

With effect Date:	19 November 2018
Document Purpose:	Terms and Conditions for the Supply of Goods and Services under Purchase Order without Formal Agreement.
Document Owner:	Chief Financial Officer

## 1 DEFINITIONS

<b>Affected Party</b>	has the meaning specified in Condition 15.1
<b>Agreement</b>	means the Purchase Order and any other document annexed to the Purchase Order (to the extent one has been issued), these Conditions and the Policies
<b>Australian Standard</b>	means an Australian standard published by Standards Australia Limited ACN 087 326 690 or any successor
<b>Authorisation</b>	means any approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent from any Authority or required under and Law and includes any variation or renewal to any of them
<b>Authority</b>	means any court or any local, state or federal government, statutory or public authority, instrumentality or body or any other person having jurisdiction over the provision of the Goods and/or Services or the Site
<b>Claim</b>	means any claim, action, suit, demand, proceeding, notice, litigation, investigation, or judgment of any nature, whether actual or threatened: <ul style="list-style-type: none"> <li>• under, arising out of or in any way in connection with this Agreement</li> <li>• arising out of, or in any way connected with the obligations of the Supplier</li> <li>• arising under any Law</li> </ul>
<b>Conditions</b>	means these purchase order terms and conditions
<b>Confidential Information</b>	means communications between the Parties, the terms of this Agreement and any information that concerns the business, operations, finances, plans of a Party and/or any Related Body Corporate and is disclosed to or acquired by the other Party and which: <ul style="list-style-type: none"> <li>• is by its nature confidential</li> <li>• is designated by the Party as confidential or</li> <li>• the other Party knows or ought to know is confidential, but does not include information which: <ul style="list-style-type: none"> <li>• is or becomes public knowledge other than by a breach of this Agreement</li> <li>• is in the possession of the other Party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the other Party, or</li> <li>• has been independently developed or acquired by the other Party</li> </ul> </li> </ul>
<b>Defect</b>	includes: <ul style="list-style-type: none"> <li>• any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or similar in any Goods and/or Services, or</li> <li>• any aspect of any Goods and/or Services which is not in accordance with the requirements of the Agreement</li> </ul>
<b>Defects Liability Period</b>	means the period of 24 months from the date of delivery of the Goods, or 12 months from the date on which a Service is last performed, or in the case where a Defect has been rectified, 12 months from the date the rectification was carried out
<b>Delivery Date</b>	means the date specified in the Purchase Order, being the date by which the Supplier must provide the Goods and/or Services

<b>Delivery Point</b>	means the delivery point specified in the Purchase Order, being the place, the Supplier is to provide the Goods and/or Services
<b>Duties</b>	means any duties to be performed by the Supplier's Personnel in relation to the Supplier's supply of the Goods and Services
<b>Duties Commencement Date</b>	means the date when the Supplier's Personnel commence performance of the Duties, which is taken to be the earlier of: <ul style="list-style-type: none"> <li>the Supplier's Personnel first attending the designated airport for a flight to Site, where the Supplier's Personnel is designated fly in fly out, or</li> <li>the Supplier's Personnel first attending Site to commence Tellus inductions for performance of the Duties</li> </ul>
<b>Force Majeure</b>	means any event or circumstance beyond the control of the Party affected by that event or circumstance or both which could not reasonably have been foreseen at any time of entering into this Agreement and which could not reasonably have been provided against, prevented, or overcome by the Party affected, including without limitation any: <ul style="list-style-type: none"> <li>act of God</li> <li>act of the public enemy, war (declared or undeclared) blockade, revolution, riot, insurrection, civil commotion, hostility</li> <li>lightning, fire, storm, flood, earthquake, inclement weather, perils of navigation</li> <li>quarantine restriction or epidemic</li> <li>accident, explosion, breakage</li> </ul> but does not include <ul style="list-style-type: none"> <li>strike, lockout, ban or limitation of work or other industrial disturbance (if the Affected Party is a party to it or would be able to influence a settlement thereof)</li> <li>wet weather</li> <li>lack of, or inability to use funds, for any reason</li> <li>breakdown of the Supplier's equipment or the unavailability of required goods, materials or spare parts</li> <li>any occurrence which results from the wrongful or negligent act or omission of the Affected Party or the failure of the Affected Party to act in a prudent and proper manner and in accordance with Good Operating Practices</li> <li>any event or circumstance where the event of circumstance or its effects on the Affected Party or the resulting inability of the Affected Party to perform its obligations, could have been prevented, overcome, or remedied by the exercise standard of care and diligence by the Affected Party consistent with that of a reasonable and prudent person in their position or through the due and proper performance by the Party's obligations under the Agreement</li> </ul>
<b>Formal Agreement</b>	means the formal agreement (if any) for the provision of goods and/or services and which has been entered into by the Parties
<b>Good Operating Practices</b>	<ul style="list-style-type: none"> <li>the exercise of that degree of diligence, competence, prudence and foresight reasonably and ordinarily expected from a reputable, prudent, skilled and experienced professional engaged in providing goods and/or services similar to the Supplier's obligations under the Agreement</li> <li>compliance with Australian Standards, other industry accepted standards and codes applicable to the provision of the Goods and/or Services, and</li> <li>compliance with applicable Laws</li> </ul>
<b>Goods</b>	means the goods detailed in the Purchase Order (if any) which will be supplied by the Supplier to Tellus, for purchase or hire by Tellus as the case may be
<b>Gross Negligence or Wilful Misconduct</b>	means any act or omission which was wilful or which was done or omitted to be done with reckless disregard for its foreseeable and harmful consequences
<b>GST</b>	has the same meaning as given to that term under the GST Act

<b>GST Act</b>	means A New Tax System (Goods and Services Tax) Act 1999
<b>Input Tax Credit</b>	has the meaning it has in the GST Act
<b>Insolvency Event</b>	<p>means the happening of any of the following events in relation to the Supplier:</p> <ul style="list-style-type: none"> <li>• the Supplier makes an assignment for the benefit of or enters into any arrangement, scheme or composition with creditors</li> <li>• if the Supplier is a company: <ul style="list-style-type: none"> <li>i. the Supplier is unable to pay all its debts as and when they become due and payable or has failed to comply with a statutory demand as provided in section 459F of the Corporations Act, or it is deemed to be unable to pay its debts under section 585 of the Corporations Act</li> <li>ii. an order is made, or a resolution is passed, or a meeting is convened for the purposes of considering a resolution, for the appointment of a provisional liquidator, a liquidator or an administrator to the Supplier</li> <li>iii. an application is made, a resolution is passed or a meeting is called for the purposes of considering a resolution for the Supplier to be wound up</li> <li>iv. the appointment of a controller (as defined in section 9 of the Corporations Act) of any of the Supplier's assets</li> <li>v. the Supplier proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement, or</li> <li>vi. the Supplier becomes insolvent or under administration, as defined in section 9 of the Corporations Act</li> </ul> </li> <li>• if the Supplier is an individual: <ul style="list-style-type: none"> <li>vii. the Supplier becomes bankrupt, admits in writing the inability to pay debts, commits an act of bankruptcy or brings their estate within the operation of any law relating to bankruptcy</li> </ul> </li> <li>• an investigation is commenced under the Corporations Act against the Supplier</li> <li>• an execution or similar process is made by creditors, debenture holders or trustees or under a general security agreement</li> </ul>
<b>Insurance Amount</b>	<p>means for:</p> <ul style="list-style-type: none"> <li>• Public liability insurance, providing coverage with a limit of liability of not less than \$20 million for each and every occurrence</li> <li>• Product liability insurance, providing coverage with a limit of liability of not less than \$10 million for each and every occurrence and in the aggregate during any one period of insurance</li> <li>• Motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Conditions, including <ul style="list-style-type: none"> <li>i. insurance that is compulsory under applicable Laws governing the use of motor vehicles and liability for personal injury or death, and</li> <li>ii. liability insurance for third party property damage with a sum insurance of not less than \$20 million per occurrence</li> </ul> </li> <li>• professional indemnity insurance (where the supply of Goods and or provision of Services include professional services in relation to which professional indemnity insurance is commonly taken out), providing coverage for at least \$2 million in relation to each occurrence and in the aggregate during any one period of insurance written on a 'claims made' basis</li> </ul>
<b>Insurance Company</b>	means a public insurance company carrying on business in Australia and authorised to operate as an insurance company under any applicable statute from time to time in force
<b>Intellectual Property</b>	means all intellectual property rights existing anywhere in the world, including any patent, design right, copyright, trade mark, protected circuit layout, trade secret,

	Confidential Information, or other right whether existing under statute, at common law, in equity or otherwise
<b>Law</b>	means all applicable present and future laws including: <ul style="list-style-type: none"> <li>• all acts, regulations, ordinances, by-laws, orders, awards, proclamations of the jurisdiction of the State of Western Australia or the Commonwealth of Australia</li> <li>• Authorisations</li> <li>• principles of law or equity</li> <li>• standards, codes and guidelines, and</li> <li>• fees, rates, taxes, levies, charges payable regarding the things referred to in the previous paragraphs of this definition</li> </ul>
<b>Liability</b>	means all liabilities, losses, death, injury, legal action, Claims, damages, outgoings, costs and expenses of whatever description and whether present, unascertained, contingent or prospective, including costs actually payable to its legal representatives (on a full indemnity basis)
<b>Party</b>	means Tellus or the Supplier according to the context
<b>Parties</b>	mean Tellus and the Supplier
<b>Personnel</b>	means the directors, officers, employees, contractors and/or agents of the Supplier or Tellus, as the context requires, including the Supplier's Personnel contracted to or employed by the Supplier in the delivery of the Services
<b>Policies</b>	means Tellus' policies, procedures and codes of conduct in place from time to time as publicised on the Tellus website or included in the Supplier's Personnel's Tellus inductions before and during performance of the Duties
<b>Price</b>	means the amount payable by Tellus to the Supplier detailed in the Purchase Order. In relation to any provision of Supplier's Personnel for supply of the Services, the Price shall take into account all the overheads and expenses of the Supplier in relation to medical examinations, the costs of any National Police Checking Service clearances provided by the Chamber of Minerals and Energy or similar provider, the costs of Site visit flights and accommodations by the Supplier to conduct safety and procedure audits at Site, where reimbursement is not charged separately under these Conditions
<b>Purchase Order</b>	means the purchase order for Goods and/or Services which has been approved and signed off by the relevant authorised officer of Tellus and issued to the Supplier and to which these Conditions are applicable
<b>Related Body Corporate</b>	means a body corporate that is a holding company of another body corporate, a subsidiary of another body corporate or a subsidiary of a holding company of another body corporate. A body corporate is a subsidiary of a holding company or another company if the company controls the composition of the subsidiaries board or controls directly or indirectly more than one half of the voting shares in the subsidiary
<b>Services</b>	means the services described in the Purchase Order (if any) which will be provided by the Supplier, including any supply of the Supplier's Personnel for performance of the Duties from the Duties Commencement Date
<b>Site</b>	means site/premises from which Tellus conducts its business and specified in the Purchase Order, including Tellus' Perth and Sydney offices
<b>Supplier</b>	means the person, company or entity detailed in the Purchase Order who will provide the Goods and/or Services to Tellus in accordance with the terms of the Agreement
<b>Supplier's Personnel</b>	means either: <ul style="list-style-type: none"> <li>• individuals who are employed by the Supplier or</li> <li>• individuals who are not employed by the Supplier but are contracted to the Supplier, and</li> <li>• who are supplied by the Supplier to perform the Duties on a temporary basis from the Duties Commencement Date, for the delivery of the Goods and Services by the Supplier</li> </ul>

<b>Supplier's Plant and Equipment</b>	means all plant, equipment, machinery, tools, appliances and other items which are brought on Site for the purposes of the Supplier supplying the Goods and/or performing the Services or which are otherwise required for the proper carrying out and completion of the Supplier's obligations under this Agreement
<b>Tax Invoice</b>	has the meaning it has in the GST Act
<b>Taxation Authority</b>	means the relevant taxation and revenue authority which has jurisdiction over the provision of the Goods and/or Services
<b>Taxes</b>	means any tax, levy, charge, customs duty, excise, impost, fee, deduction, compulsory loan or withholding, that is assessed, levied, imposed or collected by any governmental agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or for any of the above
<b>Tellus</b>	means Tellus Holdings Limited (ACN 138 119 829) or the Tellus wholly owned subsidiary detailed in the Purchase Order and includes its successors and permitted assigns
<b>Tellus' Indemnified Parties</b>	means any of Tellus' Personnel, Related Bodies Corporate and Personnel of any Related Bodies Corporate of Tellus
<b>Third Party Claim</b>	means any claim, action demand, proceeding, suit of any nature, whether actual or threatened, initiated by a person other than the Supplier, including but not limited to any Claim arising out of, or in connection with: <ul style="list-style-type: none"> <li>• loss or destruction of, or injury or damage to, or loss of use of any real or personal property, or</li> <li>• any personal injury to or death of any person, and</li> <li>• which is caused or contributed to by the Supplier or the Supplier's Personnel</li> </ul>
<b>Variation</b>	means a change in any part of the Supplier's obligations to provide Goods and/or Services but does not include any change in the Supplier's obligations under this Agreement arising from: <ul style="list-style-type: none"> <li>• a reasonable direction made by Tellus regarding the Supplier's performance of its existing obligations under the Agreement</li> <li>• any change in Law, or</li> <li>• any matters expressed to be at the Supplier's own cost</li> </ul>

## 2 INTERPRETATION

In interpreting, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of the Conditions;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning in these Conditions;
- (e) including and similar expressions are not words of limitation;
- (f) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency and vice versa;
- (g) an obligation or liability assumed by, or a right conferred on, 2 more parties binds and benefits all of them jointly and each of them severally;
- (h) a reference to a clause, condition, party or schedule is a reference to a clause of, and a party and schedule to these Conditions;
- (i) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (j) reference to an amount of money is a reference to Australian Dollars;

- (k) a reference to a party includes that party's successors and permitted assigns;
- (l) no provision of these Conditions will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Conditions or that provision;
- (m) if the day on or by which a person must do something under the Agreement is not a business day, the person must do it on or by the next business day.

## 2.1. Order of Precedence

- (a) If there is any inconsistency or ambiguity between the documents comprising the Agreement, the documents shall be read in the following order of priority to the extent of any inconsistency or ambiguity:
  - (i) these Conditions;
  - (ii) the Policies;
  - (iii) the Purchase Order (if any); and
  - (iv) any other attachments to the Purchase Order and any special conditions which are expressly incorporated by reference in the Purchase Order.
- (b) If a Formal Agreement has been entered into by Tellus and the Supplier, the terms of the Formal Agreement will prevail over the Agreement to the extent of any inconsistency or ambiguity.

## 2.2. Exclusion

To the extent any of the Supplier's terms and conditions are supplied to Tellus at any point in time regarding the Goods and/or Services, the Supplier's terms and conditions will be of no legal effect and are not incorporated into this Agreement unless the variation provisions of this Agreement are complied with.

## 3 ENGAGEMENT

### 3.1. Engagement of Supplier

Tellus appoints the Supplier to supply the Goods and/or provide the Services to Tellus in accordance with the Agreement for the Price on and from the Duties Commencement Date or earlier date specified by the Supplier.

### 3.2. Application

If any Goods and/or Services are provided to Tellus before a Purchase Order is issued to the Supplier by Tellus, these Conditions bind the Supplier immediately.

### 3.3. Nature of Relationship

- (a) This Agreement does not confer any exclusivity on the Supplier with respect to the provision of the Goods and/or Services.
- (b) The Supplier is engaged as an independent contractor and nothing constitutes the Supplier or the Supplier's Personnel as an employee, agent, partner, agent, representative or joint venturer of Tellus.
- (c) The Supplier and the Supplier's Personnel:
  - (i) must not engage in any negotiations or discussions on behalf of Tellus; and
  - (ii) do not have any authority to incur, and must not incur, any obligation on Tellus' behalf,
  - (iii) except with and to the extent of the prior express written authority of Tellus.
- (d) The Supplier acknowledges:
  - (i) Tellus may be contracting in its capacity as agent for a Related Body Corporate of Tellus; and
  - (ii) reference to Tellus includes its authorised officers and employees.
- (e) The Supplier confirms that any person from or representing the Supplier or who corresponds or liaises with Tellus on the Supplier's behalf is deemed to have authority to act on the Supplier's behalf and is capable of binding the Supplier.

## 4 PROVISION OF GOODS AND/OR SERVICES AND SUPPLIER'S PERSONNEL

### 4.1. Obligations

The Supplier must:

- (a) provide the Goods and/or Services in accordance with the terms of the Agreement including the provision of any necessary Supplier's Personnel from time to time in accordance with Tellus' written instructions, using Good Operating Practices and in compliance with the lawful and reasonable directions and orders given by Tellus and its Personnel.
- (b) only supply Supplier's Personnel to perform the Duties who:
  - (i) satisfy Tellus' requirements, including pre-employment medical checks (where required, at Tellus' expense), eligibility to work in Australia, training and competences (as required and specified by Tellus), a current National Police Checking Service clearance provided by the Chamber of Minerals and Energy or similar provider (at Tellus' expense);
  - (ii) Tellus is satisfied have the appropriate professional or trade qualifications for the job description or classification designated by Tellus for performance of the Duties from time to time;
  - (iii) Tellus is satisfied have been trained in safe work practices, skilled and experienced in the trades and professions, as specified by Tellus, for which they are engaged to perform the Duties, before commencing performance of the Duties;
  - (iv) are prepared to comply with the Policies, and
  - (v) satisfactorily complete Tellus inductions and additional training at Tellus' expense as required by Tellus for performance of the Duties, from time to time;
- (c) remove or have removed immediately from any Site any Supplier's Personnel who cease to be acceptable to Tellus for any reason;
- (d) where requested by Tellus, provide alternative Supplier's Personnel acceptable to Tellus to ensure there is no interruption to the supply of Services;
- (e) not re-deploy to any Site any of the Supplier's Personnel previously removed under this Condition 3.1 at any Site without Tellus' prior written approval;
- (f) provide all materials, equipment, goods and services necessary for the Supplier to provide the Goods and/or Services under this Agreement;
- (g) obtain all Authorisations required for the Supplier to provide the Goods and/or Services;
- (h) supply the Goods and/or provide the Services using Good Operating Practices and in compliance with the lawful and reasonable directions and orders given by Tellus and its Personnel;
- (i) provide any and all information, data, advice and reports on the status of the provision of the provision of Goods and/or Services as requested by Tellus from time to time;
- (j) provide any and all information, data, advice and manuals necessary or required by Tellus to enable Tellus to obtain the full benefit of the Goods and/or Services or their use;
- (k) return any equipment, materials, goods or other property provided by Tellus to the Supplier if those items were provided by Tellus to the Supplier for the purposes of the Supplier providing the Goods and/or Services, and
- (l) ensure that premises occupied or under the control of Tellus, used by the Supplier for the performance of Services, are left fit for immediate use, clean and in an orderly state.

## 4.2. Performance

- (a) The Supplier must provide the Goods and/or Services to Tellus at the Delivery Point on the Delivery Date or as otherwise directed by Tellus.
- (b) The Supplier must pack and transport the Goods to Tellus in accordance with Good Operating Practice (for the avoidance of doubt, including in compliance with all relevant laws and Chain of Responsibility obligations) to avoid damage in transit or storage.
- (c) Any Goods delivered to Tellus must be marked externally with the Purchase Order number, Delivery Point, and package number (e.g. 1 of 4).
- (d) If the Supplier provides excess Goods and/or Services, Tellus may, without prejudice or limitation to any of its other rights:
  - (i) return excess quantities to the Supplier at the Supplier's expense; and/or
  - (ii) refuse to pay for excess Services.



### 4.3. Variation

- (a) Tellus may, at any time, request a Variation to the supply of Goods and/or Services provided under the Agreement by written notice to the Supplier ("Variation Notice").
- (b) Within 5 business days of receiving the Variation Notice, the Supplier will advise Tellus of:
  - (i) any proposed addition or reduction to the Price in carrying out the proposed Variation, including any delay or disruption costs connected with the Variation; and
  - (ii) the proposed impact the Variation will have on the Supplier providing the Goods and/or Services by the Delivery Date.
- (c) If:
  - (i) Tellus does not accept the Supplier's proposed change to the Price or Delivery Date due to the proposed Variation; and
  - (ii) the Parties are unable to agree on the change to the Price or Delivery Date within 5 business days after the Supplier's informs Tellus of the estimated impact of the Variation under Condition 3.3(b);
  - (iii) Tellus must advise the Supplier whether it wishes to proceed with the Variation detailed in the Variation Notice. If Tellus:
    - (iv) does not wish to proceed with the Variation, the terms of the Agreement will remain unaltered;
    - (v) advises the Supplier it wishes to proceed with the Variation, the Agreement will be amended by the terms of the Variation agreed by the parties.

### 4.4. Co-operation

The Supplier must:

- (a) liaise, co-operate and confer with any third parties as directed by Tellus;
- (b) carefully co-ordinate and integrate the provision of the Goods and/or Services with services or works to be performed or provided by Tellus or any of its other contractors or consultants including any other contractors or consultants employed by third parties;
- (c) perform Services so as to avoid or minimise interfering with, disrupting or delaying the services or works performed and provided by Tellus or any other of its contractors or consultants or any contractors or consultants of third parties;
- (d) not solicit or entice away (or attempt to do so) any consultant, contractor or employee from Tellus or engage any such person as a consultant, employee or in any other capacity.

#### 1 Site

If the Supplier is required to enter the Site to provide the Goods and/or Services:

- (a) Tellus will give the Supplier access to Site as and when required to enable the Supplier to provide the Goods and/or Services subject to the Supplier complying with the terms of this Agreement;
- (b) the Supplier must:
  - (i) execute a [Mt Walton Road Indemnity Agreement] with Tellus which facilitates use by the Supplier of the Mt Walton Road which is necessary in order to travel to the Sandy Ridge site;
  - (ii) comply with all lawful directions given by Tellus for the provision of the Goods and/or Services and the Supplier's access to Site; and
  - (iii) comply with all site conditions, safety and other policies generally applied by Tellus to persons attending its premises and all directions of Tellus' Registered Manager or other designated Tellus manager, including without limitation relevant fitness for work tests.
- (c) All of the Supplier's Personnel who visit the Site as contemplated by these Conditions must, as a pre-condition to entry, have a current National Police Checking Service clearance provided by the Chamber of Minerals and Energy or similar provider, and have satisfactorily completed a Tellus general induction (where required) and a Site induction.
- (d) If the Supplier is required to provide the Goods and/or Services on Site and requires flights and accommodation to facilitate that, the Supplier must negotiate commercial terms with Tellus, which is beyond the scope of this Agreement.



#### 4.5. Condition of Hire Goods

Where the supply involves the hire of Goods, the following clause will apply to the hire of those Goods:

- (a) As soon as practicable following delivery of the Goods, Tellus will inspect and record the condition of the Goods. Tellus will provide a copy of this record to the Supplier upon request at the time of delivery.
- (b) Tellus agrees to return the Goods to the Supplier in the same clean condition and good working order it was in when Tellus received the Goods, ordinary fair wear and tear and reasonable use excluded. Prior to the Goods being returned the Supplier at conclusion of the hire period, the condition of the Goods will be inspected and recorded in writing and photos as appropriate, by Tellus and the Supplier together.

#### 4.6. Maintenance Services for Hired Goods

Where the supply involves the hire of Goods, the following clause will apply to the hire of those Goods:

Unless otherwise stated on the Purchase Order, the Supplier must provide and conduct the following maintenance services to ensure the Goods are available for use and operation by Tellus at all times in accordance with the Agreement:

- (a) all recommended maintenance procedures set out in the technical manuals and operating instructions for the Goods;
- (b) all service and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage repairs and mutually approved modifications;
- (c) supply and maintenance of all necessary spare parts, materials, lubricants and consumables (other than petroleum fuels); and
- (d) any statutory maintenance requirements.

### 5 REPRESENTATION AND WARRANTY

Without limiting any other warranty or obligation under the Agreement, the Supplier represents and warrants:

- (a) the Supplier has all expertise and resources to perform its obligations under the Agreement;
- (b) all records and information supplied by the Supplier are true and correct and may be relied on by Tellus;
- (c) the Goods and/or Services provided by the Supplier comply with all relevant national and international standards and Laws;
- (d) the Goods supplied by the Supplier will:
  - (i) be in good working order and condition and acceptable in appearance and finish;
  - (ii) be free from defect, failure and malfunction;
  - (iii) be fit for purpose and use intended by Tellus;
  - (iv) be safe and durable and have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
  - (v) be new and of the best quality and workmanship unless specified otherwise; and
  - (vi) be free from all encumbrances or charges in favour of a third party at the time of sale and/or delivery to Tellus.
- (e) the Services provided by the Supplier will be performed:
  - (i) promptly and with due care, skill and diligence; and
  - (ii) in a manner so that the Services and any product resulting from the Services will be fit for their intended purpose and of a nature, quality, state or condition which are required by Tellus.
- (f) in relation to the hire of Goods, the Supplier has provided to Tellus all information and prudent safety and operational signage relating to:
  - (i) the operating instructions for the Goods;
  - (ii) any dangers associated with the use or incorrect use of the Goods;
  - (iii) the manufacturer's specifications; and
  - (iv) any procedures necessary to ensure that workers properly using the Goods are not exposed to uncontrolled hazards.

## 6 DEFECTS LIABILITY PERIOD

### 6.1. Error

The Supplier must correct any errors or omissions in the provision of Goods and/or Services from time to time, at the Supplier's own cost.

### 6.2. Obligations

- (a) The Supplier must rectify, at the Supplier's own cost, all Defects discovered by Tellus during the Defects Liability Period.
- (b) The Supplier must carry out any rectification of Defects:
  - (i) in accordance with the terms of the Agreement and any directions given by Tellus;
  - (ii) in a manner which causes as little inconvenience as is reasonably possible;
  - (iii) at the Supplier's own cost which, for the avoidance of doubt, includes the Supplier assuming all costs associated with any labour involved to rectify any Defects, removal, delivery, transport or replacement of parts or items.
- (c) If the Goods break down or become inoperable or unsafe to use, Tellus agrees to immediately stop using the Goods and notify the Supplier. Tellus agrees to take all steps reasonably practicable to prevent any further damage to the Goods and shall not repair or attempt to repair the Goods without the Supplier's written consent. The Supplier must take all steps to repair the Goods at its expense or provide suitable substitute Goods as soon as reasonably possible after being notified by Tellus, and no Price will be payable by Tellus for the portion of the hire period for which the Goods were broken down, inoperable, unsafe or unavailable.

## 7 PERSONNEL

### 7.1. Personnel

The Supplier must:

- (a) not subcontract, assign or otherwise transfer the whole of any part of the Supplier's obligations under this Agreement unless Tellus' prior written consent is obtained; and
- (b) ensure all Supplier's Personnel are appropriately qualified, competent, skilled and experienced in the provision of the Goods and/or Services and Duties.

### 7.2. Acknowledgement

Subject to the Supplier first obtaining any necessary Tellus consent to sub-contract under clause 13.1, the Supplier acknowledges and agrees:

- (a) the Supplier is liable to Tellus for all acts, omissions and defaults of the Supplier's Personnel as if they were the acts, omissions and defaults of the Supplier;
- (b) the Supplier's obligations and liabilities under the Agreement are not reduced or otherwise affected in any way by any Supplier's Personnel providing the Goods and/or Services and the Supplier is responsible for carrying out and completing all obligations under this Agreement;
- (c) the Supplier is solely responsible for:
  - (i) all remuneration and benefits including but not limited to all employee entitlements, superannuation, accommodation, penalty rates;
  - (ii) workers compensation premiums or levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
  - (iii) any payment upon termination of engagement of the Supplier's Personnel,
  - (iv) for any of the Supplier's Personnel.

### 7.3. Supplier's obligations in relation to industrial relations matters

- (a) The Supplier is responsible for maintaining good industrial relations with the Supplier's Personnel.
- (b) The Supplier is responsible for the conduct of all proceedings, conferences, negotiations, and dealings regarding industrial matters brought against the Supplier by the Supplier's Personnel.

- (c) The Supplier shall keep Tellus fully informed of all industrial matters concerning its Supplier's Personnel where they affect or could potentially affect Tellus.
- (d) The Supplier shall strictly comply with the wages and working conditions prescribed in all relevant awards and industrial instruments regarding the rates of pay and conditions for the performance of the work by the Supplier's Personnel in connection with the Agreement.
- (e) The Supplier shall keep Tellus' representative immediately and fully informed of any dispute with the Supplier's Personnel or any demand for wages or conditions in excess of or outside the scope of current and applicable industrial awards or registered industrial agreements.
- (f) The Supplier shall, as and when requested by Tellus, attend meetings for the purpose of discussing industrial matters.
- (g) In the event of an actual or threatened industrial dispute, ban, limitation of work or denial of facilities or services involving the Supplier's Personnel, the Supplier shall:
  - (i) keep the authorised representative of Tellus for that Site informed and continue to keep such representative reasonably informed throughout the course of the relevant events;
  - (ii) endeavour to resolve the dispute in the shortest practical time; and
  - (iii) take all practical action to ensure that the Duties being performed at the Site by the Supplier's Personnel continues whilst the appropriate steps are taken to resolve the dispute.

#### 7.4. Privacy

Tellus and the Supplier agree to abide by the National Privacy Principles contained in the Privacy Act 1988 (Cth) and their respective privacy policies which may be obtained upon written request. Either party may collect information about the other to assist it in relation to the supply of Goods and Services. Neither party will disclose information about the other to any person except in the ordinary administration of its business.

## 8 RISK AND TITLE

### 8.1. Risk

- (a) Risk in the Goods passes from the Supplier to Tellus when the Supplier delivers the Goods to the Delivery Point and the Goods are accepted by Tellus.
- (b) The Supplier enters the Site and performs the Services under this Agreement at its own risk.

### 8.2. Title

At the earlier of:

- (a) delivery of the Goods at the Delivery Point; and
- (b) payment of the Price,

the Supplier transfers to Tellus, legal and beneficial ownership of and title to the Goods free from any encumbrances, Third Party Claims or third party rights and interests.

### 8.3. Waiver

The Supplier waives any lien or any other right, title or interest it may have for any materials or equipment which are incorporated into, or form the whole or part of, the provision of Goods and/or Services, and undertakes to:

- (a) obtain a similar waiver from any relevant Personnel; and
- (b) include a similar provision in all contracts with any Personnel and suppliers who supply any materials and equipment to the Supplier for the purposes of this Agreement.

### 8.4. Hire of Goods

Where the supply involves Tellus hiring the Goods, the following will apply to the hire of the Goods:

- (a) the Supplier will deliver the Goods at the Delivery Point; and
- (b) risk in the Goods passes to Tellus when the Goods are:
  - (i) delivered and unloaded at the Delivery Point and accepted by Tellus; or
  - (ii) collected by Tellus.

- (c) risk in the Goods passes to the Supplier on the first of:
  - (i) return to the Supplier; or
  - (ii) notification to the Supplier that the Goods are ready to be collected, from a secure location under Tellus' control.
- (d) Title in the Goods remains with the Supplier at all times. Hired Goods shall not be deemed to be a fixture.
- (e) Tellus' rights to use the hired Goods are as a bailee only. Tellus is not entitled to sell, assign, sub-let, charge, mortgage or create any form of security interest over, or otherwise deal with the hired Goods.
- (f) Tellus acknowledges that the Supplier may hire or lease the Goods from a third party in order (Third Party Owner) to provide the Goods to Tellus, in which case Tellus acknowledges that title in the Goods will remain with the Third Party Owner.
- (g) Tellus acknowledges that the Supplier or the Third Party Owner may register a security interest in relation to any security interest contemplated or constituted by the hire of the Goods to Tellus, in the Goods. Tellus undertakes to do anything that is reasonably required by the Supplier or the Third Party Owner to acquire and maintain one or more perfected security interests under the Personal Properties Securities Act 2009 (Cth) and to ensure that the Supplier's or Third Party Owner's security position, and their rights and obligations, are not adversely affected by the Personal Properties Securities Act 2009 (Cth).

## 9 PAYMENT

### 9.1. Price

- (a) Where the Purchase Order does not specify when payment becomes due, on completion of the Supplier supplying Goods and/or providing Services to Tellus in accordance with this Agreement, Tellus will pay the Price to the Supplier in one lump sum payment.
- (b) The Price includes all costs and expenses incurred by the Supplier in relation to the supply of the Goods and/or provision of the Services, including all Taxes.

### 9.2. Invoice

- (a) The Supplier must submit an invoice to Tellus to support a claim for payment of the Price.
- (b) A Purchase Order is the only authority the Supplier may use for claiming payment of the Price.
- (c) The invoice or payment form (as may be notified from time to time) must be in a form acceptable to Tellus and contain the following information:
  - (i) the Purchase Order number;
  - (ii) a brief description of the Goods and/Services supplied;
  - (iii) the period in which the supply of Goods and/or Services occurred;
  - (iv) any further information stipulated in any applicable Law, or reasonably required by Tellus, so that Tellus will receive the benefit of any Input Tax Credit; and
  - (v) such other verification documentation as may be requested by Tellus.

### 9.3. Payment

- (a) Subject to Condition 8.3 (c), Tellus will pay the Price (or part thereof) on the last day of the month after the month in which the invoice was received.
- (b) For the purposes of 8.3 (a), if the Supplier changes the Supplier's bank account details, the Supplier must telephone Tellus to notify of the changed details.
- (c) If Tellus disputes any amount claimed by the Supplier is due and payable, Tellus will notify the Supplier, specifying the reasons for the dispute.
- (d) Tellus will:
  - (i) pay the undisputed portion of the invoice; and
  - (ii) withhold payment of the disputed portion until settlement of the dispute.
- (e) The Supplier acknowledges taxation and prescribed payments under Law may require Tellus to pay part of the Price to the Taxation Authority, to the credit of the Supplier, unless the Supplier, at the time of submitting invoices, provides Tellus with written evidence of exemptions from such payment obligations.

- (f) If the Supplier is entitled to a payment for Goods which are not yet on Site, the Supplier shall not be entitled to such payment unless the Goods have been marked as Tellus' property in accordance with Tellus' instructions, or appropriate security, as required by Tellus, has been provided.
- (g) Tellus may deduct from any payment or moneys due or becoming due to the Supplier all costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by the Supplier or its Personnel to Tellus under any provision of this Agreement.

#### **9.4. Delay**

If there is delay in the Supplier providing the Goods and/or Services under the Agreement, Tellus can withhold payment of the Price until the Goods are delivered and/or Services are performed in compliance with the Agreement. Tellus is entitled to claim damages or other appropriate remedies at Law against the Supplier if provision of Goods and/or Services occurs after the Delivery Date.

#### **9.5. GST**

- (a) Unless otherwise specified in the Purchase Order, the Price does not include any amount for GST.
- (b) If provision of the Goods and/or Services is subject to GST, Tellus must, subject to Condition 9.1(c), pay the Supplier an amount in addition to the Price equal to the GST payable for that supply.
- (c) The recovery of any GST is subject to the Supplier providing a Tax Invoice to Tellus to support the claim for payment of GST.
- (d) The Tax Invoice must be in a form acceptable to Tellus and must contain all information stipulated in any applicable GST legislation or by Tellus and in order that Tellus will receive the benefit of any Input Tax Credit.

### **10 INTELLECTUAL PROPERTY**

- (a) The Supplier warrants in providing the Goods and/or Services neither Tellus nor the Supplier will infringe the Intellectual Property of any third party.
- (b) The Supplier grants to Tellus a perpetual, irrevocable, royalty free, worldwide licence to use any Intellectual Property which Tellus requires in order to lawfully use the Goods.
- (c) All Intellectual Property created by the Supplier (either by itself or jointly with any third party), in provision of the Goods and/or Services or otherwise pursuant or incidental to this Agreement will be owned by Tellus.

### **11 INDEMNITY**

#### **11.1. Indemnity by Supplier**

- (a) Except to the extent caused by a negligent act of Tellus or Tellus' Indemnified Parties, the Supplier is liable for and shall indemnify and keep indemnified Tellus and Tellus' Indemnified Parties against any and all Liabilities caused or contributed to by the negligence, wrongful act or omission, or breach of the Agreement by the Supplier or the Supplier's Personnel.
- (b) Where the Supplier's Personnel are employees of the Supplier, the Supplier acknowledges that the Supplier has common law and statutory duties to ensure the safety of its employees. The Supplier acknowledges that regularly undertaking site inspections at Site will assist the Supplier in demonstrating a discharge of these duties.
- (c) The indemnity is a continuing obligation and survives termination of this Agreement.
- (d) It will not be necessary for Tellus to incur expense, loss or make payment before enforcing the indemnity in this Condition.

#### **11.2. Failure to perform**

If the Supplier fails to comply with any of its obligations under the Agreement, Tellus may, in its sole discretion, perform or have a third party perform the Supplier's obligations and the costs incurred by Tellus in performing or having a third party perform the Supplier's obligations will be a debt due from the Supplier to Tellus.

#### **11.3. Limitation of Liability**

Notwithstanding any other provision of this Agreement, the Supplier, Tellus and Tellus' Indemnified Parties will not be liable for any consequential loss or damage of any kind, including loss of business revenue, loss of profits, failure to

realise expected profits or savings, overhead costs or other economic losses in contract, tort (including negligence), under any statute or otherwise arising out of or in any way connected to the Agreement.

#### 11.4. Indemnity by Tellus

Where the supply involves the hire of Goods, the following clause will apply to the hire of those Goods:

Tellus will be liable for, and will indemnify the Supplier against all Liabilities arising out of or in connection with Tellus' use of the hired Goods, except to the extent that:

- (a) such Liabilities are caused or contributed to by the Supplier or the Supplier's Personnel;
- (b) the Supplier receives payment or other consideration pursuant to an indemnity under a policy of insurance that the Supplier effects under this Agreement, or would have received but for an act or omission of the Supplier or the Supplier's Personnel that reduces or negates that payment; or
- (c) Liabilities that arise from fair wear and tear and reasonable use of the Goods.

### 12 INSURANCE

#### 12.1. Insurance Required

At all times during the Supplier's performance of its obligations under this Agreement, the Supplier must comply with all applicable Laws and in doing so bears the sole responsibility for determining the requirements of those Laws relating to insurance. The Supplier must, at its own expense, procure and maintain or cause to be procured and maintained the following minimum insurances:

- (a) (Where the Supplier is required to enter Site) workers' compensation (including occupational disease where required by Law) and employer's indemnity insurance which complies with the relevant Laws covering all claims and liabilities under any statute and where common law claims are allowed outside of the statutory scheme, for employer's liability at common law, for not less than the amount required by the relevant State or Territory Legislation for each occurrence, for the death of or injury to:
  - (i) any person employed by the Supplier in connection with this Agreement; and
  - (ii) any person who is a worker of the Supplier or any of its subcontractors in connection with this Agreement and who may be deemed under statute to be a worker of the Supplier;
- (b) (Where the Supplier is required to enter Site) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20 million for each and every occurrence which covers the liability of the Supplier and any of the Supplier's Personnel in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death or, any person, arising out of the performance of this Agreement including the provision of the Services by the Supplier and the performance of the Duties by the Supplier's Personnel who are employees of the Supplier. This insurance must also extend to cover liability for:
  - (iii) any Plant and Equipment of Tellus in the care, custody or control of the Supplier, except to the extent such Plant and Equipment is otherwise insured against the risk or loss or damage under other insurances required to be effected pursuant to this Agreement;
  - (iv) underground operations, if applicable;
  - (v) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Agreement; and
  - (vi) registered vehicles used as a tool of trade in the performance of the Services;
- (c) (Where Tellus purchases or hires any Goods from the Supplier) product liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10 million for each and every occurrence and no less than \$10 million in the aggregate during any one 12 month period of insurance which covers the liability of the Supplier and any of the Supplier's Personnel in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death or, any person, arising out of the performance of this Agreement (including the provision of the Services) by the Supplier. This insurance must also extend to cover liability for:

- (iii) any Plant and Equipment of Tellus in the care, custody or control of the Supplier, except to the extent such Plant and Equipment is otherwise insured against the risk or loss or damage under other insurances required to be effected pursuant to this Agreement;
  - (iv) underground operations, if applicable;
  - (v) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Agreement; and
  - (vi) registered vehicles used as a tool of trade in the performance of the Services;
- (d) (Where the Supplier is required to bring motor vehicles to Site) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and owned or leased by the Supplier, and are at any time used in connection with this Agreement, including:
- (i) insurance that is compulsory under applicable Laws governing the use of motor vehicles and liability for personal injury or death; and
  - (ii) liability insurance for third party property damage with a sum insurance of not less than \$20 million per occurrence;
- (e) (Where the supply of Goods and or provision of Services include professional services in relation to which professional indemnity insurance is commonly taken out) professional indemnity insurance of not less than the amount set out in the Insurance Amount for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under this Agreement; and
- (f) (Where the Supplier is bringing Supplier's Plant and Equipment to Site) all risks property insurance covering the Supplier's Plant and Equipment against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of Tellus for not less than its market value.

## 12.2. Endorsement

The Supplier must ensure that:

- (a) the insurance referred to in clause 12.1(a) shall be endorsed (except where precluded by Law) to include a Principal's Indemnity extension for Act Benefits and Common Law, indemnifying Tellus against any liability which it may incur in respect of the Suppliers' employees, arising by virtue of the applicable worker's compensation legislation or under the common law.
- (b) the insurance referred to in clause 12.1(b) and 12.1(c) provides that Tellus' interest is noted as Principal in the insurance cover provided by the policy and extends in respect of Tellus' vicarious liability for the acts or omissions of other named insureds under such policy.
- (c) the insurance required under clause 12.1(b) and 12.1(c) provides that failure by an insured to observe and fulfil the terms of the policy or to comply with any duty of disclosure does not prejudice the insurance of any other insured.

## 12.3. Acknowledgement

It is expressly agreed and acknowledged that:

- (a) the requirements of this clause 12 are fundamental requirements of this Agreement, and
- (b) maintenance by the Supplier and Tellus of all required insurances will not in any way limit the responsibilities, obligations and liabilities of the Supplier under any other provision of the Agreement.

## 12.4. Subcontractors

The Supplier must ensure that its subcontractors (including Supplier's Personnel who are not employees of the Supplier) are insured as required by clause 12, as appropriate (including as to amounts of insurance and type of insurance) given the nature of services or work to be performed by them, as if they were the Supplier.

## 12.5. Currency

The Supplier must ensure that each insurance referred to in:

- (a) clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.1(f) is in force from the Start Date and is maintained until the end of the end of this Agreement; and
- (b) clause 12.1(e) is in force from the commencement of this Agreement and is maintained for at least three (3) years after the later of:



- (i) the end of this Agreement; and
- (ii) the date upon which the Supplier completed the performance of the Services in accordance with this Agreement.

### 12.6. Insurers

The Supplier must ensure (and, where relevant, procure that its subcontractors ensure) that the insurance required to be taken out under clause 12 is:

- (a) effected with reputable insurers with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency and/or with an APRA approved insurer; and
- (b) on terms (including deductible levels) in line with prudent risk management practices given the nature of the business of the Supplier.

### 12.7. Production

The Supplier must, on or prior to the commencement of this Agreement and otherwise when requested by Tellus, promptly satisfy Tellus that each contract of insurance it is required to procure under this clause 12 is current by providing to Tellus cover notes, certificates of currency from the Supplier's broker or insurer, policy wordings (except for statutory policies), renewal certificates, proof or premium payment or other evidence reasonably required by Tellus. Notwithstanding anything to the contrary in this Agreement, Tellus:

- (a) has the right to refuse the Supplier (and any of the Supplier's Personnel) entry to Site; and
- (b) is not obliged to pay, and may withhold payment of without any interest accruing), any amount owed by it to the Supplier under this Agreement,

unless and until Tellus has been so satisfied. Nothing in this clause 12.7 will fix Tellus with written notice of the contents of any policy and will not be raised as a defence to any claim by the Supplier against Tellus.

### 12.8. Prejudicing insurance

The Supplier must ensure that in relation to any insurance policy required to be maintained under clause 12 it:

- (a) does not do or omit to do or, insofar as possible, permit or suffer to be done, any act or omission whereby any of the insurances referred to in this clause 12 may be prejudiced, vitiated, rendered void or voidable;
- (b) if necessary, reinstates an insurance policy if it lapses;
- (c) does not cancel or materially vary the policy in a manner adverse to its obligations under this Agreement or allow an insurance policy to lapse without the prior written consent of Tellus;
- (d) immediately notifies Tellus of any event which may result in an insurance policy lapsing or being cancelled; and
- (e) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

### 12.9. No insurance

If the Supplier (or the Supplier's Personnel who are contractors of the Supplier) fails to procure and maintain insurance policies in accordance with this clause 12, Tellus may, but is not obliged to:

- (a) procure and maintain any such insurance and deduct the cost of doing so (which will be a debt due and immediately payable from the Supplier to Tellus) from any payments to be made to the Supplier by Tellus (under this Agreement or any other Agreement); or
- (b) refuse to make any further payments due from time to time to the Supplier (under this Agreement or any other Agreement) until the insurance policies and receipt for the payment of premiums are made available for inspection by Tellus.

### 12.10. Claim

Whenever a claim is made under any of the policies of insurance referred to in this clause 12, the Supplier is liable for any excess or deductible payable as a consequence. The Supplier must inform Tellus in writing immediately it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in Clause 12.1(e) and where materially relevant to Tellus in clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.1(f), except claims which Tellus may have against the Supplier, accompanied by full details of the circumstances of such incident and where relevant, provide all such assistance to Tellus as may be required for the preparation and negotiation of insurance claims.

The Supplier's insurance policies will be the first in time to respond to any claims, where insurance is duplicated between the Supplier and Tellus' respective policies.

### 13 ASSIGNMENT

- (a) The Supplier must not assign, novate, transfer, encumber, sub-contract or otherwise part with the benefit of this Agreement in whole or in part, without the prior written consent of Tellus, which consent may be withheld by Tellus in its absolute discretion.
- (b) Notwithstanding any sub-contract of this Agreement in whole or in part, the Supplier is not released by Tellus, the Supplier will remain fully liable and responsible for the performance of the obligations under this Agreement, and the Supplier will be liable for all acts and omissions of its subcontractors and suppliers.
- (c) Any sub-contract must be subject to the terms of the Agreement.
- (d) Tellus may assign, novate, charge or encumber the Agreement or any part of it or any right, benefit, money or interest under the Agreement without the need to obtain the Supplier's consent.

### 14 SUSPENSION

- (a) Tellus may, by notice in writing to the Supplier ("the Suspension Notice"), direct the Supplier to suspend the provision of the Goods and/or Services or any part for any time and for any purposes Tellus thinks fit.
- (b) Upon receipt of the Suspension Notice, the Supplier must immediately suspend provision of the Goods and/or Services, as required in the Suspension Notice or by Tellus.
- (c) The Supplier must comply with any direction by Tellus to recommence provision of the Goods and/or Services as soon as is reasonably practicable.
- (d) The Supplier must do all things reasonably necessary to reduce any cost or expense incurred by the Supplier as a result of the suspension in provision of the Goods and/or Services.
- (e) Tellus will pay the Supplier's unavoidable fixed direct costs which have been reasonably and actually incurred by the Supplier as determined by Tellus during the period of suspension and which are incurred due to the suspension provided that:
  - (i) the Supplier does all things reasonably necessary to reduce any cost or expense as a result of the suspension; and
  - (ii) the reason for suspension was not caused or contributed to by any act, omission or default of the Supplier or the Supplier's Personnel.
- (f) If Tellus directed the Supplier to suspend provision of the Goods and/or Services and:
  - (i) the reason for the suspension was caused by Tellus; and
  - (ii) the suspension was not attributable to any act, omission or default of the Supplier or the Supplier's Personnel,

the date by which the Supplier must provide the Goods and/or Services under this Agreement will be extended for the same period of time as the provision of Goods and/or Services is suspended by Tellus under this Agreement.

### 15 FORCE MAJEURE

- (a) If a Party is prevented from carrying out the whole or any part of its obligations under this Agreement by reason of any Force Majeure, that Party ("the Affected Party") must immediately give to the other Party, written notice containing full particulars of the Force Majeure event including:
  - (i) the nature of the Force Majeure;
  - (ii) date of the first occurrence of the Force Majeure;
  - (iii) the effect the Force Majeure event will have on the Affected Party's ability to perform its obligations under the Agreement; and
  - (iv) the expected duration of the Force Majeure.
- (b) If the Affected Party is prevented from performing its obligations under the Agreement, subject to the Affected Party complying with Condition 15.1(e), performance of the Affected Party's obligations under the Agreement will be suspended to the extent performance is prevented by that Force Majeure event from the date of the written notice in Condition 15.1(a) is provided to the other Party and until cessation of the Force Majeure event.

- (c) The Affected Party must notify the other Party in writing as soon as practicable and in any event within 1 business day of the Force Majeure event ceasing to prevent the Affected Party from performing its obligations under the Agreement and the Affected Party must immediately resume its obligations which were suspended as a result of the Force Majeure event.
- (d) If the Affected Party's obligations are suspended under Condition 15.1(b), during that period of suspension:
  - (i) the Affected Party's non-performance or delay in performance resulting from the Force Majeure event will not be deemed to be a breach of the Agreement; and
  - (ii) each party will bear its own costs.
- (e) On and from the date the Affected Party is aware of the Force Majeure event, the Affected Party must use all reasonable diligence to mitigate and minimise the cause of and the effect of the Force Majeure on the Affected Party's ability to perform its obligations under the Agreement and must do all reasonable things to remedy the situation and resume its performance under the Agreement as soon as possible.
- (f) The Supplier is not entitled to:
  - (i) payment for obligations that are suspended under clause 15.1(b); and
  - (ii) an adjustment to the Price due to a Force Majeure event.
- (g) The time in which the Goods and/or Services must be provided by the Supplier under this Agreement will be extended for the period of time from the date the Affected Party issues a notice to the other Party providing details of the Force Majeure event and the date the Force Majeure event ceases.

## 16 DEFAULT

### 16.1. Event of Default

An Event of Default occurs if:

- (a) the Supplier or its Personnel do not comply with any of the Supplier's material obligations under the Agreement and that default continues for 14 days after notice from Tellus to the Supplier has been provided requiring the default to be remedied, where remedy is possible in the opinion of Tellus acting reasonably;
- (b) the Supplier or any of its Personnel commits an act of Gross Negligence or Wilful Misconduct, fraud or dishonesty for any matter undertaken or required to be undertaken under the Agreement;
- (c) the Supplier or the Supplier's Personnel act in a manner which Tellus considers to be substantially prejudicial or harmful to Tellus or which is unsafe;
- (d) an Insolvency Event occurs with respect to the Supplier.

### 16.2. Acceptance

The acceptance of provision of the Goods and/or Services or an attempt by Tellus to mitigate its loss is not a waiver of a preceding breach by the Supplier of its obligations under this Agreement or a surrender by operation of law.

## 17 TERMINATION

### 17.1. Termination for Default

If an Event of Default occurs, Tellus may terminate the Agreement at any time after the Event of Default by written notice to the Supplier with immediate effect.

### 17.2. Termination for Force Majeure

Without prejudice to any other rights, if an obligation of the Supplier is suspended due to a Force Majeure event for more than 14 consecutive days, Tellus may terminate the Agreement by issuing a written notice to the Supplier.

### 17.3. Termination

The Agreement will terminate on the date stated in the termination notice received by the Supplier or if no date is specified, the date notice is issued by Tellus to the Supplier.

### 17.4. Termination for Convenience

- (a) Tellus may at any time for its sole convenience terminate the Agreement by not less than 5 days' notice to the Supplier.

- (b) The Agreement will terminate on the date and time stated in the notice of termination.
- (c) If Tellus terminates the Agreement, Tellus must pay to the Supplier the actual costs payable up until the date of termination provided that:
  - (i) the Supplier has taken all reasonable steps to minimise those costs and expenses; and
  - (ii) where any materials or goods are ordered that cannot be cancelled, the Supplier ensures that Tellus receives delivery of and title to those materials or goods.
- (d) Tellus (acting reasonably) will determine the amount payable by it under this Condition and the Supplier must provide Tellus with whatever reasonable documentation Tellus may require in order for Tellus to make that calculation.

If any termination of this Agreement by Tellus is found to be wrongful, then the termination will be deemed to have been made in accordance with this clause 17.4 and Tellus will not in any event be liable to the Supplier for any indirect or consequential loss, or loss of profits.

### 17.5. Accrued rights

The expiration or earlier termination of this Agreement does not affect the rights Tellus has in relation to a breach of the Agreement by the Supplier before the expiration or termination.

## 18 DISPUTE RESOLUTION

### 18.1. Dispute Resolution

- (a) In the event of any dispute between the Parties concerning or arising out of this Agreement, the Parties must meet to attempt to resolve the dispute prior to the commencement of any proceeding.
- (b) The Party initiating the dispute must give notice setting out the nature of the dispute and available dates to meet to resolve the dispute.
- (c) Either Party may commence legal proceedings in relation to the dispute if:
  - (i) the Parties fail to resolve the dispute within 30 days of the first meeting;
  - (ii) the Parties fail to agree on a meeting within 14 days of receipt of the dispute notice; or
  - (iii) a Party fails to attend a scheduled meeting.

### 18.2. Continuity

- (a) Despite the existence of a dispute, the parties must continue to perform their obligations under the Agreement unless Tellus, by notice to the Supplier, suspends the parties' obligations pending the outcome of the dispute.
- (b) The Supplier is not entitled to any adjustment to the Price by reason of suspension of the Supplier's obligations under this Condition.

### 18.3. Injunctive or Urgent Relief

Nothing in this Condition prejudices either party's right to institute proceedings to seek injunctive or urgent declaratory relief for a dispute or any other matter arising under the Agreement.

## 19 CONFIDENTIALITY

The Supplier must:

- (a) not, and must ensure its Personnel do not, without Tellus' prior written consent, directly or indirectly disclose any Confidential Information to any person or use the Confidential Information in whole or in part, except in fulfilling its obligations under the Agreement;
- (b) not copy or otherwise reproduce any documents containing Confidential Information, except as necessary in fulfilling its obligations under this Agreement;
- (c) on termination of this Agreement, or on demand by Tellus, return all documents containing any Confidential Information, including any documents created by the Supplier which contain Confidential Information;
- (d) use its best endeavours to protect the confidentiality of the Confidential Information; and
- (e) comply with all reasonable requests by Tellus regarding the protection of the Confidential Information.

## 20 NOTICES

- (a) All notices and other documents given pursuant to this Agreement must be in writing and may be given by email, facsimile, personal delivery or prepaid post to the party to whom the notice is addressed as set out in the Purchase Order or such other address as it may have notified to the other party.
- (b) A notice or other document sent by email is deemed to be successfully received by the recipient:
  - (i) unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient; and
  - (ii) at the time of sending, or if the email is not sent before 5pm AWST on a business day, at the start of the next business day.
- (c) A notice or other document sent by facsimile is deemed to be successfully received by the recipient upon successful transmission or, if transmission is not effected before 5pm AWST on a business day, at the start of the next business day.
- (d) If a Purchase Order is issued by email, the Purchase Order is deemed to be successfully received by the Supplier:
  - (i) unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient; and
  - (ii) at the time of sending, or if the email is not sent before 5pm on a business day, at the start of the next business day.

## 21 GENERAL

### 21.1. Governing Law

The Agreement is governed by and is to be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

### 21.2. Severance

If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

### 21.3. Variation

This Agreement may only be varied by in accordance with Condition 3.3.

### 21.4. Waiver

- (a) A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.

### 21.5. Entire Agreement

The Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Agreement as at the date of this Agreement. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.

### 21.6. Survival

- (a) Subject to Condition 21.6(b), Conditions 1.2, 1.3, 2.3, 5, 7, 8.5, 9, 10 to 15 inclusive, 18, 19 and 21 of the Agreement survive termination of the Agreement and will continue in full force and effect;
- (b) The Conditions referred to in Condition 21.6(a) will cease to have any further force or effect on and from the time at which:
  - (i) a party will be barred from taking an action against the other under the relevant Condition due to the application of any Law for the expiration of time; and

- (ii) Tellus ceases to have any obligations under any Law where those obligations are being performed by the Supplier under the Agreement.

### **21.7. Further Assurance**

From time to time at the request of Tellus, the Supplier shall do and execute or cause to be done or executed all such acts, deeds and assurances whatsoever reasonably necessary for ensuring full and proper compliance with or performance of the terms of this Agreement.