

# GLENCORE TECHNOLOGY

[Insert document no. e.g.  
PM00099-GTA-CON00001]

[Insert Project Name]

## Sample Technology Supply Agreement

Dated:.....

Between:

Glencore Technology Pty Limited

And

[Client Name]

## Parties

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<b>Parties</b>	<b>GT and Client</b>	
<b>GT</b>	Name	Glencore Technology Pty Limited
	ABN	65 118 727 870
	Incorporated in	Australia
	Address	Level 29, 180 Ann Street Brisbane, Queensland 4000
	Attention	Project Manager

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<b>Client</b>	Name	
	ABN	
	Incorporated in	
	Address	
	Fax	
	Attention	

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## Recitals

### WHEREAS

- A. GT has the right to licence a technology known as [#INSERT TECHNOLOGY NAME here. E.g. IsaMill™] Technology.
- B. The Client wishes to construct the Project Plant at the Operating Site which will incorporate aspects of the [#INSERT TECHNOLOGY NAME here. E.g. IsaMill™] Technology.
- C. Upon the Parties entering into this Agreement, GT agrees to supply Goods and Services to the Client for the Project Plant in accordance with and subject to the terms and conditions contained in this Agreement; and  
[#use Option A where the Client is the end user of the goods#]
- D. #Option A# Upon the Parties entering into a separate Technology Licence Agreement, the Client will be licensed to use GT's [#INSERT TECHNOLOGY NAME here. E.g. IsaMill™] Technology] to operate and maintain the Project Plant. #Option A#  
[#use Option B where the Client is not the end user of the goods – i.e. where the Client is the EPC provider and a different party (the Principal) will be signing the Technology Licence Agreement #]
- E. #Option B# Upon GT and [Insert end user name] (the “Principal”) entering into a separate IsaMill™ Licence Agreement, the Principal will be licensed to use GT's [#INSERT TECHNOLOGY NAME here. E.g. IsaMill™] technology to operate and maintain the Project Plant. #Option B#

## Interpretation

The following definitions apply in this Agreement:

- Additional Fee** means the amount described in item 6) of Schedule A and referred to in clauses 4.5 and 4.6.
- Agreed Supply** means the supply of Services and Goods as set out in Schedule 1 to this Agreement.
- Agreement** means this agreement between GT and the Client including all Schedules to it.
- AUD** means the lawful currency of the Commonwealth of Australia.
- Cancellation Fee** means the amount described in item 11) of Schedule A and referred to in clause 14.2.
- Client** means the party specified as such in the Parties section of this Agreement.
- Client Personnel** means a Representative of the Client.
- Client's Project** means the design, construction, operation and maintenance of the Project Plant.
- Commencement Date** is the date of execution of this Agreement.
- Confidential Information** means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties (or a Related Corporation) before, on or after the Commencement Date relating to the business, technology or other affairs of the Discloser of the information but does not include information:
- (a) which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
  - (b) which the Recipient can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
  - (c) which the Recipient acquires from a source other than the Discloser or any of its Representatives where such source is entitled to disclose it.
- Date of Delivery** means the date on which that part of the Agreed Supply is provided to the Client by GT under this Agreement.
- Defect** means a defect or fault in the Goods to the extent that it does not arise out of, or result from, any of the following:
- (and **Defective** shall have the corresponding meaning)
- 1) an act or omission of the Client or their Representative, unless such act or omission is consistent with the design limits, manufacturer's guidelines or other recommendations referred to in paragraph (3);
  - 2) an act or omission by a person other than GT after risk in the Goods has passed to the Client, unless such act or omission is consistent with the design limits, manufacturer's guidelines or other recommendations referred to in paragraph (3);
  - 3) operation outside of design limits or the manufacturer's guidelines or other recommendations provided by GT;

- 4) any defects of the items supplied by/or on behalf of the Client;
- 5) any defects of the materials of consumable nature and materials whose normal life is shorter than the Defect Liability Period;
- 6) reasonable erosion or corrosion; or
- 7) reasonable wear and tear.

**Defects Liability Period** is the period specified in item 8) of Schedule A.

**Discloser** means the party disclosing Confidential Information.

**Euro** means the lawful currency of the European Union.

**Fee** means the amount referred to as such in Schedule 2 as being payable by the Client in consideration for GT's provision of the Agreed Supply.

**Force Majeure Event** means an exceptional event or circumstance which is outside the reasonable control of the affected party, which was not reasonably foreseeable, which could not have been prevented or avoided by that party taking all reasonable steps and which cannot be substantially attributed to that party. For the purposes of this Agreement, a Force Majeure Event includes (but is not limited to) acts of God, earthquake, flood, storm, lightning, fire, explosion, war, terrorism, riot, civil disturbance, sabotage, strike, lockout, slowdown, unavailability of materials or transportation, labour disturbances, accident, epidemic, acts of governments or delay or non performance of sub-suppliers due to Insolvency.

**Glencore Group** means GT, its Related Corporations or any other entity through which such entities are engaged in a joint venture.

**Goods** means the goods and equipment described in Schedule 1.

**GT Personnel** means a Representative of GT including any sub-contractor personnel engaged by GT to provide Technical Assistance Services.

A party is **Insolvent** if:

- (a) it has been declared insolvent under any law applicable to it;
- (b) it is in liquidation, in provisional liquidation, under administration, is being wound up or has had a receiver appointed to any part of its property;
- (c) it is otherwise unable to pay its debts when they fall due; or
- (d) something having a substantially similar effect to (a) to (c) above happens in connection with that party under any law applicable to it.

**Intellectual Property** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layout, trade marks, trade secrets, Know-How, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Know-How** means confidential and proprietary industrial and commercial information.

**Legislative Requirements** includes:

- (a) Acts, Ordinances, regulation, by-laws, order, awards and proclamations of the jurisdiction where the Agreed Supply, or part of it, is being carried out;

- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where the Agreed Supply, or part of it, is being carried out; and
- (c) fees and charges payable in connection with (a) and (b).

**Payment Schedule** means the schedule for payment of the Fee set out in Schedule 2.

**Principal** means the owner and operator of the Project Site and the end user of the Agreed Supply.

**Project Plant** means the plant to be constructed at the Project Site.

**Project Schedule** means the timetable for the Client's Project, a preliminary form of which is set out in the schedules to this Agreement.

**Project Site** means the site described in Item 3) of Schedule A to this Agreement.

**Recipient** means the party that receives Confidential Information.

**Related Corporation** means, with respect to a corporation, another corporation that is:

- (a) the holding company of the first corporation;
- (b) a subsidiary of the first corporation; or
- (c) a subsidiary of the holding company of the first corporation.

**Representative** of a party means an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or sub-contractor of that party.

**Schedule A** means the section of this Agreement titled "Schedule A".

**Services** means the Technical Assistance Services as described in further detail in the Schedules to this Agreement.

**Specified Purpose** is the design and construction of the Project Plant.

**Technical and Commercial Information** means designs, plans, specifications, flow sheets, operating instructions, computer software, Know-How and other information, whether of a technical or commercial nature (including the Intellectual Property) relating to the Technology, as provided directly or indirectly by GT to the Client and any material form in which the above materials or information are contained or embodied, or from which they can be reproduced.

**Technical Assistance Services** means the services described as such in Schedule 1 to this Agreement.

**Technology** means the technology specified in item 5) of Schedule A.

**Term** means the period specified in item 1) of Schedule A.

**USD** means the lawful currency of the United States of America.

The following rules of interpretation apply in this Agreement unless the context requires otherwise:

- (a) a reference to a person includes a body corporate, unincorporated body or other entity and conversely;
- (b) a reference to any party to this Agreement or any other agreement includes that party's successors and permitted assigns;
- (c) a reference to a document (including this agreement) includes any variation or replacement of it, except to the extent prohibited by this Agreement or that other document;
- (d) each Schedule to this Agreement is incorporated by reference in this Agreement, but if there is any inconsistency between any Schedule and any provision of this Agreement, the

provision of this Agreement shall prevail to the extent of the inconsistency. If there are inconsistencies among the Schedules, the following order of descending precedence shall prevail to the extent of any inconsistency:

- i) Schedule A
  - ii) Schedule 1
  - iii) Schedule 2
  - iv) Schedule 3
  - v) Third party technical specifications;
  - vi) Last, any documents incorporated by reference in any of the foregoing. A later-dated document shall supersede an earlier-dated document to the extent of any inconsistencies between such documents, provided that the later-dated document is expressly incorporated into this Agreement by the parties.
- (e) mentioning anything after the words *"include"*, *"includes"* or *"including"* does not limit what else might be included.



# General Terms

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## 1 Term

### 1.1 Term of Agreement

This Agreement commences on the Commencement Date and continues until the expiration of the Term unless terminated earlier in accordance with this Agreement.

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## 2 Supply

### 2.1 Agreed Supply

Subject to clause 2.2:

- (a) GT shall provide the Agreed Supply to the Client in accordance with the terms and conditions of this Agreement; and
- (b) the Client shall accept the Agreed Supply from GT and pay the Fee in accordance with this Agreement.

### 2.2 Completion

Subject to the Client's payment of the Fee in accordance with this Agreement, GT shall use its best endeavours to provide the Agreed Supply in accordance with the Project Schedule.

A party becoming aware of anything which may cause delay to the performance of any obligation under this Agreement shall promptly give the other party written notice of that cause and the estimated delay.

### 2.3 GT obligations

GT shall provide all supervision, labour, materials, plant and equipment necessary to provide the Agreed Supply unless expressly stated otherwise in the Schedules to this Agreement.

### 2.4 Client obligations

The Client shall provide to GT such materials and information as is specified and described in the Schedules to this Agreement or is otherwise requested by GT and comply with its obligations in accordance with this Agreement (including the Project Schedule).

If the Client fails to fulfil or is delayed in fulfilling an obligation under this Agreement in accordance with the relevant Schedule or otherwise fails to promptly provide such materials and information as reasonably requested by GT in order to allow GT to comply with its obligations under this Agreement, and that delay or failure causes delay and/or additional expense to GT, then, without affecting GT's other rights:

- (a) the time allowed for GT to complete any affected obligations under this Agreement shall be extended by the duration of the Client's delay;
- (b) the Client shall pay to GT any actual costs incurred by GT as a result of the Client's delay. Such costs will be paid as an Additional Fee that will be invoiced by GT at cost plus 10%; and
- (c) both parties shall take all reasonable steps to minimise the impact of the Client's delay.

### 2.5 Deemed acceptance

If the Goods provided as part of the Agreed Supply are not collected by the Client within 30 calendar days of issuance of the 'notice of readiness for collection' then:

- (a) delivery of such Goods shall be deemed to have been accepted by the Client, and GT shall have the right to invoice for the Agreed Supply in accordance with clause 5; and
- (b) any additional costs that are incurred by GT as a result of the failure to collect the Goods, including but not limited to any holding, rescheduling or storage incurred by GT, will be payable by the Client. Such costs will be invoiced by GT at cost plus 10%.

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### **3 Fees**

#### **3.1 Fees**

In consideration for the provision of the Agreed Supply, the Client agrees to pay GT the Fee in accordance with the Payment Schedule and the Payment Terms set out in item 7) of Schedule A.

#### **3.2 GT Charges payable by the Client**

Any amount payable under this Agreement is net (i.e. exclusive) of:

- (a) all taxes and charges payable by the Client; and
- (b) any amount required to be withheld permanently in accordance with any Legislative Requirements excluding Legislative Requirements of Australia.

#### **3.3 Withholding amounts**

If the Client is required by any non-Australian Legislative Requirement to deduct or withhold taxes or any other amount for the benefit of a third party from any amount that is payable under this Agreement (including as withholding agent for GT under any non-Australian Legislative Requirement), the Client must:

- (a) increase the relevant amount that is payable to GT by the amount that is required to be deducted or withheld (which will result in the receipt by GT of the full amount which would have been payable to GT under this Agreement if no deduction or withholding had been required);
- (b) make the required deductions or withholdings;
- (c) pay the full amount deducted or withheld in accordance with the obligation imposed on the Client by the non-Australian Legislative Requirement; and
- (d) promptly deliver to GT a copy of the receipt for each such payment.

#### **3.4 Additional charges**

Any amount payable under this Agreement is net (i.e. exclusive) of any applicable goods and services charge, value added tax or similar charge.

If such charge is levied on GT with respect to the whole or part of any amount payable under this Agreement:

- (a) the Client must also pay to GT an amount equivalent to that charge within 30 days of the end of the month in which GT provides the Client with an appropriate invoice (or other tax documentation required) for that amount or as otherwise agreed between the parties in writing; and
- (b) if a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for a goods and services tax or similar charge for which that party is entitled to a taxation credit.

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### **4 Variation**

#### **4.1 Reasonable efforts**

GT will make reasonable efforts to comply with any requests from the Client relating to variation of the Agreed Supply. However, GT shall not be deemed to have accepted such request unless this Agreement is formally varied in writing by the parties.

#### **4.2 Client request**

The Client may request, in writing, a change to the scope or specification of the Agreed Supply (including to the Project Schedule). GT may reject such changes or accept them subject to a corresponding change in the Fee and/or the Project Schedule.

### **4.3 GT's estimate**

GT shall as soon as practical after receiving such notice, notify the Client whether the proposed variation can be effected, together with, if it can be effected, GT's estimate of the:

- (a) effect on the Project Schedule and any Dates for Delivery; and
- (b) cost (including all warranties and time-related costs, if any) of the proposed variation on the basis set out in clause 4.6.

### **4.4 Client variation**

The Agreed Supply is provided to the Client on the basis of the information that is set out in this Agreement and its Schedules. Any variation in such information by the Client after the Commencement Date may lead to variations in the Fee. GT shall advise the Client if any such variation in the Fee may be required which shall be determined in accordance with clause 4.6.

### **4.5 Additional services**

GT may, on the Client's request, agree to provide additional services or adopt a new Project Schedule which may be subject to an Additional Fee. The parties will endeavour to agree to the amount of such Additional Fee based on reasonable rates and charges before any additional services are provided.

### **4.6 Variation to Fees**

Any Additional Fee shall be determined on the basis of the applicable rates and prices contained in this Agreement or, otherwise, on the basis of reasonable rates or prices which take into account costs and a reasonable amount for profits and overheads.

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## **5 Payment & invoices**

### **5.1 Invoices**

GT shall provide the Client with invoices for amounts payable to GT in accordance with this Agreement. Each invoice shall include details of the Agreed Supply to which the invoice relates.

### **5.2 Payment**

The Client agrees to pay the Fee on the basis of the payment terms set out in item 7) of Schedule A.

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## **6 Risk and title**

### **6.1 Risk**

Risk in the Goods provided as part of the Agreed Supply shall pass from GT to the Client in accordance with the terms of delivery for such Goods as set out in item 2) of Schedule A to this Agreement.

### **6.2 Title**

Title in the Goods provided as part of the Agreed Supply shall pass from GT to the Client upon full payment for such Goods by the Client or such part of the Goods to which the title relates.

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## **7 Defects liability**

### **7.1 Liability period**

Subject to clause 7.4, the Defects Liability Period stated in item 8) of Schedule A shall commence at the time and for the period specified in item 8) of Schedule A.

### **7.2 Notice of rectification**

During the Defects Liability Period, the Client may give GT a notice in writing requiring GT Technology to rectify a Defect in the Goods which shall identify the Defect (by reference to the requirements for such Goods as set out in this Agreement) as well as the reasonable date for commencement, and completion, of its rectification.

### 7.3 Failure to rectify

If the rectification is not commenced or completed by the required dates, the Client may have the rectification carried out by others, without prejudice to any other rights and remedies that the Client may have. The reasonable cost incurred in doing so shall be an amount payable by GT to the Client.

### 7.4 Rectification during Defects Liability Period

In the event that a Defect has been rectified during the Defects Liability Period, the Defects Liability Period applicable to the rectification work shall be a period equal to the remaining period of the Defects Liability Period.

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## 8 Technical and Commercial Information

### 8.1 No title

No right, title or interest in the Technical and Commercial Information (including the Intellectual Property) shall pass to the Client under this Agreement other than as expressly granted in this Agreement.

### 8.2 Client's rights to design and construct

The Client's only right with respect to GT's Technical and Commercial Information is the right to review and assess the Agreed Supply for the Specified Purpose.

[#use Option A where the Client is the end user of the goods#]

### 8.3 [#Option A#] Client's rights to operate and maintain

The Client will not be granted the right to use the Technical and Commercial Information for the purpose of operating and maintaining the Project Plant unless and until the Client and GT enter into a separate Technology Licence Agreement. [#Option A#]

[#use Option B where the Client is not the end user of the goods – i.e. where the Client is the EPC provider and a different party (the Principal) will be signing the Technology Licence Agreement #]

### 8.4 [#Option B#] Principal's rights to operate and maintain

The Principal will not be granted the right to use the Technical and Commercial Information for the purpose of operating and maintaining the Project Plant unless and until the Principal and GT enter into a separate Technology Licence Agreement. [#Option B#]

### 8.5 Document markings

The Client shall ensure that all documents, drawings and other materials issued in connection with the Client's Project and which contain any part of GT's Intellectual Property or Confidential Information, are marked with a clear note that informs the reader that the document, drawing or material contains information that is proprietary to GT.

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## 9 Confidentiality

### 9.1 Undertaking to maintain confidence

Each party acknowledges that the Confidential Information of the other party is valuable to that other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

### 9.2 Use of Confidential Information

The party receiving Confidential Information ("Recipient") from the other party ("Discloser") may only use such Confidential Information for the purposes of performing the Recipient's obligations, or exercising the Recipient's rights, under this Agreement.

### 9.3 Disclosure of Confidential Information

A Recipient may not disclose Confidential Information of the Discloser to any person except:

- (a) Representatives, legal advisors, auditors and other consultants of the Recipient who require it for the purposes of this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) if the Recipient is required to do so by law or a stock exchange or corporate regulator; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

### 9.4 Disclosure by Recipient

A Recipient disclosing Confidential Information under clause 9.3(a) and (b) must ensure that persons receiving that Confidential Information are aware that it is Confidential Information and do not disclose the information except in circumstances permitted in clause 9.3.

The Recipient shall be responsible for any breach of the confidentiality and other obligations under this clause 9 by any person described in clause 9.3(a) to whom the Recipient discloses Confidential Information.

### 9.5 Return of Confidential Information

Subject to clause 9.6, on the Discloser's request, the Recipient must immediately deliver to the Discloser all documents or other materials containing or referring to the Discloser's Confidential Information which are:

- (a) in the Recipient's power, possession or control; or
- (b) in the power, possession or control of person who have received Confidential Information from the Recipient under clause 9.3(a) and (b).

### 9.6 Exceptions

The obligation in clause 9.5 does not apply to Confidential Information of the Discloser that the Recipient requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.

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## 10 Warranties

### 10.1 Mutual warranties

Both parties warrant that:

- (a) they are validly existing under the laws of the place of their incorporation and have the power and authority to carry on their respective businesses;
- (b) they have all necessary licences, approvals, permits and consents to enter into this Agreement and perform their obligations under it; and
- (c) they have the power to enter into and perform their obligations under this Agreement.

### 10.2 Client warranties

The Client represents and warrants that:

- (a) it has, before signing this Agreement:
  - i. satisfied itself about all matters that are relevant to its rights and obligations under this Agreement;
  - ii. as part of that process, considered whether it should obtain independent legal advice;
  - iii. satisfied itself as to the suitability and commercial feasibility of the Agreed Supply and the Technology for the Client's Project; and

- (b) it, and its Representatives, will only use the Agreed Supply and the Technology for the Specified Purpose and will not incorporate any part of the Agreed Supply or any part of the Technology into any other plant without the express written permission of GT.

### **10.3 GT warranties**

GT represents and warrants that:

- (a) it has evaluated all aspects of this Agreement and has the capability and expertise to provide the Agreed Supply;
- (b) GT has the right and authority to licence or sub-licence the Technology;
- (c) employees and agents of GT who carry out the Agreed Supply under this Agreement are and will remain suitably qualified and experienced and possess the level of professional skill, care and judgement necessary to carry out the Agreed Supply under this Agreement; and
- (d) any materials, information or goods provided to the Client as part of the Agreed Supply will be complete and free from encumbrance, will have been prepared with reasonable care and will be of merchantable quality.

Unless expressly stated otherwise in the Schedules to this Agreement, GT makes no other representation or warranty in respect of the Agreed Supply.

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## **11 Liability and indemnity**

### **11.1 No limitation**

Nothing in this Agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) a Party's liability resulting from its wilful misconduct.

### **11.2 Client indemnity**

The Client indemnifies the Glencore Group and its Representatives against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by the Glencore Group arising out of or in connection with:

- (a) any death or injury to persons, and any loss or damage to the real or personal property of the Glencore Group or a third party to the extent caused by any negligent act or omission of the Client or its Representatives; and
- (b) any infringement of a proprietary right in the Technical and Commercial Information under clause 8 or any breach of an obligation of confidence under clause 9 by the Client or its Representatives.

### **11.3 GT indemnity**

GT indemnifies the Client and its Representatives against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by the Client arising out of or in connection with:

- (a) any death or injury to persons, and any loss or damage to the real or personal property of the Client or a third party to the extent caused by any negligent act or omission of GT or its Representatives; and
- (b) any infringement of the warranty under clause 10.3(b) or any breach of an obligation of confidence under clause 9 by GT or its Representatives.

### **11.4 Indemnities continue**

The indemnities in this agreement are continuing obligations which shall continue after this Agreement ends.

## **11.5 Contribution**

Any amount claimed by GT pursuant to the indemnity in clause 11.2 will be reduced proportionally to the extent that any loss, damage, liability, claim or expense is directly caused or contributed to by the Glencore Group or its Representatives. Any amount claimed by the Client pursuant to the indemnity in clause 11.3 will be reduced proportionally to the extent that any loss, damage, liability, claim or expense is directly caused or contributed to by the Client or its Representatives.

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## **12 Limitation of liability**

### **12.1 Consequential loss**

Neither party shall be liable to the other in respect of any consequential or indirect loss or damage (including without limitation loss of profit or production) arising out of any default, omission or negligence in the performance, or purported performance, of that party's obligations in connection with this Agreement.

### **12.2 Limitation**

With the exception of:

- (a) any liability arising under clause 7;
- (b) any liability arising under clauses 10.3(b); and

subject to clause 11.1, GT's total liability arising in connection with this Agreement (including a claim in tort or under statute and under any Performance Guarantee) is limited to the amount stated in Item 9) in Schedule A.

---

## **13 Assignment**

### **13.1 Assignment**

Neither party shall, without the other's prior written approval (which shall not be unreasonably withheld) assign any obligation, right, benefit or interest under this Agreement to another party unless that party is a Related Corporation.

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## **14 Termination**

### **14.1 Termination with cause**

Either party may terminate this Agreement immediately by written notice if:

- (a) the other party commits a material breach of an obligation under this Agreement and such breach is incapable of remedy;
- (b) the other party commits a material breach of an obligation under this Agreement and has not taken all reasonable steps to rectify that breach within the reasonable time period specified by the non-defaulting party in a notice of breach (such period to be not less than fifteen (15) days);
- (c) the other party is declared Insolvent; or
- (d) it is expressly entitled to do so under clause 15.4 of this Agreement.

### **14.2 Suspension**

Should the Client's Project be suspended for any reason, any additional costs that are incurred by GT as a result of the suspension, including but not limited to any holding, rescheduling or storage costs or any suspension costs incurred by GT under contracts with its own suppliers relating to the Client's Project, will be payable by the Client. Such costs will be invoiced by GT at cost plus 10%.

The Client must promptly give GT notice of any such suspension.

GT may terminate this Agreement if provision of the Agreed Supply is disrupted by suspension of the Client's Project for a period greater than the period specified in item 10) of Schedule A. In the

event of GT terminating the Agreement under this clause, the Client shall be liable and shall fully compensate GT a Cancellation Fee, excluding any applicable Taxes, pursuant to item 11) in Schedule A.

### **14.3 Consequences of termination**

If this Agreement is terminated by GT under clause 14.1:

- (a) the Client shall forfeit all rights and entitlements under this Agreement; and
- (b) the Client shall pay all amounts owing to GT under this Agreement as of the date of termination and shall be indebted to GT for the loss, cost and damage incurred by GT as a direct consequence of the breach and the termination.

If this Agreement is terminated by the Client under clause 14.1, the Client shall pay all amounts owing to GT under this Agreement as of the date of termination.

### **14.4 Continuing obligations**

Termination or expiry of this Agreement shall not relieve the parties of any obligation arising under this Agreement prior to the date of termination or expiry and shall not relieve either party of the obligations arising under clauses 9, 10, 11, 14, 15, 16, 17, and 19 of this Agreement which survive termination and expiry.

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## **15 Force majeure**

### **15.1 No liability**

Despite any other provision in this Agreement, no party shall be liable to the other party for any delay or inability to perform an obligation under this Agreement if such delay or inability is due to a Force Majeure Event and notice has been given in accordance with clause 15.3.

### **15.2 Effect of Force Majeure Event**

A party affected by a Force Majeure Event must:

- (a) take all possible and reasonable steps to avoid, remove or limit the effects of the Force Majeure Event of the performance on its obligations under this Agreement; and
- (b) promptly re-commence performing its obligations under this Agreement as soon as reasonably possible.

### **15.3 Notice of Force Majeure Event**

A party affected by a Force Majeure Event must, as soon as reasonably possible, give the other party notice which:

- (a) sets out details of the Force Majeure Event and identifies the nature and extent of the obligations affected by such event;
- (b) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (c) provides details of the action that it has taken or proposes to take to remedy the situation.

### **15.4 Termination**

GT may terminate this Agreement under clause 14.1(d) if provision of the Agreed Supply is disrupted by a Force Majeure Event for a period greater than the period specified in item 12) of Schedule A. In such case, the Client shall pay all amounts owing to GT under this Agreement as of the date of termination.

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## **16 Dispute resolution**

### **16.1 Dispute Notice**



If a dispute between the parties arises in connection with this Agreement, then either party may give a notice pursuant to clause 17.1 that identifies and provides details of the dispute (“Dispute Notice”).

## **16.2 Conference**

Within 14 days of receiving a Dispute Notice, the parties must meet at least once, on a without prejudice basis, to resolve the dispute or to agree on methods of doing so. At every such conference, each party shall be represented by a person having authority to agree to such resolution or methods. If the dispute has not been resolved within 45 days of service of the Dispute Notice, the dispute must be escalated to the respective Chief Executive Officers of the Client and GT. If the dispute can still not be resolved after a further 14 days, the dispute must be referred to arbitration.

## **16.3 Arbitration**

If, after a further 14 days, the parties are unable to agree on an arbitrator, the arbitrator shall be nominated by the person specified in item 13) of Schedule A. The arbitration shall be conducted in accordance with the rules and at the location specified in item 13) of Schedule A.

## **16.4 Obligations continue**

Notwithstanding the existence of a dispute, the parties shall, subject to clauses 14 and 16.5, continue to perform their obligations under this Agreement.

## **16.5 Urgent relief**

Nothing in this clause 16 shall prejudice the rights of a party to institute proceedings to seek injunctive or urgent declaratory relief.

## **17 Notices**

### **17.1 Form**

All notices and other communications in connection with this Agreement must be:

- (a) signed and in writing;
- (b) marked for the attention of the person identified in the Parties or the person otherwise specified by the recipient; and
- (c) either:
  - i. left at, or sent by pre-paid post to, the address set out in the Parties section of this Agreement; or
  - ii. sent by fax to the fax number set out in the Parties section of this Agreement
  - iii. if an email address is provided, scanned and attached to an email to that address

unless the intended recipient had previously notified a changed address, fax number or email address, in which case, the communication must be to that address or number.

### **17.2 Effective**

All notices or communications take effect from the time that they are received. They will be deemed to be received:

- (a) if sent by post, three days after posting (if within the same country) or seven days (if sent from a different country);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email, at the time that the message was received on the recipient’s server.

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## **18 Security**

### **18.1 GT Security**

GT agrees to provide security in the amount described in item 14) of Schedule A and issued by an institution and in a form which is acceptable to the Client (acting reasonably) and its respective banks or financiers.

### **18.2 Client Security**

The Client agrees to provide security in the amount described in item 14) of Schedule A and issued by an institution and in a form which is acceptable to GT (acting reasonably) and its respective banks or financiers.

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## **19 General**

### **19.1 Governing law**

This agreement is governed by the law in force in the place specified in item 15) of Schedule A. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### **19.2 Discretion**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate unless this Agreement expressly states otherwise.

### **19.3 Partial exercise 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.

### **19.4 Approval and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### **19.5 Remedies cumulative**

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

### **19.6 Further steps**

The Client agrees, at its own expense, to do anything GT reasonably requests (such as obtaining consents, signing and producing documents):

- (a) to bind the Client and any other person intended to be bound under this Agreement;
- (b) to enable GT to exercise its rights; and
- (c) to show whether the Client is complying with this Agreement.

### **19.7 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation except for stamp duty.

### **19.8 Stamp duty**

The parties agree to pay, in equal shares, all stamp duty payable and assessed by Australian legislation or by any Australian revenue office on this Agreement on any documents entered into under this Agreement and in respect of a transaction evidenced by this Agreement. The Client agrees to pay all stamp duty payable and assessed by any legislation of another country or by any non-Australian revenue office on this Agreement on any documents entered into under this Agreement and in respect of a transaction evidenced by this Agreement. GT will not register the document without first advising the Client.

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## **19.9 Publicity**

A party may not make press or other announcements or releases relating to this Agreement without the approval of the other party as to the form and manner of the announcement or release unless, and to the extent that, the announcement or release is required to be made by the party by law or by a stock exchange.

## **19.10 Counterparts**

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument

## **19.11 No relationship**

Nothing in this Agreement will be taken to constitute either party as an employee, agent, partner or joint venturer of the other party nor is either party authorised to incur any obligation on behalf of the other party.

## **19.12 Prompt performance**

If this Agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

## **19.13 Compliance with law**

Both parties shall satisfy all applicable Legislative Requirements. If one party realises that a Legislative Requirement is at variance with this Agreement, written notice of such will be promptly provided to the other party and the variance rectified.

## **19.14 Benefit for Glencore Group**

This Agreement and all rights granted under it are for the benefit of all members of the Glencore Group in order that they may exercise and enforce all rights granted pursuant to this Agreement jointly and severally.

## **19.15 Severability**

- (a) Subject to clause 19.15(b), if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) Clause 19.15(a) does not apply if severing that provision:
  - i. materially alters the nature of this Agreement or the relative commercial positions of the parties; or
  - ii. would be contrary to public policy.

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## **20 Compliance**

### **20.1 Compliance with laws and prohibition on improper inducements**

- (a) Client warrants, represents and undertakes to GT that, in connection with the subject matter of this Agreement, it, its affiliates and its and their directors, officers, employees, agents, representatives and any other person acting on its or their behalf:
  - i. have complied with, and will comply with, all applicable laws, rules and regulations including, without limitation, sanctions, anti-bribery and corruption, anti-money laundering and tax laws; and
  - ii. have not authorized, offered, promised, paid or otherwise given, and will not authorize, offer, promise, pay or otherwise give, whether directly or indirectly, any financial or other advantage to or for the use or benefit of any public official or any private individual (i) for the purpose of inducing or rewarding that person's

improper performance of their relevant function, or (ii) that would be a breach of any applicable law.

## 20.2 Raising Concerns

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

## 20.3 Sanctions Clause:

- (a) Client represents and warrants to GT as at the date of this Agreement and throughout its duration that:
- i. neither it nor any of its subsidiaries (collectively, the "Company") or directors, senior executives or officers, or to the knowledge of the Company, any person on whose behalf the Company is acting in connection with the subject matter of the Agreement, is an individual or entity ("Person") that is, or is 50% or more owned or controlled by, a Person (or Persons) that is the subject of any economic or financial sanctions or trade embargoes administered or enforced by the U.S. Department of the 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 or any other applicable sanctions authority (collectively, "Sanctions") or based, organized or resident in a country or territory that is the subject of comprehensive (i.e., country-wide or territory-wide) Sanctions (including, as of the date of signature of this Agreement, Crimea, Cuba, Donetsk People's Republic, Iran, Luhansk People's Republic North Korea and Syria) (a "Sanctioned Country") (collectively, a "Sanctioned Person");
  - ii. no Sanctioned Person has any beneficial or other property interest in the Agreement nor will have any participation in or derive any other financial or economic benefit from the Agreement;
  - iii. it will not use, or make available, the Technology or funds (as applicable) provided by GT in terms of the Agreement (i) to fund or facilitate any activities or business of, with or related to any Sanctioned Country or Sanctioned Person, or (ii) in any manner that would result in a violation of Sanctions, or (iii) for any activities or business that could result in the designation of GT as a Sanctioned Person ("Sanctionable Activity").
- (b) Client will not be in breach of this clause in respect of a Sanctioned Person where the relevant Sanctions are exclusively sectoral sanctions, meaning any Sanctions that do not freeze or block the assets and/or economic resources of a person or comprehensively freeze or block making available funds or economic resources to such person, but merely restrict the ability of certain individuals or entities to access financing or export or import equipment, goods, technology or services, including, for the, avoidance of doubt, the Sanctions imposed under the Sectoral Sanctions Identification List maintained by OFAC ("Sectoral Sanctions") and where the relevant activity or business is permitted by those Sectoral Sanctions.
- (c) If Client becomes a Sanctioned Person or if GT is of the reasonable opinion that Client has breached or will breach this clause, GT may (without incurring any liability of any nature whatsoever) terminate or suspend all or any part of the Agreement with immediate effect by notice to the Client or take any other action it deems necessary in order for GT to comply with applicable Sanctions or avoid Sanctionable Activity. Client shall be liable for any and

all costs, liabilities and expenses whatsoever incurred by GT due to GT exercising its rights under this clause. Any exercise by GT of its right under this clause shall be without prejudice to any other rights or remedies of GT under the Agreement.

**20.4 Vessel Nomination clause [APPLICABLE FOR FOB/FCA/FAS]:**

- (a) The Client warrants and represents that it will not nominate any vessel in the performance of its obligations under this Agreement that is, or will become during the performance of this Agreement, in violation of US sanctions, European Union sanctions, Swiss sanctions or any other applicable sanctions (hereinafter, "Sanctions") or which would put GT in breach, or under designation risk, of Sanctions.
- (b) GT will have the right to reject any nomination which (a) violates any Sanctions, (b) would or could, in GT's reasonable opinion, put GT in breach, or under designation risk, of any Sanctions, or (c) otherwise involves a vessel that is the subject of any Sanctions (including, but not limited to, vessels that are the subject of Sanctions due to ownership or country of registration, or that appear on any Sanctions list), by serving a rejection notice on the Client detailing the grounds for the rejection. Service of such notice shall not constitute a breach of this Agreement and GT shall not be liable to the Client for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such rejection. If GT rejects a nomination on these grounds it shall be entitled, at its sole discretion, to (i) require the Client to promptly nominate a suitable substitute vessel; or (ii) terminate this Agreement.
- (c) To the full extent permitted by applicable law, the Client shall indemnify GT against any and all costs, expenses, losses and liabilities it incurs as a result of the Client nominating a vessel in breach of this clause.

## Schedule A

### Item

- 1) Term (clause 1.1) means the period from the Commencement Date until such time as each Party's obligations under this Agreement have been fully and irrevocably discharged and no actual or contingent liabilities are capable of becoming owed by one party to another under this Agreement.
- 2) Date, place and method of supply (clause 2.2) shall be on the basis of [insert delivery terms] (INCOTERMS 2020) and on the dates set out in the Schedules to this Agreement.
- 3) Project Site [insert description of name and location of operating site]
- 4) Technology means [#INSERT TECHNOLOGY NAME here. E.g. IsaMill™] Technology.
- 5) Fee (clause 3.1) is the amount specified in Schedule 2 of this Agreement as being payable by the Client in consideration for GT's provision of the Agreed Supply.
- 6) Additional Fee (clause 4.5) will be calculated by reference to the rates and charges set out in Schedule 2 to this Agreement.
- 7) Payment Terms (clause 5.2) GT will provide invoices to the Client in accordance with the Payment Schedule.  
  
Correctly rendered invoices will be paid within 30 days of receipt by the Client by direct transfer into GT's Bank as described in Schedule 2 or another bank account nominated by GT in writing.
- 8) Defects Liability Period (clause 7) the Defects Liability Period for each item of the Goods is 12 months following commissioning or 18 months following the Date of Delivery, whichever period ends first.
- 9) Liability (clause 12.2) Except as set out under clause 12.2, GT's liability under this Agreement is limited to 25 % of the Fee.
- 10) Suspension period after which GT can terminate (clause 14.2) 90 days
- 11) Cancellation Fee (clause 14.2) will be calculated by reference to the rates and charges set out in Schedule 2 in this Agreement.
- 12) Force Majeure (clause 15.4) The Agreement may be terminated if performance is delayed for more than 180 days.
- 13) Arbitration (clause 16.3) Any arbitration shall be held in Brisbane, Queensland and conducted in accordance with the UNCITRAL rules as at present in force and in English.  
  
A single arbitrator shall, in the absence of agreement between the parties, be appointed by the President of the Queensland Law Society.

**Item**

- 14) Security (clause 18) The security to be provided by GT to the Client shall be as follows: [TBC]
- The security to be provided by the Client to GT shall be as follows: [TBC]
- 15) Governing law (clause 19.1) is the law of Queensland, Australia.

# Execution page

EXECUTED as an agreement

EXECUTED by GLENCORE )  
TECHNOLOGY PTY LIMITED by )  
its duly authorised representative in )  
the presence of: ) .....  
 ) Signature of representative  
 )  
 )  
..... ) .....  
Signature of witness ) Name of representative (print)  
 )  
 )  
..... ) .....  
Name of witness (print) ) Title of representative (print)

EXECUTED by the [CLIENT] by its )  
duly authorised representative in the )  
presence of: )  
 ) .....  
 ) Signature of representative  
 )  
 )  
..... ) .....  
Signature of witness ) Name of representative (print)  
 )  
 )  
..... ) .....  
Name of witness (print) ) Title of representative (print)



# Schedule 1. Scope of Supply

## Schedule 2. Fee, Applicable Rates and Payment Schedule

## Schedule 3. Drawings