

Goldcorp Canada Ltd. Standard Terms and Conditions for the Purchase of Goods and/or Services

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1. Interpretation

1.1

Definitions. In these Standard Terms and Conditions, unless there is something in the subject matter or content inconsistent therewith or unless otherwise specifically provided herein, the following terms shall have the meanings set forth below:

- (a) **"Affiliate"** means any body corporate, limited liability company, partnership, joint venture, firm or other form of enterprise which directly or indirectly Controls or is Controlled by or is under common Control with the Buyer or the Seller, as the case may be;
- (b) **"Agreed Standard Terms"** means these Agreed Standard Terms and Conditions for the Purchase of Goods and/or Services;
- (c) **"Agreement"** means the applicable Purchase Order, together with these Agreed Standard Terms and any other policies and documentation incorporated by reference in such Purchase Order, as each may be amended, restated or supplemented from time to time;
- (d) **"Buyer"** means the Buyer set out in Schedule "A" (Site Specific Terms);
- (e) **"Buyer Related Party"** means any of the Buyer's Affiliates and the shareholders, directors, officers, employees, agents, representatives, contractors, subcontractors, licensees and invitees of the Buyer and any of its Affiliates; in this section 1.1(e), **"invitee"** means any person who the Buyer or a Buyer Related Party invites on or otherwise causes to be on a Site, other than the Seller or a Seller Related Party;
- (f) **"Cause"** has the meaning set forth in section 7.4;
- (g) **"Change Order"** means a written or electronic document issued by the Buyer that contains changes to a Purchase Order;
- (h) **"Compensation"** means the amounts payable for any Services, including all taxes, insurance and other miscellaneous charges associated with the Services;
- (i) **"Control"** means the right to the exercise, directly or indirectly, of at least fifty per cent (50%) of the voting rights attributable to the shares or other ownership interests in any body corporate, limited liability company, partnership, joint venture, firm or other enterprise;
- (j) **"Delivery Location"** means the location for the delivery of Goods as specified in the Purchase Order;
- (k) **"Delivery Schedule"** means the schedule for the delivery of Goods as specified in the Purchase Order;
- (l) **"Equipment"** means all equipment supplied by the Seller pursuant to an Agreement, and for purposes of section 8 means the Goods;
- (m) **"Goods"** mean the goods to be supplied to the Buyer by the Seller as set forth in the Purchase Order;
- (n) **"Incoterm"** means the Incoterms 2010 delivery term applicable to the delivery of the Goods by the Seller to the Buyer;
- (o) **"Laws"** means all laws, statutes, acts, codes, regulations, bylaws, ordinances, rules, restrictions, regulatory policies, common law principles, equitable principles, treaties, conventions (except as provided in section 12.10) and international laws and any and all other lawful requirements from whatever source, of or applicable in any national, federal, state, provincial, municipal, regional or other jurisdiction now or hereafter in force, including any and all directions, orders,

judgments, decrees, awards or writs of any court, tribunal or governmental authority having jurisdiction which are applicable to the Seller and the Buyer or either of them in respect of the transactions contemplated in this Agreement;

- (p) **"Lien"** means any charge, security interest, hypothec, lien (statutory or otherwise, including construction, builder's, mechanic's, unpaid vendor's, miner's or other lien for unpaid work or services) or other encumbrance of any nature which, in substance, secures payment or performance of an obligation;
- (q) **"Parties"** means the Buyer and the Seller named in an Agreement;
- (r) **"person"** includes, unless the context otherwise requires, any individual, body corporate, firm, partnership, joint venture or other form of enterprise;
- (s) **"Price"** means the price to be paid by the Buyer to the Seller for Goods purchased pursuant to an Agreement;
- (t) **"Purchase Order"** means a written or electronic purchase order agreed to by the Seller and the Buyer for the purchase of Goods and/or Services, which specifies a purchase order number and includes other schedules, exhibits or other documentation attached thereto or incorporated by reference;
- (u) **"Seller"** means the Seller set out in Schedule "A" (Site Specific Terms);
- (v) **"Seller Documents"** means confirmations, invoices and all other documents issued by the Seller in connection with the sale of Goods to the Buyer;
- (w) **"Seller Related Party"** means any of the Seller's Affiliates and the shareholders, directors, officers, employees, agents, representatives, dealers, distributors, contractors, subcontractors, licensees and invitees of the Seller and its Affiliates; in this section 1.1(w), **"invitee"** means any person who the Seller or a Seller Related Party invites on or otherwise causes to be on a Site, other than the Buyer or a Buyer Related Party;
- (x) **"Services"** means installation, modification, maintenance, repair or other services to be performed by the Seller or a Seller Related Party in respect of Goods purchased or proposed to be purchased by the Buyer from the Seller as may be provided in the Purchase Order, and/or other professional services set out in the Purchase Order, including any ancillary services reasonably necessary for the Buyer to receive and benefit from the Goods and services purchased;
- (y) **"Site"** means a mine site, exploration site or other worksite operated by the Buyer or Buyer Related Party to which Goods may be delivered under an Agreement;
- (z) **"Software"** for purposes of section 8 means all software and software documentation, if any, delivered to the Buyer by the Seller or otherwise licensed to the Buyer by the Seller under an Agreement; and
- (aa) **"Terms"** means the terms and conditions set forth in an Agreement.

1.2

Construction. In the Agreement: (a) the singular includes the plural and vice versa; (b) reference to any document means such document as amended from time to time upon mutual agreement of the Parties; (c) headings are for convenience only and are not intended to interpret, define or limit the scope, extent or intent of any Agreement or any provision thereof; (d) **"include"** or **"including"** means including without limiting the generality of any description preceding such term; and (e) all references to currency are to the lawful currency of Canada/United States, as specified. The Buyer has recommended that the Seller obtain independent legal advice regarding the

Agreement and its effect. The Seller represents that it has done so or has voluntarily chosen not to do so. The Parties agree that any rule of construction to the effect that any ambiguity of an agreement will be resolved against the drafting Party will not apply to the interpretation of an Agreement.

2. Agreement

- 2.1 Entire Agreement.** The Agreement constitute the entire agreement between the Buyer and the Seller in respect of the purchase of Goods and/or Services specified in a Purchase Order, and supersede any prior or contemporaneous oral or written agreements or communications between the Parties relating to the subject matter thereof.
- 2.2 Seller Documents.** The Parties anticipate that Goods may from time to time be delivered by the Seller to the Buyer pursuant to Seller Documents and that such Seller Documents may contain terms or conditions that are different from, or in addition to, the Terms (the “**Proposed Terms**”). Unless otherwise provided herein or as may be agreed in writing by the Buyer and the Seller (a) no Proposed Terms in the Seller’s order acknowledgment or invoice forms or in any other Seller Documents that are inconsistent with the Terms shall be of any force or effect; and (b) the Buyer expressly rejects all Proposed Terms contained in any Seller Document, regardless when the Seller Document containing Proposed Terms is received by the Buyer.
- 2.3 Incorporation into Agreement.** Except as may otherwise be specifically provided in the Purchase Order, these Agreed Standard Terms shall be deemed incorporated into and made a part of each Agreement between the Buyer and the Seller.
- 2.4 Priority of Documents.** In the event of, and to the extent only of any conflict between the Agreed Standard Terms and the Purchase Order, the Agreed Standard Terms will prevail over the Purchase Order unless such Purchase Order clearly indicates the Parties’ intention to override the provisions of this Agreed Standard Terms.
- 2.5 Acceptance.** An Agreement shall be deemed to have been formed upon: (a) the execution of a Purchase Order by the Buyer and the Seller; or (b) delivery by the Seller of the goods or services specified in a Purchase Order issued by the Buyer.

3. Purchase of Goods

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

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

3.2

Delivery. The Seller shall deliver the Goods specified in an Agreement in accordance with the Delivery Schedule provided therein. Unless otherwise specified in the applicable Purchase Order, the Seller shall be solely responsible for transporting and delivering the Goods to the Delivery Location. The Seller shall comply with all requirements under applicable Laws relating to the production, handling, loading, transporting, delivery and unloading of the Goods in and to each jurisdiction in which the Goods are transported and delivered and shall comply with such other requirements as may be specified in the Purchase Order. All transport vehicles shall be professionally operated and shall comply with all such Laws and other requirements. The Seller shall ensure that all of its employees and any other applicable Seller Related Parties have been properly trained and are properly supervised with respect to the production, handling, loading, transporting, delivery and unloading of the Goods. If the Seller engages any third party carriers to deliver the Goods, the Seller shall exercise due care to select carriers who will perform to the same standards as are required of the Seller hereunder, and the Seller shall monitor any such third party carriers to ensure that each carrier complies with all Laws applicable to the handling, loading, transporting, delivery and unloading of the Goods. If the scheduled delivery of Goods is delayed by the Buyer or a force majeure event suffered by the Buyer, the Seller may on prior written notice to the Buyer move the Goods to storage for the account of and at the risk of the Buyer whereupon the Goods shall be deemed to be delivered.

3.3

Delivery to a Site. Where Goods are to be delivered to a Site, the Seller shall consult with the Buyer to establish an appropriate time for delivering the Goods and the Seller shall use all reasonable efforts to ensure that the Goods are delivered at such time and in accordance with the Delivery Schedule. No deliveries may be made prior to the scheduled delivery date without the prior approval of the Buyer. The Seller and the Seller Related Parties responsible for the delivery of Goods to a Site shall: (a) comply with the Buyer’s code of conduct and the Buyer and the Site’s policies and procedures, as applicable and as each may be provided by the Buyer from time to time. Such compliance includes the participation in the Site’s safety trainings/induction courses, as necessary, at no additional cost to the Buyer; (b) not interfere with the Buyer’s activities and leave the Buyer’s premises secure, clean orderly having regard to the condition of such premises immediately prior to such access by the Seller; (c) ensure that the Goods are delivered in a safe manner that does not prejudice safe working practices, safety and care of property and continuity of work at the Site; and (d) comply with the Buyer’s unloading and loading policy, as such policy may be provided to Seller from time to time.

3.4

Packaging. The Goods shall be packaged in accordance with all applicable Laws and any Buyer specifications set forth in an Agreement and in such manner as may be required for the protection of the Goods from damage or destruction by any hazard prior to acceptance of the Goods by the Buyer. All packages shall include labels and tags containing adequate and accurate information with respect to use, safety and treatment of the Goods. The Seller shall ensure that the Goods are properly contained, secured, labelled, safety marked, documented and inspected at all times during the course of handling,

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

- 3.5 **Title and Risk of Loss.** Title to the Goods and the risk of loss with respect thereto shall pass to the Buyer upon delivery in accordance with the Incoterm as specified in the Purchase Order, or if not so specified, then upon physical receipt of the Goods by the Buyer and final inspection and acceptance by the Buyer following delivery to the Delivery Location. The Buyer shall have no responsibility whatsoever for the Goods or any liabilities in connection therewith arising prior to the time title to the Goods has so passed to the Buyer.
- 3.6 **Inspection.** The Buyer may inspect or test the Goods during their manufacture, processing, construction, preparation, completion and delivery, at reasonable times upon reasonable advance notice and subject to compliance with the Seller's policies regarding site safety and the Seller's policies regarding the use of identification badges and rules concerning hours of arrival to and departure from the Seller's site.
- 3.7 **Excess Goods.** If the Seller delivers Goods that is more than the quantity specified in the applicable Purchase Order or otherwise do not conform to the specifications set out in the applicable Purchase Order, the Buyer may return any excess quantities or non-conforming Goods to the Seller at the Seller's sole risk and expense.
- 3.8 **Cancellation and Returns.** Purchase Orders for Goods may be cancelled by the Buyer in whole or in part as provided in section 7.3 hereof. Subsequent to shipment, cancellation of Purchase Orders for Goods, other than defective Goods, shall be subject to the Seller's return policy, provided that the Seller shall not unreasonably withhold approval for requests to return Goods.
- 3.9 **Product Warranties.** In addition to and without limiting the Seller's standard Equipment, Services and Software warranty set out in section 8 hereof, and in addition to any other specific product warranties and guarantees set forth in the Purchase Order, the Seller represents, warrants and agrees that (a) such Goods will conform to the specifications set forth in the Purchase Order; (b) such Goods will be of the quality, size and dimensions ordered and be free from defects in material and workmanship; (c) such Goods will be free and clear of all Liens; (d) such Goods will be of new and merchantable quality; (e) good and marketable title to such Goods will be transferred to the Buyer upon delivery of the Goods pursuant to the applicable Incoterm; and (f) such Goods will comply with all applicable government standards and all Laws relating to health, safety and environmental matters. The foregoing representations and warranties shall survive any inspection, delivery, acceptance or payment by the Buyer and in the case of sections 3.9 (a) and (b), for the Warranty Remedy Period as set out in the Seller's standard warranty in section 8. In addition, the Seller will ensure that the Buyer has the full benefit of any

manufacturer's warranties that may be applicable to the Goods and the Seller must pursue any manufacturer's warranties on the Buyer's behalf if the Buyer so requests.

- 3.10 **License to Use Intellectual Property.** The Seller grants to the Buyer a perpetual, royalty-free, irrevocable license to use any patent, software, design, trade secret, know-how, documentation or information owned by or licensed to the Seller and relating to the Goods: (a) provided to the Buyer pursuant to an Agreement; or (b) is otherwise required in order that the Buyer may use the Goods in the manner contemplated in an Agreement.
- 3.11 **Licenses to Sell Goods.** The Seller shall hold and keep in good standing and shall cause each Seller Related Party involved in the sale of Goods to the Buyer to hold and keep in good standing in each applicable jurisdiction all licenses, permits, authorizations, registrations, exemptions, consents and approvals required to be held by the Seller or such Seller Related Party under applicable Laws in such jurisdictions in order to sell and deliver Goods to the Buyer.
- 3.12 **Compliance with Laws.** The Seller shall comply and shall cause each Seller Related Party involved in the sale of Goods to the Buyer to comply with all applicable Laws in each jurisdiction relating to the sale and delivery of the Goods, including any applicable rules and regulations related to ethical and responsible standards dealing with human rights (including human trafficking and slavery, employment standards, and conflict mineral sourcing), environmental protection, sustainable development, as well as applicable anti-bribery laws.
- 3.13 **Tariff Documentation.** The Seller shall provide to the Buyer on request any certificates of origin, affidavits of manufacturer or other tariff documentation for any Goods which receive preferential tariff treatment under any trade agreement or special tariff agreement (collectively, "**Tariff Documentation**"). The Tariff Documentation shall be provided with each shipment of the Goods. The Seller shall update any Tariff Documentation and shall notify the Buyer of any changes affecting eligibility under any applicable trade agreement or special tariff agreement within thirty (30) days after any change occurs. The Seller shall ensure that all Goods with foreign origin are marked in English with the country of origin.

4. Supply of Services

- 4.1 **Supply of Services.** The Seller shall perform or shall cause Seller Related Parties to perform any Services described in a Purchase Order in accordance with the specifications set out therein.
- 4.2 **Performance and Subcontracting.** The Seller shall perform and shall cause each Seller Related Party to perform the Services safely, in accordance with the specifications and the Agreement, and in accordance with industry standards and all applicable Laws. The Seller shall not subcontract the performance of the Services without the Buyer's prior written consent. Subcontracting shall not release the Seller from any of its obligations under the Agreement, provided that performance of any Services in full by a subcontractor shall be deemed performance of such Services by the Seller. The Seller shall preserve and protect the rights of the Buyer under the Agreement with respect to any Services to be performed by a subcontractor, including requiring each subcontractor to perform the services in compliance with this Agreed Standard Terms.
- 4.3 **Equipment.** Unless the Purchase Order provides otherwise, the Seller must supply all equipment, parts and

- materials necessary to perform the Services, at the Seller's expense.
- 4.4 Access to Site.** The Seller and Seller Related Parties shall have access to any Site to the extent required for the performance of any Services described in the Purchase Order. The Seller, the Seller Related Parties and any of their personnel responsible for the performance of Services at a Site shall: (a) comply with the Buyer's policies in accordance with section 4.5, as such policies may be provided by the Buyer from time to time; (b) not interfere with the Buyer's activities and leave the Buyer's premises secure, clean orderly having regard to the condition of such premises immediately prior to such access by the Seller or Seller Related Parties; and (c) ensure that the Services are delivered in a safe manner that does not prejudice safe working practices, safety and care of property and continuity of work at the Site.
- 4.5 Compliance with Buyer Policies.** For Services performed at a Site, the Seller shall be aware of and comply with and ensure that all Seller Related Parties performing Services at the Site are aware of and comply with (a) all requirements set out in manuals, procedures, safety and sustainability policies, regulations and other written materials provided by the Buyer to the Seller, including Goldcorp Inc. Code of Conduct, the Goldcorp Inc. Occupational Health and Safety Policy and all Goldcorp Inc. Group Safety Standards, together with all amendments made from time to time to any of the foregoing; (b) the Buyer's policies regarding mine safety, including mine safety training, the use of identification badges and contractor cards and rules concerning hours of work and arrival to and departure from the Site; and (c) all lawful directions and orders given by the Buyer and management at the Site. Such compliance includes participation in the Site's safety trainings/induction courses, as necessary, at no additional cost to the Buyer.
- 4.6 Reporting.** The Seller shall provide all reports required in Schedule "A" (Site Specific Terms), under a Purchase Order, and any ad hoc or other reports reasonably requested by the Buyer from time to time. All reports will be well-organized, complete and accurate.
- 4.7 Inspection.** The Buyer shall have the right to inspect the Services at any time during the Agreement term. To assist the Buyer in this respect, the Seller shall give the Buyer reasonable notice of readiness for inspection of all Services before the same are substantially completed. The Services shall not be deemed acceptable until after final inspection by the Buyer. The making or failure to make any inspection of, or payment for or acceptance of the Services, shall in no way impair the Buyer's rights to reject non-conforming Services, or to avail itself of any other remedies to which the Buyer may be entitled, notwithstanding the Buyer's knowledge of the non-conformity, its substantiality or the ease of its discovery. For greater certainty, the Seller is not relieved of its responsibilities under an Agreement because the Buyer has reviewed, inspected, examined or witnessed any testing of the Services.
- 4.8 Knowledge of Hazards and Acceptance of Risks.** For Services performed at a Site, the Seller shall have knowledge of mining operations and conditions and shall have fully inspected the condition of the Site and the Buyer's operations and the ingress and egress to the Site. The Seller shall have knowledge of and shall accept all hazards and risks that may be present in the performance of the Services except such hazards and risk that are caused by the negligence or wilful default of the Buyer or any Buyer Related Party, and the Seller acknowledges that the Buyer assumes no affirmative duties with respect to the safety of Seller Related Parties at the Site. The Seller assumes full responsibility for all loss of or damage to the materials, machinery, equipment and other property of the Seller and any Seller Related Party used in performance of the Services at the Site except to the extent caused by the negligence or wilful default of the Buyer or any Buyer Related Party. The Seller shall ensure that all Seller Related Parties performing Services at the Site meet the same standards as are required of the Seller under this section 4.8.
- Without limiting the generality of the foregoing and for greater certainty, Buyer hereby disclaims any and all liability towards the Seller or any Seller Related Parties for incidents in or outside the Buyer's premises, where such incidents which are considered to be "non-occupational injury or diseases" or which occur other than within the Buyer's "Controlled Location", or which are considered to have occurred other than during the Seller's participation in the Buyer's "Controlled Activities", as such terms are defined in the *International Council on Mining & Metals'* January 2014 report on "Health and safety performance indicators".
- 4.9 Removal of Persons from Site.** The Buyer may give notice in writing requiring the Seller to remove from the Site for any reason any persons providing the Services on behalf of the Seller. Upon receipt of such notice, the Seller shall, at its own cost, promptly arrange for the removal of such persons from work on the Services and their replacement with persons acceptable to the Buyer. If the Seller is unable to provide persons acceptable to the Buyer, the Buyer shall have the right to terminate the Agreement for Cause in accordance with section 7.4.
- 4.10 Service Warranties.** In addition to and without limiting the Seller's standard Equipment, Services and Software warranty set out in section 8 hereof, and in addition to any other specific Service warranties and guarantees set forth in the Purchase Order, the Seller represents, warrants and covenants to the Buyer that (a) the Services will be performed to the standard of care, skill and diligence normally provided by competent professionals in their performance of services similar to the Services contemplated in the Purchase Order; (b) the Seller will proceed diligently, continuously and expeditiously in accordance with accepted industry practices and standards to perform or cause to be performed the Services; (c) the persons performing the Services on behalf of the Seller will not unreasonably interfere with the Buyer's activities or the activities of any other person at the Site; and (d) the persons performing the Services on behalf of the Seller have been properly trained with respect to occupational health and safety concerns associated with the Seller's activities and the performance of the Services and are familiar with and compliant with the Buyer's policies and procedures, including the Goldcorp Inc. Occupational Health and Safety Policy and the Goldcorp Inc. Group Safety Standards.
- 4.11 Employment Costs and Charges.** Unless and except to the extent otherwise provided in the Purchase Order, the Seller shall be responsible for paying and remitting or causing to be paid and remitted all costs and charges related to and arising from the performance of the Services, including all fees, wages, holiday pay, medical insurance payments, employment taxes, workers compensation assessments, workers insurance premiums and all other statutory deductions and benefits relating to persons performing the Services.

4.12 Withholding Tax. If the Seller or any Seller Related Party performing Services is not a resident of Canada, the Buyer shall be entitled to withhold and remit to the Canada Revenue Agency (the “**CRA**”) an amount equal to fifteen percent (15%) of the gross amount paid to the Seller for the performance of any Services rendered in Canada to the Buyer (excluding disbursements accompanied by proper receipts) unless the Seller or such Seller Related Party has obtained from the CRA a waiver of such withholding tax or a reduction in the rate of such withholding tax. If the Seller or any Seller Related Party performing Services is not a resident of Canada, the Buyer shall be entitled to withhold and remit to the Ministry of Revenue Québec (the “**MRQ**”) an amount equal to nine percent (9%) of the gross amount paid to the Seller for the performance of any Services rendered in Québec to the Buyer (excluding disbursements accompanied by proper receipts) unless the Seller or such Seller Related Party has obtained from the MRQ a waiver of such withholding tax or a reduction in the rate of such withholding tax.

4.13 Ownership and License to Use Intellectual Property.

(a) Subject to Seller’s retention of Know-How and perpetual license to the Buyer set out in section 4.13(b), all right, title and interest (including all intellectual property rights) in and to the deliverables, all work product generated by the performance of the Services, including, any documentation, reports, drawings, designs, plans, schedules, manuals, and models, (collectively the “**Work Product**”) are hereby irrevocably assigned, transferred and conveyed by the Seller to the Buyer.

(b) The Seller grants to the Buyer and Buyer Related Parties a perpetual, royalty-fee, irrevocable license to use any patent, software, design, trade secret, know-how or information owned by or licensed to the Seller and relating to the Services (the “**Know-How**”) required in order that the Buyer and Buyer Related Parties may benefit from the Services in the manner contemplated in the Agreement.

(c) Nothing contained in these Agreed Standard Terms will prohibit the Seller from using any of the Know-How to perform similar services for others; provided however that the Seller will not use any of the Buyer’s Confidential Information in providing services to others. The Seller shall execute and cause Seller Related Parties to execute such assignments and other documents as may be necessary to confirm the allocation of ownership of intellectual property rights as contemplated in this section 4.13. The Seller shall obtain unconditional and irrevocable waivers for the benefit of the Buyer and Buyer Related Parties from all individuals involved in the creation of any Work Product, of all rights which cannot be assigned, including moral rights.

4.14 Licenses to Perform Services. The Seller shall hold and keep in good standing and shall cause each Seller Related Party performing Services to hold and keep in good standing in each applicable jurisdiction all licenses, permits, authorizations, registrations, exemptions, consents and approvals required to be held by the Seller and each such Seller Related Party under applicable Laws in order to perform the Services.

4.15 Services in Ontario. Before commencing performance of any Services in Ontario, the Seller shall deliver or cause to be delivered to the Buyer a clearance certificate issued by the Workers Safety Insurance Board of Ontario (the “**WSIB**”) confirming that the Seller or, if the Services are to be performed by a Seller Related Party, such Seller Related Party, is registered with the WSIB and has an account in good standing under the Workers Safety

Insurance Act (Ontario) (the “**WSIA**”). The Buyer shall have the right to retain holdbacks from any payments in respect of Services otherwise due to the Seller, such holdbacks to be in amounts sufficient to cover the obligations of the Seller and any Seller Related Party under the WSIA until the Seller or the Seller Related Party has provided clearance certificates from the WSIB covering the periods in which the Services were performed.

4.16 Services in Québec. Before commencing performance of any Services in Québec, the Seller shall deliver or cause to be delivered to the Buyer sufficient evidence issued by the *Commission de la santé et de la sécurité du travail* (the “**CSST**”), confirming that the Seller or, if the Services are to be performed by a Seller Related Party, such Seller Related Party, is registered with the CSST and has an account in good standing with the CSST and that all assessments, reassessments, compensation, indemnities, fines and penalties assessed by the CSST have been paid. The Buyer shall have the right to retain holdbacks from any payments in respect of Services otherwise due to the Seller, such holdbacks to be in amounts sufficient to cover the obligations of the Seller and any Seller Related Party under the CSST until the Seller or the Seller Related Party has provided clearance certificates from the CSST covering the periods in which the Services were performed. Should the Seller or a Seller Related Party be exempt from registration with the CSST, a letter signed by the CSST to that effect shall be delivered to the Buyer.

4.17 Compliance with Laws. The Seller shall comply and shall cause each Seller Related Party performing Services to comply with all applicable Laws in each jurisdiction relating to the performance of the Services, including any applicable rules and regulations related to ethical and responsible standards dealing with human rights (including human trafficking and slavery, employment standards, and conflict mineral sourcing), environmental protection, sustainable development, as well as applicable anti-bribery laws.

4.18 Open Site. Where the Buyer’s Site is an open site where contractors, subcontractors and suppliers providing goods or services may be union or non-union, the Seller shall perform the Services and shall cause any Seller Related Party performing Services to perform the Services in a manner so as to ensure that there is no work stoppage or other labour dispute and shall if so requested by the Buyer obtain written agreements with any unions representing its employees that non-affiliation rights in any collective agreement will not be exercised in connection with the provision of the Services.

4.19 Cancellation. Any Services described in the Purchase Order may be cancelled by the Buyer in whole or in part as provided in section 7.3 hereof.

5. Price, Compensation, Change Orders and Payments

5.1 Price and Compensation. The Price to be paid for Goods and the Compensation to be paid for Services by the Buyer to the Seller shall be as set forth in the Purchase Order. The Price and Compensation shall remain in effect regardless of any changes in currency rates, revenue Laws, treasury regulations or tariffs, increases in the appraisal of the value of the Goods or Services by customs authorities of any country or other variables, unless otherwise provided in the Purchase Order. Such Prices and Compensation are inclusive of: (a) all charges for packaging, packing, insurance, equipment, materials or tools used in the delivery of the Goods and/or Services, as applicable; and (b) the cost of any miscellaneous services

of any kind which are commonly provided with the Goods and any miscellaneous items of any kind which are commonly used or supplied in the performance (and in conjunction with) the Services.

- 5.2 **Change Orders.** Without limiting the rights of the Buyer under section 7.3, the Buyer may modify a Purchase Order so long as such modification is given in advance of shipment of Goods or the performance of Services by the issuance of a Change Order. If modifications contained in the Change Order can reasonably be expected to necessitate an adjustment to the Price, Compensation or Delivery Schedule, as the case may be, the Parties shall endeavour to reach an equitable adjustment as soon as practicable so as not to adversely affect the Price, Compensation or Delivery Schedule. Unless otherwise agreed, the amount of any Price adjustment shall be equal to the amount of the increase or decrease in the costs incurred by the Seller directly resulting from the Change Order. The Seller will not implement and will not be compensated for any change that adversely affects the Buyer, increases safety or security risks, increases the Price, Compensation or causes delays in Delivery Schedule, or will result in a breach of applicable Law, without the Buyer's prior written consent specifically agreeing to such impact.
- 5.3 **Amount of Payment.** Payment of the Price for Goods and the Compensation for Services shall be made as specified in the Purchase Order. Any modification to the Price or the Compensation shall be of no force or effect unless processed through a Change Order signed by the Parties in accordance with section 5.2.
- 5.4 **Taxes, Duties and Other Charges.** Unless and except to the extent otherwise provided in the Purchase Order, the Seller shall be responsible for remitting or causing to be remitted all taxes (including goods and services tax ("GST"), retail sales tax ("RST"), harmonized sales tax ("HST"), value added tax ("VAT"), Québec Sales Tax ("QST") or similar taxes or charges where applicable), duties, imposts or other charges relating to or arising out of any Agreement and the purchase and sale and delivery of the Goods to the Buyer and the performance of any Services for the Buyer. The Buyer shall be responsible for any such taxes, duties, imposts or other charges, the Seller shall provide the Buyer with all necessary invoices, notifications and advices relating to such taxes, duties, imposts and other charges. If and to the extent that the Buyer pays any taxes, duties, imposts or other charges payable by the Seller, the Seller shall reimburse such payment promptly upon request. Upon the request of the Buyer, the Seller shall provide all reasonable assistance to cause the benefit of any credit, rebate, drawback or other recovery to which the Buyer is entitled to be passed along to the Buyer.
- 5.5 **Customs and Regulatory Approvals.** Unless otherwise provided in the Purchase Order, the Seller shall obtain all customs approvals and permits and meet all other regulatory requirements to permit the sale of the Goods to the Buyer and delivery of the Goods to the Delivery Location, other than any customs approvals, permits or other regulatory requirements which by their nature can only be obtained by the Buyer.
- 5.6 **No Liens.** Seller must not and must not allow or permit any Seller Related Party to assert any right to a Lien over the Site (or any other property of the Buyer) or take any steps whatsoever to lodge or register a Lien over the Site (or any other property of the Buyer) under, or in pursuance of, any applicable Law relating to Liens. If any Lien is lodged or registered against the Site or any other

property of the Buyer either prior to or after the termination or expiration of an Agreement by a Seller Related Party, then the Seller must, at its sole cost and expense, promptly vacate, discharge or otherwise cause that Lien to be removed and discharged.

- 5.7 **Lien Holdbacks.** The Buyer shall have the right to retain Lien holdbacks from any payments in respect of Goods or Services otherwise due to the Seller in such amount and for such period as may be permitted or required in accordance with applicable Laws relating to Liens.
- 5.8 **Delivery of Clearance Certificates.** Before commencing to perform Services the Seller shall deliver to the Buyer any clearance certificates obtainable under applicable Laws relating to occupational health and safety. The Buyer shall have the right to hold back from payment of Compensation for Services an amount equal to the greater of ten percent (10%) of the Compensation for such Services and the current rate from time to time for employer premiums under applicable Laws relating to workers safety insurance in the jurisdictions in which the Services are performed until final clearance certificates are provided.
- 5.9 **Setoff.** The Buyer shall be entitled to set off any amount payable by the Buyer under any Agreement the Buyer may have with the Seller against any financial obligations the Seller may have to the Buyer.
- 5.10 **Invoices and Payment Terms.** Unless otherwise provided in the Purchase Order, the Seller shall invoice the Buyer monthly on the basis of one invoice per month. All invoices from the Seller shall be delivered to the Accounts Payable Department of the Buyer. Subject in each case to the requirements of sections 4.12, 5.7, 5.8 and 5.9, payment by the Buyer shall be due to the Seller thirty (30) days from the date of receipt by the Buyer of an undisputed invoice.

6. Mutual Representations and Warranties

- 6.1 **Representations and Warranties.** Each Party to an Agreement represents and warrants to the other that:
- the Agreement has been duly authorized by all necessary procedures;
 - the Agreement does not violate any provision of the Party's governing documents or any Laws applicable to such Party;
 - the Agreement will not result in the breach of any agreement by which such Party is bound;
 - the Party has the requisite power, capacity and authority to carry out all of its obligations under the Agreement; and
 - as at the effective date of an Agreement, there are no, and there will not be any, material outstanding litigation, investigation, arbitration or other disputed matters to which the Party is a party which may have a material adverse effect upon the supply of the Goods or usage of the deliverables and the Services or the fulfillment of the Party's responsibilities and obligations pursuant to the Agreement. Without prejudice to the foregoing, during an Agreement term, the Seller shall inform the Buyer in the event that any material litigation, investigation, arbitration or other disputed matter occurs, or is likely to occur, which may have a material adverse effect upon the supply of the Goods or usage of the deliverables and the Services or the fulfillment of the responsibilities and obligations of the Seller. For greater certainty, investigations related to the alleged violation of any applicable anti-bribery laws shall be considered a "material investigation" for the purposes of this section 6.1(e).

6.2 **Representation and Warranties Regarding Human Rights Abuse.** The Seller represents and warrants to the Buyer that it has not, and shall not during an Agreement term, retain the services of, provide payments to, or provide benefits-in-kind to government and non-government entities that cause, support or benefit unlawful armed conflict, contribute to human rights abuses or any breaches of humanitarian law.

7. **Correction of Errors, Cancellations and Termination for Cause**

7.1 **Correction of Errors.** If the Seller fails to deliver any Goods or perform any Services within the deadlines specified in the Purchase Order or to provide Goods or perform Services in accordance with the specifications set out in the Purchase Order or the specifications and requirements provided by the Buyer's contact person at the Site, then the Buyer may, at its option, without limitation: (a) extend the delivery period or allow a correction to be made; (b) suspend the Buyer's obligations under the Agreement until the failure to deliver is addressed to the Buyer's reasonable satisfaction or the error is corrected; (c) terminate the Agreement for Cause under section 7.4; or (d) return and request refund or re-performance in accordance with the Seller's Standard Goods, Services and Software Warranty set out in section 8.

7.2 **Suspension of Payment.** Without limiting the Buyer's other rights and remedies under an Agreement, the Buyer may suspend any payment in whole or in part if the Seller has not performed its obligations under the Agreement. If the Buyer exercises its rights under this section 7.2, the Seller shall continue to perform its obligations under the Agreement unless the Buyer otherwise agrees in writing.

7.3 **Cancellation of Purchase Orders.** The Buyer may cancel a Purchase Order or the delivery of some of the Goods or Services referred to therein at any time prior to shipment/performance for its sole convenience. Upon written notice of such cancellation, the Seller shall use all reasonable efforts to mitigate all costs or expenses incurred up to the date of cancellation, including immediately stop all production and shipment of any Goods and any Services referred to in the notice of cancellation and shall cause any applicable Seller Related Parties to do the same. The Seller shall invoice (in accordance with the billing method set out herein) and the Buyer shall pay for the cost of Goods and/or Services delivered prior to the date of any such cancellation. The receipt of such payment from the Buyer is the Seller's sole and exclusive remedy in respect of the Buyer cancelling the Purchase Order in accordance with this section 7.3. No other payment of any kind whatsoever shall be due from the Buyer to the Seller including, without limitation, payment for: (a) any loss of anticipated profits; (b) any direct, indirect, special, consequential or other forms of damages; (c) expenses of the Seller or Seller Related Parties incurred after receipt of notice of cancellation, or for costs incurred by the Seller or any Seller Related Parties that the Seller or such Seller Related Parties could reasonably have avoided; (d) losses on other contracts, agreements or arrangements however arising; (e) any other costs, loss or expenses of the Seller or Seller Related Parties from any other sources whatsoever, whether arising directly or indirectly under or from an Agreement.

7.4 **Termination for Cause.** An Agreement may be terminated by a non-breaching Party for Cause. "Cause" means (a) a material breach of the Agreement; (b) if a Party (deemed for purposes hereof to be the breaching

Party) is adjudged insolvent, proposes a compromise or arrangement to its creditors generally, files for protection from its creditors under any applicable bankruptcy or other Laws for the administration of insolvent estates, files or has filed against it any proceedings to have it declared bankrupt, takes or has taken against it any proceedings to have it wound up, or files or has filed against it any proceeding to have a receiver appointed over any of its assets; (c) prolonged force majeure in accordance with section 10.1; (d) the Buyer has reasonable grounds for believing that the Seller is in breach of its obligation to comply with applicable Laws as required by the Agreement; or (e) the Seller is found by a governmental authority or a competent court to be guilty of money laundering, breaching any Law relating to bribery, corruption or offering inducements, or in breach of any other applicable Law. No termination by the Buyer or the Seller for a material breach of the Agreement shall be effective unless, within fifteen (15) days after receipt by a Party of the other Party's notice specifying such material breach, the receiving Party shall have failed to cure such specified material breach to the reasonable satisfaction of the non-breaching Party. Termination of the Agreement in accordance with this section 7.4 shall be without cost or liability to the Party so terminating, and shall not prejudice or affect any right of action or remedy which will have accrued to any Party up to and including the date of such termination.

7.5 **Obligations Upon Termination.** Any right or obligation of a Party based on either performance or a breach of an Agreement prior to the effective date of termination of the Agreement shall survive the termination. Without limiting the scope of the preceding sentence, if Goods have been ordered by the Buyer prior to a notice of termination given by the Seller, then at the option of the Buyer, the Terms of the Agreement shall govern until final delivery, inspection and acceptance of the Goods and the Seller shall (a) ensure that any Purchase Orders outstanding on the effective date of termination are timely filled; and (b) remove from the Site all equipment and materials owned by the Seller. If the Goods are being sold to the Buyer on the basis of instalment deliveries and the Buyer has the right to terminate the Agreement as provided in section 7.4, the termination of the Agreement shall apply to all instalments not delivered prior to the effective date of termination.

8. **Seller's Standard Goods, Services and Software Warranty**

8.1 **Equipment and Services Warranty.** The Seller warrants that Equipment (excluding Software, which is warranted as specified in section 8.4 below) shall conform to any specifications set out in the Purchase Order and shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The warranty remedy period (the "Warranty Remedy Period") for Equipment (excluding Software, spare parts and refurbished or repaired parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Remedy Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of acceptance of Services.

8.2 **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or

Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to the Seller promptly after such discovery and within the applicable Warranty Remedy Period, the Seller shall, at the Buyer's election, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to the Seller promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, the Seller will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

8.3 Exceptions. The Seller shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-Seller supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at the Buyer's risk and expense. The Seller shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to the Seller's instructions; or (iv) has failed as a result of ordinary wear and tear.

8.4 Software Warranty and Remedies. The Seller warrants that, except as specified below, the Software will, when properly installed, execute in accordance with the Seller's published specification and any other specifications set out in the Purchase Order. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of installation and written notice of such nonconformity is provided to the Seller promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, the Seller shall correct the nonconformity by, at its option, either (i) modifying or making available to the Buyer instructions for modifying the Software; or (ii) making available at the Seller's facility necessary corrected or replacement programs. The Seller shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Buyer-supplied software or interfacing that has not been authorized by the Seller to be utilized with the Software. Except as set out in manuals or other documentation associated with the Software, the Seller does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Buyer. The Seller warrants that as of the time of delivery of the software products or performance of the Services, the deliverables and the Services do not contain any computer virus, computer worm, Trojan horse, authorisation key, licence control utility, software lock or any similar coding. **THE FOREGOING WARRANTIES TOGETHER WITH THE OTHER WARRANTIES SET OUT IN THE PURCHASE ORDERS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL**

OR IMPLIED. ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED IN AN AGREEMENT CONSTITUTE THE BUYER'S EXCLUSIVE REMEDIES AND THE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

9. Insurance

9.1 Liability Insurance. The Seller shall carry comprehensive general liability insurance covering liabilities relating to the provisions of the Goods and any Services, including contingent employer's liability coverage, and including coverage for injury (including death) and property damage, with a combined single limit of five million dollars (\$5,000,000) per occurrence and in the aggregate, covering claims by the Buyer with respect to the performance of an Agreement by the Seller or any Seller Related Party. The Buyer shall be added as an additional insured for claims of third parties to the extent such claims are caused by the act or failure to act of the Seller or any Seller Related Party and such coverage shall contain cross liability, severability of interest and waiver of subrogation provisions and be without right of contribution by any Buyer's insurance to the extent such claims are caused by the act or failure to act of the Seller or any Seller Related Party.

9.2 Additional Coverage for Services. If the Seller or any Seller Related Party performs any Services under an Agreement, the Seller shall carry: (a) if Services are performed on lands or premises of the Buyer, insurance against loss or damage to the Buyer's plant and equipment, machinery, tools, temporary buildings and any other property of the Buyer used in the performance of the Services, to the extent such loss or damage is caused by the act or failure to act of the Seller or any Seller Related Party, such coverage to be for the full replacement value of such property; and (b) motor vehicle liability insurance coverage for death or injury to any person or for loss or damage to property arising from the use of all owned and non-owned vehicles and mobile equipment used by the Seller or any Seller Related Party in the performance of Services, in the amount of five million dollars (\$5,000,000) per occurrence and in the aggregate, covering claims by the Buyer with respect to the performance of the Agreement by the Seller or any Seller Related Party, with the Buyer to be named as an additional insured in such policy for claims of third parties to the extent such claims are caused by the act or failure to act of the Seller or any Seller Related Party. The policy must contain a clause stating that thirty (30) days written notice will be given to the Buyer by the insurer in the event of a material change, cancellation or expiration of the insurance coverage.

9.3 Upon the Buyer's request, the Seller shall provide the Buyer with a certificate of insurance evidencing the insurance required under this section 9. If the Seller fails to deliver to the Buyer a certified copy of insurance within thirty (30) days of such request, the Buyer may, at the expense of the Seller, arrange such insurance coverage which the Buyer, in its discretion, deems advisable and the cost of such insurance shall be due and payable by the Seller to the Buyer on demand.

10. Force Majeure

10.1 Force Majeure. No Party shall be liable for any delay or non-performance, other than for non-payment of money, resulting from acts of God, labour disturbances, strikes and lockouts, casualty, severe weather conditions, war, riots, acts of a public enemy or terrorist, civil disorder, earthquakes, insurrections, freight embargoes, custom delays at the port of shipment or destination, unforeseeable and irresistible event or other condition or occurrence of a similar nature beyond the Party's reasonable control, *provided that* such delay or non-performance could not have been prevented by reasonable precautions (including back-up systems) and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, work-around plans or other means (such event, a "Delay"). If performance is delayed, prevented, restricted, or interfered with by a Delay: (a) the Party whose performance is Delayed (the "Delayed Party") shall give prompt written notice to the other Party of the event and shall be excused from performance to the extent Delayed; provided, however, that the Delayed Party shall take reasonable steps to avoid or remove such causes of non-performance and shall resume performance whenever and to the extent such causes are removed; and (b) if it appears that a scheduled time for delivery of Goods or performance of the Services shall be Delayed for more than 90 days, such Delay will be deemed to cause the other Party unreasonable hardship, and the Party receiving notice of the Delay shall have the right to terminate, by written notice to the Delayed Party, shipments of any portion of the Goods to be delivered or Services to be performed which have been so Delayed and the Buyer shall have the further right to terminate the Agreement with respect to any Goods to be delivered or Services to be performed which have been so Delayed.

11. Notices

11.1 Notices. All notices or other communications which are required or permitted to be given to the Parties under an Agreement shall be sufficient in all respects if given in writing and delivered in person or by electronic mail, facsimile, courier or certified mail, postage prepaid, return receipt requested, to the receiving Party at the address shown in the applicable Purchase Order or to such other address as the receiving Party may have given to the other Party by notice in writing. Notice shall be deemed given on the date of delivery, in the case of personal delivery, electronic mail, or facsimile, or on the delivery or refusal date as specified on the return receipt in the case of certified mail or on the tracking report in the case of delivery by courier.

12. General Provisions

12.1 Confidential Information. During the term of an Agreement the Buyer may disclose to the Seller or the Seller may otherwise acquire certain technical, operational, commercial, legal, pricing information or technical know-how of a confidential nature about the Buyer or the Buyer Related Parties ("Confidential Information"). Such Confidential Information will either be indicated to be confidential or will evidently be so because of its nature. The Seller shall keep in confidence and prevent the unauthorized disclosure of all such Confidential Information, except Confidential Information (a) which is required to be disclosed by applicable Laws, court orders, court proceedings or the rules or policies of any stock exchange or government or regulatory authority

having jurisdiction; (b) which is in the public domain at the date of the applicable Purchase Order or which becomes a part of the public domain after the date of the applicable Purchase Order other than through a breach of the Agreement by the Seller; (c) which has become known to the Seller independently on a non-confidential basis, whether before or after the date of the applicable Purchase Order, other than through a breach of the Agreement by the Seller or by a third party subject to any confidentiality agreement between the third party and the Buyer; or (d) which was independently developed by the Seller without reference to Confidential Information received hereunder. The Seller shall not make any use of Confidential Information of the Buyer for any purpose other than on a need-to-know basis for the purpose of performing its obligations or deliver the Goods and/or Services under an Agreement, or for the purpose for which the Confidential Information was provided by the Buyer. The obligations under this section 12.1 shall survive the termination of the Agreement. The Seller agrees that upon written request by the Buyer, it will promptly return or destroy (such destruction shall be certified by the Seller in writing) all Confidential Information and copies thereof and shall require each of the Seller Related Parties to do so likewise. The Seller acknowledges that the Confidential Information is proprietary and confidential and that the harm suffered by the Buyer would not be compensable by monetary damages alone and, accordingly, in addition to other available legal or equitable remedies, the Buyer shall be entitled to apply for an injunction or specific performance with respect to such breach or threatened breach, without proof of actual damages.

12.2 Use of Goldcorp Name. The Seller shall not use and shall ensure that no Seller Related Party uses the name of Goldcorp Inc. or any of its Affiliates in any sales promotion, advertising or other publication without the Buyer's prior written consent.

12.3 Assignment. An Agreement may not be assigned by the Seller in whole or in part without the prior written consent of the Buyer, which consent may in the Buyer's absolute discretion be withheld. Unless otherwise agreed by the Parties in writing, the Seller shall remain liable to the Buyer in the event that a permitted assignee cannot perform its obligations hereunder.

12.4 Relationship between Parties. Nothing contained in an Agreement shall be construed as creating a joint venture or partnership or employment or fiduciary relationship between the Parties to the Agreement. No Party shall have the power to control the activities or operations of the other Party, and their status shall at all times be that of independent contractors. No Party shall hold itself out as having any authority or relationship in contravention of this section. Nothing in an Agreement shall entitle the Seller or Seller Related Parties to receive the benefits (including but not limited to medical, life, accident or disability insurance, pensions, unemployment or workers' compensation or profit sharing plans) received by employees of the Buyer or the Buyer Related Parties, or otherwise require the Buyer or the Buyer Related Parties to pay, in respect of Seller Related Parties, any income taxes or social security or similar or related contributions.

12.5 Audit. The Buyer shall have the right, by providing the Seller with reasonable written notice, to inspect the Seller's facilities and/or books and records to verify: (a) the existence of adequate internal control procedures and security surrounding the delivery of the Goods/Services; (b) the Seller's compliance with an Agreement, including the amounts billed; (c) compliance with applicable Laws;

- and (d) any claims made by the Seller. The Seller agrees to promptly respond in writing to any observations made in connection with such inspection, including the correction of any errors or the refund of any overpaid amounts.
- 12.6 Further Assurances.** The Parties to an Agreement shall cooperate fully with each other and execute such further instruments, documents, and agreements and shall give such further written assurances as may be reasonably requested by the other Party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intent and purposes of the Agreement.
- 12.7 Amendments.** An Agreement may not be modified or amended except by an instrument in writing (including Change Orders) signed by the Seller and the Buyer.
- 12.8 Severability.** If any of the provisions of an Agreement shall for any reason be held void or unenforceable, the remaining provisions shall remain in full force and effect.
- 12.9 Governing Law.** Unless the Parties to an Agreement otherwise agree in writing, (a) the Agreement shall be governed by and construed in accordance with the Laws of Ontario and the Laws of Canada applicable therein. The Parties voluntarily submit to the non-exclusive jurisdiction of the courts of Ontario situated in Toronto, Ontario.
- 12.10 United Nations Convention.** The United Nations Convention on Agreements for the International Sale of Goods, or any amendment thereto, (the “**Convention**”) shall not apply to any Agreement. If the Convention is incorporated by reference as a Law of any jurisdiction, then to the extent permitted under the Laws of such jurisdiction the Convention shall not apply to any Agreement.
- 12.11 Waiver.** The failure of one Party to insist upon the strict performance of any provision of an Agreement or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of the Agreement or limit that Party’s right thereafter to enforce any provision or exercise any right.
- 12.12 Remedies.** Except as otherwise expressly provided in the Purchase Order, the rights, powers and remedies of each Party shall be cumulative. Without limiting any other remedy available at law or in equity, if an Agreement is breached, injunctions, restraining orders, specific performance and other forms of equitable relief shall be available in the discretion of the Court.
- 12.13 Survival of Terms and Conditions.** The provisions of sections 1, 2, 3.9, 3.10, 4.10, 4.13, 5, 6, 7, 8, 9 and 12 and any other provisions which by their nature ought to survive termination or expiration, will survive termination or expiration of an Agreement, however and whenever occurring.
- 12.14 Parties Bound by Agreement.** Each Agreement is binding upon the Parties thereto and upon their respective heirs, executors, administrators, successors and permitted assigns.
- 12.15 Language.** The Parties hereto have expressly required that each Agreement and all documents and notices relating thereto be drafted in the English language. *Les Parties aux présentes ont expressément exigé que cette entente et tous les documents et avis qui y sont afferents soient rédigés en langage anglaise*
- 12.16 Limitation of Liability.**
 (a) Subject to section 12.16(b), in no event shall the Seller or any Seller Related Party or the Buyer or any Buyer Related Party be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise. In no event shall the maximum liability of the Seller or any Seller Related Party, with respect to any and all claims arising from Goods purchased or Services to be performed pursuant to an Agreement, exceed: (i) US \$5,000,000 for insurable claims in accordance with section 9 hereof; or (ii) US \$5,000,000 for claims pursuant to the intellectual property indemnity in section 12.18.
 (b) Notwithstanding anything to the contrary in an Agreement, the Seller does not exclude or limit its liability in respect of any damages resulting from the breach of confidentiality obligations set out herein or the indemnification obligations set out under an Agreement. For greater certainty, the Parties acknowledge that the limitation of liability set out in section 12.16(b) is not intended to limit any claims potentially recoverable under the insurance coverage the Seller is required to maintain pursuant to section 9, whether such coverage has or has not been maintained by the Seller at the time of the claim.
- 12.17 Export Control.** (a) The Buyer represents and warrants that the Goods and Services provided under any Agreement and the “direct product” thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. The Buyer agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by the Seller or the “direct product” thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations. (b) If applicable, the Seller shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by the Buyer. The Buyer shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of the Agreement by the Seller. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, the Agreement may be canceled by the Seller without liability for damages of any kind resulting from such cancellation. At the Seller’s request, the Buyer shall provide to the Seller a Letter of Assurance and End-User Statement in a form reasonably satisfactory to the Seller.
- 12.18 Intellectual Property Indemnity.** (a) The Seller shall indemnify and save harmless the Buyer and the Buyer Related Parties from and against all claims, demands, suits, damages, costs, expenses, attorneys’ fees, judgments or similar liabilities (the “**Liabilities**”) arising from or incurred by reason of any claim that the use of the Services, Goods or any other deliverables supplied by the Seller constitutes an infringement or misappropriation of any patent, trade-mark or other intellectual property rights of a third party. (b) If the Buyer becomes subject to a claim set forth in (a) above, the Seller, without limiting its indemnification obligations, shall at its option and its own expense, procure for the Buyer the right to continue using said Goods, Service or deliverable; or modify or replace them with non-infringing deliverables/equipment; or remove it and refund the portion of the price allocable to the infringing Goods/Services. (c) the Seller shall not be liable under the indemnity in this section 12.18: (i) for any action settled or otherwise terminated by the Buyer without the prior written consent of the Seller; (ii) to the extent that any infringement or misappropriation claim is solely due to modification or combination of the Goods with other equipment or process not supplied,

recommended or authorized by the Seller; or (iii) to the extent that any infringement or misappropriation claim is solely due to the Buyer's design for the Goods or Services, provided that if the Seller, at any time, knows or suspects that the design provided by the Buyer is likely to infringe, the Seller promptly advised the Buyer in writing. THIS SECTION 12.18 STATES THE ENTIRE LIABILITY OF THE SELLER FOR ANY INFRINGEMENT OR MISAPPROPRIATION CLAIMS RELATING TO THE USE OF THE SERVICES, GOODS OR ANY OTHER DELIVERABLES SUPPLIED BY THE SELLER.

12.19 *General Indemnities.* The Seller agrees to indemnify and save harmless the Buyer and the Buyer Related Parties from and against all Liabilities arising from or incurred by reason of any of the following events (including the defence of such events): (a) any negligent act or omission of, or wilful misconduct by the Seller or any Seller Related Parties; (b) any breach by the Seller or any Seller Related Parties of an Agreement; (c) any injury or death to person or damage or destruction to property caused by the Seller or any Seller Related Parties. The Buyer shall promptly give the Seller notice of any such claim (although failure to so promptly notify the Seller shall only relieve the Seller of its obligations to the extent it is prejudiced). The Seller may, by notifying the Buyer, assume the entire control of the defense and settlement of the claims (provided that any settlement of such claims by the Seller requires the prior written approval of the Buyer and shall include a full release of claims against the Buyer and the Buyer Related Parties);

12.20 *Dispute.* If the Parties have a dispute relating to an Agreement, then either Party may give written notice of the dispute to the other Party, in which case the Parties shall use commercially reasonable efforts to negotiate a resolution to the dispute. If the dispute is not resolved within five (5) business days after delivery of the above notice, then the dispute shall be referred to and exclusively resolved with finality by arbitration administered by a single arbitrator under the *Arbitration Act, 1991* (Ontario). Notwithstanding the foregoing, a Party may apply to a court of competent jurisdiction for interim protection or equitable relief such as an interlocutory or interim injunction. The place of arbitration shall be Toronto, Ontario. The arbitrator must be qualified with respect to the matter in dispute and must not be related to either Party. The Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary for the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. Any documents marked "without prejudice" and exchanged in an effort to negotiate a settlement to the dispute shall not be admitted as part of the arbitration. The Parties shall continue performing their obligations under this Agreement during the dispute resolution or arbitration process, until this Agreement (or the applicable Purchase Order) is terminated pursuant to its terms.