

General Conditions of Contract

Minor Works ref MW1200



1. Construction of Contract

The contract (**Contract**) between the Viterra entity specified in the attached Purchase Order (**Viterra**) and the contractor specified in the attached Purchase Order (**Contractor**) is comprised of these General Conditions of Contract, the Purchase Order (and, if applicable, any documents described in the Purchase Order).

2. The Agreement

The Contractor agrees to carry out all Works set out in the attached purchase order (**Purchase Order**), any variations pursuant to this Contract and all remedial works (**Works**). The Works must be carried out in accordance with the Contract.

3. Performance & Payment

The Contractor must execute and complete the Works and Viterra must pay the Contractor:

- (a) for work for which Viterra accepted a lump sum, the lump sum;
- (b) for work for which Viterra accepted rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out under this Contract by the rate accepted by Viterra for the section or item,

adjusted by any additions or deductions pursuant to this Contract (**Contract Sum**).

4. Risks

Unless this Contract expressly provides to the contrary, the Contractor:

- (a) assumes all risks relating to the Works including the actual cost of performing the Works and whether the Works can be performed within the Contract Sum;
- (b) will not be entitled to make any claim against Viterra for the risks that it assumes under or in connection with this Contract; and,

releases Viterra from any claim or liability in respect of such matters.

5. Warranties and Acknowledgments

5.1. Contract Sum Acknowledgment

- (a) The Contractor acknowledges and warrants that the Contract Sum payable is a fixed amount subject to adjustment only as expressly specified in this Contract and is inclusive of all Works under the Contract, risks, compliance with all duties and obligations under the Contract, including the following:
 - i. any rise and fall in the cost of labour and materials including any increase in the cost of parts forming part of the Works because of any fluctuation in foreign currency exchange rates;
 - ii. conditions at the Site;
 - iii. payments in respect of the Contractor's employees, including long service leave, redundancy, severance, worker's compensation or superannuation;

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- iv. taxes including customs, duties and sales taxes applicable to any goods or materials to be used in the performance of the Works but not including any GST;
 - v. management and supervisory costs; and
 - vi. any levy payable in respect of the training and support of the construction industry and its members.
- (b) The Contractor acknowledges that, unless expressly provided for in this Contract, Viterra is not liable for any amounts above the Contract Sum, and the Contractor must not claim, and releases Viterra, in respect of such matters.

5.2. Contractor Warranties

- (a) The Contractor warrants to Viterra that:
- i. it will carry out the Works with all skill and care to be expected of an appropriately qualified and experienced professional contractor;
 - ii. it will procure the resources, expertise and experience necessary to construct and complete the Works;
 - iii. it has provided Viterra with all of the information necessary for Viterra to assess its capacity to perform this Contract safely;
 - iv. it is familiar with and has the capability, resources, competencies and experience to comply with its obligations under this Contract (including the Glencore Group Policies, SH&E Plan and the SH&E Requirements);
 - v. it has received, read, understood, is aware of and must at all times comply with the Glencore Group Policies and must take reasonable steps to ensure that its Personnel comply with the Glencore Group Policies;
 - vi. the provision of all labour and other Personnel, including supervision, as are required to carry out the Works in which respect the Contractor must, where possible and provided quality and economy are not comprised, endeavour to engage local labour;
 - vii. the implementation and management of safe systems and methods to enable and allow Personnel and invitees of Viterra to have access to, on and through the Site during the undertaking of the Works and during the Defects Liability Period to enable them to access areas adjacent to the Site; and
 - viii. it will carry out the Works in accordance with Good Construction Practices to the extent that it imposes a higher or better standard.
- (b) The Contractor acknowledges that it is responsible for:
- i. the overall and complete design (if clause 5.3 applies), construction, co-ordination and general management of the Works;
 - ii. the carrying out of any and all studies, including Site investigations and, if clause 5.3 applies, a design risk assessment as is necessary to establish the proper design of the Works;

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- iii. the manufacture and procurement and, if clause 5.3 applies, the design of the Works in accordance with the requirements of Viterra;
- iv. the engineering, supply, construction, testing and completion of the Works as is required by and in accordance with the Contract, including the correction of all Defects in the Works;
- v. the integration of the Works with any existing buildings or structures at, on and/or under the Site.

5.3. Design Warranties

- (a) If all or any part of the Works require the Contractor to assume design obligations then this clause 5.3 applies.
- (b) The Contractor warrants to Viterra that:
 - i. the design for the Works is suitable, appropriate and adequate for its intended purpose (including, without limitation, having regard to the receipt, storage and handling of food and food products at the Site); and
 - ii. it has examined and carefully checked any preliminary design included in any documents provided to the Contractor by Viterra and any such preliminary design is suitable, appropriate and adequate for its intended purpose.

5.4. Workmanship Warranties

- (a) The Contractor warrants to Viterra that the Works (including any materials and equipment furnished or manufactured in the performance of the Works):
 - i. will strictly conform with the requirements of this Contract and all Laws;
 - ii. will be free from Defects and completed to a reasonable Standard of Finish;
 - iii. will be accurate and in all respects suitable for their intended purpose included in or ascertainable under this Contract and of a high quality (including having regard to the receipt, storage and handling of food or food products at the Site);
 - iv. will minimise the repair and maintenance costs of the Works;
 - v. will be new unless otherwise expressly authorised by Viterra in writing;
 - vi. will in all respects conform with this Contract and where relevant, will be of a quality consistent with good engineering practice and/or Good Construction Practice;
 - vii. will comply with the requirements of all applicable Australian Standards or any other relevant standards or codes of practice (subject to the express terms of the Contract);
 - viii. will comply with all Laws; and
 - ix. will be properly stored and protected and while in storage will be labelled as intended for inclusion in the Works.

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5.5. Warranties Unaffected

The Contractor acknowledges that the warranties in clause 5 remain unaffected despite:

- (a) that the design of all or any portion of the Works has been carried out by or on behalf of the Contractor or subject to any requirements of Viterra; and
- (b) any Variation of the Works made pursuant to this Contract.

6. Security Deposit

6.1. Security is for the purpose of ensuring the due and proper performance of the Contract.

6.2. If required to do so by the conditions of tendering (if applicable), or otherwise notified to the Contractor in writing, the Contractor must provide the Security. The Security must be in a form approved by Viterra.

6.3. If the Security is a security deposit or an unconditional guarantee, the Contractor must provide that Security within 14 days of this Contract being awarded to the Contractor.

6.4. Viterra may have recourse to the Security if:

- (a) the Contractor defaults under the Contract; or
- (b) Viterra suffers a loss directly or indirectly as a consequence of a Contractor default.

6.5. Unless Viterra otherwise agrees in writing, Viterra's entitlement to the Security ceases on the later of:

- (a) 28 days after the expiry of the Defects Liability Period (or any other time period notified to the Contractor in writing by Viterra prior to the date of this Contract); and
- (b) the date when Viterra is satisfied (acting reasonably and without delay) that:
 - i. the Contractor has discharged in full its obligations under this Contract;
 - ii. all existing claims under or in connection with this Contract have been resolved; and
 - iii. Viterra has no further claims against the Contractor.

6.6. If Viterra makes a call on any Security, within 3 Business Days of the date of such call, the Contractor must replenish the Security to the extent of the amount called.

7. Works Programme

7.1. If requested by Viterra, the Contractor must, within 5 Business Days of any such request, provide Viterra with 2 copies of a works programme showing the sequence and duration of all activities and the interrelationship between those activities including, where applicable, design, shop drawing, submissions and approvals, procurement, manufacture, delivery, installation, testing and commissioning dates. The programme must identify the critical path.

7.2. The programme will be reviewed by Viterra and a copy returned with comments or approval to the Contractor. If the programme is not approved, the comments must be incorporated in a

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subsequent submission for approval and be resubmitted within 4 Business Days of Viterra comments being received by the Contractor.

- 7.3. Unless otherwise agreed in writing by Viterra, the Contractor must ensure that the programme is strictly adhered to and at all times reflects the progress of the Works.
- 7.4. Viterra is not obliged to, but may in its absolute discretion, use the programme for any purposes including for the purposes of assessing claims made by the Contractor for any Variation, extension of time, delay or disruption costs.

8. Documents

8.1. The Contractor acknowledges that:

- (a) Viterra does not warrant, guarantee, make any representations in relation to, or assume any duty of care with respect to, the completeness, accuracy or adequacy of any information, drawings, specifications, documents or materials provided by Viterra or otherwise contained in any information, drawings, specifications, documents or materials provided by the Contractor (including the programme, the SH&E Plan and any design documents) or that it will otherwise comply with, or enable the Contractor to discharge its obligations under, the Contract; and
- (b) the review, approval or endorsement by Viterra of any information, drawings, specifications, documents or materials provided by the Contractor (including the programme, any design documents, SH&E Plan and any required design risk assessment) does not relieve the Contractor from its obligations and liabilities (including for any errors or omissions), or prejudice Viterra's rights against the Contractor, under or in connection with this Contract.

9. Viterra Facilities

- 9.1. The Contractor must, in accordance with any applicable Laws current at the time, provide suitable facilities on Site for the Contractor's Personnel or agreed in writing.
- 9.2. The Contractor must not use any existing Viterra facilities, equipment or services unless expressly stated elsewhere in the contract documents and provided that at all times the Contractor complies with Viterra's reasonable directions.

10. Sub-contracting of Works

- 10.1. The Contractor must not subcontract out of the performance of any obligations under this Contract or any part of this Contract without Viterra's prior written consent.
- 10.2. The Contractor must ensure all subcontractors are bound by these General Conditions of Contract.
- 10.3. The Contractor is responsible for any act, omission, default or negligence of any subcontractor (including any subcontractor Personnel) as if they were an act, omission, default or negligence of the Contractor.
- 10.4. Approval by Viterra of any subcontracting by the Contractor does not relieve the Contractor from any liability or obligation under this Contract or create or impose any obligation on Viterra.

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11. Progress of Works

- 11.1. The Contractor must proceed with the Works with due expedition and without delay such that the Works will reach Practical Completion by the Date for Practical Completion.
- 11.2. The Contractor must not suspend the progress of the whole or any part of the Works except where the suspension is expressly approved in writing by Viterra.
- 11.3. The hours of work are those normally worked at the Site (or, where applicable, the Viterra facility where the Site is located or otherwise where the Works will be performed), unless otherwise agreed in writing by Viterra.
- 11.4. If the progress of the Works is delayed by reason of a Force Majeure Event, the Contractor will not be liable provided that:
- (a) the Contractor has notified Viterra immediately in writing that a Force Majeure Event has arisen;
 - (b) within 2 Business Days after advising Viterra under clause 11.4(a), the Contractor must provide Viterra with a written notice stating:
 - i. details of the Force Majeure Event including details of the basis on which the Contractor has formed the opinion that an event does constitute a Force Majeure Event;
 - ii. details of the obligations under this Contract affected; and
 - iii. details of the actions that the Contractor has taken and proposes to take to avoid or minimise the consequences of the Force Majeure Event;
 - (c) in addition to providing the notice under clause 11.4(b), the Contractor must promptly after the occurrence of a Force Majeure Event take and continue to take proper and reasonable steps (including expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures) to remedy, avoid or minimise the preventing or delaying effect of the Force Majeure Event on the Contractor's obligations under this Contract; and
 - (d) the Contractor will bear its own costs incurred as a result of the occurrence of a Force Majeure Event.
- 11.5. If Viterra agrees that the progress of the Works is delayed by reason of a Force Majeure Event, the Date for Practical Completion will be extended by the period of time that the Contractor was actually delayed in achieving Practical Completion.
- 11.6. The Contractor is not entitled to receive or recover any payment for an obligation that was suspended due to a Force Majeure Event until such time as that obligation is actually performed.

12. Suspension of the Works

Viterra may, by notice in writing, suspend the execution of the Works at any time and for any reason and upon receipt of a notice of suspension, the Contractor must cease work in accordance with the directions of the notice and must immediately do everything possible to minimise its costs associated with the suspension of the Works. The Contractor must recommence the Works as soon as possible after any direction of Viterra. The Contractor will only be entitled to payment of the value of the Contract Sum completed up to the date of

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suspension subject always to the Viterra's right of set-off, except where the suspension was directed as a result of an act or omission of the Contractor or its Personnel.

13. Access, Site Safety Rules and Regulations

- 13.1. Viterra must give the Contractor sufficient access to the Site to allow it to perform the Works subject to the Contractor, at all times, complying with the terms of this Contract.
- 13.2. Unless otherwise agreed in writing, Viterra is not obliged to the Contractor sole access to the Site.
- 13.3. The Contractor is responsible for the safety of its operations at the Site and methods of construction and/or demolition relating to or in connection with the Works.
- 13.4. The Contractor must (and ensure that its Personnel):
 - (a) comply at all times with Viterra's site safety, security and access policies, procedures and protocols (including Viterra's Safety Rules & Regulations (attached at Schedule 1 to this Contract), ensuring it and its Personnel has a current and valid registration within SitePass and the Glencore Group Policies) and any reasonable directions or instructions of Viterra or its Personnel (including any instructions provided within the SitePass induction);
 - (b) comply with the SH&E Requirements; and
 - (c) work to agreed and approved conditions in any authorised Viterra permit relating to the Works;
 - (d) avoid or minimise unreasonable interference with the passage of people and vehicles and the operations or activities carried out at the Site.
- 13.5. If requested by Viterra, the Contractor must, within 5 Business Days of any such request, provide Viterra with a SH&E plan that, at a minimum:
 - (a) considers and responds to the specific SH&E and environmental hazards and issues relevant to the Works;
 - (b) documents the systems and methods to be implemented for the term of the Contract;
 - (c) incorporates those matters set out in Part B Schedule 2; and
 - (d) incorporates any other matter reasonably requested by Viterra from time to time,

(SH&E Plan).
- 13.6. Upon receipt of the SH&E Plan, Viterra will review the SH&E Plan and, within a reasonable time, provide formal approval to commence the Works. The Contractor acknowledges that it must not commence the Works until formal approval has been provided by Viterra.
- 13.7. In performing the Contract, the Contractor must all times comply with the SH&E Plan and the SH&E Requirements and, upon the request of Viterra, demonstrate to Viterra's reasonable satisfaction, that the Contractor has the capability, resources, competencies and experience to comply, and is complying, with the SH&E Plan and the SH&E Requirements.

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13.8. Without limiting Viterra's rights under clause 27.1(c), if during the term of this Contract Viterra reasonably believes that the Contractor:

- (a) has failed to comply with the SH&E Plan or the SH&E Requirements;
- (b) is not conducting the work in compliance with the Contractor's SH&E Plan, safety, health and environmental management system procedures, Laws, Glencore Group Policies or safety, health and environmental procedures provided by Viterra from time to time, or
- (c) is conducting the work in such a way as to endanger the health and safety of Contractor's Personnel, or Viterra employees, plant, equipment, materials or the general public, other invitees on the Site and the environment,

(each a **Safety Breach**),

Viterra may, at the Contractor's expense:

- (d) engage a suitably qualified expert to independently verify the Contractor's compliance; or
- (e) request the Contractor to immediately remedy the Safety Breach.

13.9. While the Safety Breach is subsisting:

- (a) Viterra may direct the Contractor to suspend the Work until such time as the Contractor satisfies Viterra that the Safety Breach has been remedied; and
- (b) the Contractor is not entitled to any time or cost relief during the period the Works are suspended in accordance with this clause.

13.10. The Contractor acknowledges that nothing in this clause 13 limits or reduces any warranties given by the Contractor or otherwise an obligations of the Contractor under this Contract.

14. Statutory Obligations

In carrying out this Contract the Contractor must comply with all applicable Laws.

15. Defective Materials or Work

15.1. If Viterra discovers material or work which is a Defect or not otherwise in accordance with the Contract, Viterra may direct the Contractor to:

- (a) remove the material from Site;
- (b) demolish the work;
- (c) reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

15.2. Viterra may, acting reasonably, direct the times within which the Contractor must commence and complete the removal, demolition, replacement or correction.

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16. Patents, Copyright and Other Intellectual Property Rights

- 16.1. Viterra warrants that unless otherwise provided in this Contract design, materials, documents, and methods of working, specified in this Contract or provided or directed by Viterra will not infringe the Intellectual Property Rights of any third party.
- 16.2. The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe the Intellectual Property Rights of any third party.
- 16.3. Intellectual Property Rights developed or first reduced to practise by the Contractor during the performance of the Works will become and remain the property of Viterra. The Contractor may have access to and use of such Intellectual Property Rights on application to and approval from Viterra.
- 16.4. All drawings, specifications, bills of quantities, calculations and reports, whether produced by the Contractor or Viterra in relation to the Works will be copyright to Viterra with the exception of any proprietary items or equipment for which copyright already exists elsewhere.
- 16.5. Any Intellectual Property Right which under this clause is defined as neither the property of nor copyright to Viterra must nevertheless be made available to Viterra for use in performing repairs, maintenance and the like to the particular item or equipment to which it relates.

17. Protection of People and Property

- 17.1. The Contractor must provide all things and take all measures reasonably necessary to protect people and property at and adjacent to the Site.
- 17.2. The Contractor must promptly make good any damage and pay any compensation which any Law requires the Contractor to pay for damage caused by the Contractor.

18. Care of the Work under the Contract

- 18.1. From the date of commencement of work on the Site to 4.00pm on the Practical Completion Date, the Contractor is responsible for the care of the Work under the Contract.
- 18.2. After 4.00pm on the Practical Completion Date the Contractor remains responsible for the care of any outstanding work and items to be removed from the Site by the Contractor and will be liable for damage occasioned by the Contractor in the course of completing outstanding work (including rectifying any Defects).

19. Damage to Persons and Property other than the Works - Indemnity by Contractor

- 19.1. The Contractor must indemnify and keep indemnified Viterra for all claims, costs, losses and damages incurred by Viterra due to a failure by the Contractor to meet requirements of the Contract or in relation to or connection with injury or damage to any person or property arising out of the Works undertaken by the Contractor except to the extent such claims, costs, losses and damages was directly caused by Viterra.

20. Insurance of the Works

20.1. Works Insurance

On or before the date of the Contract, the Contractor will affect a "Contract Works" insurance policy in the name of the Contractor covering the Contractor, Viterra and all sub-contractors

employed from time to time in relation to the Works. The purpose of this insurance is to cover the risk of material damage to the Works only.

20.2. Public Liability Insurance Cover

Prior to commencement of the Works, the Contractor must take out and maintain until the end of the Defects Liability Period a public liability insurance policy with respect to liabilities to any third parties for the death or injury of any person or any loss, damage or destruction of any property and with a reputable and solvent insurer for an amount of \$20 million. The Contractor must ensure that its subcontractors maintain public liability insurance in accordance with, and which would satisfy, the requirements set out in this clause, which must be maintained for the period in which the relevant party has subcontracted its obligations to that subcontractor.

20.3. Workers Compensation and Motor Vehicle Insurance Cover

Viterra does not provide insurance cover for workers compensation for Contractors or their Personnel. Viterra does not provide insurance cover for damage to Contractors motor vehicles or construction equipment. The Contractor is responsible for providing these coverages plus any additional cover it deems necessary (or a prudent contractor in the position of the Contractor would deem necessary) to fulfil the Contractor's requirements and obligations under this Contract.

20.4. Professional Indemnity Insurance

If all or any part of the Works require the Contractor to assume design obligations then this clause 20.4 applies. Before the Contractor undertakes any Works under this Contract, the Contractor must obtain and maintain a professional indemnity insurance policy (**PI Insurance**). The Contractor will maintain the PI Insurance and pay all premiums due under the Insurance for a minimum of 5 years after the Practical Completion Date.

20.5. Insurance Obligations and Certificates of Currency

In respect of each insurance policy required under this clause 20, the Contractor must:

- (a) maintain the insurance policy and pay all the premiums due under the insurance policy;
- (b) ensure the insurance policy is placed with an insurer and on terms approved in writing by Viterra (which approval will not be unreasonably withheld);
- (c) as soon as is reasonably practicable, will advise Viterra of all claims or potential claims and of anything that may prejudice cover under the insurance policy;
- (d) immediately rectify anything that might prejudice cover under the insurance policy; and
- (e) as soon as reasonably practicable after a request is made by Viterra, produce a current insurance policy or certificate of currency setting out the extent of the cover provided, any exclusions and the amount of any excess.

21. Provisional Sums

Any amount included in the Contract Sum as a provisional sum (as set out in the Purchase Order) must only be expended on the written authority of Viterra and then the Contract Sum will be assessed by Viterra in accordance with clause 23. Viterra is not liable for any provisional sums spent otherwise than on the written authority of Viterra.

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22. Variation Orders

The Works described within the Purchase Order may be varied only on the written order of Viterra (**Variation**). The Contractor is entitled to reasonable compensation for the costs of any Variation ordered under this clause.

23. Terms of Payment

23.1. Progress claims must be submitted monthly in arrears. Payments will be made net cash 45 days after receipt of invoice for that portion of the Works satisfactorily completed. Payment of moneys (including under clause 24.1(b)) is not an admission of liability or that the relevant portion of the Works has been executed satisfactorily but is on an account payment only.

24. Practical Completion Certificate

24.1. If Viterra considers that the Works have been satisfactorily completed by the Contractor and ready for use except for minor omissions and minor defects and that Practical Completion has been achieved, Viterra may:

- (a) issue a Certificate of Practical Completion to the Contractor which will specify the date of practical completion; or
- (b) make the final payment owing under clause 23 (exclusive of any retained Security), the date of such payment being deemed the date of practical completion for the purposes of this clause 24,

(Practical Completion Date).

24.2. Upon the Practical Completion Date, the Contractor must give possession of the Site and Works to Viterra.

25. Defects Liability Period

25.1. Unless otherwise agreed in writing by Viterra, the defects liability period will be 12 months from the Practical Completion Date (**Defects Liability Period**).

25.2. Within 10 Business Days of the Practical Completion Date, the Contractor must rectify any Defects existing at Practical Completion, at the Contractor's expense.

25.3. At any time prior to the expiration of the Defects Liability Period, Viterra may direct the Contractor to, at the Contractor's expense, rectify any Defects in the Works, at the Contractor's expense.

25.4. Nothing in this clause limits or otherwise reduces:

- (a) Viterra's other rights and remedies in this Contract arising out of or in relation to any Defects;
- (b) the Contractor's obligations to deliver the Works; and
- (c) any warranties given by the Contractor in this Contract.

26. Disputes

26.1. If either party notifies the other party in writing of any dispute arising out of or in connection with this Contract (**Dispute**), the parties must resolve the Dispute on the terms of this clause.

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- 26.2. In the case of a Dispute, a party may deliver a notice (**Dispute Notice**) to the other party requesting that the Dispute be referred to the Senior Representatives of the parties.
- 26.3. The Senior Representatives of the parties must meet (whether by phone or in person) to attempt to resolve the Dispute no later than 5 Business Days after the date of the Dispute Notice.
- 26.4. Litigation in respect of the Dispute must not be commenced until the process in this clause has been followed and at least 20 Business Days have passed since the referral of the Dispute to the Senior Representatives.
- 26.5. Nothing in this clause restricts or limits a party's rights to seek urgent injunctive or declaratory relief in respect of a Dispute or any other matter arising out of or in connection with this Contract.
- 26.6. Despite the existence of a Dispute, the Contractor must continue to perform its obligations under this Contract (including continuing to perform the Works).

27. Default and Termination

- 27.1. Either party (**Non-Defaulting Party**) may terminate this Contract without compensation to the other party (**Defaulting Party**) with immediate effect by giving notice to the Defaulting Party if:
- (a) an Insolvency Event occurs in respect of the Defaulting Party;
 - (b) the Defaulting Party breaches any provision of this Contract and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
 - (c) the Defaulting Party breaches a material provision of this Contract where that breach is not capable of remedy
 - (d) where the Contractor is the Defaulting Party, the Contractor fails to comply at all times with its SH&E Plan or the SH&E Requirements, and

upon termination under this clause the Contractor must immediately provide to Viterra a complete copy of any information, drawings, specifications, documents or materials and the like relevant to or in connection with the Works including any information necessary to facilitate completion of the Works (including, if applicable, any design documents).

- 27.2. Termination of this Contract under this clause does not affect any accrued rights or remedies that the Non-Defaulting Party may have.

28. No Assignment

- 28.1. Neither party may assign or transfer its rights or obligations under this Contract without the prior written consent of the other party (not to be unreasonably withheld or delayed).
- 28.2. For the purpose of this clause:
- (a) a change in ownership or Control of the Contractor is deemed to be an assignment; and
 - (b) **Control** means control or influence of, or having the capacity to control or influence the composition of the Board, or decision making, directly or indirectly, in relation to the financial and operating policies or otherwise being in a position to cast, or control the casting of, more than 50% the maximum number of votes that may be cast at a general meeting of the Contractor.

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29. No Waiver

A party waives a right under this Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. Failure of a party to insist upon strict performance of any condition of this Contract will not constitute a waiver of such condition or a waiver of any default.

30. Notices

30.1. Written Notice

Any notice to be given or made pursuant to the provisions of this Contract must be in writing and may be signed by the authorised agent of the party giving the notice and may be served either personally or by email or by posting to the party to whom the notice is directed at the above address or at any other address of which prior notification must have been given by the addressee prior to the dispatch of the notice.

30.2. Notice by Post

Any notice given by post is deemed to have been received by the party to whom it is addressed at the expiration of forty eight (48) hours after it has been properly posted.

31. GST

31.1. Viterra and the Contractor acknowledge that all fees and charges payable pursuant to this Contract have been calculated on a GST exclusive basis unless otherwise expressly stated.

31.2. If a taxable Supply is made under any law relating to Goods and Services Tax, the Contractor must incorporate this into the tax invoice to Viterra, complying with those laws and vice versa.

31.3. The Contractor warrants and represents that it is registered under the GST Act as at the date of this Contract.

31.4. In this clause **Supply** has the same meaning it does in Section 9-10 of the GST Act and excludes any GST-free supplies and input taxed supplies defined in Section 195-1 of the GST Act.

32. Personal Properties Securities Act

32.1. If Viterra determines that this Contract contains or gives rise to a security interest in respect of any goods and any proceeds of sale of those goods for the purposes of the PPSA, to the extent permitted by Law, the Contractor agrees to promptly do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Viterra asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected as a first ranking security interest (including, where possible, by possession or control in addition to registration) and otherwise effective; or
- (b) enabling Viterra to register a financing statement or financing change statement on the PPSR against the Contractor in connection with the security interest; or
- (c) enabling Viterra to exercise rights in connection with the security interest.

32.2. The Contractor agrees, to the extent permitted by Law, that:

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- (a) to the extent that any security interest secures the purchase price of the goods, is a PPS lease or a commercial consignment, that security interest will be a PMSI;
 - (b) Viterra may register a financing statement on the PPSR against the Contractor;
 - (c) notices or documents required or permitted to be given to Viterra under the PPSA may be given in accordance with the PPSA;
 - (d) it will not to change its name, address for service or any other of its details that constitute data for the purposes of registering a financing statement or financing change statement on the PPSR without notifying Viterra in writing of the Contractor's intention to change those details at least 10 Business Days prior to doing so;
 - (e) it waives its rights to receive a copy of any verification statement under the PPSA; and
 - (f) the parties contract out of the Contractor's rights, and the Contractor waives its rights, under sections 95 (*Secured party must give notice of removal of accession*), 96 (*when a person with an interest in the whole may retain an accession*), 118 (*Enforcing Security in accordance with land law decisions*), 121 (*Enforcement of security interests in liquid assets*), 125 (*Obligation to dispose of or retain collateral*), 128 (*secured party may dispose of collateral*), 129 (*disposal by purchase*), 130 (*Notice of disposal of collateral*), 132 (*Secured party to give statement of account*), 135 (*Notice of retention of collateral*), 142 (*Entitled persons may redeem collateral*) and 143 (*Entitled persons may reinstate security agreement*) of the PPSA.
- 32.3. The Contractor must not at any time register against Viterra under the PPSA a financing statement in relation to personal property supplied, or to be supplied, by the Contractor or otherwise relating to or in connection with the Works or this Contract, without the prior written consent of Viterra.
- 32.4. Subject to the provisions of the PPSA, the Contractor and Viterra agree that the terms of this Contract are confidential and the Contractor and Viterra will not disclose any of the information set out in section 275(1) of the PPSA in relation to this Contract to any person, save and except that Viterra may disclose the information to its professional and legal advisors in relation to any of its rights and obligations under this Contract, or if required by law.
- 32.5. A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause, unless the context otherwise requires.

33. Set-off

- 33.1. Viterra may set off from any amount it owes the Contractor, the amount of any claim Viterra or a Related Body Corporate of Viterra (as that term is defined in the *Corporations Act 2001 (Cth)*) has against the Contractor on any account.

34. Governing law

This Contract is governed by and construed with reference to the laws for the time being in force in South Australia.

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35. Entire agreement

This Contract:

- (a) constitutes the entire agreement between the parties as to the Works;
- (b) no quotation, confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Contractor in relation to the Works will vary this Contract; and
- (c) supersedes all prior representations and agreements in connection with the Works.

36. Definitions and Interpretation

36.1. Definitions

In this document:

Australian Standards means any guideline, policy or standard issued by the Standards Association of Australia relevant to the performance of this Contract generally.

Business Day means a day that is not a Saturday, Sunday or public holiday in the jurisdiction where the Works are being performed or carried out.

Contract has the meaning given in clause 1.

Contract Sum has the meaning given in clause 3.

Contractor has the meaning given in clause 1.

Date for Practical Completion means the date set out in the Purchase Order or as otherwise notified by Viterra in writing.

Defaulting Party has the meaning given in clause 27.1.

Defects means:

- (a) any error, deficiency, omission, non conformity, fault, failure, malfunction, irregularity or other defect in the Works; or
- (b) any aspect of the Works which is not in accordance with the requirements of this Contract.

Defects Liability Period has the meaning given in clause 25.1.

Dispute has the meaning given in clause 26.1.

Dispute Notice has the meaning given in clause 26.2.

Force Majeure Event is limited to the following specific events or circumstances: any strikes, lockouts, bans or other industrial disturbances (except those limited to the Contractor's site or sites), acts of the enemy, wars or conditions arising out of or attributable to wars (whether declared or undeclared), blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, fire, explosions but only where such events or circumstances:

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- (a) are beyond the reasonable control of the Contractor;
- (b) are such that even a competent contractor would not be able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under this Contract; and
- (c) are not caused or contributed to in whole or in part by a breach by the Contractor of this Contract.

Glencore Group Policies means Glencore Code of Conduct and Corporate Practice Global Anti-Corruption Policy located at <http://www.glencore.com/who-we-are/our-values/policies/> or otherwise any other policy published, provided or notified by Viterria to the Contractor from time to time.

Good Construction Practices means construction of the Works and practices which are carried out:

- (a) in a sound and workmanlike manner with due care and skill applying nationally accepted best practice in engineering, construction and management procedures for assets in the nature of the Works;
- (b) with due expedition and without unreasonable delay;
- (c) in a manner which facilitates best building practice and efficient operation;
- (d) in accordance with all applicable Laws; and
- (e) in a manner that is safe to workers, the general public and environment.

GST has the meaning it does in section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended, superseded or replaced from time to time.

Insolvency Event includes:

- (a) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (b) a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment;
- (c) an order is made for the administration, dissolution or winding up of a corporation, or a resolution is passed for the administration or winding up of the corporation;
- (d) a corporation ceases, or threatens to cease, to carry on its business or payment of its debts generally;
- (e) a corporation enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors;
- (f) an inspector is appointed under any companies legislation to investigate all or any part of the affairs of a corporation in relation to a possible contravention by a corporation of that legislation; or

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- (g) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute).

Intellectual Property Right means all intellectual property rights and interest including common law rights and interests, patents, registered designs, trade marks, copyright, circuit layout rights.

Law or **Laws** include:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations;
- (c) any direction or requirement imposed by any statutory corporation, statutory authority, tribunal or person exercising statutory power responsible for administering and maintaining standards and requirements in connection with the design, construction or use of the Works;
- (d) industry-specific codes of practice or standards as applied from time to time; and
- (e) fees and charges payable in connection with the foregoing,

relating to the jurisdiction(s) where the Works will be performed or the parties are located.

Non-Defaulting Party has the meaning given in clause 27.1.

Personnel means in respect of a party, the employees, agents, invitees, consultants, permitted contractors and permitted subcontractors of the party (and includes their respective employees and agents).

PI Insurance has the meaning given in clause 20.4.

PMSI means a purchase money security interest as defined in the PPSA.

PPSA means *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Property Securities Register.

Practical Completion means that stage in the execution of the Works when:

- (a) the Works are complete and have achieved an acceptable Standard of Finish except for minor omissions and minor defects:
 - i. which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
 - ii. rectification of which will not prejudice the convenient use of the Works; and
- (b) all documents and other information required under this Contract or which, in the reasonable opinion of Viterra, are essential for the use, operation and maintenance of the Works, have been supplied to Viterra.

Practical Completion Date has the meaning given in clause 24.

Purchase Order has the meaning given in clause 2.

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Safety Breach has the meaning given in clause 13.8.

Senior Representative means, in respect of a party, a person with the ability and authority to resolve, and bind a party in respect of, a Dispute.

SH&E means safety, health and environment.

SH&E Plan has the meaning given in clause 13.5.

SH&E Requirements means those requirements set out in Schedule 2.

Security means either:

- (a) 5% of the Contract Sum as retention monies (or any other percentage notified to the Contractor in writing by Viterra prior to the date of the Contract); or
- (b) 5% of the Contract Sum as a security deposit (or any other percentage notified to the Contractor in writing by Viterra prior to the date of the Contract); or
- (c) 5% of the Contract Sum as an unconditional guarantee (or any other percentage notified to the Contractor in writing by Viterra prior to the date of the Contract). Where **unconditional guarantee** means an unconditional undertaking from a reputable financial institution approved by Viterra that is irrevocable, payable on demand and presentable in South Australia.

Site means the location(s) of the Works as set out in a Purchase Order or as otherwise notified by Viterra in writing.

SitePass means Viterra's contractor management system located at: <https://safety.glencoreagriculture.com.au/>.

Standard of Finish means that all of the Works have been completed so that upon a visual inspection a high standard of presentation is immediately evident and:

- (a) the Contractor and (if applicable, each subcontractor) have carried out their own quality inspections and remedied any Defects except for minor Defects which will not prevent or prejudice the convenient use of the Works for their intended purpose;
- (b) all of the Contractor's and any of its Personnel's equipment and materials have been removed from the Site;
- (c) all appliances, equipment and services are operational; and
- (d) the Site is entirely clear of any building debris, dust or any dirt or rubbish of any kind brought in by the Contractor during the Works.

Variation has the meaning given in clause 22.

Viterra has the meaning given in clause 1.

Works has the meaning given in clause 2.

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36.2. Interpretation

In this document:

- (a) a reference to this document includes any schedules or annexures to this document;
- (b) a reference to a party to this document includes that party's successors in title, legal personal representatives, transferees and permitted assigns;
- (c) words importing the singular include the plural and vice versa;
- (d) headings do not affect interpretation;
- (e) the whole or any part of this document that is illegal or unenforceable will be severed and will not affect the continued operation of the remaining provision of this document;
- (f) no rule of construction applies to the disadvantage of a party because that party put forward this document or any portion of it;
- (g) unless specified by Viterra, a reference to AUD\$, \$AUD, dollar or \$ is to Australian currency;
- (h) a reference to time is to Adelaide, South Australia time;
- (i) references to "includes" or "including" or "for example" means without limitation;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) unless expressly set out in this Contract, where Viterra is required to give its consent or exercise its discretion under this Contract, it may give that consent or exercise its discretion with or without conditions and withhold such consent in its sole and absolute discretion (without giving reasons);
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) in the event of any inconsistency between the General Conditions of Contract and the terms of any Purchase Order, the following order of precedence applies to the extent of the inconsistency:
 - i. the terms specified in the Purchase Order (if any); then
 - ii. the terms specified in these General Conditions of Contract.

SCHEDULE 1 - SITE SAFETY RULES & REGULATIONS

1. No person shall enter a Viterra Site without the prior approval of Viterra. Approvals are to be arranged with the person nominated in the contract documents as being the person responsible for the Works.
2. All persons entering the Site of Works who intend to carry out, or supervise, works of any nature shall not commence such duties unless they have a current and valid SitePass registration for each individual as well as their employing entity and have completed the appropriate induction.
3. The Contractor shall be responsible for ensuring this procedure is adhered to and shall be responsible for signing in and signing out all of their Personnel. The registers shall be maintained at all times and be located at the access/egress point and is to be readily available to the Operations Coordinator or its representative and Viterra Emergency Services Personnel at all times on request. The Registers shall contain a record of all Contractors' Personnel at any given time. Registers are available from Viterra upon request.
4. Without limiting the General Conditions of Contract, the Contractor shall ensure that its Personnel comply with the work health and safety (**WHS**) laws, regulations and codes of practices of the state or jurisdiction in which they are operating. The Contractor shall ensure that work is conducted in accordance with any Viterra Standards (located on SitePass) unless agreed otherwise in writing (this includes, without limitation, all high risk work including confined space, heights, hot work and ground penetration must be conducted in accordance with Viterra's Hazard Standards, which can be accessed through the resources within the SitePass system). Where a conflict arises between the WHS laws, regulations or codes of practices and the instructions from Viterra, the WHS laws, regulations or codes of practices shall take precedence to the extent of the conflict.
5. The Contractor must ensure that its Personnel comply with the requirements of the environmental laws of the state or jurisdiction in which they are operating (including its supporting regulations, policies, etc) and any specific requirements of individual site EPA Licences.
6. The Contractor shall ensure the safety of all other attendees on Site by barricading dangerous areas, use of signs and warning lights.
7. The Contractor shall comply with Viterra's Personnel Protective Equipment standard and mandatory requirements.
8. The Contractor shall ensure that all clearways and walkways are free of materials and that the works areas are kept clean and tidy.
9. The Contractor shall supply suitable equipment, including safety equipment, as required for the Works. Viterra equipment is not to be used unless with direct authorisation from Viterra's Senior Management, and only once all necessary training, licencing and safe systems of work have been acknowledged. It shall also ensure that all its equipment is in a safe working condition and suitable for the task / work for which it is intended to be used for. Viterra has the right to inspect and reject equipment.
10. Unless specifically excluded within a Construction Safety Management Plan (incorporated in a SH&E Plan), no work can commence unless a valid Permit to Work has been issued by a Viterra Authorised Permit Issuer.

SCHEDULE 2 - SAFETY HEALTH AND ENVIRONMENTAL REQUIREMENTS

A. SH&E REQUIREMENTS

1. Where the Works include the provision of plant or goods of any description, the Contractor must demonstrate:
 - (a) hazard identification, risk assessment and control measures, required of designers, manufacturers, importers and providers, have been carried out before goods or plant are supplied, ensuring elimination and/or minimization of any risk to the health or safety of Personnel that may arise from the use of the goods;
 - (b) where the Contractor has done everything reasonably within its control but is not able to ensure the requirements in 1(a) above are satisfied, the Contractor must ensure that risks arising from use of the goods, is either eliminated or reduced to the extent possible; and
 - (c) compliance with any applicable WHS Regulations or Australian/New Zealand standards or Codes of Practice and Viterra Standards.

2. Where the Works include the provision of new goods or plant, the Contractor must provide the following information either before commencing the whole of the Works (or otherwise before the relevant goods are incorporated or used in the Works):
 - (a) the purpose for which the goods or plant are designed;
 - (b) the hazards and any risk identified associated with the use of the goods or plant;
 - (c) details of the goods or plant design and construction;
 - (d) any testing, inspections, design notifications and registrations required;
 - (e) information on proper installation, commissioning, decommissioning, use, transport, storage, dismantling and disposal of the goods or plant;
 - (f) safe systems of work and competency of operators necessary for safe use;
 - (g) for chemical substances – container labelling and provision of material safety data sheets (**MSDS**) as per Australian / New Zealand regulatory requirements; and
 - (h) any emergency procedures required in the event of a malfunction / release of the goods or plant.

3. Where the Works include the provision of used goods or plant, the Contractor must provide the following information either before commencing the whole of the Works (or otherwise before the relevant goods are incorporated or used in the Works):
 - (a) the condition of the goods or plant at the time of supply;
 - (b) the hazards and any risk identified associated with the use of the goods or plant;
 - (c) any information in the possession of the Contractor relating to safe use of the goods or plant;
 - (d) any information kept by the previous owner of the goods or plant, that is in the possession of the Contractor; and

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- (e) safe systems of work and competency of operators necessary for safe use;
- (f) registration details for the goods or plant (if applicable).

4. The Contractor must (and ensure that its Personnel):

- (a) have a current and valid SitePass registration for each individual as well as their employing entity and have completed the appropriate induction.
- (b) provide and maintain, a working environment for contracted Personnel, Viterra Personnel and members of the public, that is safe and without risk to health;
- (c) provide and maintain a working environment that prevents environmental damage or pollution;
- (d) inform itself of and comply with all work health and safety and environmental policies, procedures, Standards or measures implemented or adopted by Viterra and/or the occupiers of any premises at or within which the Contractor will perform the Works. If any inconsistency arises, the Contractor must comply with such procedures or measures as they produce the highest level of safety, health and environmental performance;
- (e) if, at any stage, all or any portion of the Works (or the provision of any goods or services forming part of the Works) or otherwise any act or omission of the Contractor gives rise, or may give rise, to a reasonable likelihood of waste matter, hazardous substance, pollution or contaminants (**Contaminants**) being created as a by-product or otherwise being abandoned, dumped or left on the Site, the Contractor must, at its own cost, do everything necessary to remove the Contaminants from the Site before the Works will be considered to have reached Practical Completion by Viterra;
- (f) comply with and ensure that its Personnel comply with any Laws and Viterra's SH&E policy, Standards which are in any way applicable to this Contract or the performance of the Works unless agreed otherwise in writing;
- (g) upon the request of Viterra, but no later than the commencement of the Services, submit a complete copy of its SH&E management system documentation which must include as a minimum requirement:
 - (i) SH&E policy and objectives;
 - (ii) organisational structure and responsibilities;
 - (iii) risk assessment methodology (including, if applicable, any design risk assessments);
 - (iv) safe work practices and procedures;
 - (v) SH&E training and induction;
 - (vi) SH&E auditing and inspection procedures;
 - (vii) SH&E consultation procedures; and
 - (viii) SH&E performance monitoring;

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- (h) prepare and submit a risk assessment prior to commencing the Works. A risk assessment form shall be used to record the risk assessment and risk control methods to be employed by the Contractor. The completed risk assessment and any associated safe work procedures and/or permits shall be submitted to Viterra for review and approval prior to commencement of Works.
- (i) when erecting or installing goods/plant, take all reasonably practicable steps to ensure that the goods/plant is not erected or installed in such a manner that:
 - (i) the goods/plant is unsafe for, or constitutes a risk to the health of, employees at the workplace where the plant is erected or installed; or
 - (ii) the process of erection or installation is unsafe for, or constitutes a risk to the workplace where the goods/plant is erected or installed;
- (j) provide evidence of ongoing performance of the Contractor's SH&E management system in the form of a monthly SH&E Performance Report which includes but is not limited to:
 - (i) proactive near miss and hazard reports
 - (ii) number of injuries;
 - (iii) working days lost due or restricted due to any injury;
 - (iv) current status of any injured personnel, damaged property;
 - (v) environmental damage or pollution;
 - (vi) status of the implementation and outcomes of corrective actions undertaken as a result of SH&E inspections and risk assessments; and
 - (vii) status of SH&E management system audits undertaken.
- (k) upon the request of Viterra, and within 5 Business Days, provide reports on SH&E inspections, audits or assessments undertaken during the term of the Contract; and
- (l) without in anyway limiting the Contractor's obligations at Law, notify Viterra:
 - (i) immediately, in respect of incidents resulting in regulatory reporting and injuries requiring medical treatment; and
 - (ii) otherwise within 24 hours, of any accident, injury, property or environmental damage that occurs during the term of the Contract,

and provide a report of any such incident within three Business Days, giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

B. SH&E PLAN

A **safety, health and environmental plan** should contain, at a minimum, the following elements:

1. a description of this Contract and a summary of major activities and types of work to be performed;

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2. the SH&E structure and system for the work to be performed under the Contract, including names and/or positions of those with specific SH&E responsibilities and a summary of their responsibilities;
3. the position and/or name of a senior person who will liaise with the agency on SH&E matters;
4. induction, safety and environmental training procedures for the Contractor's Personnel;
5. details of employee SH&E training relevant to the contract requirements;
6. certificates and licenses for persons required to supervise or undertake specialist work activity, this includes specialized licences or permits held by the Contractor and its subcontractors for environmental activities;
7. a register of names and/or positions of contract employees with authorisations, permits, competency;
8. safe work practices and procedures for the work to be performed under the Contract;
9. a list of tasks or specialist procedures requiring detailed SH&E work procedures and training;
10. a list of variations in how work will be conducted if not in accordance with Viterra's Standard,
11. a list of areas of the Contract requiring special consideration from a SH&E perspective, for example:
 - (a) where members of the public may be present;
 - (b) traffic management;
 - (c) work restrictions, such as times of work or confined spaces; or
 - (d) exposure to hazards, such as noise, dust or elevated heights;
12. a risk assessment for the work to be performed under the Contract;
13. disposal methods for any wastes generated under the Contract;
14. a workplace inspection and audit schedule for the duration of the Contract;
15. WHS consultative processes to be followed for the duration of the Contract;
16. emergency procedures to be followed during the term of the Contract;
17. incident recording and investigation procedures to be in place during the term of the Contract; and
18. SH&E performance monitoring arrangements to be implemented during the Contract.