

# PURCHASE ORDER TERMS FOR GOODS AND SERVICES

These terms and conditions apply to the CONTRACT between COMPANY and CONTRACTOR, which may be in the form of a purchase order or a work statement (the "CONTRACT"). These terms and conditions are binding between COMPANY and CONTRACTOR and supersede and replace any CONTRACTOR terms and conditions or previous contracts for SCOPE. In the event any special terms are agreed between the parties, the special terms will prevail over terms contained in these terms and conditions. Where these terms and conditions are attached to or incorporated in a CONTRACT issued under an existing contract, the terms and conditions of that existing contract will prevail.

## PART A

### 1. DEFINITIONS

Capitalised words and expressions have the following meanings when interpreting the CONTRACT:

**ACCEPTANCE:** COMPANY accepts SCOPE in writing or is deemed to have accepted SCOPE in the manner specified by the CONTRACT.

**AFFILIATE:** in reference to a PERSON, any other PERSON that: (a) directly or indirectly controls or is controlled by the first PERSON; or (b) is directly or indirectly controlled by a PERSON that also directly or indirectly controls the first PERSON. A PERSON controls another PERSON if that first PERSON has the power to direct or cause the direction of the management of the other PERSON, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by ownership of shares or other equity interests, the holding of voting rights or contractual rights, by being the general partner of a limited partnership, or otherwise. An AFFILIATE of COMPANY is also an AFFILIATE of Royal Dutch Shell, plc.

**AGENCY PERSONNEL:** those CONTRACTOR PERSONNEL who are not direct employees but are working under the direct control and supervision of CONTRACTOR GROUP.

**ANTI-BRIBERY LAWS:** all APPLICABLE LAWS that prohibit the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any GOVERNMENT OFFICIAL or any other PERSON, including: (a) the United States Foreign Corrupt Practices Act of 1977; and (b) the United Kingdom Bribery Act 2010.

**APPLICABLE LAWS:** where applicable to a PERSON, property, or circumstance, and as amended from time to time: (a) statutes (including regulations enacted under those statutes); (b) national, regional, provincial, state, municipal, or local laws; (c) judgments and orders of courts of competent jurisdiction; (d) rules, regulations, and orders issued by government agencies, authorities, and other regulatory bodies; and (e) regulatory approvals, permits, licences, approvals, and authorisations.

**COMPANY:** the party identified as such in this CONTRACT.

**COMPANY GROUP:** COMPANY and: (a) its co-venturers and joint ventures; (b) any AFFILIATE of COMPANY, its joint ventures, or its co-venturers; and (c) any director, officer, employee, or other individual working under the direct control and supervision of COMPANY, its joint ventures, or co-venturers, or the AFFILIATES of COMPANY, its joint ventures, or co-venturers.

**CONFIDENTIAL INFORMATION:** all technical, commercial, or other information or materials, and all documents and other tangible items that record information, whether on paper, in machine readable format, by sound or video, or otherwise, relating to a PERSON's business, including WORK PRODUCT and

SCOPE provided to that PERSON, business plans, property, way of doing business, business results or prospects, the terms and negotiations of the CONTRACT, proprietary software, IP RIGHTS, and business records.

**CONSEQUENTIAL LOSS:** (a) indirect or consequential losses; and (b) loss of production, loss of product, loss of use, and loss of revenue, profit, or anticipated profit, whether direct, indirect, or consequential, and whether or not the losses were foreseeable at the time of entering into the CONTRACT.

**CONTRACT:** The completed form purchase order, together with this Part A and Part B.

**CONTRACT PRICE:** the total amount payable by COMPANY to CONTRACTOR.

**CONTRACTOR:** the party identified as such in this CONTRACT.

**CONTRACTOR GROUP:** CONTRACTOR and: (a) its SUBCONTRACTORS, (b) any AFFILIATE of CONTRACTOR or its SUBCONTRACTORS; and (c) any director, officer, employee, other PERSON or AGENCY PERSONNEL employed by or acting for and on behalf of CONTRACTOR, its SUBCONTRACTORS, or the AFFILIATES of CONTRACTOR and its SUBCONTRACTORS.

**CONTRACTOR PERSONNEL:** any individual provided by CONTRACTOR GROUP, whether directly or indirectly, and assigned to work in connection with the performance of SCOPE, whether or not an employee of CONTRACTOR GROUP.

**FORCE MAJEURE EVENT:** the events qualifying as a FORCE MAJEURE EVENT as expressly set out in the CONTRACT.

**GOODS:** goods, materials, products, and equipment to be supplied by CONTRACTOR under the CONTRACT.

**GOVERNMENT OFFICIAL:** (a) any official or employee of any government, or any agency, ministry, or department of a government (at any level); (b) anyone acting in an official capacity for a government regardless of rank or position; (c) any official or employee of a company wholly or partially controlled by a government (e.g. a state-owned oil company), political party, or any official of a political party; (d) any candidate for political office, or any officer or employee of a public international organisation (e.g. the United Nations or the World Bank); and (e) any immediate family member (meaning a spouse, dependent child, or household member) of any of the foregoing.

**HSSE:** health, safety, security, environment.

**HSSE STANDARDS:** (a) all HSSE policies, manuals, standards, rules, and procedures, as communicated to CONTRACTOR, designed to manage HSSE risks during performance of SCOPE under the CONTRACT; (b) all APPLICABLE LAWS relating to HSSE; and (c) any other rules and procedures (whether issued by COMPANY GROUP or otherwise) in force at a relevant COMPANY GROUP WORKSITE at the time of performance of SCOPE.

**INCOTERM:** INCOTERMS 2010 as published by the International Chamber of Commerce.

**INDEMNIFY:** release, save, indemnify, defend, and hold harmless.

**INSOLVENCY EVENT:** when a PERSON (a) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or is unable to pay its debts as they fall due; (b) ceases or threatens to cease to carry on all or a substantial part of its business; (c) begins negotiations for, starts any proceedings concerning, proposes or makes any agreement for the reorganisation, compromise, deferral, or general assignment of, all or substantially all of its debts; (d) makes or proposes an arrangement for the benefit of some or all of its creditors of all or substantially all of its debts; (e) takes any step with a view to the administration, winding up, or bankruptcy of that PERSON; (f) is subject to an event in which all or substantially all of its assets are subject to any steps taken to enforce security over those assets or to levy execution or similar process, including the appointment of a receiver, trustee in bankruptcy, or similar officer; or (g) is subject to any event under the law of any relevant jurisdiction that has an analogous or equivalent effect to any of the INSOLVENCY EVENTS listed above.

**IP RIGHTS:** all patents, copyright, database rights, design rights, rights in CONFIDENTIAL INFORMATION, including know-how and trade secrets, inventions, moral rights, trademarks and service marks (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world), whenever and however arising for their full term, and including any divisions, re-issues, re-examinations, continuations, continuations-in-part, and renewals.

**LIABILITIES:** liabilities for all claims, losses, damages, costs (including legal fees), and expenses.

**LIENS:** liens, attachments, charges, claims, or other encumbrances against SCOPE or property of COMPANY GROUP.

**OTHER PERMITTED BUYER:** (a) joint ventures where Royal Dutch Shell plc has a direct or indirect ownership interest; and (b) PERSONS acting as a contractor of an AFFILIATE of Royal Dutch Shell plc.

**PERSON:** (a) a natural person; or (b) a legal person, including any individual, partnership, limited partnership, firm, trust, body corporate, government, governmental body, agency, or instrumentality, or unincorporated venture.

**PERSONAL DATA:** any information relating to an identified or identifiable individual, unless otherwise defined under APPLICABLE LAWS related to the protection of individuals, the processing of such information, and security requirements for and the free movement of such information.

**RESTRICTED JURISDICTION:** countries or states that are subject to comprehensive trade sanctions or embargoes (as may be amended by the relevant governmental authorities from time to time).

**RESTRICTED PARTY:** (a) any PERSON targeted by national, regional, or multilateral trade or economic sanctions under APPLICABLE LAWS; (b) any PERSON designated on the United Nations Financial Sanctions Lists, European Union (EU) or EU Member State Consolidated Lists, US Department of the Treasury Office of Foreign Assets Control Lists, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List, in force from time to time; or (c) any AFFILIATES of such PERSONS; and (d) any PERSON acting on behalf of a PERSON referred to in the foregoing.

**SCOPE:** all activities and obligations to be performed by or on behalf of CONTRACTOR under the CONTRACT.

**SERVICES:** services to be supplied by CONTRACTOR under the CONTRACT, including the results of those services.

**SOFTWARE:** any software forming part of SCOPE or necessary for the intended use of SCOPE, including, as applicable, the database and all machine codes, binaries, object codes or source codes, whether in a machine or human readable form, and all improvements, modifications, and updates, flow charts, logic diagrams, passwords, and output tapes, and any future updates, releases, and generally available associated software items, together with the licence to use them or ownership rights in them.

**STANDARDS OF PRACTICE:** with reference to SCOPE and the performance of SCOPE, the sound standards, principles, and practices that are recognised and generally accepted in the international oil, gas, and petrochemical industry.

**SUBCONTRACT:** any contract between CONTRACTOR and a SUBCONTRACTOR or between a SUBCONTRACTOR and another SUBCONTRACTOR of any tier for the performance of any part of SCOPE, including any call off under framework agreements and supply agreements for materials.

**SUBCONTRACTOR:** any party to a SUBCONTRACT, other than COMPANY and CONTRACTOR, including any employers of AGENCY PERSONNEL (except as explicitly provided otherwise).

**TAXES:** all taxes, duties, levies, import, export, customs, stamp or excise duties (including clearing and brokerage charges), charges, surcharges, withholdings, deductions, or contributions that are imposed or assessed by any competent authority of the country where SCOPE is performed or any other country in accordance with APPLICABLE LAWS.

**TRADE CONTROL LAWS:** all APPLICABLE LAWS concerning the import, export, or re-export of goods, software, or technology, or their direct product, including: (a) applicable customs regulations, Council Regulation (EC) No. 428/2009; (b) any sanction regulations issued by the Council of the European Union; (c) the International Traffic in Arms Regulations ("ITAR"); (d) the Export Administration Regulations ("EAR"); and (e) the regulations and orders issued or administered by the US Department of the Treasury, Office of Foreign Assets Control in relation to export control, anti-boycott, and trade sanctions matters.

**VARIATION:** a modification or alteration of, addition to, or deletion of, all or part of SCOPE.

**VARIATION ASSESSMENT:** a proposal prepared by CONTRACTOR in respect of a VARIATION in which it provides full detail of the following: (a) the impact of the proposed VARIATION on SCOPE; (b) a detailed schedule for the performance of adjusted SCOPE; (c) the effect on the CONTRACT PRICE (if any), determined in accordance with the CONTRACT; and (d) any other information COMPANY concludes is necessary for its evaluation.

**VARIATION ORDER:** a written order for a VARIATION authorised by COMPANY.

**WORK PRODUCT:** any and all information, reports, data, drawings, computer programs, source and object codes, program documentation, spread sheets, presentations, analyses, results, conclusions, findings, solutions, calculations, studies, concepts, codes, manuals, inventions, business models, designs, prototypes, magnetic data, flow charts, recommendations, working notes, specifications or other information, documents, or materials, which arise out of or are made, created, or generated for COMPANY, directly or indirectly, in the course of performance of SCOPE, or which are made, created, or generated from or using CONFIDENTIAL INFORMATION or COMPANY's IP RIGHTS.

**WORKSITE:** lands, waters, and other places on, under, in, or through which SCOPE or activities in connection with SCOPE are to be performed, including manufacturing, fabrication, or storage facilities, offshore installations, floating construction

equipment, vessels, offices, workshops, camps, or messing facilities. WORKSITE does not include any lands, waters, or other places used during transportation to and from WORKSITES.

## **2. REQUIREMENTS PERTAINING TO SCOPE**

**2.1.** This CONTRACT is non-exclusive and carries no requirement for COMPANY to place any orders or purchase any minimum quantities. COMPANY may acquire same or similar SCOPE from other suppliers.

### **2.2. Obligations Related to SCOPE**

**(a)** Time is of the essence for the performance of SCOPE.

**(b)** Any information supplied by COMPANY is the property of COMPANY and will not be used by CONTRACTOR for any purpose other than for performance of the CONTRACT.

## **3. REQUIREMENTS PERTAINING TO GOODS**

**(a)** CONTRACTOR warrants that GOODS supplied in connection with the performance of SCOPE will be: (i) without fault, defect, or deficiency; (ii) new on delivery, unless otherwise specified in the CONTRACT; (iii) fit for use for any purpose specified in the CONTRACT; and (iv) in strict conformance with the CONTRACT and any specification, drawing, or other description supplied by COMPANY to CONTRACTOR and agreed to as part of the CONTRACT.

**(b)** Unless a different period is specified in the SCOPE DESCRIPTION, CONTRACTOR's warranty for GOODS applies to all defects arising within 12 months of COMPANY's ACCEPTANCE of GOODS.

**(c)** Following ACCEPTANCE by COMPANY of the GOODS, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

**(d)** CONTRACTOR retains risk of loss of and damage to the GOODS until: delivery is complete in accordance with the INCOTERMS in any case where an INCOTERM is specified; otherwise, when COMPANY takes physical possession.

**(e)** Title to the GOODS will pass to COMPANY at the earlier of: (i) risk of loss of and damage to GOODS passing to COMPANY; or (ii) as COMPANY makes payment for the GOODS.

**(f)** CONTRACTOR will pack the GOODS so that they may be transported and unloaded safely. CONTRACTOR represents that, on delivery, the GOODS have been accurately described, classified, marked, and labelled, in accordance with the CONTRACT, all APPLICABLE LAWS, and STANDARDS OF PRACTICE.

## **4. REQUIREMENTS PERTAINING TO SERVICES**

### **4.1. SERVICES Warranties**

**(a)** CONTRACTOR warrants that all SERVICES supplied in connection with the performance of SCOPE will be: (i) performed in accordance with the CONTRACT; (ii) fit for use for any purpose specified in the CONTRACT; and (iii) free from any defect or deficiency.

**(b)** Unless a different period is specified in the SCOPE DESCRIPTION, CONTRACTOR's warranty for SERVICES applies to all defects arising within 12 months of COMPANY's ACCEPTANCE of the SERVICES.

**(c)** CONTRACTOR will supply SERVICES diligently, efficiently, and carefully, in a good and professional manner, and in accordance with the CONTRACT and all STANDARDS OF PRACTICE. CONTRACTOR will furnish all skills, labour, supervision, equipment, goods, materials, supplies, transport, and storage required for SERVICES.

**(d)** Following ACCEPTANCE by COMPANY of the SERVICES, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

## **4.2. CONTRACTOR PERSONNEL in Connection with SERVICES**

**(a)** In performing any SERVICES, CONTRACTOR will only use CONTRACTOR PERSONNEL who are properly permitted, qualified, suitably trained, competent, skilled, and experienced in accordance with all STANDARDS OF PRACTICE and as required by the CONTRACT. CONTRACTOR will verify all relevant qualifications and experience of CONTRACTOR PERSONNEL, including all requirements of APPLICABLE LAWS and the CONTRACT.

**(b)** Where required by COMPANY, CONTRACTOR will perform at its own expense security background checks and obtain entry credentials for CONTRACTOR PERSONNEL on COMPANY GROUP WORKSITES. CONTRACTOR is responsible for CONTRACTOR PERSONNEL used in connection with SERVICES, including the direction, transport, payment, board, lodging, permits, and entry credentials which may be required.

**(c)** CONTRACTOR will INDEMNIFY COMPANY GROUP for LIABILITIES resulting from the failure by any member of CONTRACTOR GROUP to pay or timely pay any salary or other remunerations to CONTRACTOR PERSONNEL.

## **5. COMPENSATION, PAYMENT, AND INVOICING**

**(a)** COMPANY agrees to pay the CONTRACT PRICE to CONTRACTOR at the times, in the manner, and in the currency specified in the SCHEDULE OF PRICES and in this Article. The CONTRACT PRICE is all-inclusive except for value added tax or sales tax.

**(b)** CONTRACTOR will invoice only after ACCEPTANCE of SCOPE, except as otherwise provided in the CONTRACT.

**(c)** COMPANY will pay CONTRACTOR any undisputed amount within 30 days after receipt of a correct and adequately supported invoice. An invoice is considered unsupported when COMPANY cannot reasonably verify the legitimacy or accuracy of the invoice using the information provided by CONTRACTOR or if supporting documentation is missing.

**(d)** Payment of an invoice is not: (i) by itself an accord and satisfaction, or otherwise a limitation of the rights of the parties in connection with the matter; or (ii) evidence SCOPE was performed in accordance with the CONTRACT.

**(e)** If COMPANY disputes an invoice, COMPANY may withhold payment of any disputed part of an invoice and pay only the undisputed part. COMPANY may, on notice to CONTRACTOR, set off any liabilities between CONTRACTOR and COMPANY arising out of the CONTRACT or any other agreement. Any exercise by COMPANY of its rights under this provision will be without prejudice to any other rights or remedies available to COMPANY.

## **6. QUALITY ASSURANCE**

CONTRACTOR must have quality assurance programs in place adequate to support its performance of SCOPE.

## **7. ACCESS TO COMPANY SYSTEMS, INFORMATION, OR INFRASTRUCTURE**

In the event that performance of SCOPE requires CONTRACTOR or CONTRACTOR PERSONNEL to access COMPANY GROUP's technical information, information technology, or resources (including COMPANY's infrastructure), CONTRACTOR will sign and comply with COMPANY's standard terms and conditions for access and security, unless other terms applicable to the CONTRACT were agreed on by the parties in writing.

## **8. VARIATIONS**

COMPANY may request, or CONTRACTOR may initiate, a VARIATION ASSESSMENT for reasons of emergency, safety, or other reasonable necessity. CONTRACTOR is not entitled to a VARIATION for matters that were included in SCOPE, or matters that CONTRACTOR agreed to perform or take into account in connection with the CONTRACT. COMPANY may reject or

accept the VARIATION ASSESSMENT by issuing a VARIATION ORDER.

#### **9. INSPECTIONS, TESTING, AND ACCEPTANCE OF SCOPE**

To confirm SCOPE complies with the CONTRACT, CONTRACTOR will perform all tests and inspections required by the CONTRACT, APPLICABLE LAWS and, unless otherwise specified in the CONTRACT, STANDARDS OF PRACTICE. CONTRACTOR will request ACCEPTANCE from COMPANY: i) of GOODS by completion of delivery; or ii) of SERVICES by writing on completion of SCOPE. Other than to start the period for any warranty of limited duration, ACCEPTANCE does not limit or waive any remedies.

#### **10. REMEDIAL ACTIONS**

In the case of any defects in SCOPE, CONTRACTOR will provide a plan and remedy the defects in an expeditious manner. Without prejudice to other remedies it may have, COMPANY may perform or have others perform some or all of the remedial actions, and CONTRACTOR will pay or promptly reimburse COMPANY for all costs CONTRACTOR would have been liable for under the CONTRACT where: (i) emergency situations or other HSSE risks require the immediate performance of remedial actions; (ii) CONTRACTOR presents a plan which does not provide for expeditious completion of warranty work; or (iii) CONTRACTOR does not timely complete the actions according to the agreed schedule. CONTRACTOR's warranties against defects are assignable, and CONTRACTOR will assign to COMPANY all manufacturers' warranties or will pursue for COMPANY or its assignee all warranties that cannot be assigned.

## **PART B**

### **1. TAXES**

(a) Italicised terms in this and the following Article have the same meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST Act") and all provisions in this and the following Article survives any termination of the CONTRACT.

(b) All amounts invoiced by CONTRACTOR include all TAXES and statutory obligations in connection with the provision of SCOPE, except that any value added tax or sales tax (including GST) must be set out separately.

### **2. WITHHOLDING**

(a) In connection with GST: (i) in the case of a *taxable supply*, after issuing a valid *tax invoice* to COMPANY, CONTRACTOR may recover from the other party an additional amount on account of GST, calculated in accordance with the GST Act. (ii) In recovery of costs or expenses by way of reimbursement or indemnity, any payment will exclude any part of that cost or expense attributable to GST where the party or a *representative member* of any *GST group* of which that party is a *member* is entitled to an *input tax credit*. (iii) If a party becomes aware of an *adjustment event*, that party agrees to notify the other party as soon as practicable, and the parties will take steps necessary to make whatever *adjustments* are required, including issuance of an *adjustment note*, and, to ensure that any GST is paid or refunded as soon as is practicable but no later than 14 days after *adjustment event* is confirmed.

(b) CONTRACTOR will: (i) apply for or make use of available concessions whether termed as a rebate, refund, credit, exemption, or other concession in respect of TAXES owed; (ii) provide information and assistance required to enable COMPANY to apply for either or both of (1) any new

concessions or (2) a refund of duties using existing concessions; and (iii) where CONTRACTOR receives the benefit of a concession, pass through to COMPANY such benefit to the extent permitted by APPLICABLE LAWS.

(c) CONTRACTOR will: (i) use its best endeavours to qualify the GOODS for any preferential duty rates for the import or export of GOODS available under APPLICABLE LAW; and (ii) provide information and assistance required to enable COMPANY to claim any preferential duty rates, which may include tariff classifications, certificates of origin and related documents, and information on origin and cost breakdown of components of GOODS.

(d) If CONTRACTOR receives applicable rebates, refunds, credits, preferential rates, or exemptions, CONTRACTOR must pass these through to COMPANY, to the extent permitted by APPLICABLE LAWS.

(e) Where requested by COMPANY and without prejudice to its audit rights, CONTRACTOR will provide information relating to any TAXES paid by CONTRACTOR for the import or export of GOODS.

### **3. LIENS**

CONTRACTOR warrants good and clear title to SCOPE supplied. CONTRACTOR will not permit CONTRACTOR GROUP to place any LIENS or claim any LIENS.

### **4. SUSPENSION**

(a) COMPANY may suspend the CONTRACT or reduce SCOPE for cause by written notice with immediate effect pending COMPANY's decision on termination where COMPANY concludes it has grounds to terminate the CONTRACT for cause. Where suspending for cause, CONTRACTOR will not be entitled to any VARIATION, nor will it be entitled to other compensation or relief for the suspension. COMPANY may recover from CONTRACTOR any costs incurred in connection with securing items related to SCOPE or obtaining alternate sources of supply upon suspension.

(b) COMPANY may suspend the CONTRACT or reduce SCOPE for convenience at its own discretion with seven days' prior written notice. CONTRACTOR may make seek a VARIATION if actions required by suspension impact the schedule or timing of SCOPE.

(c) COMPANY may at any time withdraw by written notice all or part of a suspension, and upon receipt of that notice, CONTRACTOR will promptly resume and diligently continue performance of SCOPE for which the suspension was withdrawn.

### **5. TERMINATION**

#### **5.1. Termination by COMPANY**

(a) COMPANY may terminate the CONTRACT or reduce SCOPE for cause by written notice with immediate effect if: (i) CONTRACTOR breaches (in the opinion of COMPANY) the Shell General Business Principles or CONTRACTOR's equivalent principles in connection with performance of the CONTRACT; (ii) any member of CONTRACTOR GROUP violates (in the opinion of COMPANY) any ANTI-BRIBERY LAWS, applicable competition laws, TRADE CONTROL LAWS, other APPLICABLE LAWS, or HSSE STANDARDS in connection with the performance of the CONTRACT, or causes COMPANY to be in violation of those laws; (iii) any member of CONTRACTOR GROUP becomes a RESTRICTED PARTY; or (iv) CONTRACTOR is subject to an INSOLVENCY EVENT. CONTRACTOR must immediately notify COMPANY if any of the preceding events occur.

(b) COMPANY may terminate the CONTRACT or reduce SCOPE for cause where COMPANY determines CONTRACTOR breaches a term or condition of the CONTRACT other than those set out in the preceding paragraph, and the effect of the breach (or

culmination of a series of breaches) is material. In such cases, COMPANY may serve notice on CONTRACTOR specifying the breach and requiring it to be remedied within a period determined by COMPANY, or terminate the CONTRACT immediately if COMPANY determines the breach is not capable of remedy.

(c) COMPANY may terminate all or part of the CONTRACT for convenience at its own discretion with 30 days' prior written notice.

#### **5.2. Termination by CONTRACTOR**

CONTRACTOR may terminate the CONTRACT with prior written notice of at least 30 days when: (i) COMPANY fails to pay an undisputed amount to CONTRACTOR that is properly presented, due, and payable for more than 60 days; and (ii) CONTRACTOR has given COMPANY written notice of COMPANY's failure to timely make payment and COMPANY has not paid CONTRACTOR within 30 days after receipt of the notice. Where non-payment is related to the exercise of a valid set-off or withholding right, or where the amount is less than 5% of the CONTRACT PRICE, assuming complete performance of the CONTRACT, these termination rights will not apply.

#### **5.3. CONTRACTOR Obligations on Termination**

On any termination, CONTRACTOR will: (i) cease performance of parts of SCOPE specified in the notice; (ii) secure the WORKSITE, where applicable, and transfer custody and ownership of items related to SCOPE not yet in COMPANY's possession, except where CONTRACTOR validly terminated for non-payment which has not been cured; (iii) immediately provide COMPANY access to SCOPE in progress, wherever it may be located; (iv) turn over materials and equipment COMPANY may require in connection with SCOPE, and remove the remainder promptly from any COMPANY GROUP WORKSITE, at its own expense, and without unreasonably interfering with the activities of others; (v) use reasonable endeavours to minimise any termination costs; and (vi) return any amounts COMPANY has paid, including any pre-payments, that are greater than the amount CONTRACTOR is entitled to on termination; (vii) assign to COMPANY or its nominee any SUBCONTRACT requested by COMPANY to be assigned; and (viii) deliver to COMPANY: (A) all of COMPANY's documents and information supplied to CONTRACTOR for performance of the CONTRACT; (B) all documents and information needed to assist in completing SCOPE in progress; and (C) all documentation for SCOPE and SOFTWARE which was to be supplied in connection with the CONTRACT.

#### **5.4. Compensation in the Event of Termination**

(a) On any termination, COMPANY will determine the amounts owed to CONTRACTOR for SCOPE properly performed prior to termination. Those amounts will be limited to: (i) the rates, prices, and discounts included in the CONTRACT for similar SCOPE; or (ii) if that does not provide a means for valuation, the market rates in the region for SCOPE and contractors performing work of a similar nature and carried out under similar conditions as SCOPE.

(b) In the case of termination by COMPANY "for convenience" or valid termination by CONTRACTOR for non-payment, COMPANY will pay: (i) the amounts determined to be owed according to the preceding paragraph; and (ii) any reasonable, unavoidable, and auditable demobilisation and work in progress costs of CONTRACTOR, or any other amounts that COMPANY has specifically agreed elsewhere in the CONTRACT to pay on termination for convenience by COMPANY.

**5.5.** The parties waive any right to terminate, rescind, or otherwise end the CONTRACT, on grounds other than those set out in the CONTRACT.

#### **6. LIQUIDATED DAMAGES**

Where any liquidated damages are set out in the CONTRACT, and are applicable, all amounts are agreed as genuine pre-estimates of the losses that may be sustained by failure of performance and are not a penalty. Where any liquidated damages are unenforceable, COMPANY may claim demonstrated damages, subject to any limitations that may be set out in the CONTRACT.

#### **7. LIABILITIES AND INDEMNITIES**

(a) Liability for loss of and damage to property and for personal injury, death, or disease to any PERSON, arising in connection with the CONTRACT, will be determined in accordance with APPLICABLE LAW.

(b) Neither party will be liable to the other for that other party's own CONSEQUENTIAL LOSS, or any punitive or exemplary damages that might be awarded in that party's favour, regardless of negligence or other fault.

(c) Neither party excludes or limits its LIABILITIES to the extent they may not be excluded under APPLICABLE LAW.

#### **8. INSURANCE**

Prior to commencement of performance, CONTRACTOR will arrange any insurance required by APPLICABLE LAW, and maintain such insurance in effect throughout the duration of the CONTRACT. CONTRACTOR will provide COMPANY with copies of the certificates of insurance or other proof of insurance, at COMPANY's request. Satisfaction of the obligation to procure insurance and perform other actions in connection with this Article will not relieve CONTRACTOR of any other obligations or LIABILITIES.

#### **9. COMPLIANCE WITH APPLICABLE LAWS, BUSINESS PRINCIPLES, AND HSSE STANDARDS**

**9.1.** CONTRACTOR represents that it is familiar with and will comply, and ensure that CONTRACTOR GROUP complies, with APPLICABLE LAWS in the performance of the CONTRACT.

CONTRACTOR will notify COMPANY in writing of any material breaches of APPLICABLE LAWS related to the performance of the CONTRACT. CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES arising from CONTRACTOR GROUP's non-compliance with APPLICABLE LAWS.

#### **9.2. Business Principles**

(a) CONTRACTOR acknowledges that it has actual knowledge of: (i) the Shell General Business Principles, at [www.shell.com/sGBP](http://www.shell.com/sGBP), and Shell's Supplier Principles, at [www.shell.com/suppliers](http://www.shell.com/suppliers); (ii) Shell's Code of Conduct, at [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/code\\_of\\_conduct/](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/code_of_conduct/); and (iii) Shell's Global Helpline, at [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/compliance\\_helpline/](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/compliance_helpline/).

(b) CONTRACTOR agrees that it and each member of CONTRACTOR GROUP will adhere to the principles contained in the Shell General Business Principles and Shell Supplier Principles (or where CONTRACTOR has adopted equivalent principles, to those equivalent principles) in all its dealings with or on behalf of COMPANY, in connection with this CONTRACT and related matters.

(c) In the event that CONTRACTOR GROUP supplies staff that work on behalf of COMPANY or represent COMPANY, CONTRACTOR commits that the staff will behave in a manner that is consistent with the Shell Code of Conduct.

#### **9.3. Anti-Bribery and Corruption**

(a) CONTRACTOR represents that, in connection with this CONTRACT and related matters: (i) it is knowledgeable about ANTI-BRIBERY LAWS applicable to the performance of SCOPE and will comply with those laws; (ii) CONTRACTOR GROUP has not made, offered, authorised, or accepted, and will not make,

offer, authorise, or accept, any payment, gift, promise, or other advantage, whether directly or through any other PERSON, to or for the use or benefit of any GOVERNMENT OFFICIAL or any other PERSON where that payment, gift, promise, or other advantage would: (A) comprise a facilitation payment; or (B) violate the relevant ANTI-BRIBERY LAWS; and (iii) CONTRACTOR will impose the requirements in this Article on any SUBCONTRACTOR, or other party from which GOODS or SERVICES are procured in connection with the CONTRACT.

**(b)** CONTRACTOR will immediately notify COMPANY if CONTRACTOR receives or becomes aware of any request from a GOVERNMENT OFFICIAL or any other PERSON that is prohibited by the preceding paragraph.

**(c)** CONTRACTOR will ensure that all transactions are accurately recorded and reported in its books and records to reflect truly the activities to which they pertain, such as the purpose of each transaction, with whom it was entered into, for whom it was undertaken, or what was exchanged.

**(d)** CONTRACTOR will maintain adequate internal controls and procedures to ensure compliance with ANTI-BRIBERY LAWS, including the ability to demonstrate compliance through adequate and accurate recording of transactions in its books and records, keeping such books and records available for audit for five years following termination of the CONTRACT.

**(e)** CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES arising out of CONTRACTOR's breach of ANTI-BRIBERY LAWS or any related undertakings under this Article.

#### **9.4. Export and Trade Controls**

**(a)** CONTRACTOR represents that it is knowledgeable about, will keep up to date with, and will ensure that CONTRACTOR GROUP complies with, all applicable TRADE CONTROL LAWS.

**(b)** CONTRACTOR will provide COMPANY, in writing, the relevant export control classification number ("ECCN") and applicable jurisdictions for any dual-use or military items (i.e. goods, SOFTWARE, or technology), as well as harmonised system codes for any items provided pursuant to the CONTRACT. In addition, CONTRACTOR will ensure that COMPANY provided items are used in accordance with applicable TRADE CONTROL LAWS.

**(c)** CONTRACTOR will be responsible for obtaining all necessary import and export licences, or any other customs licences, which may be required by APPLICABLE LAWS for any items, SOFTWARE, or technology provided by or on behalf of CONTRACTOR in connection with performance of the CONTRACT, except where the CONTRACT provides otherwise. When those licences or authorisations are obtained, CONTRACTOR will provide COMPANY written notice of all applicable conditions, including those restricting their further export, use, or release.

**(d)** CONTRACTOR will ensure that, except with the prior written consent of COMPANY: (i) COMPANY provided items are not exported, provided, or made available to any RESTRICTED JURISDICTION or RESTRICTED PARTIES; (ii) CONTRACTOR PERSONNEL with access to COMPANY GROUP's technical information, information technology resources (including COMPANY GROUP's infrastructure), or COMPANY GROUP WORKSITES, are not RESTRICTED PARTIES or nationals of a RESTRICTED JURISDICTION; and (iii) CONTRACTOR will not utilise SUBCONTRACTORS that are RESTRICTED PARTIES.

**(e)** In addition other requirements in respect of hazardous or dangerous GOODS under the CONTRACT, CONTRACTOR will ensure that a proper notice accompanies each delivery of GOODS to the extent that they contain toxic, corrosive, or hazardous materials, or materials of a sensitive military nature, or which are otherwise "restricted use". CONTRACTOR's notices will include information regarding safety, environment, and

health hazards, including toxicity, flammability, reactivity, and corrosiveness, together with handling and storage requirements, action to be taken in case of fire or spillage, and health precautions to be observed, as well as export controls and other compliance requirements in accordance with CONTRACTOR's obligations under the CONTRACT.

**9.5.** Without limiting CONTRACTOR's other obligations, CONTRACTOR agrees to comply, and ensure other members of CONTRACTOR GROUP comply, with relevant APPLICABLE LAWS, in particular, the Privacy Act 1988 (Cth), as amended from time to time, and any similar legislation in any other relevant jurisdiction. Where CONTRACTOR will receive, collect, or handle PERSONAL INFORMATION in the course of supplying SCOPE, CONTRACTOR must ensure that it has taken and continues to take all appropriate technical and organisational measures against unauthorised or unlawful processing or disclosure of PERSONAL INFORMATION and against accidental loss of, destruction of, or damage to the personal information. CONTRACTOR must comply with all lawful directions issued by COMPANY regarding the handling of personal information which CONTRACTOR receives or collects in the course of supplying SCOPE. In this Article, "PERSONAL INFORMATION" has the meaning given in the Privacy Act 1988 (Cth).

**9.6.** In performing SCOPE at COMPANY GROUP WORKSITES, CONTRACTOR will at all times: (i) pursue Shell's HSSE principle of Goal Zero; (ii) comply with Shell's "Life Saving Rules", at <http://www.shell.com/global/environment-society/safety/culture.html>; and (iii) comply with other applicable HSSE STANDARDS.

**9.7.** Where APPLICABLE LAWS imply warranties or conditions, and the law does not permit those warranties or conditions to be excluded, then those warranties and conditions will still apply.

**9.8.** If the CONTRACT is subject to the Australian Industry Plan, e.g. Prelude, and CONTRACTOR utilises SUBCONTRACTORS any part of SCOPE, CONTRACTOR must, having regard to the nature of SCOPE and as far as it is reasonable, lawful, and economically practical to do so, meet the requirements for local content and Aboriginal and Torres Strait Islander suppliers specified by COMPANY.

#### **10. CONFIDENTIAL INFORMATION**

**(a)** CONTRACTOR will not disclose or permit a disclosure to a third party of COMPANY's CONFIDENTIAL INFORMATION without the prior written consent of COMPANY and will use CONFIDENTIAL INFORMATION only in connection with performance of the CONTRACT.

**(b)** On COMPANY's request, CONTRACTOR will return promptly any CONFIDENTIAL INFORMATION and delete it from electronic storage, and delete or destroy all extracts or analyses that reflect any CONFIDENTIAL INFORMATION.

**(c)** Except where the obligation is elsewhere expressly stated in the CONTRACT or through a separate agreement, COMPANY GROUP will not have an obligation of non-disclosure or non-use regarding information provided by CONTRACTOR or any other member of CONTRACTOR GROUP.

**(d)** CONTRACTOR must obtain written approval from COMPANY before proceeding with any external communications in connection with the CONTRACT, disclosure of business relationships, or use of COMPANY's trademarks.

#### **11. INTELLECTUAL PROPERTY**

**(a)** This CONTRACT does not grant CONTRACTOR GROUP any rights, title, or interest in or to COMPANY GROUP's IP RIGHTS, other than those set out in the CONTRACT. IP RIGHTS created by modifications, amendments, enhancements, or improvements (including tailor-made to the specifications of COMPANY) to COMPANY GROUP's IP RIGHTS, or made using

COMPANY GROUP's CONFIDENTIAL INFORMATION, will vest with COMPANY or its nominee when created.

**(b)** COMPANY's ownership rights in SCOPE under the preceding paragraph will not extend to CONTRACTOR's IP RIGHTS that:

(i) pre-existed performance under the CONTRACT; (ii) are developed independently from performance of the CONTRACT; or (iii) are used by CONTRACTOR in connection with or to perform the CONTRACT, but are not based on or arising out of COMPANY's IP RIGHTS or CONFIDENTIAL INFORMATION.

**(c)** CONTRACTOR, warranting that it is entitled to do so, grants to COMPANY GROUP the irrevocable, non-exclusive, perpetual, worldwide, royalty-free right and licence, with the right to grant sub-licences, to possess, and use any of CONTRACTOR's IP RIGHTS embodied in SCOPE, including the right to import, export, operate, sell, maintain, and repair SCOPE. CONTRACTOR warrants that any possession or use of SCOPE or of CONTRACTOR's IP RIGHTS will not infringe the IP RIGHTS of any third party.

**(d)** CONTRACTOR will INDEMNIFY COMPANY GROUP, assignees, transferees, and sublicensees permitted by this CONTRACT for any LIABILITIES resulting from any claim that the possession or use of any SCOPE or WORK PRODUCT infringes or misappropriates the IP RIGHTS of any third party.

#### **12. FINANCIAL AND PERFORMANCE AUDIT**

**(a)** COMPANY will have the right to audit: (i) invoiced charges and proper invoicing; (ii) other books and records; and (iii) the performance of any other of CONTRACTOR's obligations under the CONTRACT, including compliance with ANTI-BRIBERY LAWS, where capable of being verified by audit.

**(b)** Based on the findings of the audit the parties will settle any amounts charged incorrectly within 45 days of any audit finding; and CONTRACTOR will provide any SCOPE, or refund, repair, replace, or re-perform any SCOPE where the requirement to do so is identified by any audit within 45 days of any audit finding.

**(c)** CONTRACTOR will keep books and records available for audit for the longer of the following periods: (i) seven years following termination of the CONTRACT or any longer period as required by APPLICABLE LAWS; or (ii) two years after the period expires on any obligation of CONTRACTOR to refund, repair, replace, or re-perform any SCOPE (including correction of defects).

**(d)** CONTRACTOR will keep books and records relating to compliance with ANTI-BRIBERY LAWS available for audit for the period prescribed in the CONTRACT for retention of such records.

#### **13. RELATIONSHIP OF THE PARTIES**

**(a)** CONTRACTOR is an independent contractor in all aspects of performance under the CONTRACT. CONTRACTOR is responsible for the method and manner of performance to achieve the results required by the CONTRACT.

**(b)** In respect of industrial relations, CONTRACTOR: (i) accepts responsibility for the due and proper conduct of labour management and industrial relations (together "IR") in respect of CONTRACTOR PERSONNEL and must keep COMPANY informed on relevant IR policies, matters, and disputes pertaining to SCOPE; (ii) must comply with all decisions, awards, industrial agreements, and determinations relating to wages, conditions, and entitlements of its employees; (iii) must not take any action seeking to join COMPANY as a party to any industrial dispute arising out of or affecting the CONTRACT.

**(c)** COMPANY enters into the CONTRACT on its own behalf and on behalf of its co-venturers, where applicable, but CONTRACTOR agrees to look solely to COMPANY for performance and payment. No obligations are assumed by any co-venturer. CONTRACTOR agrees to refrain from making

claims or commencing proceedings against any co-venturer or any member of COMPANY GROUP other than COMPANY.

CONTRACTOR expressly waives any LIABILITIES any co-venturer may owe to CONTRACTOR under APPLICABLE LAWS. A co-venturer, with COMPANY's consent, and COMPANY are each entitled to enforce any obligation arising out of the CONTRACT. COMPANY is further entitled to make any claim in its own name on behalf of any co-venturer. All such claims are subject to any limitations or exclusions imposed by the CONTRACT.

#### **14. CONTRACTOR PERSONNEL AND SUBCONTRACTING**

**(a)** CONTRACTOR is responsible for any SCOPE performed by and all activities, omissions, and defaults of any SUBCONTRACTOR and all CONTRACTOR PERSONNEL as if they were the activities, omissions, or defaults of CONTRACTOR.

**(b)** CONTRACTOR may not subcontract any part of its obligations under the CONTRACT except as agreed in writing by COMPANY. CONTRACTOR will ensure that SUBCONTRACTS are in all material respects consistent with the terms and conditions of the CONTRACT.

**(c)** CONTRACTOR agrees to INDEMNIFY COMPANY and its AFFILIATES for LIABILITIES arising from CONTRACTOR's use of SUBCONTRACTS in the performance of the CONTRACT.

#### **15. ASSIGNMENT**

An assignment or novation of all or part of the CONTRACT requires the written consent of the other party, except that COMPANY may assign and novate all or part of the CONTRACT to an AFFILIATE without the consent of CONTRACTOR by giving written notice to CONTRACTOR.

#### **16. FORCE MAJEURE**

**(a)** COMPANY and CONTRACTOR are each excused from performance of the affected part of an obligation of the CONTRACT while performance is prevented by a FORCE MAJEURE EVENT unless the event: (i) was contributed to by the fault of the party or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence by (A) any member of CONTRACTOR GROUP where CONTRACTOR claims force majeure or (B) any member of COMPANY GROUP where COMPANY claims force majeure; or (ii) relates to an inability to make payments of money or secure funds.

**(b)** Only the following are FORCE MAJEURE EVENTS: (i) riots, wars, blockades, or acts of sabotage; (ii) threats or acts of terrorism; (iii) radioactive contamination; (iv) earthquakes, floods, fires, named hurricanes or cyclones, tidal waves, tornadoes, or other natural physical disasters; (v) epidemics; (vi) maritime or aviation disasters; (vii) strikes or labour disputes at a national or regional level or involving labour not forming part of CONTRACTOR GROUP or COMPANY GROUP, which materially impair the ability of the party claiming force majeure to perform the CONTRACT; (viii) government sanctions, embargoes, mandates, or laws, that prevent performance; (ix) inability of a party to obtain licences, permits, or governmental consents required for performance; or (x) non-performance of a party's SUBCONTRACTOR where the SUBCONTRACTOR has been or is affected by one of the above FORCE MAJEURE EVENTS. However, performance will only be excused under this sub-article if the parties agree that substitute performance by another SUBCONTRACTOR is impracticable under the circumstances.

**(c)** A party whose performance is delayed or prevented will: (i) notify the other party without delay; (ii) use all reasonable endeavours (including acceleration of schedules on resumption of performance) to mitigate the effects; and (iii) provide on a continuing basis plans for resumed performance and revised schedules.

**(d)** COMPANY may terminate the CONTRACT if any FORCE MAJEURE EVENT results in a delay that exceeds 90 consecutive or 180 cumulative days, except where COMPANY has provided a VARIATION ORDER.

#### **17. NOTICES**

All notices or other communications under the CONTRACT must be in English and in writing, and: (i) delivered by hand; (ii) sent by prepaid courier; (iii) sent by registered post; or (iv) sent by email with confirmation receipt requested. Notices and communications are effective when actually delivered at the address specified in the CONTRACT.

#### **18. GOVERNING LAW AND DISPUTE RESOLUTION**

**18.1.** This CONTRACT, and any dispute or claim arising out of or in connection with this CONTRACT or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of the State of Western Australia, excluding conflict of law rules and choice of law principles that provide otherwise. The United Nations Convention on the International Sale of Goods will not apply to this CONTRACT.

##### **18.2. Dispute Resolution**

**(a)** Any dispute or claim arising out of or in connection with the CONTRACT or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination, and including any non-contractual claim, will be finally and exclusively resolved by arbitration under London Court of International Arbitration ("LCIA") Administered Rules for Arbitration (the "RULES"). The arbitral tribunal, to be appointed in accordance with the RULES, will consist of one arbitrator. However, if either party asserts the amount in controversy exceeds USD \$5 million, then the tribunal will consist of three arbitrators. The seat of the arbitration will be Perth, Western Australia, Australia. The language of the arbitration will be English.

**(b)** The International Bar Association ("IBA") Rules on the Taking of Evidence in International Arbitration will apply to the arbitration. Each party waives, to the fullest extent permitted by law any right under the laws of any jurisdiction: (i) to apply to any court or other judicial authority to determine any preliminary point of law; and (ii) to appeal or otherwise challenge the award, other than on the same grounds on which recognition and enforcement of an award may be refused under Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("The New York Convention").

**(c)** Nothing in this Article will be construed as preventing any party from seeking conservatory or similar interim relief from any court with competent jurisdiction. Any award rendered by the arbitral tribunal will be made in writing and will be final and binding on the parties. The parties will carry out the award without delay. Judgment upon any award or order may be entered in any court having jurisdiction. All aspects of the arbitration will be considered confidential.

#### **19. ADDITIONAL LEGAL PROVISIONS**

**(a)** The parties retain their rights and remedies under APPLICABLE LAWS, subject to any provisions in the CONTRACT that provide otherwise.

**(b)** COMPANY is entitled to specific performance of the CONTRACT.

**(c)** A provision of the CONTRACT is not waived unless made in writing by an authorised representative of the waiving party. The waiver of a right or the partial exercise of a remedy does not limit a party's entitlement to exercise such right or remedy in the future.

**(d)** If any provision of the CONTRACT is determined invalid or unenforceable in any respect, the provision will remain enforceable in all other respects and all other provisions of the CONTRACT will be given full effect.

**(e)** Provisions that state that they survive or by their nature are intended to survive completion of performance or termination of the CONTRACT do so, along with all remedies attached to them.

**(f)** Amendments to the CONTRACT must be made in writing and signed by the parties' authorised representatives in order to be binding.

**(g)** Members of CONTRACTOR GROUP or COMPANY GROUP not a party to the CONTRACT, but conferred rights in it, (including any rights which would otherwise be conferred by the operation of Section 11 of the *Property Law Act 1969* (WA)) are entitled to enforce those rights, but their consent will not be required to amend or terminate the CONTRACT, even if it affects those rights. Otherwise, the parties do not intend that any term of this CONTRACT should be enforceable by any PERSON who is not a party to the CONTRACT.

**(h)** The CONTRACT, and all ancillary notices, correspondence, and other documents, will be in English. Where translations have been provided, the English version will prevail in case of any conflicts or inconsistencies between translations.

**(i)** The CONTRACT sets forth the entire agreement between the parties concerning its subject matter and supersedes any other agreements or statements pertaining to the same subject matter, except those agreements or statements expressly referenced in the CONTRACT as included. To the full extent permitted by law, the parties exclude any implied obligation to act in good faith unless this CONTRACT expressly requires them to do so. Subject to fraud, a party has no right of action against the other party arising out of or in connection with any PRE-CONTRACTUAL STATEMENT except to the extent that it is repeated in this CONTRACT. For purposes of this sub-article, "PRE-CONTRACTUAL STATEMENT" includes any agreement, undertaking, representation, warranty, promise, assurance, arrangement, or draft of any nature whatsoever, whether or not in writing, relating to the subject matter of the CONTRACT, and which is not repeated in the CONTRACT, made by any PERSON at any time before the date of the CONTRACT. Any confidentiality agreement pertaining to the subject matter will remain in effect according to its terms, unless the CONTRACT provides that it is terminated or replaced.