

GLENCORE

SERVICE AGREEMENT **(Professional Services)**

Between:

GLENCORE CANADA CORPORATION	
Contract Number:	
Operating Site:	
GST/HST Number:	

(hereinafter referred to as "**Glencore**")

and

Registered/Full Name:	
Trading Name (if different):	
GST/HST Number:	

(hereinafter referred to as the "**Contractor**")

Contract Term:	
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TABLE OF CONTENTS

		Page
1.	INTERPRETATION	3
2.	APPOINTMENT	4
3.	COMMENCEMENT AND DURATION	4
4.	NATURE OF RELATIONSHIP	5
5.	REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS	5
6.	INSPECTION AND AUDIT	10
7.	ACCESS TO OPERATING SITE AND FACILITIES	11
8.	SUB-CONTRACTORS	12
9.	INSURANCE	13
10.	LIMITATIONS OF LIABILITY AND INDEMNITY	14
11.	CONSIDERATION AND PAYMENT	15
12.	CHANGES IN THE SERVICES.....	17
13.	INTELLECTUAL PROPERTY RIGHTS.....	18
14.	CONFIDENTIALITY.....	19
15.	OPERATING SITE RULES	20
16.	SUPPLIER CODE OF CONDUCT	21
17.	DEFAULT, TERMINATION AND SUSPENSION	21
18.	ADDRESS FOR NOTICES	24
19.	FORCE MAJEURE EVENT.....	25
20.	SHIPMENT, DELIVERY, TRANSFER OF TITLE, RISK OF LOSS AND TESTING	26
21.	ROAD TRANSPORT SAFETY	28
22.	NON-SOLICITATION	29
23.	GENERAL	30

WHEREAS Glencore requires the provision of certain Services and the Contractor has the requisite skills, training and experience to provide such Services;

AND WHEREAS Glencore wishes to appoint the Contractor to provide the Services and the Contractor has accepted the appointment on the terms and conditions set out in this Agreement;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

- 1.1 The division of this Agreement into sections and paragraphs and the insertion of a table of contents and headings are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement or any section or paragraph hereof.
- 1.2 Unless a contrary intention clearly appears, words importing:
- 1.2.1 any one gender include the other gender;
- 1.2.2 the singular include the plural and vice versa; and
- 1.2.3 persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and Government Authorities.
- 1.3 Unless something in the subject matter or context is inconsistent herewith, any reference in this Agreement to sections, paragraphs or Schedules shall be to the sections, paragraphs and Schedules of this Agreement.
- 1.4 The following are the Schedules annexed hereto and incorporated by reference in and deemed to be part of this Agreement:
- | | |
|------------|---|
| Schedule A | Definitions |
| Schedule B | Additional Conditions |
| Schedule C | Services |
| Schedule D | Consideration |
| Schedule E | Facilities |
| Schedule F | Performance Undertakings and Liquidated Damages |
| Schedule G | Insurance |
| Schedule H | Dispute Resolution Procedure |
| Schedule I | Road Transport Requirements – Public or Other Offsite Roads |
- 1.5 The use of the word “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

- 1.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.7 A reference to any legislation or legislative provision includes any statutory amendment or re-enactment of, or legislative provision substituted for, and any rules, regulations or notices issued under, that legislation or legislative provision.
- 1.8 The Parties agree that the validity, interpretation and/or enforcement of this Agreement will be governed by the laws in force in the Jurisdiction, with the exception of the United Nations Convention on Contracts for the International Sale of Goods which shall not apply to this Agreement, and subject to the provisions of Schedule H consent to the non-exclusive jurisdiction of the courts in the Jurisdiction in respect of all court proceedings which may arise out of or in connection with this Agreement.
- 1.9 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement unless such rights, powers or remedies are expressly excluded.
- 1.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which were intended to continue to have effect after such expiration or termination, notwithstanding that such provisions do not expressly provide for this.
- 1.11 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.
- 1.12 Should a Schedule attached to this Agreement deviate from or be at variance with the provisions of the main body of this Agreement, the main body of this Agreement shall prevail unless specific reference is made to such deviation on the said Schedule citing the section or paragraph of the main body of this Agreement that is superseded by such deviation. Notwithstanding the aforementioned provision, the Additional Conditions contained in Schedule B (if any) shall prevail over the terms of this main body of this Agreement, solely to the extent of any inconsistency with the main body of this Agreement.

2. APPOINTMENT

- 2.1 Glencore hereby appoints the Contractor to provide the Services subject to the terms and conditions set out in this Agreement and the Contractor hereby accepts the appointment.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the Commencement Date and shall, subject to prior termination in accordance with the terms of this Agreement, continue until (i) the End Date, if an End Date has been specified, or (ii) if no End Date has been specified, the completion of the Services including any applicable warranty period (the “**Term**”).

4. NATURE OF RELATIONSHIP

- 4.1 The Contractor is an independent contractor and the relationship between Glencore and the Contractor under this Agreement does not constitute nor may it be construed as constituting a fiduciary relationship, a joint venture, contract of agency, partnership or employment. The Contractor shall not represent or allow itself to be represented as an employee or agent of Glencore.
- 4.2 The Contractor shall incur no liability of any nature whatsoever for or on behalf of Glencore and the Contractor shall have no authority to bind Glencore by any representations, statements or agreements made or concluded by it.

5. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

- 5.1 The Contractor represents, warrants and covenants as follows, and acknowledges that Glencore has relied thereon in entering into this Agreement:
- 5.1.1 it has examined and carefully studied this Agreement and has become familiar with its terms and has given Glencore a written notice of all conflicts, errors, ambiguities or discrepancies in this Agreement which are known (or reasonably should have been known) to the Contractor on the date of execution of this Agreement;
- 5.1.2 this Agreement conveys sufficient understanding for the proper performance and completion of the Services;
- 5.1.3 it has the capacity to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions have been taken to authorise that execution, delivery and performance;
- 5.1.4 this Agreement constitutes a valid and legally binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditor’s rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;

- 5.1.5 it is properly organised, financed, equipped, qualified, licensed and able, and has sufficiently skilled and experienced Employees to be able, to fulfil its obligations under this Agreement;
- 5.1.6 it is registered to do business in the jurisdictions in which the Services are to be provided, and holds all permits, authorizations, certificates, licenses, approvals and registrations required under applicable Law for the performance of its obligations under this Agreement (the “**Permits**”) and that (i) such Permits are in force and good standing, and covenants that such Permits shall remain in force and in good standing throughout the Term and (ii) the Contractor shall be responsible for obtaining all other Permits required, from time to time, to perform the Services and all its other obligations under this Agreement;
- 5.1.7 it is not a non-resident of Canada or a partnership other than a “Canadian Partnership” within the meaning the *Income Tax Act* (Canada). The Contractor shall notify Glencore immediately if at any time after the date hereof the representation and warranty in this paragraph 5.1.7 ceases to be correct;
- 5.1.8 in connection with the subject matter of this Agreement, it, its Affiliates and its and their employees, Representatives and any other person acting on its or their behalf have complied with, and will comply with, all applicable Laws and regulations including, without limitation, sanctions, anti-money laundering and tax Laws;
- 5.1.9 neither it nor any of its directors, officers and employees nor, to its knowledge, any of its contractors, agents or representatives has directly or indirectly made, and, further, it shall not make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any person, private or public, whether in money, property or services to (i) obtain favourable treatment or to secure any contracts, agreements or commitments, (ii) pay for favourable treatment or for any contracts, agreements or commitments secured or (iii) obtain special concessions or for special concessions already obtained, in each case, in violation in any material respect of any Law, including the *Corruption of Foreign Public Officials Act* (Canada), 1998, c. 34, the *Bribery Act* (U.K.), 2010, c. 23 (in each case, whether or not applicable to the Contractor), and any other Law concerned with the prevention of bribery and corruption applicable to the Contractor (collectively, the “**Anti-Corruption Laws**”);
- 5.1.10 it shall take particular care to ensure the propriety of all interactions with Government Authorities during the Term;

- 5.1.11 any compensation paid by the Contractor to Sub-contractors or any other person in connection with the Services, will be for legitimate, *bona fide* goods or services;
- 5.1.12 it has fully disclosed to Glencore all information pertaining to former or current relationships between the Contractor's directors, officers, employees, distributors, representatives, dealers and agents (collectively, the "**Representatives**") and any government officials and/or candidates for government office; and it has fully disclosed to Glencore whether any of its Representatives are or are likely to hold the status of an official of a Government Authority or a candidate for government office. If at any time there are changes to the information provided to Glencore, including but not limited to the development of a new relationship between any of the Representatives and a government official, the Contractor covenants to immediately notify Glencore of those changes. Glencore reserves the right to alter the terms of this Agreement, or terminate this Agreement, to the extent necessary to ensure that such relationships will not result in a violation of the Laws, including the Anti-Corruption Laws and codes of conduct (including the Operating Site Rules and the Glencore Business Principles) applicable to Glencore and its Affiliates. The Contractor covenants that no part of the Consideration shall accrue for the benefit of any government official or candidate, regardless of the existence or non-existence of a relationship between the Representative and such government official or candidate;
- 5.1.13 it shall not replace any of the Key Personnel without the prior written approval of Glencore. If any of the Key Personnel become unavailable to perform services in connection with this Agreement due to ill health or death or discharge by the Contractor, then the Contractor shall promptly designate a replacement who shall be subject to Glencore's written approval. Glencore shall be entitled to complete information on any such replacement of the Key Personnel, including a current resume. Further, Glencore shall have the right, acting reasonably, to require the Contractor to replace any of the Key Personnel from time to time;
- 5.1.14 it shall comply, and cause its Employees and Contractor Parties to comply, with all reasonable directions of Glencore relating to the performance of the Services, including acceleration of activities, suspension of the Services or any activities, resuming of performance of the Services or such activities and rescheduling and reprogramming of the Services; and shall immediately remove from any activity connected with the provision of the Services any Employees or Contractor Parties who, in the reasonable opinion of Glencore, are incompetent or negligent or are otherwise interfering with the orderly performance of the Services or have failed to comply with the Operating Site Rules; and not knowingly permit any Employees or

Contractor Parties not connected with the performance of the Services, or who have been removed from or denied entry to the Operating Site at any time in the past, onto the Operating Site without Glencore's prior written approval;

5.1.15 it shall perform the Services in a good and workmanlike fashion and with the skill, care and diligence expected of a service provider experienced in the particular activities that are the subject of this Agreement and in compliance with all Law (including Environmental Law), Permits and standards applicable to the Contractor and the performance of the Services;

5.1.16 it shall ensure that the Work Product, materials and methods that are used in the performance of, or connected to, the Services, and any Products delivered pursuant hereto, comply with all applicable Law and standards applicable thereto and that they do not infringe, misappropriate or otherwise damage any Intellectual Property Rights of a third party. The Contractor agrees to indemnify and hold harmless Glencore, its Affiliates, and their respective officers, directors, employees, representatives and agents (collectively, the "**Indemnified Parties**") from and against all claims, demands, proceedings, injuries and actions, and all losses, liabilities, costs, charges, expenses and damage (including legal fees and disbursements) (collectively, "**Claims**") suffered or incurred by such Indemnified Parties of whatsoever nature arising as a result of the Contractor's failure to comply with this provision; and

5.1.17 it shall during the Term, and shall cause its Sub-contractors to maintain for a minimum of five years thereafter, books, records and accounts (the "**Books and Records**") prepared in accordance with accepted accounting principles, consistently applied, which accurately and completely reflect the Consideration paid by Glencore and the nature of every transaction related to the provision of the Services and compliance with this Agreement.

5.2 The Contractor shall notify Glencore in writing as soon as it becomes aware that:

5.2.1 there is any actual or suspected breach by Contractor of paragraphs 5.1.8 to 5.1.11 and paragraph 5.1.17 of this Agreement;

5.2.2 any of the warranties and representations given in paragraphs 5.1.8 to 5.1.11 of this Agreement is not true and accurate in all respects.; or

5.2.3 it, or any of its Affiliates, becomes the subject of any investigation in connection with this Agreement by any law enforcement, regulatory or other governmental agency in relation to any sanctions, anti-bribery and corruption, anti-money laundering and/or tax-evasion.

- 5.3 Without limiting any of its other rights or remedies, in the event that:
- 5.3.1 the Contractor, or any party that directly or indirectly owns or controls it, is sanctioned by any Applicable Sanctions Authority;
 - 5.3.2 Glencore is of the reasonable opinion that the Contractor has breached or will breach any Sanctions; or
 - 5.3.3 performance by Glencore of any obligation required by this Agreement would or could result in violation of, or be inconsistent with, any Sanctions, or expose Glencore to other Sanctions risks, including, without limitation, the risk of being designated as a sanctioned person by any Applicable Sanctions Authority,

Glencore may (without incurring any liability of any nature and regardless of any subsequent ownership change of Contractor) terminate or suspend all or any part of the Agreement with immediate effect by written notice to Contractor or take any other action it deems necessary in order for Glencore to comply with Sanctions or avoid the risk of designation as a sanctioned person by any Applicable Sanctions Authority.

- 5.4 The Contractor, during the Warranty Period, undertakes to make good by repair or replacement, defects in the Work Product promptly after being notified of the defect by Glencore. All costs incurred by the Contractor in such repair or replacement shall be the responsibility of the Contractor. If the Contractor fails to remedy any such defect promptly upon notice thereof, Glencore shall be entitled to repair the defect or purchase a replacement item from another supplier at the Contractor's cost and expense. The obligation of the Contractor in this paragraph 5.4 is without prejudice to any other right or remedy Glencore may have at Law or under this Agreement.
- 5.5 The Contractor covenants and agrees that the Services shall be undertaken in compliance with the Performance Undertakings (where applicable) and/or it shall meet the Performance Undertakings (where applicable) in the provision of the Services.
- 5.6 The Contractor authorizes Glencore and its agents to make enquiries and obtain information about the Contractor and its Representatives from references supplied by the Contractor and any other source to verify the information given to Glencore, to determine the reputation and credit standing of the Contractor, and for other customary due diligence purposes; and agrees to use reasonable efforts to obtain similar authorizations from its Representatives if required by Glencore.
- 5.7 Where the Services include procurement or procurement management services, the Contractor shall procure for Glencore Products from third-party suppliers using Glencore's

standard form of agreement for the supply of Products; or, where using Glencore's standard agreement for the supply of Products is not practicable, the Contractor shall obtain from the vendors of the Products guarantees and warranties, including with respect to quality, materials, suitability, workmanship and performance of the Products that are generally made available by vendors of goods, with warranty or guarantee periods (for breach of such warranties or guarantees) extending for no less time than 18 months from the date of delivery. The Contractor shall use its commercially reasonable efforts to obtain more comprehensive or extended warranties or guarantees from the vendors of such Products at no further cost to Glencore. Notwithstanding the foregoing sentences in this paragraph 5.7, the Contractor shall not sign any agreement with a third-party supplier in its own name or in the name of Glencore, as agent; but rather shall obtain the signature of the appropriate employees or officers of Glencore on such agreements.

- 5.8 The representations, warranties and covenants of the Contractor in this Agreement shall survive the execution and delivery of this Agreement, and the completion of any Services performed hereunder, for a period of two years following the expiry or termination of this Agreement.

6. INSPECTION AND AUDIT

- 6.1 During the Term and five years thereafter, Glencore shall be entitled to inspect and examine the premises of the Contractor (the "**Premises**") and the Books and Records for compliance with this Agreement and, to the extent the Consideration is based, in whole or in part, on the time and materials costs of the Contractor to provide the Services, the Contractor's costs. Subject to paragraph 6.2, the Contractor shall give or cause to be given free and safe access for Glencore's representatives to enter the Premises for such purposes.
- 6.2 All rights of inspection and audit under this section 6 may be exercised by Glencore upon providing the Contractor no less than two Business Days' prior written notice and, subject to paragraph 6.3, shall be conducted at Glencore's sole cost and expense. Any access to the Premises exercised by Glencore pursuant to this section 6 shall be effected during the regular business hours of the Contractor and shall be conducted in such a way as to minimally interfere with the operations of the Contractor. Any inspection, examination, auditing or testing performed pursuant to this section 6 shall not relieve the Contractor of any of its obligations under this Agreement. The Contractor shall cooperate with Glencore and its representatives in any such inspection and audit. Upon the request of the Contractor, Glencore shall adopt reasonable safeguards to prevent the use of any information obtained from such inspections and audits for any other purpose.

- 6.3 If the audit determines that there has been an overpayment by Glencore, then the Contractor will promptly pay Glencore the amount due, but no interest shall accrue on such amount until the date that is 30 days after the audit results have been communicated to the Contractor. If the audit demonstrates that the Contractor has been overpaid by more than \$1,000, the Contractor will reimburse Glencore for the reasonable costs of the audit.

7. ACCESS TO OPERATING SITE AND FACILITIES

- 7.1 Glencore shall provide the Contractor, its Employees and the Contractor Parties with access to the Operating Site and the Facilities as may be necessary for the provision of the Services. The Contractor shall conduct itself and shall cause the Employees and Contractor Parties to conduct themselves while at the Operating Site in such a way as to minimally interfere with the activities of Glencore, its employees and its other contractors.
- 7.2 Notwithstanding the provisions of paragraph 7.1, Glencore shall have the right to:
- 7.2.1 refuse entry to the Operating Site to the Employees and the Contractor Parties until the Contractor has provided Glencore with evidence of all Insurance Policies, Permits and evidence, in form and substance satisfactory to Glencore, acting reasonably, that all Employees and Contractor Parties accessing the Operating Site have read and agreed to comply with the Operating Site Rules;
- 7.2.2 refuse entry to the Operating Site to any Employees or Contractor Parties that Glencore reasonably suspects of being under the influence of any alcohol or intoxicating substance; and
- 7.2.3 require that any Employees or Contractor Parties leave or refrain from entering the Operating Site if Glencore reasonably believes that such Employees or Contractor Parties are guilty of any misconduct or pose a security or other risk to Glencore, its employees or its other contractors or refuse to undergo reasonable search of their person, possessions or vehicle.
- 7.3 If Glencore provides Facilities, the Contractor shall use the Facilities in a responsible and professional manner and ensure they are not damaged due to negligent or wilful acts or omissions, return the Facilities in the same good condition as they were received, ordinary wear and tear excepted, and if so specified in Schedule E, pay to Glencore the consideration specified in such Schedule for the use of the Facilities.
- 7.4 The Contractor represents and acknowledges that it has examined and familiarized itself with local, regional and site conditions which could affect the performance of the Services. Any variance in actual conditions from those observed by the Contractor prior to the execution of

this Agreement or contemplated by any of the documents reviewed by or furnished to the Contractor shall not be the basis for extra compensation or extension of time by Glencore to the Contractor, unless and only to the extent that such variance was not reasonably capable of discovery by the Contractor prior to the execution of this Agreement.

- 7.5 Subject to applicable Law, the Contractor shall not have any lien or right of retention of whatsoever nature in respect of the Operating Site and/or any part thereof and expressly waives all rights that it may have in this regard.
- 7.6 Each of the Parties, by notice to the other, shall designate a representative to act on its behalf for the administration of this Agreement. Each Party shall advise the other Party in writing in the event that a new representative is appointed. The representative of the Contractor must on a regular basis liaise with, and report to, the representative of Glencore on all aspects of the Services.

8. SUB-CONTRACTORS

- 8.1 The Contractor shall not be entitled to appoint any Sub-contractors to assist with the provision of the Services without the prior written approval of Glencore, provided that such consent shall not be required for (i) any portion of the Services described and assigned to those Sub-contractors designated in Schedule B (if any), or (ii) the purchase of materials necessary for the provision of the Services.
- 8.2 All references to Sub-contractors in this Agreement are to sub-contractors appointed in compliance with the provisions of this section 8. Any consent to sub-contract shall not imply a contract between Glencore and the Sub-contractor or a responsibility or liability on the part of Glencore to the Sub-contractor and shall not relieve the Contractor from any liability or obligation under this Agreement.
- 8.3 The Contractor shall:
- 8.3.1 execute an agreement in writing with each Sub-contractor in which it appoints the Sub-contractor on substantially the same terms and conditions as are applicable to the Contractor and in which the Sub-contractor acknowledges having read, and agrees to comply with, this Agreement;
- 8.3.2 ensure that all Sub-contractors undertake their duties and responsibilities with skill, care and diligence expected of a service provider experienced in the aspect of the Services to be undertaken by the Sub-contractor and in accordance with the applicable terms and conditions of this Agreement; and

- 8.3.3 manage and coordinate the activities of the Sub-contractors to ensure compliance with the terms of this Agreement.
- 8.4 Before any payment is made by Glencore to the Contractor pursuant to this Agreement, Glencore is entitled to request the Contractor to furnish reasonable proof that all payments due by the Contractor to any Sub-contractor have been discharged and, unless the Contractor informs Glencore in writing that it has reasonable cause for withholding such payment and submits proof that it has informed the applicable Sub-contractor thereof in writing, Glencore may pay the relevant portion of the amount due to the Contractor directly to such Sub-contractor. Any payment made pursuant to this paragraph 8.4 to a Sub-contractor shall be deemed to be a payment made directly to the Contractor and Glencore's obligation to the Contractor regarding payment of the Consideration shall be reduced accordingly.
- 8.5 The Contractor shall be liable for all acts, defaults and omissions of the Contractor Parties as if they were the acts, defaults and omissions of the Contractor. The Contractor shall indemnify and hold harmless the Indemnified Parties from and against all Claims of whatsoever nature and howsoever arising whether directly or indirectly suffered or incurred by any such Indemnified Parties as a result of the actions or omissions of any Contractor Parties.

9. **INSURANCE**

- 9.1 Without in any way limiting or affecting the Contractor's other obligations under this Agreement (including the Contractor's indemnity under section 10), the Contractor shall take out, maintain and pay, for itself and the Contractor Parties, or shall cause the Contractor Parties to take out, maintain and pay, on or prior to the Commencement Date for the duration of the Term with reputable insurers, the insurance coverages required to be taken out by the Contractor as set out in Schedule G (the "**Insurance Policies**").
- 9.2 All coverages in the Insurance Policies shall be primary and any coverage Glencore may have in any of its own insurance policies shall not be considered contributory.
- 9.3 The Contractor shall:
- 9.3.1 immediately upon the execution of this Agreement and upon the renewal of any Insurance Policy, provide to Glencore certificates of insurance for all Insurance Policies showing the Contractor and Glencore as insured persons where required and showing the required waivers of subrogation and coverage set forth in Schedule G. Such coverage shall include all the Employees and all equipment and vehicles of the Employees used in providing the Services, if any, or the Contractor will ensure such Employees carry the insurance noted (including all required hold harmless agreements and waivers of subrogation). Either such certificates will show all

Contractor Parties as insured persons or the Contractor will obtain certificates for the required insurance from its Contractor Parties (which insurance policies will include all required hold harmless agreements and waivers of subrogation), and provide same to Glencore. All certificates will show that all insurers shall give Glencore prior written notice of cancellation or material amendment of any Insurance Policy noted in Schedule G. Should the Contractor fail to take out and maintain said Insurance Policies or provide said certificates of insurance as and when required by this Agreement, the Contractor will indemnify the Indemnified Parties for any loss resulting from any shortfall in insurance; and Glencore shall be entitled, at its discretion, to withhold any payment owing to the Contractor until such time as the Contractor provides the required certificates of insurance, in addition to any other recourse available to Glencore under this Agreement or Law;

- 9.3.2 promptly notify Glencore of any proposed variation, amendment or endorsement of any of the Insurance Policies which adversely affect the amount, scope or term of insurance coverage provided by such Insurance Policies and of any pending or actual non-renewal of any Insurance Policy and not effect or consent to effect any such variation, amendment or endorsement of an Insurance Policy that reduces the insurance coverage provided thereunder to less than what has been stipulated in Schedule G without first obtaining the approval in writing of Glencore;
- 9.3.3 ensure that all conditions of the Insurance Policies are complied with at all times;
- 9.3.4 not do or omit to do anything which might vitiate, impair or derogate from the coverage under the Insurance Policies or which might prejudice any claim under such Insurance Policies;
- 9.3.5 promptly notify Glencore if the insurer gives notice of cancellation in respect of any Insurance Policy;
- 9.3.6 as soon as practical notify Glencore of any occurrence at the Operating Site or in the provision of the Services of which it is aware that may give rise to a claim under any Insurance Policy and thereafter keep Glencore informed of developments concerning the claim; and
- 9.3.7 immediately notify Glencore of any event which may result in any of the Insurance Policies being cancelled.

10. LIMITATIONS OF LIABILITY AND INDEMNITY

- 10.1 Glencore does not assume, and the Contractor hereby releases the Indemnified Parties from any Claims suffered by the Contractor or its Employees or any Contractor Parties due to any cause whatsoever that is related to the performance of the Services under this Agreement, except to the extent that such Claims are directly attributable to a breach of this Agreement by Glencore or to the negligence or wilful acts or omissions of the Indemnified Parties.
- 10.2 To the maximum extent permitted by Law, but subject to paragraph 10.4, the Contractor will indemnify and save harmless the Indemnified Parties from and against all Claims suffered or incurred by any Indemnified Parties arising out of or in any manner connected with the performance of this Agreement, to the extent such Claims are caused directly or indirectly by:
- 10.2.1 a breach of any obligation or covenant of the Contractor or any inaccuracy or misrepresentation in any representation or warranty contained in this Agreement; or
- 10.2.2 the negligence or wilful acts or omissions of the Contractor, Employees or the Contractor Parties.
- 10.3 The Contractor's liability to indemnify the Indemnified Parties is a primary obligation and not the same as or subordinate to any other indemnity to which Glencore is entitled. The Contractor's indemnification obligations shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by the Contractor or a Sub-contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 10.4 With the exception of (i) damages arising as a result of a breach of section 13 or section 14 or as a result of fraud or wilful misconduct and (ii) any Liquidated Damages payable by the Contractor in accordance with this Agreement, neither Party shall be liable to the other Party for any special, punitive, consequential and/or like damages (including loss of profits or loss of business) which may arise pursuant to this Agreement and/or are sustained by the other Party and/or the other Party's employees, including as a result of its negligent act or omission or those of its employees, agents or contractors or other persons for whom in law it may be liable, a breach of the terms of this Agreement or otherwise. Each Party hereby waives its right to claim the damages that are excluded hereby.
- 10.5 The exercise of any right of inspection by Glencore of the Services or any Products to be furnished hereunder permitted by this Agreement shall be without prejudice to Glencore's other rights and remedies at Law and under this Agreement, including any rights it might have hereunder to test Products and Services after delivery or completion thereof and to reject any such Products or Services on the basis of such tests, and its rights to make a claim against the Contractor for breach of representation, warranty or covenant.

11. CONSIDERATION AND PAYMENT

- 11.1 Subject to the Contractor's compliance with the terms of this Agreement and proper performance of the Services, Glencore shall pay the Contractor the Consideration.
- 11.2 The Contractor acknowledges that the Consideration includes all costs and expenses it may incur in performing the Services and its other obligations under this Agreement and, where applicable, is subject to adjustment for Liquidated Damages due to failure by the Contractor to perform the Services in compliance with the Performance Undertakings.
- 11.3 On each Invoice Date, the Contractor will deliver to Glencore an invoice for the Consideration for all Services provided since the previous Invoice Date, plus exigible Sales Taxes. The invoices shall separately indicate the applicable Sales Taxes and contain all prescribed information necessary to allow Glencore to recover such Sales Taxes or input tax credits or refunds, as the case may be, from the appropriate Government Authority, where applicable. Glencore shall, subject to paragraphs 8.4, 11.5, 11.6 and 11.7 (and any other provision hereunder permitting Glencore to withhold some or all of the Consideration from the Contractor), pay the Contractor the amount specified as due on the invoice by the Payment Date. The Contractor shall be solely responsible for remitting any Sales Taxes payable to the appropriate Government Authorities. Where Glencore provides the Contractor with a valid purchase exemption certificate or tax registration number in respect of Sales Taxes, the Contractor agrees not to collect the Sales Taxes covered by such certificate or registration number. The Contractor shall indemnify and hold harmless the Indemnified Parties from and against any Claims such person may suffer or incur arising out of or in any manner connected with the failure of the Contractor to collect and remit exigible Sales Taxes as set out herein.
- 11.4 All payments due to the Contractor pursuant to this Agreement shall be made by electronic funds transfer into the Contractor's Bank Account.
- 11.5 Glencore may withhold payments to the Contractor to the extent reasonably necessary to protect Glencore from loss arising from any uncured default by the Contractor in respect of any of its obligations, undertakings and responsibilities under this Agreement. Glencore shall promptly give written notice to the Contractor of any such withholding, specifying in reasonable detail the cause therefor. When the cause for withholding payment is removed, payment to the Contractor of such withheld amounts shall be made promptly by Glencore in accordance with the provisions of this Agreement.
- 11.6 Glencore may deduct and set off against any Consideration due to the Contractor under this Agreement any amount due to Glencore or its Affiliates by the Contractor or any of its Affiliates under this Agreement or otherwise, including any Liquidated Damages assessed but not paid. The foregoing provision shall not prevent Glencore from separately recovering from the Contractor any debt owed by the Contractor to Glencore under this Agreement or otherwise.

- 11.7 Glencore shall (a) be entitled to deduct or withhold from any amounts payable to the Contractor under this Agreement any amount required to be withheld or deducted in accordance with applicable Law (including, for certainty, the *Income Tax Act*) (the "**Withholding Amount**"); and (b) remit each Withholding Amount to the appropriate Government Authority. Each Withholding Amount shall be deemed to have been paid to the Contractor on the Payment Date of the related amount payable. The Withholding Amounts shall be determined giving effect to the provisions of any applicable waivers or reductions of withholding issued to the Contractor by a Government Authority and delivered to Glencore. The Contractor will be solely responsible for claiming any applicable tax credits or refund related to such deductions or withholdings. To the extent that the Contractor wants to benefit from a waiver or reduction of withholding, the Contractor shall, in addition to the requirements found under paragraph 11.3 separately identify on each invoice delivered to Glencore (i) the Consideration in respect of services from Consideration for other items and (ii) the portion of any services (whether rendered directly by the Contractor or indirectly through agents, subcontractors or other third parties) which may be rendered in Canada. The Contractor will indemnify Glencore for and save it harmless from any and all taxes (including interest, penalties or additions to tax) as a result of the failure by Glencore to withhold any amount that it would have otherwise have been required to withhold pursuant to section 105 of the Income Tax Regulations or any provincial equivalent, as applicable, together with any reasonable costs and expenses incurred in connection therewith. The provisions of this paragraph 11.7 shall survive the termination of this Agreement.
- 11.8 Unless otherwise expressly provided in this Agreement, the Contractor must pay all taxes and duties in connection with the Services and its other obligations under this Agreement.

12. CHANGES IN THE SERVICES

- 12.1 Glencore may, without invalidating this Agreement, make changes in the Services, consisting of additions, deletions or other revisions to the Services, or changes in the Contract Time and Performance Undertakings, by Change Order or Change Directive. Changes in the Services shall not be initiated without a Change Order or Change Directive.
- 12.2 When a change in the Services is proposed or required, Glencore will provide the Contractor with a written description of the proposed change in the Services. The Contractor shall promptly present, in a form acceptable to Glencore, a method of adjustment or an amount of adjustment for the Consideration, if any, and the adjustment in the Contract Time and Performance Undertakings, if any, for the proposed change in the Services.
- 12.3 When Glencore and the Contractor agree to any required adjustments to the Consideration, Contract Time or Performance Undertakings, or method to be used to determine the adjustments, such agreement shall be recorded in a Change Order.

- 12.4 If Glencore requires the Contractor to proceed with a change in the Services prior to Glencore and the Contractor agreeing upon any required adjustments to the Consideration or the Contract Time and Performance Undertakings, as applicable, or method to be used to determine the adjustments, Glencore shall issue a Change Directive. The adjustment to the Consideration for a change carried out by way of a Change Directive shall be determined on the basis of the actual direct cost of expenditures and savings to perform the Services attributable to the change. If a change in the Services results in a net increase in the Consideration, an allowance for overhead and profit shall be included. Such allowance shall reimburse the Contractor for its own and Sub-contractors' overhead and profit, and shall in total equal the Applicable Percentage of the net increase. If a change in the Services results in a net decrease in the Consideration, the amount of credit is the Consideration identified in Schedule D related to such removed Services. In the event, the Consideration for such removed Services is not indicated in Schedule D, the amount of the credit shall be the net cost, without including deduction for overhead and/or profit. When both additions and deletions covering related Services or substitutions are involved in a change in the Services, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the Services.
- 12.5 For the purpose of valuing Change Directives, Glencore shall be afforded reasonable access to all of the Contractor's pertinent documents related to the cost of performing the Services attributable to the Change Directive. Pending determination of the final amount of a Change Directive, the value of the cost of the Services performed as the result of a Change Directive is eligible to be included in the Contractor's invoices for payment. If Glencore and the Contractor do not agree on the proposed adjustment in the Consideration or the Contract Time (and Performance Undertakings) attributable to the change in the Services, or to the method to be used to determine the adjustments, the adjustment shall be determined in accordance with the Dispute resolution procedures provided for in Schedule H. When Glencore and the Contractor reach agreement on the adjustment to the Consideration and/or the Contract Time, such agreement shall be recorded in a Change Order.
- 12.6 Failure to agree upon changes to be made to the Consideration or changes to the Contract Time and Performance Undertakings arising from the directed change shall not be grounds for delay or interruption in the Services.
- 12.7 Contractor shall be reasonably entitled to equitable adjustments to Contract Time, Performance Undertakings and, except where otherwise provided in this Agreement, the Consideration, in accordance with paragraphs 12.4, 12.5 and 12.6, and with respect to suspensions pursuant to paragraph 17.8.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 All right, title and interest in and to all Work Product shall be the property of Glencore, provided however that the Contractor may retain a copy for its records.
- 13.2 The Contractor agrees to assign to Glencore absolutely, for the full duration thereof and throughout the world, all of the Contractor's rights, title and interest in the Contractor's Created Intellectual Property on its creation, and to cause any other person, including any Contractor Party involved in the development or creation of any Created Intellectual Property, to assign to Glencore absolutely, for the full duration thereof and throughout the world, all of that person's rights, title and interest in such Created Intellectual Property. The Contractor undertakes, on request, to do all things and sign all documents necessary to assign the aforementioned rights, title and interest to Glencore in the Created Intellectual Property and necessary to record such assignment at any office responsible for the registration of Intellectual Property Rights.
- 13.3 If the rights, title and interest of any of the Created Intellectual Property is not capable of being assigned to Glencore, the Contractor undertakes, on request, to do all things and sign all documents necessary to ensure that Glencore is granted an irrevocable and unlimited licence to use the Created Intellectual Property for the full duration of the rights and throughout the world.
- 13.4 In the event of assignment, Glencore grants the Contractor a non-exclusive licence to use the Created Intellectual Property only for the performance of the Services pursuant to this Agreement.
- 13.5 The Contractor will obtain and provide unconditional and irrevocable assignments or waivers, where applicable, of all moral rights of all authors of any copyright work included in the Created Intellectual Property in favour of Glencore, to the extent permitted by Law, whether in Canada or anywhere else in the world.
- 13.6 The Contractor agrees that all Intellectual Property Rights of Glencore, its Affiliates and agents, shall remain the exclusive property of Glencore, its Affiliates or agents, as the case may be, and that nothing in this Agreement or in the performance of the Services grants to the Contractor or any Contractor Parties or any other person any right in such Intellectual Property Rights, except as expressly stated herein.

14. CONFIDENTIALITY

- 14.1 The Contractor may not advertise nor issue any information, publication or article for publication or media release or other publicity relating to this Agreement, the provision of the Services or Glencore's business and activities without the prior written approval of Glencore, which approval may be withheld in Glencore's sole discretion. Any enquiries from the media concerning the aforementioned must be referred to Glencore.

- 14.2 The Contractor may not, and must ensure that its Employees and the Contractor Parties do not take any photographs or video or other recordings at the Operating Site (or anywhere else on Glencore's premises) without Glencore's prior written approval, which approval may be withheld in Glencore's sole discretion.
- 14.3 The Contractor acknowledges that by virtue of its association with Glencore and presence at the Operating Site it may become possessed of or have access to Glencore's Confidential Information. The Contractor undertakes that, in order to protect the proprietary interest of Glencore in Glencore's Confidential Information, it will not during the Term nor at any time thereafter, either use or exploit in any manner, or directly or indirectly divulge or disclose to others any of Glencore's Confidential Information. The Contractor shall treat all Confidential Information of Glencore as strictly confidential and only use such Confidential Information for purposes of this Agreement.
- 14.4 The Contractor shall ensure that its Employees and the Contractor Parties comply at all times with the confidentiality undertakings in section 14 which shall survive the expiry or the termination of this Agreement for any reason whatsoever.

15. **OPERATING SITE RULES**

- 15.1 The Contractor may only use Employees and Contractor Parties in the provision of the Services at the Operating Site who have undergone induction training within the preceding twelve (12) months in respect of Glencore's rules, regulations, policies and standards of conduct applicable to the Operating Site, including those relating to health, safety, illegal drugs and alcohol, security, control of tools and equipment entering the Operating Site, the community and the environment (collectively, the "**Operating Site Rules**"). This induction training must be done on an annual basis.
- 15.2 Glencore intends that all amendments, supplements and replacements of the policies and business principles of Glencore comprising the Glencore Business Principles will be uploaded to <https://www.glencore.com/en/who-we-are/our-code> as updated from time to time or such other electronic location as Glencore may advise the Contractor in writing (the "**Electronic Location**"). Two Business Days after the later of (i) notice by Glencore to the Contractor of any such amendments, supplements and replacements and (ii) the uploading of such amendments, supplements and replacements to the Electronic Location, all such amendments, supplements and replacements shall form part of the Glencore Business Principles for the purposes of this Agreement. The Contractor shall review Glencore's Business Principles from time to time. Without limitation to the foregoing, the Contractor confirms that its own business principles (if applicable) align with the Glencore Business

Principles, and Contractor (including those for whom it is responsible hereunder) agrees not to act in violation of the Glencore Business Principles.

- 15.3 The Contractor may report any concerns relating to conduct of Glencore in connection with the subject matter of this Agreement that breaches Glencore's Code of Conduct or underlying policies to its contact at Glencore or through the Glencore corporate Raising Concerns Programme, details of which are available at <https://glencore.raisingconcerns.org/>.

16. **SUPPLIER CODE OF CONDUCT**

- 16.1 The Contractor shall comply with the Glencore Supplier Code of Conduct available at <https://www.glencore.com/suppliers>, as amended from time to time (the "**Glencore Supplier Code**"), the terms of which are incorporated into this Agreement.
- 16.2 Without limiting section 6, Glencore reserves the right at reasonable times and upon reasonable notice to monitor and/or review Contractor's compliance with paragraph 16.1 of this Agreement. Upon the conclusions of any review or monitoring or any other due diligence processes, Glencore reserves the right to alter the terms of this Agreement to the extent necessary to ensure compliance with Glencore Supplier Code.
- 16.3 The Contractor shall co-operate with, and provide any information and assistance reasonably requested by, Glencore in connection with any monitoring and/or review that Glencore may in its discretion undertake.

17. **DEFAULT, TERMINATION AND SUSPENSION**

- 17.1 Glencore may, at any time in its sole and absolute discretion, terminate this Agreement, in whole or in part, for any reason without cause on 30 days written notice to the Contractor. Where this Agreement has been terminated by Glencore without cause pursuant to this paragraph 17.1, in addition to paying the Consideration for the Services completed (but not yet paid for) as of the date of termination, Glencore shall pay the Contractor for its reasonable demobilization and cancellation costs, which costs, for certainty, shall not include any anticipated profit of the Contractor on any not-completed Services or any unabsorbed overhead. Such payment shall be Contractor's sole remedy on account of termination by Glencore for convenience.
- 17.2 The occurrence of any one or more of the following shall, so long as it subsists, constitute an "**Event of Default**":

- 17.2.1 in respect of the Contractor, if the Contractor defaults on any of the obligations set forth in paragraph 5.1.15 (in respect of compliance with Environmental Law and Law with respect to health and safety), sections 13,14, 15 or 22;
- 17.2.2 in respect of the Contractor, where Liquidated Damages are applicable pursuant to Schedule F, if the Contractor fails to complete a Performance Undertaking by the Longstop Date;
- 17.2.3 in respect of either Party, if such Party defaults on any of its obligations hereunder other than those described in paragraphs 17.2.1 and 17.2.2 and such default is not cured in full within 10 days after the non-defaulting Party gave notice of such default to the defaulting Party (or if it is not reasonably possible to remedy the breach within 10 days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnished evidence within the 10 days, reasonably satisfactory to the aggrieved Party, that it has taken whatever steps are available to it, to commence remedying the breach);
- 17.2.4 in respect of the Contractor, if a fatal or serious injury occurs in the provision of Services as a result of negligent or wilful acts or omissions on the part of the Contractor; and
- 17.2.5 in respect of either Party, if such Party becomes bankrupt, makes an assignment for the benefit of creditors or a proposal or similar action under applicable Law, or commences (or has commenced against it) any other proceedings relating to it under any applicable Law related to reorganization, arrangement, readjustment of debt, dissolution or liquidation or by any act indicating its consent to, approval of, or acquiescence in, any such proceeding; or a Party takes steps to wind-up, dissolve or terminate its existence; or a receiver or receiver and manager, official manager, trustee or similar official is appointed over all or any part of its assets.
- 17.3 Where a Party has committed an Event of Default the non-defaulting Party may:
- 17.3.1 where the Party that has committed the Event of Default is the Contractor, order the performance of the Services suspended, in whole or in part, without any adjustment to the Consideration (and for certainty, without any payment for demobilization or cancellation costs) or terminate this Agreement, in each case with immediate effect on written notice to the Contractor; or
- 17.3.2 where the Party that has committed the Event of Default is Glencore, terminate this Agreement with immediate effect on written notice to Glencore.

- 17.4 If a Force Majeure Event for which Glencore is the Affected Party has occurred and is continuing, and the Contractor is thereby delayed or prevented from performing the Services for a continuous period in excess of 120 days, the Contractor shall thereafter be entitled to terminate this Agreement immediately by giving written notice to Glencore. If a Force Majeure Event for which the Contractor is the Affected Party has occurred and is continuing, and the Contractor is thereby delayed or prevented from performing the Services for a continuous period in excess of 30 days, Glencore shall, without prejudice to its right to terminate this Agreement without cause pursuant to paragraph 17.1, thereafter be entitled to terminate this Agreement immediately by giving written notice to the Contractor.
- 17.5 Should Glencore provide the Contractor with written notice of a breach of this Agreement, Glencore shall be entitled, upon any further breach of the terms and conditions of this Agreement by the Contractor during the six consecutive months following such written notice of breach, to terminate this Agreement with immediate effect upon written notice to the Contractor notwithstanding that the previous breach was remedied within the required time frame.
- 17.6 Each Party's rights described hereunder (including the right of termination) are in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination or suspension shall not be deemed to be an election of remedies. Any termination of this Agreement howsoever caused shall not affect the rights or liabilities of either Party accrued at the date of termination.
- 17.7 Upon the termination of this Agreement in accordance with this section 17 or the completion of the Services to be performed hereunder:
- 17.7.1 subject to the application of paragraphs 17.1 and 17.8 (where applicable), the Contractor shall cease the performance of the Services on or before the time specified in the notice of termination;
- 17.7.2 within 30 days of the termination of this Agreement, the Contractor shall remove all equipment, surplus material, other goods of the Contractor or the Contractor Parties and its rubbish from the Operating Site and Site and ensure that the Site is left in a safe condition, failing which Glencore may perform such work and remove and dispose of such material at the Contractor's cost and expense; and
- 17.7.3 subject to the application of paragraphs 17.1 and 17.8, the Contractor shall not be entitled to any Consideration or other remuneration on account of the termination of this Agreement or completion of the Services to be performed hereunder beyond that which has been set out in Schedule D.

17.8 Without prejudice to the rights of Glencore under paragraph 17.3.1, Glencore may, at any time in its sole and absolute discretion for any reason without cause, suspend performance of the Services in whole or in part upon written notice to the Contractor specifying, *inter alia*, the date the suspension will take effect, the extent of the suspension and, if known, the duration thereof. Upon receipt of such notice, the Contractor shall cease the provision of the relevant Services on the date, in the manner and to the extent indicated in the notice. Within five Business Days after the date of termination of the suspension (as set out in the notice of suspension under paragraph 17.8 or, if not specified in such notice, as set out in a written notice on or prior to the date of the termination of such suspension given by Glencore to the Contractor), the Contractor must resume and continue providing the Services. Where a suspension applicable to all Services being provided hereunder pursuant to paragraph 17.8 persists for a continuous period in excess of 120 consecutive days, without prejudice to Glencore's right to terminate this Agreement without cause pursuant to paragraph 17.1, the Contractor shall be entitled to terminate the Agreement immediately upon notice thereof. Upon termination thereof, Glencore shall pay the Contractor for its reasonable demobilization and cancellation costs, which costs, for certainty, shall not include any anticipated profit of the Contractor on any non-completed Services or for any unabsorbed overhead. Such payment shall be the Contractor's sole remedy on account of the termination of this Agreement for a suspension persisting for a period in excess of 120 consecutive days.

18. ADDRESS FOR NOTICES

18.1 Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and must be given by personal delivery, registered mail or by electronic means of communication addressed to the Contractor at the Contractor's Address or to Glencore at Glencore's Address. A demand, notice or other communication will be deemed unless the contrary is proved, to have been given: (i) if delivered by personal delivery, when received by the addressee on the date of delivery; (ii) if delivered by registered mail, when received by the addressee on the 3rd Business Day following the deposit thereof in the mail; or (iii) if sent by electronic communication when received by the addressee on the date of sending if given during the normal business hours of the recipient Party and on the Business Day following if not given during such hours on such day. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery or by electronic communication. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party.

19. FORCE MAJEURE EVENT

- 19.1 If a Force Majeure Event occurs, the Party affected by such Force Majeure Event (the “**Affected Party**”) must immediately give the other Party written notice containing:
- 19.1.1 the full particulars of the Force Majeure Event including its nature and likely duration;
 - 19.1.2 a description of which obligations have been prevented or delayed; and
 - 19.1.3 the nature and anticipated extent of the effects of the Force Majeure Event on such obligations.
- 19.2 Provided the Force Majeure Event is not caused or contributed to by the Affected Party, the obligations of the Affected Party shall be suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the written notice until cessation of the Force Majeure Event. Where the Affected Party is the Contractor, Glencore shall be entitled to contract with a third party to meet its needs for Services for the duration of the Force Majeure Event. In such a case, the Consideration (if any) payable to the Contractor shall be reduced by an equitable amount to reflect the Services provided by the third party contractor. Notwithstanding anything to the contrary, the Contractor shall not be entitled to any increase in the Consideration on account of any impact of a Force Majeure Event.
- 19.3 On the cessation of such Force Majeure Event, the Affected Party shall:
- 19.3.1 immediately give written notice to the other Party of the cessation of the Force Majeure Event; and
 - 19.3.2 resume performance of the obligations suspended as a result of the Force Majeure Event.
- 19.4 The Affected Party shall:
- 19.4.1 use its commercially reasonable efforts to remove or lessen the effect of that Force Majeure Event affecting its obligations under this Agreement, provided, however, that settlement of strikes, work stoppages (or deteriorations), slowdowns or other labour actions affecting Glencore at the Operating Site shall be within the discretion of Glencore; and
 - 19.4.2 report to the other Party in writing (on a regular basis) of the steps taken by it to remove or lessen the effect of that Force Majeure Event.

- 19.5 **“Force Majeure Events”** are events that are beyond the reasonable control of the Affected Party, which prevent such Party from performing any of its obligations under this Agreement, including but not limited to change in Law made after the date of the execution of this Agreement, war, (whether declared or not), revolution, riots, insurrection, civil commotion, invasion, armed conflict, hostile act of a foreign enemy, acts of terrorism, sabotage, explosions, fires, radiation or chemical contamination, acts of God, plague or other serious epidemic, electricity supply interruptions and/or power failures; but, for certainty, excludes the items in paragraph 19.6 and the unavailability of funds to pay amounts owing hereunder. Notwithstanding the foregoing, any strikes, work stoppages (or deteriorations), slowdowns or other labour actions affecting Glencore at the Operating Site shall be deemed to be Force Majeure Events.
- 19.6 Force Majeure Events shall not include, only in respect of the Contractor: (a) breakdown or failure in respect of the Contractor’s machinery, equipment, materials or supplies; (b) strikes, work stoppages (or deteriorations), slowdowns or other labour actions directed solely at the Contractor or solely involving its Employees or Contractor Parties; (c) weather conditions which (i) could be anticipated by experienced contractors in the industry of the Contractor and/or (ii) do not exceed the 50-year severity for that weather condition in the area where the Site is located, as determined by, or according to the records of, the Meteorological Service of Canada (or its successors); (d) any event or circumstance arising from a weather condition described in the immediately preceding clause (c); (e) any adverse effect of market conditions or any direct or indirect delay in obtaining, or failure to obtain, any labour, materials, equipment or other resources for the Services (except where any such delay or failure is caused by another event or circumstance which is not excluded under this paragraph 19.6 but would otherwise fall within the definition of Force Majeure Events); (f) any failure (financial or otherwise) or delay of any Contractor Party or Employee, except where any such failure or delay is caused by another event or circumstance which is not excluded under this paragraph 19.6 but would otherwise fall within the definition of Force Majeure Events; (g) any mechanical, electrical or other breakdown, except where any such breakdown is caused by another event or circumstance which is not excluded under this paragraph 19.6 but would otherwise fall within the definition of Force Majeure Events; (h) any event or circumstance due to any error or defect arising out of the performance of the Services; or (i) any event or circumstance due to the unreasonable delay of the Contractor, the Employees or the Contractor Parties.

20. SHIPMENT, DELIVERY, TRANSFER OF TITLE, RISK OF LOSS AND TESTING

- 20.1 Title to and risk of loss or damage of any Product to be furnished or produced hereunder by the Contractor (whether pursuant to a purchase order or agreement made collateral to this

Agreement or pursuant to the description of the Services in Schedule C) shall pass to Glencore as follows:

- 20.1.1 in the case of completed Products being delivered to Glencore from an off-site location, title and risk of loss shall pass to Glencore upon the delivery of such Products to the Delivery Point. Where progress or instalment payments are made by Glencore prior to delivery, Glencore shall have title to the work in progress and to the materials incorporated therein, but risk of loss or damage shall remain with the Contractor (or Contractor Party as applicable) until delivery as aforesaid; or
- 20.1.2 in the case of Products being produced hereunder in whole or in part at the Operating Site, title and risk of loss shall pass to Glencore upon the handing over of such Products to Glencore, in accordance with the terms of this Agreement or purchase order or agreement made collateral to this Agreement. Where progress or instalment payments are made by Glencore prior to delivery, Glencore shall have title to the work in progress and to the materials incorporated therein, but risk of loss or damage shall remain with the Contractor (or Contractor Party as applicable) until delivery as aforesaid.
- 20.2 Where the Services include procurement or procurement management services, title to and risk of loss or damage of any product procured by the Contractor from a third-party supplier pursuant to an agreement or purchase order with such third-party supplier shall pass to Glencore in accordance with the terms of such agreement or purchase order.
- 20.3 Unless otherwise expressly stated on the purchase order pursuant to which such Products were furnished or otherwise agreed to in writing by Glencore, the Contractor shall act as the importer of record for all Products that originate from sources or suppliers based outside Canada ("**Foreign Products**") and be responsible for all requirements concerning the lawful importation and sale of the Foreign Products in Canada. If Glencore agrees, in writing, to act as the importer of record into Canada for any Foreign Products, the Contractor shall, prior to or promptly upon the dispatch of a shipment of Products to the Delivery Point (a "**Shipment**"), provide Glencore with adequate and timely prior notice and true, accurate, timely and valid information and all necessary documents to permit the lawful importation of such Foreign Products into Canada at the most preferential duty and tax rates. Without limiting the foregoing, the Contractor shall provide Glencore, with respect to Foreign Products, true, accurate and valid certificates of origin required for preferential tariff treatment prior to the Shipment of such Foreign Products and shall advise Glencore immediately of any change in the manufacturing or production process of the Foreign Products which could affect the validity of any certificate of origin provided to Glencore. The Contractor shall also provide the information set forth in the prior two sentences in respect of each Foreign Product in each Shipment where the

Contractor acts as the importer of record and is responsible for all requirements concerning the lawful importation and sale of the Foreign Products in Canada, unless such requirement has been waived by Glencore. The Contractor shall promptly and fully cooperate with the relevant Government Authorities and also with Glencore on any inquiries, audits or reviews concerning the validity and accuracy of such certificates of origin provided to Glencore; and in the event of any unfavourable determinations by the relevant Government Authorities concerning such certificates of origin, the Contractor, at the direction of Glencore, shall appeal or provide Glencore with assistance in pursuing any appeals of such unfavourable determinations. The Contractor shall indemnify and hold harmless the Indemnified Parties from and against any Claims, including customs duties, taxes, interest, penalties (including administrative monetary penalties)) suffered or incurred by any Indemnified Party arising out of or in any manner connected with the failure of the Contractor to fulfill its obligations set out herein, including to provide true, accurate, timely and valid information and documents required to permit the lawful importation of the Foreign Products at the most preferential duty and tax rates.

- 20.4 In addition to the requirements in paragraph 20.3 hereof, promptly after the dispatch of a Shipment, the Contractor shall send by electronic delivery (with originals sent by courier or other personal delivery) to Glencore (a) a bill of lading, marked “freight prepaid”; (b) a material safety data sheet or comparable information with respect to the Products in the Shipment as required to comply with applicable workplace hazardous material information system regulations; and (c) any other documents reasonably requested by Glencore from time-to-time to facilitate any shipping of the Products in the Shipment from the Delivery Point to an Operating Site;
- 20.5 The Contractor shall ensure that the information contained in the material safety data sheets for each Product in each Shipment is complete and accurate, and shall indemnify and hold harmless the Indemnified Parties from and against any Claims suffered or incurred by any Indemnified Parties arising out of or in any manner connected with any incorrect statement contained in any material safety data sheet supplied to Glencore hereunder.

21. ROAD TRANSPORT SAFETY

- 21.1 In the event the Contractor or its Sub-contractors are transporting people or Products to, from or for or on behalf of Glencore on public or other Offsite Roads, and in the case of Products:
- 21.1.1 where such Products constitute the majority of the load being carried by the Contractor or its Sub-contractors and where such Products are being carried by a Heavy Vehicle; or

21.1.2 where such Products constitute dangerous goods or hazardous substances, materials or waste as per Environmental Laws; or

21.1.3 where otherwise required by Glencore,

the Contractor shall, and shall ensure that its Sub-contractors, have a transport safety management system in place to eliminate or minimise the potential for fatalities, injuries and/or environmental damage arising from such transportation ("**Transport Safety Management System**") irrespective of when risk of loss or damage or title in the Products passes to Glencore.

21.2 The Contractor's Transport Safety Management System shall, at a minimum, comply with the public or other Offsite Roads transport requirements set out in Schedule I and to any other terms reasonably requested by Glencore, including those related to health and safety.

21.3 For further clarity, the Contractor acknowledges that Glencore's right to audit the Contractor provided in section 6 includes auditing the compliance of the Contractor with the requirements of this section 21.

21.4 The Contractor agrees to participate in performance review meetings with Glencore to review safety performance, including, without limitation. incidents and corrective actions taken; audit results; driver turnover rates; relevant operational or organization changes, route risk assessment and other items of interest.

22. NON-SOLICITATION

22.1 The Contractor covenants and agrees that neither it, nor any of its Affiliates shall, directly or indirectly, solicit or hire any employees of Glencore or any Affiliate thereof, or induce or attempt to induce any employee of Glencore or any Affiliate thereof to leave their employment; provided that the Contractor shall not be in breach of this paragraph 22.1 in connection with a general solicitation that is not directed to any employees of Glencore, or any Affiliate thereof.

22.2 The Contractor acknowledges and agrees that in the event of any breach or threatened breach of this section 22, Glencore shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an interim or permanent injunction, specific performance and any other relief that may be available from a court of competent equitable jurisdiction (without any requirement to post a bond or other security).

- 22.3 The Contractor acknowledges and agrees that the restrictions set out in this section 22 are reasonable and necessary to protect the legitimate interests of Glencore and constitute a material inducement to Glencore entering into this Agreement.
- 22.4 The covenants contained in this section 22 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

23. **GENERAL**

- 23.1 If the Contractor is comprised of more than one person, the obligations of such persons as the Contractor under this Agreement shall be joint and several. Glencore may proceed against any or all of them in respect of the Contractor's obligations in Glencore's sole discretion. Glencore is not obliged to make any claim against all of the persons comprising the Contractor.
- 23.2 This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and cancels and supersedes all previous agreements, understanding and negotiations on such subject matter. No alteration or variation of any of the terms or conditions of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both Parties.
- 23.3 Time shall be of the essence of this Agreement.
- 23.4 Each of the Parties agree to pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.
- 23.5 The Contractor shall not, without the prior written consent of Glencore, which consent may be withheld in Glencore's sole discretion, be entitled to assign, transfer, encumber or create any Security Interest in respect of or otherwise dispose of (collectively, "**Transfer**") its rights or obligations under this Agreement. The Contractor shall, however, be entitled to Transfer its rights under this Agreement to an Affiliate, provided such Affiliate covenants in writing in favour of Glencore to assume all of the Contractor's obligations and liabilities under this Agreement and agrees that if it ceases to be an Affiliate of the Contractor, it must, if so required by Glencore, Transfer back to the Contractor the rights so Transferred to it.

- 23.6 Glencore shall not, without the prior written consent of the Contractor, which consent may not be unreasonably withheld or delayed, be entitled to Transfer any of its rights or obligations under this Agreement, except as follows:
- 23.6.1 Glencore may Transfer some or all of its rights under this Agreement to an Affiliate, provided such Affiliate covenants in writing in favour of the Contractor to (i) assume all of Glencore's obligations and liabilities under this Agreement and (ii) where such Affiliate is not the owner of the Operating Site (or will not be the owner of the Operating Site during or following any transactions connected to such Transfer), upon ceasing to be an Affiliate of Glencore, if so required by the Contractor, Transfer back to Glencore the rights so Transferred to it. Upon the sale of all or substantially all of the assets associated with the business of such Affiliate at the Operating Site by the Affiliate or the sale of the ownership interests of such Affiliate to, in each case, one or more persons acting at arm's length from Glencore, Glencore shall be released from all of its obligations and liabilities under this Agreement from and after the date of such sale; and
- 23.6.2 Glencore may Transfer all of its rights under this Agreement to a person that purchases or all or substantially all of the assets associated with the business of Glencore at the Operating Site, provided such transferee covenants in writing in favour of the Contractor to assume all of Glencore's obligations and liabilities under this Agreement. Glencore shall then be released from all of its obligations and liabilities under this Agreement from and after the date of such Transfer.
- 23.7 This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties.
- 23.8 All disputes arising between the Parties with regard to any matter or thing referred to in this Agreement (including the implementation, execution, interpretation, rectification or termination of this Agreement) ("**Disputes**") shall be determined in accordance with the Dispute resolution procedure set forth in Schedule H.
- 23.9 No waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, is limited to the specific breach waived.
- 23.10 Each paragraph of this Agreement is severable and, if one or more of the paragraphs are declared invalid, the remaining provisions will remain in full force and effect.
- 23.11 This Agreement may be executed in any number of counterparts which, when taken together, shall constitute one agreement. Delivery of an executed signature page to this Agreement by

any Party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such Party.

- 23.12 The Contractor hereby acknowledges that Glencore advised the Contractor to seek independent legal advice in respect of this Agreement. The Contractor has either obtained such advice or has waived its right to obtain such advice. The Contractor has had the opportunity to review this Agreement and agrees with its terms.
- 23.13 The person signing on behalf of the Contractor warrants that he/she is duly authorised to sign this Agreement on behalf of and to bind the Contractor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT

SIGNED at _____ on the _____ day of _____ 20__

Glencore Canada Corporation:

Name of Signatory _____ Position / Title _____

Signature

SIGNED at _____ on the _____ day of _____ 20__

[Insert Name of Contractor]

Name of Signatory _____ Position / Title _____

Signature

Name of Signatory _____ Position / Title _____

Signature

SCHEDULE A

DEFINITIONS

1. **Act** has the meaning set forth in Schedule H;
2. **Additional Conditions** means the additional conditions specified in Schedule B (if any);
3. **Affected Party** has the meaning set forth in paragraph 19.1;
4. **Affiliate** means, with respect to any person, any other person that controls or is controlled by or is under common control with the referent person and, for the purposes of this definition, “**control**” of a person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise;
5. **Agreement** means this professional services agreement, including its Schedules and all Change Orders and Change Directives as the same may be amended, modified, supplemented and/or restated from time to time;
6. **Anti-Corruption Laws** has the meaning set forth in paragraph 5.1.9;
7. **Applicable Percentage** means ●%; *[INTD: This is the fixed mark-up on costs for any variations if the parties cannot agree on the adjusted price]*
8. **Applicable Sanctions Authority** means the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Departments of State or Commerce, the United Nations Security Council (“**UNSC**”), the European Union (“**EU**”), Switzerland, Canada or any other applicable sanctions authority;
9. **Books and Records** has the meaning set forth in paragraph 5.1.17;
10. **Business Day** means any day other than a Saturday, Sunday or official public holiday in a Province in which the Operating Site is located;

11. **Change Directive** means a written instruction signed and issued by Glencore directing the Contractor to proceed with a change in the Services within the general scope of the documents set forth in Schedule C prior to Glencore and the Contractor agreeing upon adjustments, if any, in the Consideration, the Contract Time and the Performance Undertakings;
12. **Change Order** means a written change order signed by Glencore and the Contractor stating their agreement upon a change in the Services, the method of adjustment or the amount of the adjustment in the Consideration, if any, and the extent of the adjustment in the Contract Time and the Performance Undertakings, if any;
13. **Claims** has the meaning set forth in paragraph 5.1.16;
14. **Commencement Date** means _____;
15. **Confidential Information** includes any information, either oral, written or recorded in any manner, that one Party (disclosing Party) furnishes to the other Party (receiving Party) or to which the receiving Party has access which is marked as confidential, simply treated as such by the disclosing Party or should otherwise be known by the receiving Party to be confidential, including but not limited to Intellectual Property Rights, know-how, trade secrets, processes, plans and financial information, data concerning business relationships, strategic objectives and planning, business activities, geological information and exploration results but excludes information which becomes public knowledge or is in the public domain by reason of becoming public property other than by fault on the part of the receiving Party;
16. **Consideration** means the price payable by Glencore to the Contractor for the provision of the Services as detailed in Schedule D;

17. **Contract Time** means the period between the date stipulated for commencement of the Services and the date stipulated for the completion of such Services;

18. **Contractor Parties** means the Sub-contractors, agents and representatives of the Contractor and Sub-contractors and any of their respective employees involved in the provision of the Services hereunder;

19. **Contractor's Address** is as follows:

Facsimile No.: _____

Email address: _____

Attention: _____

or to such other address, individual or electronic communication number as may be designated by notice given by the Contractor to Glencore;

20. **Contractor's Bank Account** is as follows:

Account Name: _____

Bank: _____

Account Number: _____

Branch Code: _____

or as otherwise advised in writing by the Contractor;

21. **Created Intellectual Property** means all intellectual property made by or on behalf of the Contractor during, in connection with or arising out of the performance of the Services, including trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, software, industrial designs, integrated circuit topographies, mask works, documentation, and copyrights, whether registered or unregistered, and all applications for registration thereof, and all goodwill associated with any of the foregoing, and formulae, recipes,

product formulations, processes and processing methods, technology, techniques, know-how, inventions, improvements to inventions and novel designs whether or not registrable as designs or patents including any development or improvement to equipment, technology, methods, processes or techniques;

- 22. **Delivery Point** means the final destination to which the Contractor or Contractor Party is obligated to deliver the Products pursuant to Schedule C or a purchase order placed or agreement entered into pursuant to the terms of this Agreement; and, for greater certainty, the Delivery Point will be the Operating Site or a consolidation point controlled by Glencore or by a contractor of Glencore, and shall not under any circumstances be a consolidation point controlled by the Contractor or a Contractor Party;
- 23. **Dispute** has the meaning set forth in paragraph 23.8;
- 24. **Electronic Location** has the meaning set forth in paragraph 15.2;
- 25. **Employees** means the employees of the Contractor engaged in the provision of Services to Glencore;
- 26. **End Date** means _____;
- 27. **Environmental Law** means any applicable Law relating to the protection and preservation of the environment, occupational health and safety or transportation of dangerous goods, wastes or contaminants, including without limitation the *Canadian Environmental Protection Act*, the federal *Transportation of Dangerous Goods Act* and regulations thereunder;
- 28. **Event of Default** has the meaning set forth in paragraph 17.2;
- 29. **Facilities** means the facilities to be provided by Glencore as detailed on Schedule E (if any);
- 30. **Final Transit** has the meaning set forth in Schedule G;

31. **Force Majeure Events** has the meaning set forth in paragraph 19.5;
32. **Foreign Products** has the meaning set forth in paragraph 20.3;
33. **Glencore Business Principles** means the code of conduct, policies and business principles of Glencore, which include (for the avoidance of doubt) requirements that its counterparties comply with the principles in the *Bribery Act* (U.K.), 2010, c. 23 and which can be found at the Electronic Location;
34. **Glencore Supplier Code** has the meaning set forth in paragraph 16.1;
35. **Glencore's Address** is as follows:
- _____
- _____
- _____
- Facsimile No.: _____
- Email address: _____
- Attention: _____
- or to such other address, individual or electronic communication number as may be designated by notice given by Glencore to the Contractor; and
36. **Government Authority** means any government department, local government, governmental or statutory authority, or any other party under Law which has a right to impose a requirement or whose consent is required with respect to or in relation to the Services and includes any local or foreign tax authority;
37. **Heavy Vehicle** means any vehicle exceeding 4.5 tonne gross load or as otherwise defined by applicable Law;
38. **High Risk Journeys** means journeys planned in harsh environments or where specific security or safety threats exist such as terrorism, banditry, extreme environmental conditions (hot, cold, weather events, flooded areas, etc.), remote areas, or dangerous road conditions;

39. **High Risk Locations** means high density populated areas with limited controls on pedestrian traffic or close kerbside activities such as markets or children playgrounds without barriers, on roads with steep grades or un-barricaded drop offs/rail crossings, roads with uncontrolled livestock, unsealed roads with low traction or where passing at speed may generate community health impacts, etc. Such locations are likely to have limited controls to speeding and loss of control potentially causing multiple fatalities;
40. **Indemnified Parties** has the meaning set forth in paragraph 5.1.16;
41. **Insurance Policies** has the meaning set forth in paragraph 9.1;
42. **Intellectual Property Rights** means all right, title and interest in and to all intellectual property rights of any kind, whether registered or not, including domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, software, industrial designs, integrated circuit topographies, mask works, documentation and copyrights, whether registered or unregistered, and all applications for registration thereof, and all goodwill associated with any of the foregoing, and inventions, formulae, recipes, product formulations, processes and processing methods, technology, techniques and know-how;
43. **Invoice Dates** means the • Business Day of each calendar month; *[NTD: adjust as appropriate]*
44. **Journey Management Plan** means a documented plan of a journey developed after a review of risks specific to the time of journey, the route planned, the vehicle/s, materials carried and people involved. Such plan shall consider hazards, risks and controls including, safety, security, potential threats and emergency preparedness;

45. **Jurisdiction** means: (i) the province of Canada in which the site, operation or project is located, (ii) otherwise, the province of **[Quebec/Ontario]**;
46. **Law** means any domestic or foreign law including any statute, subordinate legislation or treaty, and any guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Government Authority having the force of law;
47. **Liquidated Damages** means the damages detailed in Schedule F which shall apply if the Contractor fails to comply with the Performance Undertakings;
48. **Longstop Date** has the meaning set forth in Schedule F;
49. **Offsite Roads** means all non-public roads outside of the boundaries of the Operating Site;
50. **Operating Site** means the site identified on the first page of this Agreement in the description of Glencore;
51. **Operating Site Rules** has the meaning set forth in paragraph 15.1.
52. **Party** means a party to this Agreement;
53. **Payment Date** means 45 days, or such other period of time as may be required pursuant to applicable Law, from the receipt of the Invoice and all supporting documentation and information as may be reasonably required by Glencore;
54. **Performance Undertakings** means the performance undertakings set out in Schedule F;
55. **Permits** has the meaning set forth in paragraph 5.1.5;
56. **Premises** has the meaning set forth in paragraph 6.1;
57. **Product** means any machinery, equipment, device, structure, software, product or any other thing produced, procured or

supplied by the Contractor as part of the Services for use by Glencore;

58. **Representatives** has the meaning set forth in paragraph 5.1.12;
59. **Sales Taxes** means the taxes imposed under Part IX of the *Excise Tax Act* (Canada) and any other value-added or provincial sales taxes payable on the provision of the Services;
60. **Sanctions** means any economic or financial sanctions, trade embargoes or restrictive measures administered or enforced by any Applicable Sanctions Authority.
61. **Security Interest** includes any mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power having effect as a security for payment of any monetary obligation or the observance of any other obligation;
62. **Services** means the services to be provided by the Contractor as set out in Schedule C;
63. **Shipment** has the meaning set forth in paragraph 20.3;
64. **Sub-contractor** means any subcontractor of any tier of the Contractor in connection with the performance of any aspect of the Services, including the supply of any equipment or materials;
65. **Term** has the meaning set forth in paragraph 3.1;
66. **Transfer** has the meaning set forth in paragraph 23.5;
67. **Transport Safety Management System** has the meaning set forth in paragraph 21.1;
68. **Warranty Period** in respect of Work Product means the period commencing upon the date of completion of Work Product and ending 24 months after the date thereof;

69. **Work Product**

means all work product prepared by the Contractor or any Sub-contractor in the performance of the Services and includes plans, drawings, specifications, calculations, models, information, source codes and other data stored by any means;

SCHEDULE B

ADDITIONAL CONDITIONS

The following provisions shall apply to this Agreement:

1. APPROVED SUB-CONTRACTORS

Name of Sub-Contractor	Approved Services
•	•

[Note to Draft: If no Sub-contractors are pre-approved, remove table and state "None".]

SCHEDULE C

THE SERVICES

[Note to Glencore: This is the scope of work. Please ensure that the description of the Services includes a description of what constitutes "completion" of the Services.]

SCHEDULE D
CONSIDERATION

A. SALES TAXES

B. RATE

•

C. CALCULATION OF CONSIDERATION

•

D. ESCALATION

•

SCHEDULE E

THE FACILITIES

[NTD: Facilities are the items, if any, to be supplied by Glencore to the Contractor for the performance of the Services (eg fuel, site office, potable water, etc), including a description of any payment required for such facilities]

DESCRIPTION

-

CONSIDERATION

-

SCHEDULE F

PERFORMANCE UNDERTAKINGS AND LIQUIDATED DAMAGES

[OPTION 1: Not Applicable]

[OPTION 2: The Contractor shall complete the Performance Undertakings set forth in the table below by the delivery dates set across from such Performance Undertakings (the “Delivery Dates”). Liquidated Damages in the amounts set forth in the “Liquidated Damages Amount” column, which amounts have been calculated as the Parties’ good faith estimates of the damages that Glencore would incur as a consequence of the Contractor’s failure to meet the Performance Undertakings, shall be payable by the Contractor (as damages and not as a penalty) each day for so long as the Contractor has failed to comply with the Performance Undertakings. Applicable Liquidated Damages shall be due and payable on a monthly basis beginning on the day such damages accrue (as set out in the “Liquidated Damages Amount” column) and shall be paid by the Contractor within ten days following receipt of Glencore’s invoice therefor. Payment of Liquidated Damages shall constitute the Contractor's sole liability and Glencore's sole remedy for the Contractor’s late performance with respect to compliance with the Performance Undertakings; provided, that if the Contractor fails to complete a Performance Undertaking by the date set forth in the “Longstop Date” column (the “Longstop Date”), the Contractor’s delay shall constitute an Event of Default pursuant to section 15.2 and shall entitle Glencore to terminate this Agreement.

Deliverable	Delivery Date	Liquidated Damages Amount	Longstop Date
• [Insert description of Contractor deliverable/obligation]	•	an amount equal to \$____ per Business Day [____% of the Consideration per Business Day] commencing upon the ____Business Day following the Delivery Date.	____ days/weeks after the Delivery Date

SCHEDULE G

INSURANCE

In this Schedule G, where a section states that certain specified insurance policies must be purchased and maintained to cover a specified activity and neither the Contractor nor any of the Employees or Contractor Parties will be undertaking such specified activity pursuant to this Agreement, such specified policy shall not be a required Insurance Policy for the purposes of this Agreement.

1. **Commercial General Liability Insurance:** General liability insurance, including Glencore as an additional insured, covering bodily injury, death, and damage to property, including loss of use thereof and including, but not limited to the following:
 - (a) products liability for all supplies and completed operations liability for all Services under this Agreement. Completed operations shall be insured for a period of two years after final completion thereof, to the satisfaction of Glencore, by the Contractor;
 - (b) where Contractor Parties are used, contingent liability with respect to Sub-contractors (Contractors and Owners Protective);
 - (c) blanket written contractual coverage;
 - (d) where non-owned automobiles are brought onto the Operating Site, non-owned automobile coverage;
 - (e) personal injury coverage;
 - (f) broad form occurrence property damage coverage;
 - (g) where Employees or employees of any Contractor Party will be present at the Operating Site, employers' liability coverage;
 - (h) cross liability or severability of interest clause;
 - (i) where unlicensed equipment in the care, custody or control of the Contractor or the Contractor Parties is operated at the Operating Site, liability arising out of unlicensed equipment;
 - (j) where blasting, demolition or underpinning work is being done, no XCU exclusion in policy; and
 - (k) time element sudden and accidental pollution unless otherwise agreed in writing by Glencore.

Note: Minimum limits are to be \$10,000,000 inclusive bodily injury and property damage.

2. **Automobile Liability Insurance:** If the Contractor or any Contractor Party shall have any licensed vehicles entering the Operating Site or hauling Glencore's supplies in connection with this Agreement, automobile liability insurance in respect of all such licensed vehicles, including all owned and/or leased vehicles in the care, custody or control of the Contractor and/or any Contractor Party with minimum limit of \$2,000,000 inclusive per occurrence and such other coverages and limits as prescribed by applicable Law. To the extent that this coverage includes damage to the owned, leased or operated vehicles of the Contractor and the Contractor Parties, it shall include a waiver of subrogation in favour of Glencore and its Affiliates and their respective employees and contractors.

3. **Insurance on Equipment and Temporary Buildings:** For any Contractor- or Contractor Party-owned, rented or leased equipment (including construction and mobile equipment), tools and temporary buildings brought onto the Operating Site or transported or used in connection with this Agreement, "all risks" contractors' equipment insurance and transit insurance covering such assets. Each of the Contractor and Contractor Party shall waive any claim for theft, loss or damage to such assets that it may have against Glencore, and indemnify and hold Glencore harmless for any Claim brought by a third party with respect to such assets, including by any Contractor Party (including respective suppliers and/or lessors of such assets) and the Contractor shall obtain and cause any Contractor Party to obtain a waiver of subrogation by all insurers in favour of Glencore.

4. **Risk and Transit Insurance:** To the extent the Contractor or Contractor Parties are arranging the transit of goods:
 - (a) In all cases (except for those shipments noted in paragraph 4(b) of this Schedule G), "all risks" property and cargo insurance on the replacement value of all goods to be furnished hereunder (including while on route to or from and while at, any consolidation point if any), until delivered to the applicable Delivery Point, and such insurance shall include the interests of Glencore in such goods as they may appear, including where progress or instalment payments are made prior to delivery to the Delivery Point or where Glencore shall otherwise have title or risk of loss to any portion of such goods.

 - (b) In the case of (A) specific shipments of machinery and equipment with a value or more than \$1,000,000 in the shipment or (B) any marine shipments to Raglan, Quebec on Glencore's arranged ship, Glencore shall arrange cargo insurance to cover the value of the such goods for the final transit to the Delivery Point from either the Contractor's site or from Contractor's consolidation point, as the case may be (the "**Final Transit**"). Such policy shall also cover the Contractor's interest in such goods, if any, provided that the Contractor shall warrant to advise Glencore of, and arrange load and stow and discharge surveys on, all shipments that are either:
 - (i) valued in excess of \$1,000,000;

- (ii) oversized (exceeding at least one of the following dimensions: 15 M X 2.5 M X 2.5 M) or heavy lift (exceeding 20 tonnes gross weight);
- (iii) shipped on deck (other than containerized cargo); and/or
- (iv) critical to the on time completion of the Services..

With respect to shipments noted in paragraph 4(b) of this Schedule G, any shipment occurring prior to commencement of the Final Transit, the Contractor shall arrange and maintain (either itself or through the Contractor Parties) "all risks" property and cargo insurance on the replacement value of all goods to be furnished hereunder (including while on route to or at a consolidation point, if any), and such Insurance Policy shall include the interests of Glencore in such goods as they may appear, including where progress or instalment payments are made prior to delivery to the applicable Delivery Point or where Glencore shall otherwise have title to any portion of such goods.

5. **Aircraft and Watercraft Liability Insurance:** If the Contractor or any of the Contractor Parties utilize any aircraft or watercraft in connection with this Agreement, aircraft and/or watercraft liability insurance with respect to owned or non-owned aircraft and/or watercraft if used directly or indirectly in the performance of the Services, including use of additional premises, shall be subject to limits of not less than \$10,000,000 inclusive per hull for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to Glencore, acting reasonably.
6. **Mechanical Installation Floater Insurance:** If the Contractor or any Contractor Parties utilize Glencore's equipment in connection with this Agreement, "all risk" property insurance coverage for physical damage to equipment supplied by Glencore and in the care, custody or control of the Contractor and/or Contractor Party for limits of not less \$250,000 and with deductibles of not more than \$25,000. The deductible will be for the account of the Contractor.
7. **Workers Compensation:** For any Employees or employees of any Contractor Party entering an Operating Site, the Contractor shall, before entry of any such individual to the Operating Site, qualify under, and shall satisfy, the Law with respect to workers compensation applicable to the jurisdiction in which the Services (or any portion of the Services) are to be performed and will ensure all such Contractor Parties (including their respective suppliers, agents and invitees) shall also qualify for and carry such insurance before entering the Operating Site. In the event the Contractor or a Contractor Party is exempt from the Law with respect to workers compensation, a letter to this effect must be written and signed by the Workers Compensation authority with jurisdiction over the Operating Site and delivered to Glencore, prior to the commencement of any Services at the Operating Site.

8. **Errors and Omissions:** The Contractor shall carry insurance coverage in respect of errors and omissions for Services in the amount of no less than \$5,000,000 per occurrence reasonably satisfactory to Glencore and shall ensure that such policy or policies do not exclude any liability that could result from its professional errors or omissions in connection with the Services. Without limiting the generality of the foregoing, the policy shall not contain a design/build exclusion if the Contractor is carrying out designing and building activities in connection with this Agreement. The Contractor shall be responsible for any deductible. If written on a 'claims made' basis, this coverage shall continue to be maintained following the termination of this Agreement to address future claims in connection with this Agreement.

SCHEDULE H

DISPUTE RESOLUTION PROCEDURE

1. Should any Dispute arise between the Parties, the Parties agree that: representatives from both Parties shall meet to review such Dispute and to arrive, if possible, at an amicable and negotiated resolution thereto. Such meeting shall be held at the Operating Site or another venue agreed upon by the Parties and shall be held within 10 days after either Party has called for such a meeting in writing. Such written notice shall include details of the Dispute and copies of all relevant correspondence and documentation; and in the event the said representatives are unable to resolve such Dispute within one week after such meeting is held or where the meeting is not held within the time limits set out above, the Dispute may be referred for resolution by either Party for arbitration as provided herein.
2. The arbitration shall be held in the capital city of the Jurisdiction and conducted in accordance with the rules of the applicable commercial arbitration legislation of the Jurisdiction (the “Act”).
3. Each Party irrevocably authorises the other Party to apply, on behalf of both Parties, for such arbitration to be conducted on an urgent basis; and consents to any order of the arbitrator being made an order of court.
4. The Party referring the Dispute to arbitration shall notify the other Party of such referral and in such notice shall set out the names of three proposed arbitrators. The other Party shall within 10 Business Days after receiving such notice select one of the proposed arbitrators to act as the arbitrator and shall within such 10 Business Day period so notify the other Party proposing the arbitration. If such notice is not given by the end of such 10 Business Day period then the Party referring the Dispute to arbitration may apply to a judge in the courts of the Jurisdiction for the appointment of a single arbitrator as contemplated by the Act.
5. The decision of the arbitrator shall be final and binding on the Parties.
6. Notwithstanding the commencement of arbitration proceedings, either Party may nonetheless approach a court of law for relief of an urgent nature in circumstances in which such relief cannot be given or cannot urgently be given by the arbitrator.
7. The arbitration proceedings shall be confidential and neither Party shall disclose to any third party any information regarding the proceedings, the award and/or settlement terms without the prior written consent of the other Party.
8. The provisions of this Schedule H shall continue to be binding on the Parties, notwithstanding any termination of this Agreement.

9. The provisions of this Schedule H constitute an irrevocable consent by the Parties to any such proceedings and a Party shall neither be entitled to withdraw therefrom nor claim at any such proceedings that it is not bound by such provisions.

SCHEDULE I

Road Transport Requirements – Public or Other Offsite Roads

Transport operational compliance

1. The Contractor shall and shall ensure that its Sub-contractors meet the following transport operational compliance requirements unless otherwise expressly directed by Glencore:
 - 1.1 Vehicles shall be appropriately registered and conform to manufacturer's specifications, with any modification conforming to manufacturer's or industry standards;
 - 1.2 Vehicle inspection and maintenance schedules shall be conducted by authorised and competent personnel;
 - 1.3 Appropriate procedures for loading and unloading goods, including use of appropriate PPE, shall be followed at all times;
 - 1.4 Driver licensing criteria, including minimum period of driving experience, shall be met before transporting people or hazardous loads;
 - 1.5 Driver training and inductions relating to all tasks being undertaken shall be completed;
 - 1.6 Driver's medical fitness certification shall be current;
 - 1.7 Working hours and fatigue management controls shall be implemented and complied with;
 - 1.8 Means and procedures for fundamental stable parking shall be provided;
 - 1.9 Seat belts of the 3-point anchor type shall be installed and worn in all seats in all vehicles;
 - 1.10 Adequate provision for passengers in vehicles shall be made. All vehicles used shall not carry more than the number of passengers allowed by the manufacturer or as set by law, whichever number is lower;
 - 1.11 There shall be emergency egress windows/hatches in buses;
 - 1.12 Vehicle loads shall be properly secured or contained and not go beyond the manufacturer's specifications and legal/regulatory requirements for the vehicle;
 - 1.13 Vehicles and loads shall be inspected prior to departure with the use of a pre-operational checklist which includes highlighted 'No Go' controls;
 - 1.14 A Journey Management Plan shall be issued to drivers prior to embarking on High Risks Journeys, including the need for:

- 1.14.1 Identification of High Risk Locations where travelling through high density populated areas, on roads with steep grades or un-barricaded drop offs/rail crossings is possible due to the absence of other controls;
 - 1.14.2 A pre-journey review/discussion of activities, risks and controls;
 - 1.14.3 Understanding of the duty, driving and rest hours specified;
 - 1.14.4 The need to follow the route specified in the Journey Management Plan;
 - 1.14.5 Communication requirements including notification to an authorised person or supervisor immediately if changes occur;
 - 1.14.6 Security arrangements; and
 - 1.14.7 Emergency response actions.
- 1.15 Drug and alcohol testing programs shall be complied with;
 - 1.16 Drivers shall not use or answer handheld telephones whilst driving; and
 - 1.17 A process must be in place to approve, manage and audit compliance of subcontracted transport providers.

Additional requirements for hazardous situations

- 2. The Contractor shall and shall ensure that its Sub-contractors check and confirm that all passengers on passenger vehicles are aware of the requirement to wear seat belts, and are wearing seatbelts before commencing a journey.
- 3. For Heavy Vehicles and any vehicle carrying out of gauge loads (wide loads), dangerous goods or hazardous substances, the Contractor shall and shall ensure that its Sub-contractors provide, install, manage or obtain the following:
 - 3.1 Chain of custody documentation for Products from the point of origin;
 - 3.2 An on-board vehicle monitoring system and conduct a regular review of data and driver behaviour key performance indicators (KPI);
 - 3.3 Warning labelling and safety data sheets for hazardous material being transported;
 - 3.4 Security check that non approved items are not included in load;
 - 3.5 Spill kits and fire extinguishers suitable for the goods or materials carried;

- 3.6 Locked hatches or drain valves where practical that prevent accidental product release, tampering or theft of contents; and
 - 3.7 An authorised vehicle escort service for out of gauge loads (wide loads) or extreme risk scenarios.
4. The Contractor and its Sub-contractors shall also fit and provide, where practical, controls for mitigating the risks associated with Heavy Vehicles and any vehicle carrying out of gauge loads (wide loads), dangerous goods or hazardous substances, particularly when operating in High Risk Locations, including:
- 4.1 Geo-fenced speed alarms or controls;
 - 4.2 GPS tracking and continuous central monitoring system of fleet with suitably set alarms for speed and location;
 - 4.3 Fatigue alert systems;
 - 4.4 Video dash cameras with at least 24 hours continuous recording capacity;
 - 4.5 Advanced driver training for particular hazardous environments, and
 - 4.6 Any other controls as directed by Glencore.

The Contractor and its Sub-contractors shall identify critical controls associated with these categories of vehicles and implement a verification schedule to regularly confirm controls are in place and effective.

Emergency management

5. The Contractor shall and shall ensure that its Sub-contractors at all times identify onsite and offsite emergency scenarios, minimum equipment, procedures and training and competence requirements with consideration of regional emergency response availability/capability. Minimum emergency equipment must include:
- 5.1 Safety warning devices and safety vests for breakdowns;
 - 5.2 First aid kit; and
 - 5.3 Communication means to enable call out regardless of location.

Training and competency

6. The Contractor shall and shall ensure that its Sub-contractors set competency requirements and have these competency requirements approved by the Glencore team, including:
 - 6.1 Identification of training needs and competency requirements including induction, refresher training and sharing of lessons learned from relevant incidents;
 - 6.2 Drivers to receive adequate training to ensure that they at all times drive at a safe speed having regard to the relevant conditions and avoid exceeding speed limits or safe driving speed; and
 - 6.3 Provision of adequate training and assessment to verify competency.
7. The Contractor shall and shall ensure that its Sub-contractors train and assess its employees to ensure they are aware of the requirements of this Schedule I, its Transport Safety Management System and road transport Laws in general and that they are assessed as being competent.

Monitor and review

8. The Contractor shall and shall ensure that its Sub-contractors co-operate with, and provide any information, documentation and assistance reasonably requested by Glencore, in connection with any monitoring and/or audit conducted or requested by Glencore of the requirements of this Schedule I.