

## RED 5 PURCHASE ORDER TERMS AND CONDITIONS (Supply of Goods and/or Services)

### 1. Interpretation

#### 1.1 Definitions

**Applicable Anti-Corruption Laws** means any anti-corruption Laws applicable to the Principal, the Supplier or the arrangements the subject of this document, including, without limitation, any anti-corruption Law of the Commonwealth of Australia or the State of Western Australia and any anti-corruption Law of a country other than Australia which applies to the Principal, the Supplier or the arrangements the subject of this document from time to time.

**Australian Standards** are those documents published by Standards Australia from time to time setting out applicable specifications and procedures with respect to certain products, services and systems.

**Authorisation** includes:

- (a) any authorisation, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption; and
- (b) in relation to anything which will be prohibited or restricted in whole or in part by Law if a Authority intervenes or acts in a manner within a specified period after notification to it, the expiry of that period without intervention or action by the relevant Authority.

**Authority** means each of the following:

- (a) the Crown in the right of the Commonwealth of Australia and the State of Western Australia;
- (b) the Government of the Commonwealth of Australia and the State of Western Australia;
- (c) any body politic, including the Parliament of the Commonwealth of Australia and the State of Western Australia;
- (d) any local or municipal council or administrator;
- (e) any authority, commission, body or corporation constituted or formed under any Law as the agent of a government and any holder of any office exercising any authority, power or right as the agent of a government under any Law; and
- (f) any delegate, agent or person exercising the authority of any of the foregoing.

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Confidential Information** means all information which is not in the public domain and which is reasonably regarded by the Principal as confidential relating in any way to the Principal which the Supplier is or becomes aware of in the course of providing the Goods and/or Services, regardless of whether acquired or developed by the Principal, the Supplier, or a said party including, without limitation:

- (a) inventions, product designs (including designs of computer systems), secret formulae and secret processes;
- (b) computer software and data, including functional specifications, flow charts and documentation;
- (c) existing or proposed business methods and management systems;
- (d) financial and business information of any kind or including balance sheets, profit and loss accounts, working papers and the results of any analysis, reports, study or projection; and

- (e) strategic information such as information concerning current and proposed operations, projects and marketing strategies; and
- (f) the Purchase Order, these Terms and Conditions (including any Special Conditions) and the contents thereof.

**Corporations Act** means the *Corporations Act 2001* (Cth) and includes all regulations made in accordance with that Act.

**Date of Delivery** means the date on which the Goods and/or Services are actually delivered or provided on Site or at such other location as agreed by the parties.

**Due Date** means the date, dates or period specified in the Purchase Order for the intended actual delivery or completion of the Goods and/or Services but if a change of the Due Date is directed by the Principal, it means the new date.

**Delivery Point** means the location to which the Goods and/or Services are to be delivered or provided as specified in the Purchase Order.

**Encumbrances** means any restrictions, conditions, covenants, liens, charges, mortgages, security interests, Claims by third parties or encumbrances of any nature.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**Facilitation Payment** means any consideration (including a loan money, gift or anything else of value) provided in an endeavour or attempt to influence any act or decision (including a decision not to act) of any person (including personnel of an Authority or political party), in its capacity or to induce a person to use its influence to effect a decision so as to assist the person providing such consideration in obtaining or retaining business or directing business to any person or to secure any improper advantage or any payment to facilitate or expedite any routine action.

**Goods** means the goods described in the Purchase Order.

**Gross Negligence** means such reckless and wanton conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from that conduct.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all regulations made in accordance with that Act.

**Indemnified Parties** means, the participants in any joint ventures in respect of which the Principal or any affiliates of the Principal are the manager, and their respective Personnel.

**Indirect Loss** means:

- (a) any consequential loss or damage however caused, including without limitation any:
  - (i) loss of (or loss of anticipated) use, production, opportunity, revenue, income, profits, business and savings; or
  - (ii) business interruption,whether or not the consequential loss or damage was foreseeable;
- (b) exemplary or punitive damages; and
- (c) any loss or damage arising from special circumstances that are outside the ordinary course of things.

**Insolvency Event** means any one or combination of the following or any event or circumstance analogous to the following:

- (a) a party disposes of the whole or any part of its operations or business other than in the ordinary course of business;
- (b) a party ceases to carry on business;
- (c) a party ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of a party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between a party and its creditors;
- (f) any step is taken to appoint an External Administrator.

**Intellectual Property** means:

- (a) the various rights and property conferred by statute, common law and equity in and in relation to patents of any kind, inventions, utility models, designs, copyright, trademarks, trade names, business names, corporate names, logos and get up, circuit layouts, know-how, trade secrets and confidential information and the right to have trade secrets and confidential information kept confidential and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967;
- (b) all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in paragraph (a) of this definition; and
- (c) all rights of action in respect of the rights or property referred to in paragraph (a) of this definition.

**Law** includes any constitution or provision, treaty, decree, convention, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, ruling or guideline by an Authority exercising jurisdiction in the relevant matter.

**Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

**Manager** means the registered manager for the mine under the Mines Safety Act.

**Mines Safety Act** means the *Mines Safety and Inspection Act 1994* (WA) and includes all regulations made in accordance with that Act.

**Parties** means the Principal and the Supplier and Party means one of them (as relevant).

**Personal Information** has the meaning set out in the Privacy Act.

**Personnel**, in respect of a person, means that person and its affiliates and joint venture partners and their respective directors, officers, employees, agents, consultants, contractors and sub-contractors.

**Plan** means any plan provided by the Supplier in relation to health and safety, environmental compliance, employee relations, quality assurance or any other matter, and approved by the Principal and Plans means any or all of them.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time and including regulations made under it at any time.

**Price** means, subject to clause 32, the amount set out in the Purchase Order.

**Privacy Act** means the *Privacy Act 1988* (Cth), as amended from time to time and including regulations made under it at any time.

**Process**, in respect of Personal Information, means collect, hold, use, transfer, destroy and deal with in any other way, and Processing has a corresponding meaning.

**Purchase Order** means the document issued by the Principal to the Supplier in respect of the supply and/or delivery of the Goods and/or Services, in the form set out in [Schedule 1](#) hereto.

**Principal** means Red 5 Limited (ABN 73 068 647 610) or its Related Body Corporate as specified in the Purchase Order, including:

- (a) Opus Resources Pty Ltd (ACN 099 235 533) to the extent that the Goods and/or Services are provided to it or at the Darlot Gold Mine;

- (b) Darlot Mining Company Pty Ltd (ABN 78 165 235 245) to the extent that the Goods and/or Services are provided to it or at the Darlot Gold Mine; and

- (c) Greenstone Resources (WA) Pty Ltd (ABN 58 100 341 599) to the extent that the Goods and/or Services are provided to it or at the King of the Hills Gold Project

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

**Principal Representative** means the person specified as such in the Purchase Order or the person otherwise appointed by the Principal from time to time to perform the role of the Principal's Representative pursuant to this document.

**Principal's Standards and Procedures** means those regulations, standards, policies and procedures (including in relation to Site induction and Site specific issues) (or such other similar documents) published by the Principal as amended from time to time, including standards, policies and procedures relating to the Site, the environment, health, safety and social responsibility aspects of the Principal's operations.

**Scope of Services** means, where Services are provided, the activities described in the Purchase Order.

**Security Interest** has the meaning given to it in the PPS Act.

**Services** means the services to be provided by the Supplier as described in the Purchase Order.

**Services Term** means the period set out in the Purchase Order for providing the Services.

**Site** means the site or premises specified in the Purchase Order.

**Special Conditions** means any terms and conditions (if any) either (i) annexed to this document; and/or (ii) set out in the Purchase Order, which are incorporated into and form part of this document pursuant to clause 33.

**Specification** means the specification set out in the Purchase Order, Special Conditions, proposal or quotation or other information provided by the Supplier or other information communicated between the Supplier and the Principal, provided that if there is any inconsistency in any specifications set out in the documents listed above, they will prevail over each other in the order listed above.

**Supplier** means the person or party supplying the Goods and/or Services to the Principal as specified in the Purchase Order issued by the Principal.

**Supplier Personnel** means the Supplier's Personnel who are to deliver the Goods and/or provide the Services in accordance with this document and the Personnel of the Supplier who are to assist in the management and co-ordination of the Services in accordance with this document.

**Taxes** means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods and/or Services under this document by all local, state or national government Authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty, but does not include GST.

**Third Party Warranties** means the warranties in respect of the Goods obtained by the Supplier from third party manufacturers or suppliers for the benefit of the Principal as described in clause 13.

**Warranties** means the warranties in respect of the Goods and/or Services as described in the Purchase Order and this document.

**Wilful Misconduct** means any intentional act or omission by a Party carried out with disregard for the foreseeable and harmful consequences for the other Party, but does not include an error of judgment, mistake, act or omission, whether negligent or not, made in good faith.

## 1.2 Interpretation

- (a) Reference to:
  - (i) one gender includes the other genders;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes a natural person, partnership, body corporate, association, Authority or other entity;

(iv) a reference to a party means a party to this document and includes its executors, administrators, successors and permitted assigns;

(v) a reference to an affiliate means a related body corporate;

(b) If a party consists of more than one person this document binds them jointly and each of them severally.

(c) Headings are for convenience only and do not affect the interpretation, or form part of this document.

(d) The word including and similar expressions are not words of limitation and including means 'including, without limitation'.

(e) The word indemnify means indemnify and agree to defend and hold harmless.

(f) A word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act.

(g) A word or expression defined in the GST Act has the meaning given to it in the GST Act.

(h) Where a word or expression is given a particular meaning, other parts of the speech and grammatical forms of that word or expression have a corresponding meaning.

(i) If an act must be done on a specified day which is not a business day, the act must be done on the next business day instead.

(j) A reference to \$, AUD or dollar is to Australian currency, unless specified otherwise.

## 2. Supply

2.1 The Supplier must supply the Goods and/or Services to the Principal in accordance with this document and further:

(a) may only supply Goods and/or Services to the Principal once a Purchase Order in respect of those Goods and/or Services is received;

(b) this document applies to the exclusion of any terms and conditions proposed by the Supplier except to the extent that the Supplier's proposed terms and conditions are accepted in writing by the Principal's Representative;

(c) acknowledges that the Principal makes no warranty or representation as to the minimum quantities of, or requirements for Goods and/or Services by the issue of a Purchase Order; and

(d) acknowledges that the supply of Goods and/or Services is non-exclusive and the Principal may engage other suppliers or contractors for the supply of the same or similar goods or services.

## 3. Supply of Goods

3.1 The Supplier must:

(a) supply to the Principal at the Delivery Point the Goods free from any Encumbrances whatsoever;

(b) supply to the Principal at the Delivery Point all operating and maintenance manuals for the Goods (if any);

(c) deliver the Goods and all parts or components of the Goods and all operations and maintenance manuals (if any) to the Delivery Point at the Supplier's own cost on the Due Date; and

(d) ensure that the Goods delivered are accompanied by a delivery docket, packing slip, consignment note or like document which clearly describes the Goods and specifies the Purchase Order number, the Principal's operation or Site, the name of the Principal's Representative and any other information directed by the Principal's Representative,

in accordance with the Specification and this document.

3.2 The Supplier must ensure that the Goods and all components of the Goods are new and in good merchantable condition and fit for their intended purpose.

## 4. Delivery of Goods and Services

4.1 Time must be of the essence in respect of the delivery of all Goods and provision of all Services, unless otherwise agreed in writing by the Principal's Representative.

4.2 On the Date of Delivery of Goods, the Supplier must promptly unload the Goods as well as all parts or components of the Goods and provide all operating and maintenance manuals (if any) at the Delivery Point or such location as directed by the Representative, the Manager or other person nominated by the Principal. The Principal will only take delivery of the Goods once they are fully unloaded.

4.3 The Principal may direct the Supplier to change the Due Date. If the Supplier can reasonably comply with the direction, the Supplier must do so. If the Supplier cannot comply, the Supplier must give the Principal written notice of the reasons.

4.4 If compliance with any direction under clause 4.3, except those directions arising pursuant to the Supplier's default, causes the Supplier to incur more or less costs than otherwise would have been incurred had the Supplier not been given the direction, the difference must be assessed by the Principal and added to or deducted from the Price.

4.5 If, for any reason not attributable to the Principal, the Supplier fails to deliver the Goods to the Delivery Point on the Due Date or fails to complete the Services on or before the Due Date, the Supplier must pay the Principal such liquidated damages in the amount specified in the Purchase Order commencing from the day following the Due Date until the Date of Delivery (inclusive). If no liquidated damages are specified in the Purchase Order, the Principal will be entitled to its actual damages.

4.6 Unless otherwise specified in the Purchase Order, all deliveries of Goods must occur between 8.00 a.m. and 3.00 p.m.

## 5. Packaging and documentation

5.1 Goods must be suitably packaged consistent with all applicable Law and with good industry practice and weather sealed:

(a) (as the case may be) for long distance sea, road or rail transport to the Delivery Point;

(b) to provide maximum protection to the Goods in handling and storage; and

(c) so as to ensure they are within Specification when delivered to the Delivery Point.

5.2 Any Goods containing hazardous chemicals or oil, fuel or other flammable additives must be made safe for transporting, which may include being drained of those additives (and tagged accordingly) prior to delivery to the Delivery Point, and must in any event comply with all applicable Laws.

## 6. Inspection and audit of Goods and records

6.1 The Principal may:

(a) require the Supplier to send all certificates of analysis, documents relating to the identity and quality of Goods to an authorised purchasing representative of the Principal prior to arrival of the Goods at the Delivery Point; and

(b) audit the Supplier's quality system and inspect the production of Goods at Supplier's works using recognised auditing procedures (in which case the Supplier will provide such information and access necessary for the Principal's inspection).

6.2 No inspection of the Goods by the Principal or action by the Principal under clause 6.1 in any way alters the Supplier's responsibility to comply with this document.

6.3 When requested by the Principal's Representative, the Supplier will issue to the Principal regular reports on the progress of the manufacture or procurement for supply of the Goods in a form approved by the Principal. The Supplier must, on a regular basis, confer with the Principal's Representative for the purpose of receiving instructions, notifications and authorisations as to performing its obligations pursuant to this document.

6.4 The Supplier will maintain its records relating to the Purchase Order and the supply of the Goods and/or Services for a period of two years from the Date of Delivery and will make these available for inspection by the Principal when and where reasonably required by the Principal.

#### 7. **Ownership and risk**

7.1 Ownership and title in the Goods will pass from the Supplier to the Principal free of any Encumbrances on full payment for the Goods by the Principal. Risk will pass on delivery of the Goods in accordance with clause 4.

#### 8. **Rejection of Goods**

8.1 Without prejudice and in addition to any rights that the Principal has under clause 17, the Principal may reject all or any Goods delivered to the Principal where the Principal determines that:

- (a) the Goods contain a defect;
- (b) the Goods are unfit for use;
- (c) the Goods do not comply with the requirements of this document; or
- (d) the Goods' packaging is damaged or defective to an extent that damage to the Goods is possible.

8.2 To the extent the Principal rejects all or any Goods under clause 8.1:

- (a) the Supplier's obligation to deliver those Goods is not satisfied;
- (b) ownership, title and risk in the rejected Goods remains with, or reverts to, the Supplier as the case may be;
- (c) the Supplier must not replace the rejected Goods unless it receives instructions from the Principal to do so;
- (d) any monies paid by the Principal to the Supplier in respect of rejected Goods prior to their being rejected must be repaid immediately; and
- (e) the Supplier must collect the Goods at its own cost and at a time convenient to the Principal.

8.3 Without prejudice to the general application of clause 10.7, all monies paid by the Principal to the Supplier will be deemed to have been paid on account and be conditional upon, and subject to, the Goods being free of any defects.

#### 9. **Services**

9.1 The Supplier must provide the Services for the duration of the Services Term in accordance with this document, including the Scope of Services.

#### 10. **Payment**

10.1 Subject to the Supplier providing the Goods and/or Services in accordance with this document, and otherwise subject to this document, the Principal must pay the Price to the Supplier.

10.2 All payments made by the Principal in respect of the Price must be made by direct electronic deposit into a bank account nominated by the Supplier in a written notice to the Principal.

10.3 Subject to clause 11, the Supplier acknowledges that the Price represents the total amount payable by the Principal to it in respect of the Goods and/or Services and acknowledges that if it incurs additional costs, it will not be entitled to any increase in the said amount or otherwise to reimbursement or payment of any additional costs.

10.4 The Supplier must within seven days of the end of the month in which the Goods and/or Services were provided, deliver to the Principal a tax invoice in the amount specified as payable in the Purchase Order provided in the relevant month.

10.5 Each tax invoice must be dated for the month in which the Goods and/or Services were provided and must set out:

- (a) a description and date of the Goods and/or Services provided to the Principal;
- (b) the Price or part thereof payable in respect of the period to which the tax invoice relates and appropriate GST;

(c) the Purchase Order number issued by the Principal in respect of the Goods and/or Services;

(d) the name of the relevant Principal's operation and/or Site;

(e) the name of the Principal's Representative in respect of the relevant Purchase Order; and

(f) any other information directed by the Principal's Representative,

and be addressed and forwarded to the Principal's Accounts Payable department at the respective Principal's operation or Site as specified in the Purchase Order.

10.6 Subject to this document, the Principal must, within 30 days of the end of the month in which the tax invoice is submitted in accordance with clause 10.4, pay the Supplier the amount of that tax invoice. For the avoidance of doubt, invoices submitted by the Supplier:

(a) before the end of the month in which the Goods and/or Services were provided, will be paid within 30 days of the end of that month; and

(b) after the period set out in clause 10.4, will be paid within 30 days of the end of the following month.

10.7 If the Principal disputes any amount claimed in a tax invoice, the Principal must nevertheless:

(a) within 30 days of the Supplier submitting its tax invoice, notify the Supplier of the amount that it accepts is payable and insofar as an amount claimed is disputed, provide written reasons for disputing the amount; and

(b) pay the amount (if any) that it accepts as payable.

10.8 The Principal's payment will not be considered as an acceptance of the Principal's liability to pay the Supplier and all payments by the Principal are on account only.

10.9 If the Principal fails to respond to a payment claim in accordance with clause 10.7 then the amount claimed by the Supplier is deemed to be disputed.

#### 11. **Variations**

11.1 Subject to clause 22, the Principal may vary the Goods and/or Services to be supplied under a Purchase Order by issuing a further (new or adjusted, as required) Purchase Order.

#### 12. **Warranties**

12.1 By issuing a tax invoice to the Principal under clause 10.4, the Supplier warrants to the Principal that:

(a) the Goods and all components or parts of the Goods are free from any Encumbrances;

(b) the Goods and all components or parts of the Goods are to the quality and standard stipulated by this document, are of merchantable quality, free from defects and fit for their intended purpose and for the purposes for which Goods of that kinds are commonly supplied;

(c) all operating and maintenance manuals supplied with the Goods in accordance with clause 3.1 (if any) are correct, complete and fit for their intended purpose;

(d) the Goods meet the Specifications, if any;

(e) the Goods are safe and durable; and

(f) the Services will be provided in accordance with the Scope of Services and will be executed and completed in a proper and workmanlike manner with due skill, care and diligence, having regard to the nature of the Services.

12.2 The Warranties are in addition to and do not derogate from any warranty implied by Law in respect of the Goods and/or the Services.

#### 13. **Third Party Warranties**

13.1 Where the Goods or any materials, parts or components of the Goods supplied pursuant to this document are manufactured or supplied by a party or parties other than the Supplier, the Supplier must procure from the parties the best reasonably

obtainable warranties in respect of the Goods or such materials, parts or components of the Goods that are manufactured or supplied by third parties and must ensure that the Principal will have the benefit of those Third Party Warranties.

#### 14. **Supplier Obligations**

##### 14.1 The Supplier must:

- (a) at the Supplier's expense, comply with and observe:
  - (i) all applicable Law and Australian Standards as are current at the time the Goods and/or Services are delivered or provided or the Site is otherwise accessed; and
  - (ii) all the Principal's Standards and Procedures Standards and Procedures, including those in respect of health, safety and the environment;
- (b) not:
  - (i) engage in, supply, support or fund any corrupt or other activities which, directly or indirectly, finance or benefit armed conflict or contribute to abuses of human rights; or
  - (ii) make any Facilitation Payments,in respect of the supply of Goods and/or Services to the Principal;
- (c) carry out the Services in accordance with this document, and, without prejudice to any other obligation under this document, immediately notify the Principal if it is unable to provide the Services in accordance with this document;
- (d) carry out the Services so as not to compromise any benefit under the Warranties or the Third Party Warranties;
- (e) indemnify the Principal against any cost reasonably incurred by the Principal by reason of the Supplier's failure to advise in accordance with clause 14.1(c);
- (f) ensure that the Services are:
  - (i) executed and completed in a proper and workmanlike manner with due skill, care and diligence, having regard to the nature of the Services;
  - (ii) carried out by personnel who are suitably qualified, skilled and experienced and, where required, have the appropriate Authorisations to carry out those activities; and
  - (iii) executed in a timely manner consistent with the Principal's operating and other requirements;
- (g) if required by the Principal, provide the Services in accordance with the Plans and any other plan or standard reasonably required by the Principal; and
- (h) comply with any direction given by the Principal, the Principal's Representative or a Manager and ensure that all its employees, contractors and agents comply with any direction given by the same.

14.2 The Supplier must ensure that where applicable the Services are performed, at a minimum, in accordance with best industry practice, the Plans relevant to Australian (or international) Standards, all applicable Laws and any code of practice has application to the provision of the Services and in accordance with the Warranties. Without limiting the foregoing, where Services are to be provided on a Site which is a mine for the purposes of the Mines Safety Act, the Supplier must ensure that the provisions of the Mines Safety Act are complied with.

14.3 The Supplier acknowledges that the Services provided by it to the Principal pursuant to the Purchase Order and this document may be critical to the Principal and its operations and agrees that it may not withhold the provision of Services due to any dispute arising from or related to the Purchase Order or this document unless the Services are terminated and all obligations of the handover by the Supplier have been performed. In addition, and subject to this document, the parties are to continue to perform all other obligations pursuant to this

document except for any obligation which cannot be performed because of the dispute.

##### 14.4 During the Services Term:

- (a) The Supplier must at its cost provide sufficient tools and equipment to enable the Supplier to effectively carry out the Services in accordance with this document.
- (b) The Supplier will be responsible for repairing, maintaining, replacing or upgrading such tools and equipment, as required to enable it to effectively provide the Services in accordance with this document.
- (c) Where Services are to be provided on a Site which is a mine for the purposes of the Mines Safety Act, the Supplier must ensure that its tools and equipment comply with the requirements of the Mines Safety Act (if any).
- (d) risk in the tools and equipment must remain with the Supplier at all times.

14.5 The Supplier will ensure that it has all necessary Authorisations to exercise its rights and perform its obligations pursuant to this document, including any accreditation required under Law and must, upon request of the Principal, provide copies of such Authorisations.

##### 14.6 The Supplier must:

- (a) manage any industrial relations issues which may arise in relation to Supplier Personnel without impacting on the level of Services required pursuant to this document;
- (b) prior to entering into any enterprise bargaining agreement, collective or like agreement with any Supplier Personnel, provide the Principal with an opportunity to review and comment on the agreement insofar as it may impact on the provision of the Services;
- (c) keep the Principal fully and promptly informed of industrial relations problems or issues which affect or are likely to affect performance of the Services; and
- (d) ensure that the following information is available at all times for inspection by the Principal in respect of each individual Supplier Personnel:
  - (i) roster details;
  - (ii) medical clearance certificates (including drug clearance); and
  - (iii) any other information reasonably requested by the Principal's Representative or the Principal's Site Human Resources Manager from time to time.

##### 14.7 When providing the Services or otherwise accessing the Site:

- (a) The Supplier and Supplier Personnel must:
  - (i) perform the Services or conduct itself on the Site in a manner so as to avoid environmental harm, pollution or contamination of or outside the Site; and
  - (ii) ensure that each of its Supplier Personnel also complies with the requirements under clause 14.7(a)(i).
- (b) The Supplier is responsible for, and must make good, any environmental harm, pollution or contamination caused by the performance of the Services or access to the Site by the Supplier or Supplier Personnel including any environmental harm, pollution or contamination of or outside of the Site.
- (c) The Supplier must:
  - (i) clean up any pollution or contamination caused during the performance of the Services or access to the Site by the Supplier or Supplier Personnel; and
  - (ii) comply with all directions of the Principal, a Manager and any Authority regarding cleaning up pollution or contamination.
- (d) The Supplier must indemnify the Principal against:
  - (i) any liability to or Claim by a third party; and

- (ii) all costs, penalties, fines, losses and damages suffered or incurred by the Principal,

arising out of or in connection with any failure by the Supplier to comply with the requirements of this clause 14.7 or environmental harm caused by the Supplier.

14.8 Without limiting clause 14, where the Goods are to be supplied and/or the Services are to be performed on a Site which is a mine for the purposes of the Mines Safety Act (or other applicable Law, if:

- (a) any Supplier Personnel suffer any injury which would require notification pursuant to the Mines Safety Act or other applicable Law; or
- (b) the Supplier becomes aware of any incident which would require notification pursuant to the Mines Safety Act or other applicable Law,

the Supplier must immediately after such injury or incident occurs notify the Manager and provide sufficient details of the injury or incident and the circumstances giving rise to the injury or incident as are required under the Mines Safety Act or other applicable Law.

14.9 The Supplier must and must ensure that Supplier Personnel fully cooperate with the Principal in any investigation it conducts following any safety incident on a Site, and, if required, provide a written report to the Principal in respect of such incident.

## 15. Assignment

15.1 The Principal may by notice to the Supplier assign, transfer or otherwise deal with all or any part of its rights or obligations under or in connection with this document.

15.2 The Supplier may not assign, transfer or otherwise deal with its rights or obligations under or in connection with this document without the prior written approval of the Principal. Such approval may be withheld by the Principal for any reason in its absolute discretion.

## 16. Sub-Contracting

16.1 The Supplier must not sub-contract the supply, delivery or unloading of the Goods or the whole or any part of the Services without the prior written approval of the Principal.

16.2 The Principal may grant its approval subject to the condition that the Supplier must submit to the Principal for its approval each agreement, arrangement or understanding for the subcontracting of the supply, delivery or unloading of the Goods or the whole or any part of the Services. In giving written approval, the Principal may impose such terms and conditions as it thinks fit.

16.3 The Supplier remains responsible for performing its obligations under this document notwithstanding the Supplier has sub-contracted the performance of all or any part of those obligations.

## 17. Indemnity and liability

### 17.1 Indemnity

The Supplier must be liable for and must indemnify the Indemnified Parties against all Claims, demands, losses, actions, penalties, fines, damages, costs (including legal costs), liabilities and expenses arising at common law and under statute suffered or incurred by the Indemnified Parties in respect of:

- (a) personal injury, illness or disability, or the death of any persons (including Supplier Personnel); and/or
- (b) loss or destruction of, or damage to or the loss of use of all property real or personal (including the property of the Indemnified Parties);

arising out of, caused or contributed to, whether wholly or in part, directly by:

- (c) any breach of this document by the Supplier;
- (d) the performance or non-performance of the Services; or
- (e) the presence of the Supplier or any Supplier Personnel or their servants, agents or sub-contractors on the Site,

except that the Supplier's liability will be reduced proportionately to the extent that any such liability results from the negligence or Willful Misconduct of the Principal, its employees, agents or contractors.

### 17.2 Indirect Loss

Subject to clause 17.5, the Parties:

- (a) agree that neither Party is, in any circumstance, liable to the other party for any Indirect Loss, howsoever arising; and
- (b) release each other from all Claims for Indirect Loss arising under, or in respect of, this document.

### 17.3 Limitation of liability

Subject to clause 17.5, the Parties agree that:

- (a) a Party's liability to the other party under this document for any breach or negligence by that Party or any of its Personnel is, to the extent permitted by Law, limited to those losses which are a direct result of such breach or negligence; and
- (b) if an act or omission of a party under this document:
  - (i) gives the other Party a right to general damages (including damages for negligence, where that negligence constitutes, or contributes to, the default) or;
  - (ii) gives rise to liability under the indemnity provided at clause 17.1,

then except where this document specifically provides otherwise, such damages or liability is limited to the direct, proximate and foreseeable loss attributable to such act or omission, after taking into account any obligation of the relevant party to mitigate its loss.

### 17.4 Liability cap

Subject to clause 17.5, the liability of the Supplier to the Principal in connection with the Purchase Order, whether arising in contract (including but not limited to indemnities and warranties), in tort (including but not limited to negligence), in equity, by operation of statute or otherwise will be capped at:

- (a) three times the Price in the aggregate; plus
- (b) the maximum aggregate value the Supplier is able to recover or should, using reasonable endeavours and acting in accordance with this document, have been able to recover, under any relevant insurance policy; plus
- (c) any amount the Supplier is able to recover or should, using reasonable endeavours, have been able to recover from any third party in respect of the Supplier's liability to the Principal; plus
- (d) the amount of any liquidated damages payable under this document.

### 17.5 Exclusion from liability exclusions, limitations and cap

The limitations of liability, liability caps and exclusions of liability in favour of the Supplier in clauses 17.2, 17.3 and 17.4 do not apply to the extent that:

- (a) the liability or obligation of the Supplier to the Principal relates to an insured liability under a policy of insurance;
- (b) the Supplier is able to recover or should, using reasonable endeavours and acting in compliance with this document, have been able to recover, any payment or other benefit from any third party in respect of the Supplier's liability to the Principal;
- (c) the liability cannot be limited or excluded at law;
- (d) the liability arises out of a breach by the Supplier of any Intellectual Property right (including moral rights) or confidentiality obligation; or
- (e) the liability arises out of or is caused or contributed to, directly or indirectly, by the Gross Negligence, fraud, Willful Misconduct, fraudulent misrepresentation, breach

of Law or criminal conduct of the Supplier or the Supplier's Personnel.

#### 17.6 Civil Liability Act

All of the provisions comprising Part 1F of the *Civil Liability Act 2002* (WA) are hereby expressly excluded from and do not apply to this document.

#### 18. Insurance

18.1 The Supplier will effect and maintain, for the duration of this document, at its own expense, the following insurance policies:

- (a) Workers' compensation and employers' liability insurance (including Industrial Disease cover) covering all Claims and Liabilities under any applicable Law, and where common law claims are allowed outside of the statutory scheme, for employer's liability at common law, for the death of or injury to:
  - (i) any person employed by the Supplier in connection with the supply of the Goods and/or Services; and
  - (ii) any person who is a worker of the Supplier or any of its sub-contractors in connection with the supply of the Goods and/or Services and who may be deemed under statute to be a worker of the Principal.
- (b) General public and products liability insurance with a limit of liability of not less than \$10,000,000 for any one occurrence, covering liability for:
  - (i) personal injury, disease or illness (including mental illness) or death; and
  - (ii) loss of, damage to, or loss of use of, real or personal property and consequential loss,

arising out of the performance of the Services or supply of the Goods. This insurance must be extended to cover liability for:

- (iii) any plant and equipment of the Principal in the care, custody or control of the Supplier, except to the extent such plant and equipment is otherwise insured against the risk of loss or damage under other insurances required to be effected pursuant to this document;
- (iv) underground operations, if applicable;
- (v) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the supply of the Goods and/or Services; and
- (vi) registered vehicles used as a tool of trade in the performance of the Services and/or supply of the Goods.

Such insurances must be endorsed:

- (vii) to provide the principal's liability cover in respect of any vicarious liability of the Indemnified Parties arising from the Supply of the Goods and/or Services;
  - (viii) with a cross-liabilities clause in which the insurer agrees that the policy applies as if a separate policy was issued to each beneficiary (with the exception of limits of liability); and
  - (ix) with a severability and non-imputation stipulation, so that a breach of any term of the policy or of the duty of disclosure by one insured will not disentitle other named insured or noted interest beneficiaries to coverage.
- (c) Motor vehicle insurance covering all mechanically propelled vehicles that are registered, or are capable of being registered for road use, and which are used in connection with the supply of the Goods and/or Services, 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 insured of not less than \$20,000,000 per occurrence.

- (d) Equipment insurance covering all items of the Supplier's equipment (including unregistered motor vehicles) that the Supplier uses to perform the Services for an amount of not less than its market value, to the satisfaction of the Principal.

- (e) Insurance covering all insurable risks of physical loss or damage to the Goods occurring at any time while in transit or in storage in the ordinary course of transit up to the Delivery Point. Such insurance must:

- (i) cover the Goods on a declared value basis for their full invoice value at Delivery Point; and
- (ii) incorporate, as applicable, the Institute of London Underwriters standard clauses for Marine Cargo (A) or marine inland transit insurance.

- (f) If professional services are being provided, professional indemnity insurance covering Claims made against the Supplier or its sub-contractor for breach of professional duty by reason of an act, error or omission whenever committed in the provision of the Services or in respect of the provision of Goods with a limit of liability of not less than \$5,000,000 for any one occurrence. The Professional Indemnity Insurance policy will either be renewed for 7 years after the issue of the Purchase Order or alternatively 7 years run off cover will be purchased by the Supplier.

18.2 The Supplier will:

- (a) observe and perform all terms and conditions of such insurances and pay all deductibles;
- (b) ensure the Principal is not prejudiced by any breach of the conditions of the insurances by the Supplier;
- (c) provide certificates of currency and such other evidence that the Principal may require regarding the insurances at any time (including prior to the issue of a Purchase Order), if requested to do so;
- (d) ensure that all insurances arranged by the Supplier are effected with reputable financially secure insurers (with a Standard and Poor (or equivalent) rating of not less than A minus; and
- (e) notify the Principal in writing as soon as practicable after receiving any notice of cancellation or any change in any policy of insurance that will have a material effect on the cover required to be taken out by the Supplier in accordance with this document.

18.3 If the Supplier fails to take out any of the insurances required under this clause, the Principal may at its sole option take out and maintain such insurances and deduct the costs from any moneys due to the Supplier or treat the failure to insure as a breach under clause 22.1(a), which unless remedied within 14 days, the Principal may terminate the Arrangement in whole or in part immediately in writing.

18.4 Without prejudice to clause 18.3, the Supplier shall be deemed to have indemnified the Indemnified Parties against all claims, demands, proceedings, costs, charges and expenses which may arise as a result of the Supplier failing to take out or maintain any of the insurances required under this clause.

18.5 Where the Supplier has been permitted to assign or sub-contract under the Purchase Order, the Supplier must ensure that the assignee or sub-contractor obtains the insurances specified in and otherwise complies with the provisions of this clause. Such assignment or sub-contract will not relieve the Supplier of its own obligations to fulfill any provisions of this clause.

18.6 Nothing in this clause limits the Supplier's liability under clause 17.

#### 19. Confidential Information

19.1 The Supplier covenants that it will hold all Confidential Information in confidence for the Principal for the purposes of



- performing its obligations under this document and will not directly or indirectly at any time during the supply of the Goods or the provision of the Services, or after the termination or expiry of the Purchase Order or this document use, and will not permit any Supplier Personnel to use, any Confidential Information or disclose, or permit any Supplier Personnel to disclose, any Confidential Information to any third party except if the use or disclosure:
- (a) is for the purpose of providing the Goods and/or Services;
  - (b) relates to information already within the public domain, other than by virtue of a breach of this clause by the Supplier or any Supplier Personnel;
  - (c) subject to clause 19.2, is required by Law or by any competent Authority having jurisdiction over the Supplier; or
  - (d) is made with the prior written consent of the Principal.
- 19.2 Neither Party may disclose information of the kind referred to in section 275(1) of the PPS Act and this clause constitutes a confidentiality agreement within the meaning of the PPS Act. The Supplier waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of information of the kind referred to in section 275(1) of the PPS Act.
- 20. Privacy and Data Protection**
- 20.1 Each Party agrees to comply with the Privacy Act in respect of Personal Information obtained or disclosed to it in connection with this document, the Purchase Order or the Goods and/or Services.
- 20.2 Each Party warrants to the other party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it in connection with this document, the Purchase Order or the Goods and/or Services.
- 20.3 In addition to complying with its obligations under the Privacy Act, the Supplier agrees to:
- (a) only Process Personal Information of the Principal's Personnel for the purposes of performing its obligations under this document;
  - (b) not disclose the Personal Information of the Principal's Personnel to any other person without the Principal's prior written consent, unless the disclosure is required by law;
  - (c) immediately notify the Principal that the disclosure of Personal Information of the Principal's Personnel may be required by law;
  - (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Personal Information of the Principal's Personnel;
  - (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Personal Information of the Principal's Personnel; and
  - (f) take all necessary steps to ensure that its Processing of the Personal Information of the Principal's Personnel will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Principal as to the manner in which the Principal obtained the Personal Information.
- 20.4 If an individual complains to the Principal that the Supplier (or any of its Personnel) has, in the performance of the Services or supply of the Goods, handled his or her Personal Information inappropriately, the Principal must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- 20.5 If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Services or supply of the Goods, handled his or her Personal Information inappropriately, the Supplier must:
- (a) promptly inform the Principal of the complaint; and
  - (b) provided the individual has consented, provide the Principal with the Personal Information that is the subject of the complaint.
- 20.6 The Supplier indemnifies and must keep indemnified the Indemnified Parties in respect of all Claims and/or Liabilities incurred by or awarded against any Indemnified Party relating to any breach by the Supplier of its obligations under the Privacy Act or this clause 20.
- 21. Intellectual Property**
- 21.1 Any Intellectual Property rights created by reason of the supply of the Goods or the provision of the Services must vest in the Principal.
- 21.2 Any Intellectual Property rights in any pre-existing materials of the Supplier must remain vested in the Supplier, and the Supplier must grant the Principal and its affiliates a royalty free, perpetual, irrevocable licence of any such pre-existing materials for the purpose of the ongoing use of the Goods and/or Services.
- 21.3 The Supplier warrants that, unless otherwise provided in this document, the Goods and/or Services do not infringe any Intellectual Property rights of any third party. The Supplier must indemnify and hold the Principal harmless against all Claims and Liabilities arising out of any breach of this warranty.
- 22. Termination**
- 22.1 If any of the following occur (each of which will be a fundamental breach of this document) then, without prejudice to any other right or remedy which the Principal may have against the Supplier for breach or non-observance of this document, the Principal may terminate the supply of the Goods and/or Services in whole or in part immediately by notice in writing:
- (a) The Supplier breaches or fails to observe or perform any of the Terms and Conditions and such breach, non-observance or non-performance is not remedied within fourteen (14) days after the Principal gives written notice to remedy the same;
  - (b) An Insolvency Event occurs in respect of the Supplier or its affiliate;
  - (c) There is a change in ownership or shareholding of the Supplier which in the Principal's opinion may affect the quality or delivery of the Goods and/or Services;
  - (d) The Supplier refuses or neglects to comply with any reasonable lawful order or direction given by the Principal relating to the supply of the Goods or the provision of the Services and such refusal or neglect is not remedied within fourteen (14) days after the Principal gives written notice of the same;
  - (e) The Supplier, or any of its directors, is convicted of a criminal offence;
  - (f) The Supplier or Supplier Personnel fail to comply with the Principal's Standards and Procedures Standards and Procedures;
  - (g) The Supplier or Supplier Personnel (in the Principal's opinion) willfully or recklessly injures a person or damages the Principal's property.
- 22.2 Notwithstanding any other provision in this document, the Principal may, subject to clause 22.3, terminate in whole or in part the supply of Goods and/or Services at its absolute discretion on giving the Supplier one month's written notice. If the supply of Goods and/or Services are terminated under this clause 22.2 the Supplier will be entitled to payment up to the effective date of termination, and any amount payable under clause 22.3, but will not be entitled to any other payment.
- 22.3 If the Supplier has incurred costs and entered into binding legal commitments in anticipation of the continued supply of Goods and/or Services and the provision of the Goods and/or Services is terminated under clause 22.2, in addition to any amount payable under clause 22.2, the Supplier will also be entitled to reimbursement of any unavoidable costs for goods, materials, components, consumables or parts incurred by the Supplier in anticipation of continuation of supply of Goods and/or Services, provided that such items must (at the Principal's option) become



the property of the Principal and the Supplier must forthwith deliver up such items to the Principal.

## 23. Notices

23.1 All notices or other communication:

- (a) from the Supplier to the Principal must be addressed to the Principal's Representative at the address specified in the Purchase Order or, if sent by email, to DarlotVendors@red5limited.com;
- (b) from the Principal to the Supplier must be addressed to the Supplier's Representative at the address specified in the Purchase Order.

23.2 If a position referred to in the Purchase Order being renamed or replaced or the powers and functions thereof are transferred to any other position, reference in this document to the above positions must be deemed to be references to the position established or constituted in lieu thereof or as nearly as may be succeeding to the powers and functions thereof.

23.3 Any notice, demand or request by the Supplier to the Principal or by the Principal to the Supplier to be made or given pursuant to the Purchase Order or this document must be in writing signed by the party giving the notice or its agent and may be served by facsimile, by being delivered or by being sent by prepaid post or in electronic form (such as email) to the respective addresses specified in the Purchase Order or in this document.

## 24. Principal's Standards and Procedures

24.1 The Supplier must at all times comply, at its cost, with the Principal's regulations, policies and procedures including (but not limited to) the following:

- (a) The Principal's and/or the Principal's relevant Site's specific Health, Safety and Environment Policies;
- (b) The Principal's Code of Conduct, Anti-Bribery and Corruption Policy, Human Rights Policy Statement, Sustainable Development Policy and any other code of ethical business practice issued by the Principal;
- (c) All Supplier Personnel who have been approved to enter a the Principal's Site must attend and satisfy the Principal's requirements from time to time in respect of all relevant Site safety inductions.
- (d) Subject to clause 14.8, the Supplier must report to the Principal's Representative immediately all incidents or accidents on Site including any damage to the Principal's property or any third party property, and must not disturb the scene of any accident, as defined in the Mines Safety Act, without the Principal's prior approval.

24.2 Further to clause 24.1(a), at least 7 days prior to any Supplier Personnel entering the Site or any of the Principal's operation, the Supplier must, in respect of all Supplier Personnel, at the Supplier's sole cost and expense:

- (a) obtain and provide a record of police clearance in respect of each member of Supplier Personnel, or otherwise provide a duly completed application form (including all required supporting documentation, including original or certified true copies of personal identity documents for a 100-point identity check) necessary to obtain CrimTrac Agency clearances through the Chamber of Minerals and Energy of Western Australia (Inc);
- (b) arrange for medicals, or provide details of a clear medical undertaken in the 12 months prior to the date of access to the Site, at a facility approved or nominated by the Principal; and
- (c) provide clear drug and alcohol clearance screens undertaken in the three months prior to the date of the access to the Site.

24.3 The Principal may, in its absolute discretion, withhold approval for access to a Site or any of the Principal's operation by the Supplier or any Supplier Personnel.

## 25. Ethical Conduct

### 25.1 Sustainable business practices

The Supplier must not engage in, supply, support or fund any corrupt or other activities which, directly or indirectly, finance or benefit armed conflict or contribute to abuses of human rights in respect of the supply of Goods and/or Services to the Principal.

### 25.2 Compliance with Applicable Anti-Corruption Laws

Each Party, in connection with this document, a Purchase Order or a supply of Goods and/or Services under this document, must comply with every Applicable Anti-Corruption Law, and must not give or offer to give, offer, receive, or agree to accept any payment, gift or other advantage (including, for the avoidance of doubt, any Facilitation Payment) which contravenes, or is likely to contravene the Applicable Anti-Corruption Laws.

### 26. Provision of Services after Term

26.1 Subject to clause 27, if after the expiration of the Services Term, the Supplier continues to provide the Services, the Supplier agrees that the Services must be provided on and subject to this document.

### 27. Further Services Term

27.1 The Supplier must extend this document to provide the Services for the further term stated in the Purchase Order if the Principal serves a notice to that effect during the Services Term.

27.2 Any extension of this document in accordance with clause 27.1:

- (a) starts on the date immediately after the expiry of the Services Term; and
- (b) is apart from its commencement date and clauses 3, 4, 7, 8 and the right of renewal the subject of this clause, is on the same terms and conditions as contained in this document.

### 28. Set Off

28.1 The Principal may deduct from monies otherwise due to the Supplier any:

- (a) debt or other monies due from the Supplier; or
- (b) Claim to money which the Principal may have against the Supplier, whether for damages or otherwise relating to the Goods and/or Services.

### 29. Dispute Resolution

29.1 Any dispute which arises between the Principal and the Supplier arising out of or in connection with this document must be dealt with in accordance with this clause 29.

29.2 A Party may refer a dispute to the other Party for resolution, by serving notice in writing upon the person named in the Purchase Order as that party's Representative on behalf of the other Party. The notice must specify:

- (a) the dispute;
- (b) particulars of the Party's reasons for being dissatisfied; and
- (c) the position which the Party believes is correct, including the facts and provisions of this document supporting its position.

29.3 If the parties are unable to resolve the dispute referred to in clause 29.2 within ten business days of its referral, the dispute must immediately be referred to mediation.

29.4 This clause survives termination of the agreement comprised by:

- (a) the Special Conditions;
- (b) this document;
- (c) the Scope of Services;
- (d) the Specification; and
- (e) the Purchase Order.

### 30. The PPS Act

30.1 The Supplier acknowledges that a Security Interest has been or will be created in favour of the Principal by reason of or arising

out of the supply of Goods. The Supplier must not cause or permit the Goods to be subject to any other Security Interest.

### 31. **Costs and Taxes**

- 31.1 Each party must bear its own legal costs incidental to the preparation, drafting and execution of this document.
- 31.2 The Supplier will meet the cost of any duty together with any fines or penalties assessed as payable with respect to the Purchase Order and this document.
- 31.3 The Supplier is and remains liable for payment of any Taxes. If any Tax is imposed, the Supplier must pay the full amount to the relevant Authority and indemnifies the Principal against any failure to do so. If any exemptions, reductions, allowances, rebates or other privileges in relation to Taxes may be available to the Supplier or the Principal, the Supplier must adjust any payments due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent.
- 31.4 The Principal may deduct from the whole or part of payments due to the Supplier any Taxes which the Principal is required to withhold or deduct by any Authority.

### 32. **GST**

- 32.1 Any consideration to be paid or provided for a supply made under or in connection with this document, unless specifically described in this document as GST inclusive, does not include an amount on account of GST.
- 32.2 Despite any other provision in this document, if a party (**Supplier**) makes a supply under or in connection with this document on which GST is imposed (not being a supply which has been described as GST inclusive):
- (a) the consideration payable or to be provided for that supply under this document but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
  - (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided,

provided that the Supplier has provided the Recipient with a tax invoice.

- 32.3 If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be equal to the net amount incurred by the Party being reimbursed or indemnified, namely the total amount paid in relation to the loss, cost or expense less any input tax credit entitlements, plus any GST payable.

### 33. **Special Conditions**

- 33.1 All (if any) of the Special Conditions set out in the Purchase Order or annexed to this document must be deemed to be incorporated in this document. To the extent that any Special Conditions are inconsistent with any provision in this document, the Special Conditions must prevail to the extent of the inconsistency.

### 34. **Miscellaneous**

- 34.1 The Principal's failure to require remedy of any default or breach of this document to be observed by the Supplier or to require compliance by the Supplier with any provision of this document is not a waiver of that term or condition.
- 34.2 The laws applying in the State of Western Australia must apply to this document and the parties are subject to the non-exclusive jurisdiction of the Courts of Western Australia and Courts having jurisdiction to hear appeals therefrom.
- 34.3 This document does not create a partnership, joint venture, fiduciary or employment relationship between the Principal and the Supplier.
- 34.4 This document supersedes all prior agreements, arrangements and undertakings between the parties and, together with the

Purchase Order, Scope of Services, Specification and Special Conditions, constitutes the entire agreement between the parties in relation to the supply of the Goods and/or the Services.

- 34.5 To the extent of any inconsistency, unless the context requires otherwise, the documents comprising the agreement will prevail over each other in the following order:
- (a) the Special Conditions;
  - (b) this document;
  - (c) the Scope of Services;
  - (d) the Specification; and
  - (e) the Purchase Order.
- 34.6 No amendment or variation to this document nor any additional rights or obligations created in relation to the subject matter of this document must be of any force or effect unless:
- (a) made expressly in writing and signed by a duly authorised officer of the Principal and a duly authorised representative of the Supplier; or
  - (b) effected by way of update to this document in accordance with clause 34.7.
- 34.7 The Principal may update this document from time to time by publishing such updates (**Updated Terms**) on its website ([www.red5limited.com/standard-terms-conditions](http://www.red5limited.com/standard-terms-conditions)). Subject to clause 34.8, the Updated Terms are deemed to take full force and effect between the Parties from the date of publication on the Principal's website, subject to any changes effected to the Updated Terms by the application of any existing Special Conditions agreed between the Parties.
- 34.8 If the Contractor provides written notice to Principal that it does not agree to any content of the Updated Terms within 30 days of publication of the Updated Terms on the Principal's website, the Updated Terms will not apply between the Parties until the Parties agree otherwise and, until such agreement is reached, the prior version of this document will apply between the Parties.