

The Client's instructions to Vertech Group Pty Ltd to commence any engineering services or the Mobilisation of its personnel and equipment to the Client's site is deemed to be acceptance by the Client of the terms and conditions set out below. Any conditions of the Client are excluded to the extent they have not been agreed in writing by Vertech.

1 VERTECH'S SERVICES

- 1.1 Vertech will perform, or will procure the performance, of the Services from the date that is agreed by the parties.
- 1.2 Subject to availability of the appropriate Vertech Personnel, the Client acknowledges that:
 - a) Vertech may be required to mobilise personnel from outside Western Australia; and
 - b) the Services may be performed by Vertech's Sub-contractors, in which case, Vertech will remain responsible to the Client for supply of services by its Sub-contractors.
- 1.3 Vertech warrants that the Services will be performed in an efficient and workmanlike manner and with the degree of skill, care and diligence normally exercised by prudent contractors performing the same or similar services.
- 1.4 Vertech will comply, and will procure that Vertech Personnel comply, with (i) all Site rules applicable to the Services, as and when such rules are made known to Vertech and Vertech Personnel, and (ii) all applicable laws and regulations of all governmental authorities which have jurisdiction over the Services.
- 1.5 If Vertech determines in its absolute discretion that inclement weather or other circumstances pose a risk or hazard to the health and safety of any of its personnel, Vertech may:
 - a) stand down those of the Vertech Personnel affected; and
 - b) suspend the performance of the relevant Services,

until Vertech determines otherwise. However, nothing in this clause relieves or limits the Client's duty of care or other obligations at law or otherwise.

2 PROVISION OF EQUIPMENT

- 2.1 Vertech will supply or procure the supply of the Equipment for use by Vertech Personnel in connection with the performance of the Services during the term of the Agreement.
- 2.2 Title in the Equipment will remain at all times with Vertech. The Client has no right, title or interest in the Equipment and must not deal with the ownership or any interest in the Equipment, including but not limited to selling, assigning, mortgaging, charging, pledging, securing, withholding, exerting any right to withhold, disposing or lending the Equipment and must protect the Equipment against distress, execution or seizure.
- 2.3 Notwithstanding clause 2.2, title to all equipment, materials and supplies provided by Vertech and incorporated into the property of the Client will pass to the Client upon payment to Vertech in full therefor.

3 VARIATIONS

The Client may issue a change order if it requires any changes to the Services to be performed and or Equipment to be provided. If the requested change affects:

- a) Vertech's costs for performing the Services or providing the Equipment; and/or
- b) the time required for performing Services or providing the Equipment; and/or
- c) the scope of Services,

then, if requested by the Client, Vertech will prepare an estimate of the effects on costs, charges and time for completion of the Services and/or the provision of additional Equipment, as the case may be.

The Client is deemed to accept Vertech's determination of the effects on costs, charges and time of the relevant change order and the Services and the Equipment as so varied upon: (i) Mobilisation of any additional Vertech Personnel or Equipment required or (ii) provision of those additional services and equipment by Vertech, whichever first occurs.

4 COSTS AND CHARGES

- 4.1 The Client acknowledges that the estimates outlined in the Proposal are estimates only. Unless otherwise agreed in writing by Vertech, the Client must pay to Vertech its costs, expenses and charges (together, the Charges) on the basis set out below:

Vertech Personnel

- a) **(Rates for Personnel – site work):** A fee for each member of Vertech Personnel engaged in performing the Services at the Site, calculated from the date of Mobilisation until date of Demobilisation at the applicable daily rate (based on a 12 hour day, unless otherwise specified in writing by Vertech) specified in the Rates Schedule. Unless otherwise agreed in writing by Vertech, Vertech Personnel are also charged out to the Client in accordance with this sub-clause 4.1(a) on public holidays and on Sundays.
- b) **(Rates for Personnel – Engineering Services):** A fee for each member of Vertech's Personnel engaged in performing Engineering Services or reporting, in Vertech's offices or client's offices / Site, are based on completed timesheets at specified rates in the Rates Schedule. A standard working day for these services is 8 hours.

- c) **(Travel Expenses):** Travel expenses incurred by Vertech Personnel including taxi fares, airfares, excess baggage, accommodation, meals and any other reasonable expenses incurred by any Vertech Personnel associated with travelling to and from the Site. Vertech is entitled to charge an additional 15% on the cost of any tickets for air travel arranged by Vertech.
- d) **(Transit and Stand-by Rates):** A fee for Vertech Personnel when in transit or on standby for whatever reason (including in respect of any period (i) prior to commencement of the performance of the Services if there is a delay for any reason beyond the control of Vertech and Vertech has had to keep the relevant Vertech Personnel on standby to secure their availability; or (ii) if clause 1.5 applies); or (iii) of Equipment downtime; or (iv) during an event of Force Majeure) calculated on the same basis and at the same rates applicable for Vertech Personnel under clause 4.1(a), unless Vertech has agreed otherwise in writing.
- e) **(Overtime):** In the event that Vertech Personnel are required to work in excess of the daily hours specified in the Rates Schedule on any day, a fee for that overtime calculated on a pro-rata basis and otherwise at the same rates applicable for Vertech Personnel under clause 4.1(a).
- f) **(Personnel Rotation):** All costs associated with crew change and the rotation of Vertech Personnel (including time taken in Mobilisation and Demobilisation of Vertech Personnel) at the rates specified in the Rates Schedule, or, if not specifically provided for in the Rates Schedule, at the actual cost to Vertech plus an additional 15% of those costs.
- g) **(Permits and Visas):** The costs of all work permits, visas and medicals required by Vertech Personnel for performing the Services at Site and all associated costs plus an additional charge of 15% of those costs in accordance with clause 6.1, if Vertech is required to make arrangements for these requirements on behalf of the Client.

Equipment

- h) **(Equipment Hire):** A charge for the operation of each item of Equipment calculated from the date of Mobilisation until date of Demobilisation at the applicable daily rate (based on a 12 hour day unless otherwise specified in writing by Vertech) specified in the Rates Schedule, but allowing for reasonable deductions for any period of downtime of Equipment due to its failure or malfunction. For this purpose, the Client must allow a maintenance window of 1 hour for every 12 hours for planned or unplanned maintenance and repair work necessary for maintaining the Equipment, which period of maintenance will not constitute downtime.
- i) **(Transit or Stand-by):** A charge for the Equipment when the Equipment is in transit or on stand-by for whatever reason calculated on the same basis and at the same rates applicable for the Equipment under clause 4.1(g), unless Vertech has agreed otherwise in writing.
- j) **(Third Party Hires):** A charge for the Equipment hired by Vertech from third parties being all amounts invoiced to Vertech in respect of that Equipment plus an additional 15% of those invoiced amounts.
- k) **(Consumables):** A charge for all materials and consumable products used during the performance of the Services being all amounts invoiced to Vertech in respect of those materials or consumable products plus an additional amount of 15% of those invoiced amounts.
- l) **(Transport Costs):** All costs and expenses incurred in transporting Equipment (including, but not limited to, freightage, insurance, agent fees and all import, export and customs duties) from its point of origin to Site and back to its point of origin calculated at the rates specified in the Rates Schedule, or, if not specifically provided for in the Rates Schedule, those costs invoiced to Vertech plus an additional 15% of those invoiced amounts.
- m) **(Additional Costs):** A charge for any sea fastening, welding, load testing or craneage required during Mobilisation and Demobilisation at the Rates specified in the Rates Schedule, or if not specifically provided for in the Rates Schedule, at the cost invoiced to Vertech plus an additional 15% of those invoiced amounts.

Other Charges

- n) **(Interest):** If any Charges are not paid on the due date for payment, interest in accordance with clause 5.2.
 - o) **(Recovery Costs):** All costs and expenses of Vertech incurred in collecting any outstanding amounts payable to it including legal costs on a solicitor and own client basis.
- 4.2 If required by the client, timesheets signed by any of the Client's on-site representatives will constitute approval by the Client of the hours worked by Vertech Personnel.
- 4.3 Rates applicable to Vertech Personnel specified in the Rates Schedule are based on any relevant modern award (**Awards**) or collective employment agreement (**Certified Agreements**) specifying minimum terms and conditions that may cover the relevant Vertech Personnel and have the force of law. Any changes to minimum pay, entitlements or allowances in the relevant Awards or Certified Agreements, or if a new Award or Certified Agreement that covers any Vertech Personnel comes into operation after the Agreement, then appropriate adjustments will be made to the Rates Schedule. Vertech will provide the adjusted Rates Schedule to the Client, which will apply from the date it is received (or deemed to be received) by the Client in accordance with clause 13.5.

5 INVOICING, PAYMENT AND TAXES

- 5.1 Unless otherwise agreed in writing by Vertech, Vertech will provide a detailed tax invoice to the Client in respect of all Services and Equipment supplied under the Agreement monthly in arrears (or at completion of the Services at Vertech's discretion). If any sum is not invoiced by Vertech on such a monthly basis, then the relevant Charge will be added by Vertech to the next relevant invoice.
- 5.2 All payments under this Agreement must be in Australian dollars. The Client must pay the sums shown to be due to Vertech on such tax invoices within 20 days from the date of the relevant invoice. Any amount not paid within that period will attract interest at a rate of 12% per annum from the date payment was due until the amount is paid in full.
- 5.3 For the avoidance of doubt, the Charges invoiced in accordance with the Agreement are exclusive of any GST, VAT or similar tax (together, 'GST'). If at any time during the Agreement, Vertech becomes liable to pay GST on any taxable supply made by it, then the amounts payable by the Client will be increased by the amount of the relevant Charge multiplied by the prevailing rate of GST. For the purposes of this clause, **GST, tax invoice** and **taxable supply** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 5.4 All payments by the Client to Vertech under the Agreement must be made free and clear of and without deduction for or on account of any taxes, unless the Client is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Client to Vertech in respect of which such deduction or withholding is required to be made must be increased to the extent necessary to ensure that, after making the required deduction or withholding, Vertech receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum that it would have received and retained had no such deduction or withholding been made or required to be made. net sum equal to the sum that it would have received and retained had no such deduction or withholding been made or required to be made.

6 CLIENT'S OBLIGATIONS

- 1.1 Unless agreed otherwise the Client must obtain at its cost all visas or work permits and must pay the cost of any medical examinations required by any of Vertech Personnel in order for the Services to be performed in the relevant jurisdiction. If Vertech arranges and pays for all necessary visas or work permits for Vertech Personnel on the Client's behalf, then the actual costs (including any costs associated with medical examinations) plus an additional amount of 15% of those costs will be charged by Vertech and must be paid by the Client.
- 1.2 The Client must provide to Vertech any additional information reasonably requested by Vertech. If that information is not provided in a timely manner, Vertech will be entitled to a reasonable extension of time for commencement of or completion of the Services, as applicable.
- 1.3 If supplied by or on behalf of the Client, meals and accommodation for Vertech Personnel must be of a standard that is reasonably expected by workers in the industry of the Client.
- 1.4 The Client must:
 - a) ensure that systems of work and the working environment under the control of the Client are safe and without risks to health; and
 - b) ensure that any equipment or facilities provided for use by the Client for the provision of the Services are safe and without risks to health and safety when properly used; and
 - c) provide such information, instruction, training and supervision relevant to the Site as may be necessary to ensure that all Vertech Personnel know how to carry out their activities safely and without risk to health; and
 - d) do all things practicable to ensure that no Vertech Personnel is exposed to risk to his or her health or safety or hazards arising from any act or omission of any of the Client's employees, agents or sub-contractors; and
 - e) comply with all applicable laws regarding occupational health and safety.

7 INSURANCE

- 7.1 Vertech must carry and maintain in force at its own expense for the duration of the Agreement the following policies of insurance:
 - a) workers' compensation and employer's liability insurance for Vertech Personnel in accordance with applicable law; and
 - b) general liability insurance providing at least \$20,000,000 coverage for injury, death or property damage resulting from each occurrence; and
 - c) third party and public liability risks in an amount not less than \$20,000,000 for any one occurrence.
- 7.2 The Client must carry and maintain in force at its own expense for the duration of the Agreement the following policies of insurance:
 - a) general liability insurance providing at least \$20,000,000 coverage for injury, death or property damage resulting from each occurrence, including for the loss or destruction of or damage to, or arising out of the use of the Equipment howsoever occurring in an amount not less than the full replacement cost of the Equipment; and
 - b) third party and public liability risks in an amount not less than \$20,000,000 for any one occurrence.
- 7.3 The minimum insurance requirements as set forth in this clause 7 will not limit or waive a party's legal or contractual responsibilities to the other party or others.

8 DISTRIBUTION OF RISK, RELEASE AND INDEMNITIES

- 8.1 Notwithstanding any other clause in this Agreement, Vertech shall not be liable to the Client in respect of any: (i) special, indirect or consequential loss or damage, (ii) loss of profit or anticipated loss of savings, (iii) loss of opportunity or goodwill; (iv) loss of contracts or loss arising from business interruption or (v) Liability arising out of or in connection with pollution or contamination of the environment, in any case howsoever caused (including if caused by the negligence of Vertech or any Vertech Personnel) and even if Vertech knew whether such loss or damage was possible or was otherwise foreseeable.

- 8.2 The Services, including any report, drawing or other written material (each a Report), provided by Vertech to the Client are for the benefit solely of the Client and Vertech accepts no Liability to any person other than the Client arising from or in connection with the Services or any Report provided by Vertech pursuant to this Agreement.
- 8.3 Vertech makes no representation or warranty that any item of Equipment is free from defects or fit for a particular purpose and, to the extent permissible by applicable law, excludes from this Agreement all conditions, warranties and terms implied by law. If this Agreement is subject to any implied condition or warranty by reason of any law which cannot be excluded, restricted or modified, then, notwithstanding any other clause of this Agreement excluding or limiting the Liability of Vertech, in the case of a proven breach of an implied condition or warranty under any applicable law, the remedy of the Client will be limited to the remedies set out in clause 8.6.
- 8.4 The Client indemnifies Vertech and will keep Vertech indemnified against:
- any Loss resulting from loss or damage of any kind to Vertech's property; and
 - any Claim made by any person (including the Client) in respect of property damage or injury to or the death of any person and any Losses arising from such Claim,

arising from or caused or contributed to in whole or in part by the Client's failure to: (i) comply with its obligations under clause 6.4; or (ii) any act or omission of the Client or any of its employees, agents or sub-contractors.

- 8.5 The Client indemnifies Vertech and will keep Vertech indemnified against any Claim, including a Claim in respect of property damage or injury to or the death of any person, made by any person (other than the Client) and any Losses arising from such Claim relating in any way to the Services, a Report, or the Equipment.
- 8.6 Vertech's Liability to the Client for any and all Claims arising out of or in connection with this Agreement, the Services, a Report or the Equipment is limited solely to the following:
- re-performance of the Services necessary to rectify the deficient Services or payment of the cost of having such Services re-performed:
or
 - payment to the Client of the cost of replacing the relevant items of Equipment or repairing those items,

but, in each case, only up to a cost to Vertech which does not exceed the amount of the Charges paid to Vertech in respect of such deficient Services or Equipment.

9 CONFIDENTIALITY AND OWNERSHIP OF TECHNICAL INFORMATION

- 9.1 Each party agrees to keep secret and confidential all information concerning the business and affairs of the other that it shall have obtained or received in connection with the Agreement or discussions leading up to the entering into the Agreement, except for that which is:
- trivial or obvious;
 - already in its possession other than as a result of a breach of this clause; or
 - becomes part of the public domain other than as a result of a breach of this clause.
- 9.2 Each party retains ownership of all of its own Background Information. All Foreground Information shall be the sole property of the Client.
- 9.3 Vertech will provide to the Client the original and all copies of any of the Client's Background Information and the Foreground Information, when the Services are completed or earlier upon the written request of the Client. Vertech may retain one copy for its records of the Foreground Information, but it shall keep that copy confidential.
- 9.4 In this clause 9, where the context so admits, the following words and expressions have the following meanings:

Technical Information: means any information, regardless of form or type, including that of a scientific or technical nature and also data, designs, specifications, processes, techniques, inventions, drawings, photographs, reports, manuals, technical writings, sound recordings, pictorial representations and other graphical presentations, know-how and trade secrets and whether or not the subject of proprietary rights.

Foreground Information: means Technical Information generated by Vertech in the course of performing the Services.

Background Information: means Technical Information other than Foreground Information.

10 TERM AND TERMINATION

- 10.1 This Agreement commences from the date the Client instructs Vertech to begin any engineering services or arrange for the Mobilisation of any Vertech Personnel or any of the Equipment.
- 10.2 This Agreement will continue until the Services have been completed and all amounts due and owing under this Agreement to Vertech have been paid unless sooner terminated in accordance with the remaining provisions of this clause 10.
- 10.3 In the event that any money payable to Vertech becomes overdue, or in Vertech's opinion the Client will be unable to meet its financial obligations as they fall due, then without prejudice to Vertech's other remedies at law:
- Vertech will be entitled to suspend or cancel all or any part of the Services that have not been performed; and
 - all amounts owing to Vertech will, whether or not otherwise due for payment, become payable immediately.
 - Vertech will not be liable for any Loss the Client may suffer because Vertech exercises its rights under this clause 10.3.

- 10.4 Either party may terminate this Agreement at any time and for any reason by giving 7 days written notice to the other party specifying the effective date of termination, or in the case of an event of Force Majeure continuing for more than 10 days, by giving 2 days written notice to the other party.
- 10.5 Without prejudice to any other rights or remedies which may be available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party in any of the following circumstances:
- an Insolvency Event occurs in relation to such other party and whilst such Insolvency Event continues such other party fails to pay within fourteen days of written demand any sum due and payable under this Agreement; or
 - such other party commits a material breach of the provisions of this Agreement and, in the case of a breach capable of being remedied, fails to remedy that breach within 7 days of receiving written notice specifying that breach and requiring the same to be remedied.

11 CONSEQUENCES OF TERMINATION

- 11.2 Termination of this Agreement does not affect a party's accrued rights and obligations and this clause 11 and clauses 5, 8, 9, 13, 14, 15, 16 and 17 will remain in force following termination.
- 11.3 Upon termination of this Agreement for whatever reason:
- all Charges incurred by Vertech, whether or not due and payable, will become immediately payable;
 - the Client must pay to Vertech all Charges referred to in clause 4.1 (and any applicable GST amount) arising as a result of the Demobilisation of Vertech Personnel and the Equipment in accordance with clause 5.

12 FORCE MAJEURE

Any delay or failure in the performance of its obligations under this Agreement by Vertech will not constitute a default under this Agreement or give rise to any Claim (including for damages or loss of anticipated profits or savings) by the Client against Vertech, if the delay or failure is substantially caused by Force Majeure. In the event that Vertech invokes this clause, it will:

- immediately notify the Client;
 - make every reasonable effort to remedy the cause of non-performance; and
 - subject to this clause, resume the performance of its obligations as soon as the cause has abated.
- d) If the circumstances of Force Majeure continue for a period of 10 days or more and no other understanding is reached, then either party may terminate this Agreement in accordance with clause 10.

13 NOTICES AND OTHER COMMUNICATIONS

- 13.1 **Form - all communications.** Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be:
- in writing;
 - signed by the sender (if an individual) or the sender's Authorised Representative; and
 - marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.
- 13.2 **Form - communications sent by email.** Communications sent by email need not be marked for attention in the way stated in clause 13.1 ("Form - all communications"). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.
- 13.3 **Delivery.** Communications must be:
- left at the address set out or referred to in the Details;
 - sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
 - sent by fax to the fax number set out or referred to in the Details; or
 - sent by email to the address set out or referred to in the Details; or
 - given in any other way permitted by Law.

However, if the intended recipient has notified a changed address, fax number or email address then the communication must be to that address, fax number or email address.

- 13.4 **When effective.** Communications take effect from the time they are received or taken to be received under clause 13.5 ("When taken to be received")(whichever happens first) unless a later time is specified.
- 13.5 **When taken to be received.** Communications are taken to be received:
- if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
 - if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
 - if sent by email;
 - when the sender receives an automated message confirming delivery; or
 - four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

13.6 **Receipt outside business hours.** Despite clauses 13.4 (“When effective”) and 13.5 (“When taken to be received”), if communications are received or taken to be received under clause 13.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

14 GOVERNING LAW

- 14.1 This Agreement is governed by the law of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that place.
- 14.2 The Client irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

15 GENERAL

- 15.1 No assignment: No party may assign or otherwise deal with its rights under this Agreement without the consent of the other party.
- 15.2 Partial exercising of rights: If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 15.3 Remedies cumulative: The rights and remedies provided in this agreement are in addition to other rights and remedies available independently of this agreement.
- 15.4 Variation and waiver: Other than a Variation, a provision of this agreement or a right created under it may not be waived or varied except in writing, signed by the parties to be bound.
- 15.5 Entire agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- 15.6 Construction: No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.
- 15.7 Independent Contractor: In performing the services and other obligations under this Agreement, Vertech shall be an independent contractor and not the agent, partner or employee of the Client. It is expressly agreed that it is not the purpose or intention of this Agreement to create, nor shall the same be construed as creating, any partnership or joint venture between the Client and Vertech.
- 15.8 Priority: The provisions of these Terms and Conditions prevail over any other document provided by any party to the other or any other agreement between them, unless that agreement is in writing, in which case, it will take precedence over these terms and conditions to the extent of any inconsistency.

16 PRIVACY AND DATA PROTECTION

- 16.1 Each party agrees to comply with their obligations under the Privacy Act 1988 (as amended or replaced from time to time) (‘Privacy Act’) in respect of personal information obtained by or disclosed to them pursuant to the CONTRACT.
- 16.2 Each party warrants to the other party that it has complied with the Privacy Act in obtaining any personal information disclosed by it pursuant to the Agreement.
- 16.3 In addition to its obligations under the Privacy Act, each party agrees to: (i) only process the other party’s personal information for the purposes of the Agreement; (ii) not disclose the other party’s personal information to any other person without the other party’s prior written consent, unless the disclosure is required by law; (iii) immediately notify the other party that the disclosure of that other party’s personal information may be required by law; (iv) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful processing of the other party’s personal information; (v) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the other party’s personal information; and (vi) take all necessary steps to ensure that its processing of the other party’s personal information will be fair and lawful.
- 16.4 If an individual complains to the Client that Vertech (or any of its personnel) has, in the performance of the Agreement, handled his or her personal information inappropriately, the Client must promptly give Vertech sufficient details about the complaint to minimise any further misuse.
- 16.5 If an individual complains to Vertech that the Client (or any of its personnel) has, in the performance of the Agreement, handled his or her personal information inappropriately, Vertech must promptly give the Client sufficient details about the complaint to minimise any further misuse.
- 16.6 This clause 16 will survive the termination of the CONTRACT.
- 16.7 The term ‘personal information’ under this clause 16 has the meaning given in the Privacy Act.

17 DEFINITIONS AND INTERPRETATION

17.1 In these Terms and Conditions the following expressions shall have the following meanings, as the context requires:

Agreement means these Terms and Conditions, the Rates Schedule, any Variations and any other documents which the parties shall have agreed in writing will form part of this Agreement.

Authorised Representative means, in respect of a party, that party's representative notified to the other party in writing that is authorised to provide and receive notices and other communications under this Agreement on behalf of that party.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth Western Australia.

Charges has the meaning given in clause 4.1.

Claim means any claim, demand, legal or administrative proceedings or cause of action whether present or future, fixed or ascertained, actual or contingent:

- a) based in contract (including warranties and implied warranties)
- b) based in tort (including misrepresentation or the negligence of Vertech or Vertech Personnel); or
- c) under common law, in equity or arising by operation of any statute.

Client means the person to whom the Proposal and these Terms and Conditions are issued.

Demobilisation means, in respect of Vertech Personnel, arranging for the transfer of any Vertech Personnel from the Site back to their point of origin; and in respect of the Equipment, arranging the transfer of any item of the Equipment from the Site back to its point of origin.

Details means, in respect of a party, the address, facsimile number or email address of that party set out or referred to in the Proposal or notified to the other party in writing for the purposes of clause 13.

Event of Default has the meaning given in clause 8.1.

Equipment means any machinery, equipment, plant and tools required for the provision of the Services, including the equipment referred to in the Proposal.

Force Majeure means, in relation to any party, any circumstance beyond the reasonable control of that party including the following: named cyclones, acts of God, war, hostilities, riot, fire, explosion, flood, sabotage, lack of adequate fuel, power, raw materials, containers, transportation or labour, strike, lock-out or injunction (provided that neither party shall be required to settle a labour dispute against its own best judgement); compliance with governmental laws, regulations or orders imposed after the commencement date of this Agreement, breakage or failure of machinery or apparatus; or any other cause whether or not of the class or kind enumerated above which affects the performance of any of the Services or the provision of any Equipment arising from or attributable to acts, events, non-happenings, omissions or accidents beyond the reasonable control of the party affected.

Insolvency Event means, in relation to a party:

- a) that party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them; or
- b) a liquidator or provisional liquidator is appointed to that party or a receiver, a receiver and manager, trustee or similar person is appointed over any assets or undertakings of that party; or
- c) an application or order is made or a resolution is passed for the winding up of that party.

Liability means any liability or obligation (whether actual, contingent or prospective), including any Loss.

Loss means all loss, liability, damage, cost, charge, interest, penalty and expense (including legal costs and expenses on a full indemnity basis).

Mobilisation means, in respect of Vertech Personnel, arranging for the transfer of any Vertech Personnel from their point of origin (including any location outside of Western Australia) to the Site; and in respect of the Equipment, arranging the transfer of any item of the Equipment from its point of origin to the Site.

Parties means Vertech and the Client and party means either of them.

Proposal means the estimates of costs, expenses and charges provided by Vertech to the Client in writing.

Rates Schedule means Vertech's schedule of rates for Vertech Personnel and Equipment set out in the Proposal as amended from time to time in accordance with clause 4.3.

Services means the services described in the Proposal as varied from time to time by any Variation and all documents, drawings, charts and databases to be supplied by Vertech in connection with or incidental to the Services.

Site means the area or location where the Services are to be undertaken.

Sub-contractor means any contractor, supplier, agent or person contracting with Vertech to provide services, materials or equipment for the performance of the Services under this Agreement.

Terms and Conditions means the provisions of these terms and conditions.

Variation means any variation to the Services or the Equipment agreed or deemed to be agreed between the parties in accordance with clause

Vertech means Vertech Group Pty Ltd (ABN 53 132 745 665).

Vertech Personnel means each of Vertech's employees or Sub-contractors.

17.2 Unless the contrary intention appears, in these Terms and Conditions:

- a) **(headings)** headings are used for convenience only and do not affect the interpretation of this Agreement;
- b) **(singular includes plural)** the singular includes the plural and vice versa;
- c) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- d) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- e) **(two or more persons)** an agreement, representation or Warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- f) **(jointly and individually)** an agreement, representation or Warranty by two or more persons binds them jointly and each of them individually;
- g) **(dollars)** Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- h) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- i) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- j) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.