of an acceptance by Easternwell of any terms or conditions referred to or attached to such offer or quotation other than those set out in this document. Any terms and conditions proffered or referred to by the Contractor are to be disregarded and any such terms or conditions of the Contractor do not form part of the Agreement or bind Easternwell in any respect. Further, any over stamping on any acknowledgment or invoicing of the Order will not alter the Agreement.

(c) So far as legally possible, the parties intend that any Services already provided to Easternwell by the Contractor, and all Services to be provided to Easternwell under any future Orders, will be governed by the Agreement.

6. Easternwell's rights

(a) Easternwell may deduct from any amount due or becoming due to the Contractor under the Agreement:

(i) any Loss to be paid by the Contractor to Easternwell or any of its Associated Entities whether under or in connection with the Agreement or otherwise; and

(ii) the amount of any Claims that Easternwell or any of its Associated Entities have reasonable grounds for believing may be made against the Contractor under or in connection with the Agreement.

(b) Easternwell must notify the Contractor of any amount deducted under clause 6(a) and the basis for the deduction at the time that the amount deducted would otherwise be due to the Contractor.

7. Fees, invoices and payment of Fees

(a) In consideration of the performance of the Services, Easternwell will pay the Contractor the Fees, together with applicable GST, no later than 30 Days after the Month in which the relevant Tax Invoice was received.

(b) Unless otherwise specified in writing, the Fees include the cost of all materials, facilities, professional and technical services, Equipment, goods, labour and overheads for the performance of the Services and all profit and Taxes (excluding GST).

(c) After completion of the Services, the Contractor must give Easternwell a Tax Invoice which provides sufficient particulars of the Services provided to enable Easternwell, acting reasonably, to determine if relevant Services have been performed and includes:

(i) the total amount due and payable by Easternwell to the Contractor for the Services;

(ii) the quantity and the rate for any Additional Services;

(iii) any other amounts claimed by the Contractor from Easternwell;

(iv) if hourly rates apply, particulars of each person, hourly rate and time for each person who has undertaken Services; and

(v) supporting documentation for the amounts claimed under clauses 7(c)(i) to (iv).

(d) Payment of an invoice does not preclude Easternwell's right to check and object to invoices. Easternwell may dispute any part of an invoice by notifying the Contractor of the dispute within 30 Days of the end of the Month of receipt of that invoice or of the final invoice under the Agreement. Easternwell will pay the undisputed portion of the invoice under clause 7(a).

(e) The Contractor must not set off any amount Easternwell owes it under the Agreement against any amount that it owes Easternwell under the Agreement or under any other agreement or arrangement with Easternwell.

(f) Prior to the commencement of any Renewal Term, the parties must negotiate in good faith the new Fees that are to apply for the provision of any services during the Renewal Term.

8. Contractor's warranties and undertakings

(a) The Contractor warrants and represents to Easternwell that it is able, qualified and has the capacity and experience to perform the Services.

(b) The Contractor agrees to perform the Services:

(i) in a timely, prudent and safe manner; and

(ii) with a level of care, skill, knowledge and judgement reasonably expected of a competent contractor carrying out services similar to the Services having regard to good industry practice.

(c) The Contractor warrants and represents to Easternwell that the Services will:

(i) match the description of the Services set out in the Agreement and any other information provided by Easternwell in writing, prior to the Contractor providing the Services;

(ii) be performed by appropriately qualified and trained Personnel of the Contractor (who meet the skill level required by Easternwell); and

(iii) be fit for the purpose or purposes:

(A) described in the Agreement;

(B) specified by Easternwell;

(C) for which these types of Services are commonly provided; and

(D) about which Easternwell informs the Contractor either prior to or after the date of the Agreement.

(d) At all times during the Term, the Contractor, its Personnel and invitees must at its own cost:

(i) hold or obtain all authorisations, permits and licences required under any Law to perform the Services including those required by any Government Authority (e.g. roadworthy, safety, special vehicle and other certificates for all Vehicles to be utilised in the Services) or private landholder;

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(ii) obtain permission for any road closures required for movement of the Goods;
(iii) comply with all applicable Laws, including without limitation, any Safety Requirements for performing the Services (e.g. any relating to driver fatigue, registration of vehicles, loading of vehicles, weight or mass of loads, speed, storage, noise, vehicle dimensions, tyres, insurance, use of drugs or alcohol by drivers and road rules);
(iv) comply with the requirements of any Government Authority applying to the performance of the Services;
(v) comply with all guidelines or operating standards in respect of the Vehicles and the Equipment;
(vi) comply with Easternwell's standards, operating principles, policies and procedures, including Easternwell's HSE Guidelines, Logistics Induction Manual, as have been disclosed by Easternwell to the Contractor; and
(vii) comply with all directions from Easternwell to ensure minimal interference with Easternwell's operations.

(e) The Contractor must adequately and prudently address workplace health and safety issues relating to the performance of the Services including:
(i) safety, capability, maintenance, operation and proper certification of all Equipment to be utilised in undertaking the Services; and
(ii) safety, capability, licences, training, driving skills and monitoring of health and performance of all employees or others engaged in undertaking the Services.

(f) Specific provisions of the Agreement relating to employees do not limit the Contractor's obligations under this clause 8.

(g) The Contractor must ensure that all Equipment and Vehicles used by it in providing the Services are:
(i) maintained in good working order and repair;
(ii) comply with relevant Australian standards and Laws; and
(iii) fitted with In Vehicle Monitoring Systems (**IVMS**) or similar monitoring device.

(h) All Equipment and Vehicles required for the performance of the Services including any special purpose vehicles or other moving equipment will be provided by and at the cost of the Contractor and is included in the Fees (unless specifically disclosed and excluded from the Fees) and all Equipment, Vehicles and materials will be fit for their respective purposes and intended use and fit for and capable of performing the Services in accordance with the terms of the Agreement.

(i) The Contractor has fully considered and satisfied itself of the scope and nature of the Services including the specifications and component parts of the Goods, the conditions of the Site, the proposed and possible routes and access to or from the Site and all relevant transport, Safety Laws prior to performing the Services.

(j) Any Services provided by the Contractor before the date of the Agreement will be governed by the Agreement.

9. Incidents and access

(a) The Contractor must immediately notify the Easternwell Representative of any incident where a person is injured or dies or any damage to any property occurs during the conduct of the Services (which includes mobilisation and demobilisation periods).

(b) The Contractor must comply with all reasonable directions of Easternwell concerning reporting any incident and, without limitation, record relevant information on a 'Contractor's Incident and Investigation Report' to be completed after each incident and provide a copy of the report to the Easternwell Representative by the morning of the next Business Day.

(c) Every incident must be investigated and the results of the investigation and recommended corrective action must be provided to the Easternwell Representative within 7 Days of the incident.

(d) The Contractor will allow Easternwell to download data from the IVMS installed in the Vehicle involved in an incident.

(e) The Contractor must notify Easternwell immediately of any spillage or potential spillage of petroleum or any hazardous materials from the Equipment, any act of pollution or potentially polluting event or any other act or omission causing or potentially causing any nuisance, environmental harm or damage including any involving the Equipment. For each such event, the Contractor must record the relevant information and notify the Easternwell Representative as soon as practicable after the occurrence. All costs including fines, clean up and containment of the spillage, pollution, event, harm or damage will be to the Contractor's account.

(f) Easternwell will supply the Contractor with its procedures for performing the Services, including the Logistics Induction Manual, its HSE Guidelines and others for rig mobilisation/demobilization.

(g) The Contractor must comply with all Easternwell procedures or requirements of occupier of the Site of which it has been advised.

(h) The Contractor must, before mobilising any of Easternwell's goods including any vehicles bearing over dimensional loads, obtain the relevant Government Authority's permission for such transporters to move along the proposed route.

(i) Easternwell may arrange for the route to be traversed to be examined before and after transit and for any damage and consequential remedial work needed to be recorded and costed for its prompt carrying out. The Contractor is responsible for all costs of and associated with that damage and consequential remedial works.

(j) The Contractor must bear all costs of repairs to any Equipment damaged as a result of carriage by the Contractor (or its Personnel) including over improperly prepared means of access, roads, locations or otherwise during performance of the Services.

10. Delivery of Easternwell's goods

(a) The Contractor must ensure that the Goods are delivered:
(i) in the same state and condition as provided to the Contractor; and
(ii) fully and complete with no parts missing and with no parts damaged.

(b) Unless the Agreement states otherwise, the Fees and Services to be performed include delivery, proper packing and protection of the Goods and all transport and insurance costs and any associated or incidental items required for due performance by the Contractor of its obligations under the Agreement.

(c) The Contractor must at its cost (which is included in the Fees):
(i) suitably pack and stow all parts of the Goods for transport so as to secure them against damage; and
(ii) supply all labour, tools, equipment, materials, consumables including fuel, oil, water and the like necessary to transport and deliver the Goods in accordance with the Agreement.

(d) Easternwell is not liable to pay any part of the invoice unless, at the time of delivery of the Goods, an authorised representative of Easternwell and a representative of Easternwell's client each signs the delivery slip acknowledging delivery of the Goods. Any acknowledgement of delivery or receipt of the Goods by Easternwell and any payment by Easternwell will not be deemed to be an acceptance by Easternwell that the Contractor has fully performed its obligations under the Agreement.

(e) Easternwell may inspect the Goods and direct that the Goods or any component be tested at any time following delivery before acceptance.

(f) If any item is found to be missing or to have been damaged in transit, Easternwell may, at its election, and without limiting any other rights:
(i) recover the cost of replacement of the missing or damaged Goods from the Contractor; or
(ii) remedy the defect at the Contractor's cost; and
(iii) may in accordance with clause 6 deduct any such costs from any amount payable to the Contractor.

(g) When Easternwell, acting reasonably, believes that the Goods have been delivered in accordance with the Agreement, Easternwell will issue a consignment note to the Contractor. The consignment note is to be signed by a representative of Easternwell and a representative of Easternwell's client. Issuance of a consignment note is not an admission by Easternwell that the Contractor has complied with its obligations under the Agreement and does not limit the rights of Easternwell if the Contractor has breached its obligations under the Agreement.

11. Respective responsibilities

(a) Despite any other provision of the Agreement, Easternwell, its Associated Entities and their Personnel will not be liable to the Contractor on any account (including under any indemnity, in tort including negligence or for breach of statutory duty or otherwise, or for any Losses) and the Contractor will not make any Claim against Easternwell, its Associated Entities or their Personnel arising out of or in any way relating to any account except in the case of:
(i) Payment of Fees and GST under clause 7(a);
(ii) Losses incurred as a result of the fraud or wilful, reckless or deliberate breach of the Agreement by Easternwell, its Associated Entities or its Personnel; or
(iii) Losses incurred as a result of Claims made against Easternwell, its Associated Entities or its Personnel for contribution or indemnity in respect of Claims by third parties (but not any Personnel of the Contractor) for personal injury, death or property damage, provided that such Losses (in (ii) and (iii) above) do not include Consequential Loss.

(b) The Contractor indemnifies each of Easternwell, its Associated Entities and their Personnel against any and all Loss suffered or incurred by any of Easternwell, its Associated Entities and their Personnel from:
(i) any breach (including non-performance or non-observance of any obligation) by the Contractor under the Agreement; and
(ii) any Claim (including a Claim by the Contractor's Personnel or a third party against any of Easternwell, its Associated Entities and its Personnel) arising from acts or omissions of the Contractor or any of its Personnel in the course of providing any Services to Easternwell or otherwise in connection with the Agreement, except to the extent that such Losses were caused by the gross negligence of Easternwell.

(c) Each of the Contractor's obligations under clause 11(b) is:

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(i) a continuing obligation, separate and independent from the other obligations of the Contractor and survives termination or expiry of the Agreement; and
(ii) applies regardless of the amount of insurance coverage held by the Contractor, including that under any workers' compensation act, disability act or other Law that would limit the amount payable by or for the Contractor.

12. Information

(a) The Contractor warrants and represents that:
(i) it has carefully perused the documents forming the Agreement and there are no discrepancies, inconsistencies or ambiguities in or between those documents that would be apparent to an experienced and competent contractor that concern the Contractor; and
(ii) it has made proper allowance for all matters referred to in or reasonably capable of inference from the documents forming the Agreement.

(b) The Contractor acknowledges that Easternwell:
(i) has endeavoured to ensure that information provided to the Contractor in connection with the Agreement (Information) is accurate, sufficient and complete;
(ii) does not otherwise warrant and has not made any other representation about the accuracy, sufficiency or completeness of the Information;
(iii) does not accept any liability for the accuracy, sufficiency and completeness of the Information and the use of it by the Contractor; and
(iv) has provided the Information for the convenience of the Contractor and, unless specified in the Agreement, it does not form part of the Agreement.

13. Confidential Information

(a) During the Term or at any time afterwards, the Contractor will not, except in the proper course of its duties under the Agreement or as required by Law or permitted by Easternwell, use or disclose to any person any Confidential Information of or relating to Easternwell which has come into its possession as a result of the Agreement or the negotiations preceding the Agreement including the terms of the Agreement and will use its best endeavours to prevent the use or disclosure of any such information, except as permitted by this clause.

(b) Easternwell's Confidential Information (which includes designs and specifications developed for the Contractor or any other designs or specifications) supplied by Easternwell to the Contractor and copies of it must be held by the Contractor on Easternwell's behalf and at Easternwell's disposal and must not be disclosed or furnished to any other person or used for any purpose without Easternwell's express consent and all reasonable precautions must be taken by the Contractor to protect such confidentiality.

(c) The Contractor will return, erase or destroy any of the Confidential Information in its possession or under its control on the Termination Date or when and as directed to do so by Easternwell. The return, erasure or destruction of any of the Confidential Information does not relieve the Contractor of any of its obligations under the Agreement.

(d) The Contractor acknowledges that damages are not a sufficient remedy for breach of this clause 13 and that Easternwell is entitled to specific performance or injunctive relief (as appropriate) for breach or threatened breach by the Contractor or any person, in addition to any other remedies available at law or in equity.

(e) This clause 13 survives termination of the Agreement.

14. Advertising

The Contractor must not, without Easternwell's prior written consent, in any manner advertise or publish the fact that the Contractor has contracted to provide Services to Easternwell. The use of wording, brand name, colour, logo or other distinguishing mark referring to Easternwell in any of the Contractor's promotional material or otherwise requires written approval of the material by Easternwell prior to publication and approval may be withheld in Easternwell's absolute discretion.

15. Licence to use Logistics Induction Manual

(a) In this clause 15, a reference to 'Easternwell' includes a reference to an Associated Entity of Easternwell.

(b) (**Grant of licence**) Subject to the terms of the Agreement, Easternwell grants to the Contractor a royalty free, non-transferable, non-exclusive, limited licence to use the Logistics Induction Manual only for the purposes of the Agreement and for the Term.

(c) (**Legal title**) Legal title to the Logistics Induction Manual remains in Easternwell as its sole property subject to the Contractor's rights specified in this document.

(d) (**Confidentiality acknowledgments**) The Contractor acknowledges that:
(i) the Logistics Induction Manual is secret, confidential and valuable to Easternwell;
(ii) it owes an obligation of confidence to Easternwell concerning the Logistics Induction Manual;
(iii) it must not use the Logistics Induction Manual except to the extent necessary for the Permitted Purpose;
(iv) it must not disclose the Logistics Induction Manual to a third party except as set out in this document; and
(v) as between Easternwell and the Contractor, all rights (including all intellectual property rights) in the Logistics Induction Manual belong solely to Easternwell.

(e) (**Copying**) Except to the extent needed for the Permitted Purpose or authorised by Easternwell, the Contractor must not make a copy or create any Derived Information from the Logistics Induction Manual.

(f) (**Security**) The Contractor must use its best efforts to ensure that the Logistics Induction Manual is kept under its effective control and is secure from theft, loss, damage and unauthorised access, use and disclosure.

(g) (**Disclosure to Authorised Persons**) The Contractor may disclose the Logistics Induction Manual to an Authorised Person who needs to know that information for the Permitted Purpose.

(h) (**Compliance by Authorised Persons**) The Contractor must ensure that each Authorised Person to whom the Logistics Induction Manual is disclosed agrees to, and complies with, the terms of this clause 15 as if references to 'Contractor' were references to 'Authorised Person' (and, where relevant, the Authorised Person was a party to this document). The Contractor is responsible for any breach by an Authorised Person of his or her obligations concerning the Logistics Induction Manual. Any breach of an obligation concerning the Logistics Induction Manual by an Authorised Person will be treated as a breach of this document by the Contractor.

(i) (**Notice of breach or loss**) The Contractor must notify Easternwell in writing giving full details known to it immediately it becomes aware of:
(i) any actual, suspected, likely or threatened breach by it of a term of this clause 15;
(ii) any actual, suspected, likely or threatened breach by any Authorised Person of any obligation in relation to the Logistics Induction Manual; or
(iii) any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, use or disclosure of the Logistics Induction Manual.

(j) (**Action on breach or loss**) The Contractor must promptly take all steps that Easternwell may reasonably require and must cooperate with any investigation or other action of Easternwell if there is:
(i) any actual, suspected, likely or threatened breach of a term of this clause 15; or
(ii) any theft, loss, damage or unauthorised access, use or disclosure of the Logistics Induction Manual that is or was in its possession or control.

(k) (**Return of data**) At the end of the Term, or on any termination by Easternwell, the Contractor must immediately return to Easternwell the Logistics Induction Manual, all related documentation and all copies relating to the Logistics Induction Manual in the possession of the Contractor or its Personnel or other parties to whom the Contractor has provided copies.

(l) (**Continuing obligations**) The obligations under this clause 15 will continue after the end or termination of the Agreement.

16. Title to and risk in goods

(a) The Contractor's responsibilities under the Agreement include the loading and unloading of Easternwell's Goods. Accordingly, risk in the Goods (and potential liability) will pass from Easternwell to the Contractor at the point in time the Contractor commences loading the Goods, and from the Contractor to Easternwell upon completion of the unloading of the Goods.

(b) Title to the Goods remains with Easternwell at all times and does not pass to the Contractor at any time or for any reason including as a consequence of any breach by Easternwell of its obligations.

(c) The Contractor must not do or omit to do anything which is incompatible with Easternwell's rights in the Goods including seeking to exercise any lien.

(d) The Contractor must deliver up possession of the Goods (including all component parts) to Easternwell immediately as and when directed by Easternwell.

17. Insurance

(a) Before:
(i) providing the Services;
(ii) the Contractor is entitled to access the Site; and
(iii) whenever requested in writing by Easternwell,
the Contractor must provide evidence to the satisfaction of Easternwell that the Contractor has obtained and maintained the Required Insurances from a reputable insurer covering Easternwell and the Contractor for their respective rights, interest and liabilities.

(b) The Contractor must comply with the conditions of each of the policies of insurance required by this clause 17 and must not do anything which may revoke or may lead to a revocation of any of those policies.

(c) The Contractor must report to Easternwell as soon as practicable in writing:
(i) the cancellation of any policy of Required Insurance;
(ii) any Loss, Claim or incident that is material to the Agreement and which may give rise to an insurance claim under any policy of Required Insurance;

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(iii) of any event which leads or might lead to a claim for compensation or a claim under any policy for Required Insurance and must comply with the instructions of Easternwell in connection with the claim.

(d) The Contractor is not entitled to make any Claim for payment if it has not provided the evidence required under clause 17(a) or if it has beached clause 17(b).

(e) The Contractor must immediately notify Easternwell of any cancellation of any policy of insurance required by clause 17(a).

(f) Nothing in this clause 17 limits the obligations, liabilities and responsibilities of the parties under the Agreement.

18. Termination

(a) Either party (**Terminating Party**) may terminate the Agreement by notice (**Termination Notice**) to the other party if the other party (**Defaulting Party**):
   (i) suffers an Insolvency Event; or
   (ii) commits a substantial breach of the Agreement and the breach is not remedied by the Defaulting Party within 10 Business Days after the Terminating Party gives the Defaulting Party the Termination Notice.

(b) A Termination Notice under clause 18(a)(ii) will:
   (i) state that it is a notice under clause 18(a)(ii);
   (ii) specify the alleged substantial breach;
   (iii) require the Defaulting Party to show cause in writing why the Terminating Party should not exercise its right to terminate the Agreement;
   (iv) specify the time and date by which the Defaulting Party must show cause (which will not be less than 10 Business Days after the Termination Notice is given to the Defaulting Party); and
   (v) specify the place at which cause must be shown.

(c) If the Agreement is terminated under clause 18(a), the rights of the parties will be the same as they would have been at common law had the Defaulting Party repudiated the Agreement and the other party had elected to treat the Agreement as at an end and to seek to recover damages.

(d) The Contractor may terminate the Agreement if Easternwell fails to make a payment due to the Contractor that is not the subject of a dispute between the parties.

(e) If the Contractor terminates the Agreement under clause 18(d), Easternwell must pay the Contractor, as the Contractor's sole remedy, all amounts due and unpaid for Services performed to the Termination Date.

(f) The Agreement may be terminated for convenience by Easternwell giving no less than 7 Days' notice to the Contractor and in that event, subject to clause 6, Easternwell must pay the Contractor, as the Contractor's sole remedy and compensation in relation to the termination, the amounts referred to in clause 18(e).

(g) If the Agreement is terminated in accordance with clause 18(f) the Contractor will immediately cease the part, or the whole, of the Services, as required and comply with any lawful directions by the Easternwell Representative, including any direction to:
   (i) protect property in the possession of the Contractor in which Easternwell has or may acquire an interest;
   (ii) remove from the Site any of the Contractor's Personnel, Equipment or Vehicles;
   (iii) use reasonable endeavours, in co-operation with Easternwell and the subcontractor concerned, to arrange that the subcontractor's contract be novated to Easternwell; and
   (iv) provide Easternwell with possession of all materials and other things on or off the Site which are owned by Easternwell but have been in the possession of the Contractor or its Personnel and are required for the Services or for incorporation in the Services.

(h) Other than any amounts payable under clauses 7 and 18(f), Easternwell will not be liable to the Contractor for any Claim by the Contractor as a consequence of the termination pursuant to clause 18(f) and the Contractor will otherwise have no Claim.

(i) Termination of the Agreement under this clause 18 does not prejudice any party's pre-existing rights, obligations or liabilities.

19. Dispute resolution

(a) If a dispute arises in connection with or relating to the Agreement, a party to the dispute must give to the other party or parties to the dispute written notice specifying the dispute and requiring its resolution under this clause 19 (**Notice of Dispute**).

(b) An executive officer of each party must confer within 5 Business Days after the Notice of Dispute is given to try to resolve the dispute.

(c) If the parties cannot resolve a dispute within 5 Business Days of the Dispute first being raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre for mediation.

(d) Either party may commence court proceedings at any time in relation to any Claim arising under or in connection with the Agreement where:
   (i) the party seeks urgent interlocutory relief; or
   (ii) the Claim relates to a dispute which is not resolved within 30 Days after the Notice of Dispute is given.

(e) Subject to clause 19(d), neither party may litigate until the procedures in clauses 19(a) to 19(c) above have first been complied with.

(f) In the event of any unresolved dispute between Easternwell and the Contractor in connection with or relating to this Agreement, the Contractor must continue to perform its obligations under this Agreement.

(g) Easternwell may set-off or deduct from any payment due to the Contractor under this Agreement any money due or which may become due from the Contractor to Easternwell under this Agreement or otherwise relating to this Agreement.

20. Notices

All notices given pursuant to the Agreement must be in writing and will be properly served if delivered personally, posted, sent by facsimile or e-mailed to the other party at the address or facsimile number or email address set out in the Agreement or as otherwise notified in writing by the intended recipient. A notice sent by post will be deemed to have been given on the third Business Day after posting except in the case of international post, which will be deemed to have been given on the fifth Business Day after posting where sent by airmail. A notice sent by facsimile transmission will be deemed to have been given upon confirmation by the sending machine of successful transmission of the total number of pages of the notice. Notice sent by e-mail will be deemed to have been given on confirmation that the email transmission has been received. A facsimile or email sent after 17.00hrs on a Business Day or on a day which is not a Business Day will be deemed received at 09.00hrs on the following Business Day.

21. Assignment and subcontracting

(a) The Contractor must not assign, subcontract or otherwise deal with the Agreement or any right under it except with the consent of Easternwell.

(b) The Contractor must comply with any reasonable direction from Easternwell to replace any of the Contractor's Personnel involved in the provision of the Services with other Personnel acceptable to Easternwell in its absolute discretion.

(c) Entering a subcontract (whether with or without the consent of Easternwell) does not relieve the Contractor from full responsibility for the performance of the Services and the Contractor is responsible for the acts and omissions of its Personnel (including its subcontractors and all persons acting for a subcontractor or under its supervision or control).

(d) Easternwell may assign, subcontract or otherwise deal with the Agreement or its rights under it.

22. General

(e) (**Benefit of Agreement held on trust**) Easternwell accepts the benefit of the Agreement on behalf of its Associated Entities and Personnel and holds the benefit of the Agreement on trust for its Associated Entities and Personnel and may enforce the Agreement in its own name and in the name of (or for the benefit of) any of its Associated Entities or Personnel.

(f) (**Severability**) Any provision or part of the Agreement that is void or unenforceable may be severed from the Agreement and the remaining provisions or parts of the provision of the Agreement continue in force.

(g) (**No merger**) The rights and obligations of the parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.

(h) (**No Waiver**) Time is of the essence of the Agreement, except that no delay by Easternwell in exercising any right or power will operate as a waiver of that right or power. Nor will any single or partial exercise of any right or power by Easternwell preclude any other or further exercise of that right or power.

(i) (**Variation**) Easternwell may vary these Terms and Conditions (as set out in this document) effective from the date of the Order issued to the Contractor after the earlier of:
   (i) notice by Easternwell to the Contractor of the variation; and
   (ii) the publication of the document reflecting the variation on the Easternwell website.

   To avoid doubt, a variation will not apply to any Order issued before the earlier of those times referred to above. Any other variation of any term of the Agreement must be in writing and signed by the parties.

(j) (**Further actions**) Each party must, at its own expense, do all things and execute all documents necessary to give full effect to the Agreement and the transactions contemplated by it.

(k) (**Survival**) Any indemnity or any obligation of confidence under the Agreement is independent and survives termination of the Agreement. Any other term by its nature intended to survive termination of the Agreement (e.g. clauses 6, 7, 11, 13, 15, 17, 18, 19 and this clause 22) survives termination of the Agreement.

(l) (**Entire agreement**) The Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

(m) (**Counterparts**) The Agreement may be executed in any number of counterparts.

(n) (**Governing Law**) Unless otherwise specified, the Agreement will be governed and construed in accordance with the laws in the Jurisdiction. The Contractor

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and Easternwell submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

(o) (**Definitions and Interpretation**) The document named FRM-S01-053: Terms and Conditions of Supply to Easternwell (Definitions) is incorporated into the Agreement, and is available from the Easternwell website (www.easternwell.com.au).

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