

1. Definitions

- 1.1 **"Agreement"** means this agreement.
- 1.2 **"RHCS"** means Radiant Heating and Cooling Solutions Pty Ltd, ABN 61 165 065 074, its successors and assigns or any person acting on behalf of and with the authority of Radiant Heating and Cooling Solutions Pty Ltd.
- 1.3 **"Client"** means the person/s, or any person acting on behalf of and with the authority of a Client, requesting RHCS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Claim"** means all claims, demands, entitlements, suits, causes of action, proceedings, debts, dues, expenses and costs, whether arising under common law, statute, equity or otherwise and whether known or unknown, including those arising directly or indirectly out of or in connection with this Agreement.
- 1.5 **"Charge"** means those charges, fees, costs, and amounts determined in accordance with clauses 4.2(d) and 5.
- 1.6 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 **"Services"** mean all Services supplied by RHCS to the Client at the Client's request from time to time and shall include any goods, documents, or materials ("Documentation") supplied, consumed, created or deposited incidentally by RHCS in the course of it conducting, or supplying to the Client, any Services.
- 1.8 **"Proposal"** means the letters or other documents prepared by RHCS and submitted to the Client to describe the scope of Services to be provided, the Personnel, Plant and Equipment proposed to be utilised, and the amount or method of calculation of the Charges.
- 1.9 **"Personnel"** means the operator/s of the Plant and Equipment supplied by RHCS in order to facilitate the Services (which may include subcontractors where required).
- 1.10 **"Plant"** or **"Equipment"** means the drilling equipment (including all associated accessories, attachments, and ancillary equipment, machinery) and any other plant and equipment required to complete, or otherwise associated with, the Services.
- 1.11 **"Site"** means the address nominated by the Client at which the Services are to be undertaken by RHCS.
- 1.12 **"Site Conditions"** means all physical conditions on, over, or under the surface of the Site and its near surrounds, including artificial things (including existing improvements and structures and the presence, availability, location and condition of services infrastructure), whether or not such conditions are patent or latent.
- 1.13 **"Working Hours"** means anytime activities are undertaken to deliver the Services on any day including Saturday, Sunday, public holiday, special holiday or bank holiday in the state in which this Contract is applied.
- 1.14 **"Mobilisation"** includes all time and processes required to enable RHCS's Personnel and Plant to be available at the Site entry point. Additional time taken to gain Site access entry, including, gaining compliance in order proceed to the drilling phase will be charged at the Stand By Rate.
- 1.15 **"Demobilisation"** includes all activities and processes, from the time the project is completed after RHCS's Plant and Equipment is cleaned and loaded ready to leave the Site.
- 1.16 **"Quantities"** are estimates only based on our understanding of the project requirements on the information provided. Actual quantities required by the job may vary higher or lower, and invoicing will reflect the quantities used.
- 1.17 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between **RHCS** and the Client in accordance with clause 3 below.
- 1.18 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using Magellan's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.19 **"GST"** means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services

Tax) Act 1999”.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and **RHCS**.
- 2.3 Any advice, recommendation, information, assistance or service provided by **RHCS** in relation to Goods and Services supplied is given in good faith, is based on RHCS's own knowledge and experience and shall be accepted without liability on the part of RHCS and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with RHCS and it has been approved with a credit limit established for the account.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14G of the *Electronic Transactions Act 2000* (NSW) or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Pricing

- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. Any such GST and other taxes or duties are additionally at the Client's account.
- 3.2 At RHCS's sole discretion, or as otherwise agreed between the parties the Price shall be either:
- (a) as indicated on any invoice provided by RHCS to the Client; or
 - (b) RHCS's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 3.3 If the Client requests any variation to the Agreement, change in design, product upgrade, product resettlement, other variation, which may include but not limited to geological issues such as loose or collapsing soils, RHCS may increase the price to account for the variation.
- 3.4 Subject to clause 3.3, where there is any change in the costs incurred by RHCS in relation to goods or services, RHCS may vary its price to take into account of any such change, by notifying the Client.
- 3.5 At RHCS's sole discretion, a non-refundable deposit may be required. If required, RHCS will notify the Client in writing.

4. Charges and Payment

- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Charges shall be applied in line with RHCS's Proposal provided for the Services and shall be either:
- (a) as indicated on any invoice provided by RHCS to the Client; or
 - (b) RHCS's estimated Charges. The final price can only be ascertained upon completion of the Services. Variances in the estimated Charges of more than ten percent (10%) will be subject to Client approval before proceeding with the Services; or
 - (c) RHCS's quoted price which will be valid for the period stated in the Proposal or otherwise for a period of thirty (30) days; or
 - (d) RHCS's current Charges as at the date of delivery, according to RHCS's current schedule of rates are based upon:
 - (i) Day Rate – calculated on the number of hours stated in RHCS's Proposal (charged on a pro-rata basis as required);
 - (ii) Metre Rate – will be charged for each diameter as quoted should the methodology be altered, a second final diameter be drilled in a single pass then all smaller diameter Charges will also be charged on the same meters as the final diameter. This will not increase the cost estimate;
 - (iii) Work Rate – applies to all activities for all hours or to a maximum as defined within the rates descriptions;
 - (iv) Standby Rate – on boarding, cleaning Plant and Equipment, safety meetings, inclement weather, access delays, water delays, permitting delays, inductions or training, or other Client requirements. Any other delay on Site reasonably outside of RHCS's control and RDO's hours as stated. Charges will be to a

- maximum equal to the Working Hours defined in the Work Rate;
- (v) All Rates – are subject to change upon written notice to the Client and shall take effect from the date of notice. In the event that the Client does not accept the revised rates, the Client has the right to terminate without prejudice upon the required notice of termination.
- 4.3 At RHCS's sole discretion a non-refundable deposit may be required prior to the provision of Goods or Services (as the case may be). € deposit amount or percentage of the Charges will be stipulated prior to RHCS providing Goods or Services (or, where a deposit is required in respect of a particular Good or Services, prior to RHCS providing that Good or Service). and shall become immediately due and payable.
- 4.4 Notwithstanding any other provision of this Agreement, RHCS may in its sole discretion elect not to provide a Service or Good subject of this Agreement where any deposit (or part thereof) requested by RHCS under this Agreement remains unpaid.
- 4.5 The Client waives and holds RHCS harmless in respect of any Claim, including any Claim relating to delay or disruption, arising as a result of RHCS making an election in accordance with clause 4.4.
- 4.6 The Price will be payable by the Client on the date/s determined by RHCS, which may be:
- (a) on completion of the Services;
 - (b) before Delivery of the Services;
 - (c) by way of installments/progress payments in accordance with RHCS's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) seven (7), fourteen (14), twenty one (21), or thirty (30) days from the date of the Invoice;
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RHCS.
- 4.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and **RHCS**.
- 4.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RHCS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.9 Prices quoted for supply of goods & services exclude GST and any other taxes or duties imposed on or in relation to the goods & services. In addition to the Price the Client must pay to **RHCS** an amount equal to any GST **RHCS** must pay for any supply by RHCS under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 Payment terms may be revoked or amended at RHCS's sole discretion, upon giving the Client seven (7) days' prior written notice.

5. Additional Charges

- 5.1 RHCS reserves the right to change the Charges:
- (a) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to unforeseeable circumstances (including, but not limited to, inclement weather (such as poor forecast weather, storms or extreme temperatures, etc.), limitations to accessing the Site, Site related safety considerations and/or health hazards (such as the discovery of asbestos and/or other hazardous materials, etc.), obscured Site defects, latent soil conditions, availability of Plant, geological conditions, including, but not limited to, excessively hard surface, fractured, or cavernous ground, lost circulation, inflow of water, or running sands, or old mine working, etc.), iron reinforcing rods in concrete, prerequisite work by any third party not being completed or underground locations, etc.) which are only discovered on commencement of the Services; or
 - (c) as a result of an increase in RHCS's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to RHCS in the cost of labour, materials, fuel, consumables or due to relevant industry awards (e.g. site allowance, severance pay, meal, travel and/or accommodation allowances, etc.), which are outside the control of RHCS; or
 - (d) where RHCS may carry out any necessary additional Works in the event of:

- (i) any Works that RHCS considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the Client before commencing the variation; or
 - (ii) RHCS being instructed to undertake extra Works by any statutory authority.
- 5.2 Variations will be charged for on the basis of RHCS's Proposal, shall be detailed in writing, dated and signed by both parties. However, if the cost of the variation is not agreed upon then the Client will be charged at RHCS's actual cost plus ten percent (10%) for the Works.
- 5.3 The following additional Charges may be applied during the provision of the Services:
 - (a) "Slow Penetration Rate" will apply when circumstances (geological conditions, including, but not limited to, excessively hard surface, fractured, or cavernous ground, inflow of water, or running sands, or old mine working, etc.) that are beyond the reasonable control of RHCS (in accordance with clause 5.1) cause the drill penetration rate to drop to a point where the calculated daily earnings, based on the meter rate, is less than the product of the drilling hours multiplied by the rig work rate;
 - (b) Lost circulation ("LC") Charges will apply where LC is encountered and recorded on the Daily Drill Reports. The LC charge will be that the landed cost of all additives used (quoted or otherwise) from this point will be shared equally by both parties until circulation is recorded as being returned. All time delays resulting from LC will be charged at the Standby Rate;
 - (c) "Adverse Ground Conditions" Charges will apply where ground conditions are adverse to expectations and/or Client provided information (i.e. sands, gravels, alluvials, boulders, etc.) that require RHCS to alter the proposed drilling method (i.e. rotary air, rotary mud, casing advance systems), drilling operations may be temporarily suspended to re-evaluate, with the Client, the most appropriate methodology to successfully complete the drilling program. This may include the delivery of additional drilling Equipment and/or consumables that may not have been quoted and where this is the case the charge will be the on Site landed cost plus ten percent (10%). All time delays resulting from Adverse Ground Conditions will be charged at the Standby Rate;
 - (d) "Damaged/Lost Downhole Plant & Equipment" Charges will apply when any Plant & Equipment is accidentally lost or damaged through no fault of RHCS. Replacement, damaged or lost Plant & Equipment will be charged at the on Site landed replacement costs (fair wear and tear expected) plus ten percent (10%). All approved time taken attempting recovery of the Plant & Equipment will be charged at the Rig Work Rate;
 - (e) "Excessive G.E.T Wear" Charges will apply when excessive wear is determined by RHCS. Replacement G.E.T will be charged at the on Site landed cost plus ten percent (10%).
- 6. Personal Property Securities Act 2009 ("PPSA")**
- 6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 6.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to RHCS for Services – that have previously been supplied and that will be supplied in the future by RHCS to the Client.
- 6.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RHCS may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, RHCS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of RHCS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of RHCS;

- (e) immediately advise RHCS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 6.4 RHCS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 6.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 6.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 6.7 Unless otherwise agreed to in writing by RHCS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 6.8 The Client must unconditionally ratify any actions taken by RHCS under clauses 6.3 to 6.5.
- 6.9 Subject to any express provisions to the contrary (including those contained in this clause 6.9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 7. Collateral & Assignment**
- 7.1 The Buyer hereby charges all its right, title and interest in the property or properties referred to in the Buyer's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of RHCS, with the due and punctual observance and performance of all the obligations of the Buyer. The Buyer indemnifies RHCS against all expenses and legal costs (on a solicitor/own client basis) for preparing, lodging and removing any caveat.
- 7.2 The Buyer hereby acknowledges that RHCS may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 7.1. Such registration of a caveat by RHCS over the Buyer's property or properties must not be challenged by the Buyer in any way whatsoever, and the Buyer agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Buyer has paid all monies owing by it to RHCS as claimed from time to time.
- 8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 8.1 The Client must inspect the goods or services on delivery and must within seven (7) days of delivery notify RHCS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the goods or services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow RHCS to inspect the goods or services.
- 8.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 8.3 RHCS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.4 If the Client is a consumer within the meaning of the CCA, RHCS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 8.5 If RHCS is required to replace the Goods under this clause or the CCA, but is unable to do so, RHCS may refund any money the Client has paid for the Goods.
- 8.6 Subject to this clause 8.6, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
 - (b) RHCS has agreed that the goods or services are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.7 RHCS may in its absolute discretion accept non-defective Goods for return in which case RHCS may require the Client to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.
- 8.8 Notwithstanding anything contained in this clause if RHCS is required by a law to accept a return then RHCS will only accept a return on the conditions imposed by that law.
- 8.9 Subject to clause 8.15 customised, or non-stock list items or Incidental Items made or ordered to the Client's specifications are not acceptable for credit or return.

9. Default and Consequences of Default

- 9.1 If the Client defaults in payment by the due date of any amount payable to RHCS, then all monies becomes immediately due and payable upon notice to the Client, without prejudice to any of its other accrued or contingent rights:
- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at RHCS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - (b) charge the Client a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
 - (c) charge the Client for, and the Client must indemnify RHCS from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - (d) cease or suspend supply of any further goods or services to the Client
 - (e) by written notice to the Client, terminate any uncompleted contract with the Client.
- 9.2 Clauses 9.1(d) and 9.1(e) may also be relied upon, at RHCS' option:
- (a) where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.

10. Delivery of Services

- 10.1 Delivery ("Delivery") of the Services is taken to occur at the time that:
- (a) RHCS (or RHCS' nominated carrier) delivers the Services to the Client's nominated address even if the Client is not present at the address.
- 10.2 At RHCS's sole discretion, the cost of Delivery may be:
- (a) in addition to the Price; or
 - (b) included in the Price,
- subject to the requirement that, should RHCS intend to elect to charge the cost of Delivery in addition to the Price, RHCS must notify the Client either:
- (c) at the time of issuing the Proposal; or
 - (d) in the case of a variation or proposed variation, before the variation is accepted.
- 10.3 RHCS may deliver the Services in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 10.4 Any time specified by RHCS for delivery of the Services is an estimate only and RHCS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every attempt to enable the Services to be delivered at the time and place as was arranged between both parties. In the event that RHCS is unable to supply the Services as agreed solely due to any action or inaction of the Client, then RHCS shall be entitled to charge a reasonable fee paid prior for redelivery and/or storage.

11. Cancellation

- 11.1 Without prejudice to any other remedies that either party may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the party may suspend or terminate the supply of Goods. RHCS will not be liable to the Client for any loss or damage the Client suffers because RHCS has exercised its rights under this clause.
- 11.2 RHCS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice RHCS shall repay to the Client any money paid by the Client for the Goods (except where those Goods have been delivered and title in those

- Goods has passed to the Client). RHCS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3 In the event that the Client cancels delivery of Goods or Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by RHCS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 11.4 Notwithstanding any other clause in this Agreement, the Client may not cancel an order for Goods which are:
- (a) manufactured, or orders to be manufactured, to the Client's custom specifications; or
 - (b) not stock list items; or
 - (c) in the reasonable opinion of RHCS, not products which RHCS will be able to resell or resupply within six months of the cancellation;
- and the Client agrees that:
- (d) it will receive delivery of those Goods; and
 - (e) it shall be liable for and pay on demand any Charges which apply to those Goods.
 - (f) .
- 11.5 At RHCS sole discretion a Reschedule fee may apply and the Client shall be liable for any and all loss incurred (whether direct or indirect) by RHCS as a direct result of the rescheduling previously appointed work. (including, but not limited to, any loss of profits and costs of allocated labour).
- 11.6 Should the Client cancel this contract for any reason (other than as the direct result of wilful default, gross negligence, or the serious misconduct of RHCS), the Client acknowledges and agrees that RHCS is entitled to retain any deposit paid by the Client to RHCS in respect of Goods or Services under this contract (except where RHCS has expressly notified the Client that the deposit is refundable).
- 12. Privacy**
- 12.1 All emails, documents, images or other recorded information held or used by RHCS is Personal Information and therefore considered Confidential Information. RHCS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). RHCS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by RHCS that may result in serious harm to the Client, RHCS will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 12.2 The Client agrees for RHCS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by RHCS.
- 12.3 The Client agrees that RHCS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 12.4 The Client consents to RHCS being given a consumer credit report to collect overdue payment on commercial credit.
- 12.5 The Client agrees that personal credit information provided may be used and retained by RHCS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or

- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 12.6 RHCS may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Client including credit history.
- 12.7 The information given to the CRB may include:
 - (a) personal information as outlined in 12.1 above;
 - (b) name of the credit provider and that RHCS is a current credit provider to the Client; (c.) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and RHCS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of RHCS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 12.8 The Client shall have the right to request (by e-mail) from RHCS:
 - (a) a copy of the information about the Client retained by RHCS and the right to request that RHCS correct any incorrect information; and
 - (b) that RHCS does not disclose any personal information about the Client for the purpose of direct marketing.
- 12.9 RHCS will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfill the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 12.10 The Client can make a privacy complaint by contacting RHCS via e-mail. RHCS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

13. Trusts

- 13.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not RHCS may have notice of the Trust, the Client covenants with RHCS as follows:
 - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of RHCS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

14. Underground/Hidden Locations

- 14.1 Prior to RHCS commencing the Works the Client must advise RHCS of the precise location of all services on the

site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.

- 14.2 Whilst RHCS will take all care to avoid damage to any underground/hidden services, the Client agrees to indemnify RHCS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.

15. Site Access and Condition

- 15.1 Access for Site visits or field work are to be made during normal Working Hours unless otherwise agreed to prior to acceptance by the Client of any Proposal submitted by RHCS.

- 15.2 The Client is solely responsible for providing free, clear, and safe access to the Site, and:

- (a) in the event of on-shore drilling:
- (i) that such access is suitable to accept the weight of laden trucks and other drilling Equipment as may be deemed necessary by RHCS; and
 - (ii) that there are no height restrictions likely to be imposed by overhead power lines or any other obstruction at all times to enable them to undertake the Services; and
 - (iii) the Client agrees to indemnify RHCS against all costs incurred by RHCS in recovering such vehicles in the event they become bogged or otherwise immovable.
- (b) it is the responsibility of the Client to provide RHCS while at the Site with adequate access to Site amenities and facilities within the vicinity of the Services (including, but not limited to, permits, traffic management, proof of clearance of

underground utility services on the proposed job sites, electricity, water, temporary lighting, toilet, washing and first aid facilities, etc.) where applicable and required in order to maintain drilling operational requirements; and

- (c) RHCS shall not be liable for any loss or damage to the Site, unless due to the negligence of RHCS; and
(d) if the Services are interrupted by the failure of the Client to adhere to the work schedule agreed to between RHCS and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 5.1.

- 15.3 Site Inductions

- (a) in the event the Client requires an employee or sub-contractor of RHCS to undertake a Site induction prior to or at the time of initial entry, the Client will be liable to pay the hourly charges for that period; or
(b) where RHCS is in control of the Site, the Client and/or the Client's third party contractors must initially carry out RHCS's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by RHCS;
(c) access to the Site will not be available until all parties have completed the Site induction.

16. Risk

- 16.1 Irrespective of whether RHCS retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as RHCS may repossess the Documentation in accordance with clause 20.1. The Client must insure all Documentation on or before delivery.

- 16.2 RHCS reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Client's failure to insure in accordance with clause 16.1.

- 16.3 RHCS shall be entitled to rely on the accuracy of any plans, specifications, geological reports, sample test results and other information provided by the Client. In the event that any of this information provided by the Client and/or marking out of the proposed area by the Client is inaccurate, RHCS accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies where drilling/Site decisions need to be made by RHCS in the Client absence because the Client has failed to comply with this clause.

- 16.4 Without limiting any other term of this Agreement, the Client:

- (a) warrants that, at the time of entering into this Agreement, it has notified RHCS in writing of all Site Conditions

- which affect, or might affect, the delivery or implementation of the Goods or Services under this Agreement;
and
- (b) agrees to indemnify RHCS in respect of any loss and damage or Claims arising as a result of any Site Condition which was not notified to RHCS in writing at the time of entering into this Agreement in breach of the warranty in clause 16.4(a).
- 16.5 If during the provision of the Services, and as a result of extraordinary down hole issues, RHCS decides (based on industry experience) that the risk is too great to continue the hole, RHCS shall advise the Client, or the Client's agent, regarding the risk of continuing. Where such advice is not acted on, and RHCS is requested to continue, then RHCS shall require the Client or their agent to authorise the continuance of the Services in writing. RHCS shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent continuance of the Services, and the Client shall reimburse RHCS for any Plant and Equipment lost or damaged, new cost price of the replacement Plant and Equipment will apply.
- 16.6 In the event that during the course of the Services RHCS discovers any undisclosed waste and/or hazardous materials then RHCS reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that RHCS agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 5.1 and shall be in addition to the Charges. RHCS under no circumstances shall undertake the removal of asbestos.
- 16.7 Drill cuttings shall not be removed from the Site. Any drilling fluids shall be spread over the ground except where environmental or other constraints forbid this. Where special requirements are advised by the Client after the Works have commenced to treat or dispose of such drilling fluid, then any associated treatment or disposal costs shall be at the Client's expense where a provision for these have not allowed for in the Proposal.
- 17. Client's Responsibilities**
- 17.1 The Client agrees to remove any items from the vicinity of the Services and agrees that RHCS shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 17.2 The Client acknowledges and accepts that (where applicable) all traffic management, traffic control and associated planning and consultation with relevant parties is to be performed by the Client, and must comply with any and all relevant local councils, regulations and bylaws of government, and legislations of the state and/or territory in which the Services are to be performed. All associated costs incurred are to be paid by the Client.
- 17.3 Location of underground services by a licensed service locator is mandatory prior to commencement of any Services. "Dial Before You Dig" must be consulted and any potential underground services are either clearly marked on Site or removed from the Site. The Client is required to provide evidence that this has been completed prior to the commencement of the Services:
- (a) where it is impractical to engage a service locator, it shall be the Client's responsibility to ensure that, prior to commencement of the Services by RHCS, that all Sites are clear of any utility services;
- (b) the Client agrees to indemnify RHCS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services either not precisely located and notified or removed;
- (c) if the Client requests RHCS to engage the service locator then this shall be in addition to the Charges.
- 17.4 The Client will identify all boundaries of the Site and areas on which the Goods and Services are to be delivered.
- 17.5 The Client will obtain all permissions, access rights, and consents (including from Council, adjoining proprietors, regulatory bodies, etc.) required in to provide the Goods and Services under this Contract before Goods and Services are provided under this Contract.
- 17.6 The Client indemnifies RHCS for any loss, damage, and Claims caused by a breach of this clause 17 by the Client.
- 18. Services**
- 18.1 The Client shall:
- (a) be responsible for:
- (i) making all necessary arrangements where any access is required through private property;
- (ii) ensuring that no other party ever attempts to use or operate the Plant without the expressed written consent from RHCS.

- (b) provide a workplace in compliance with all applicable health and safety legislation in operation in the state where the Services are undertaken;
 - (c) provide the operator with details of all required PPE. PPE must be worn at all time, such items include, but are not limited to:
 - (i) hard hat, safety glasses, long sleeve collar shirt, long pants, steel capped lace-up safety boots, reflective vest; and
 - (ii) failure to comply with this clause may lead to permanent removal from the Site; and
 - (iii) where additional safety or equipment items other than that stated in sub-clause 18.1(c)(i) is requested by the Client, all costs associated shall be in addition to the Charges and charged to the Client's account, plus a margin of ten percent (10%).
 - (d) should it be necessary for the Plant to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Plant, and said costs shall be in addition to the Charges and either:
 - (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
 - (e) provide adequate security for any Plant left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that RHCS arrange such security on the Client's behalf;
- 18.2 RHCS shall:
- (a) be responsible for ensuring their employees, contractors and persons working under its direction or control shall:
 - (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant;
 - (ii) maintain daily maintenance and servicing of the Plant in accordance with RHCS's OEM pre-start checks: clean, maintain, lubricate and fuel the Plant to the standard and level specified in the manual or as otherwise specified by RHCS and record such checks in the systems provided;
 - (iii) be qualified and trained personnel who will operate the Plant and that they possess current licences to operate the Plant, vehicle orientation and familiarity;
 - (iv) wear suitable protective and high visibility clothing in line with Site requirements;
 - (v) operate the Plant to a standard of skill, knowledge and competence of an experience and professional operator of the assigned tasks in compliance with all relevant laws;
 - (vi) comply with all health, safety and environmental requirements of the Client and the Site in accordance with any occupational health and safety laws and the Environmental Protection Authority.
- 18.3 RHCS reserves the right not to enter the Site if RHCS believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 18.4 Notwithstanding that the operator of the Plant shall at all times remain an employee or representative of RHCS and the operator shall operate the Plant in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 18.5 In the event the Client requires an employee of RHCS to undertake a recognised safety course or medical examination during Working Hours, the Client will be liable to pay all Charges for that period.
- 19. Compliance with Laws**
- 19.1 The Client and RHCS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating an to building/construction sites and any other relevant safety standards or legislation (including, but not limited to, any environmental requirements in accordance with the Environmental Protection Authority of the state in which the Services are to be performed, etc.).
- 19.2 Furthermore RHCS will ensure that all Personnel:
- (a) have current and valid licences in place to operate the Plant (including, but not limited to, classes 1, 2 and 3 drillers);
 - (b) have all other suitable licences and certifications required for the provision of the Services.
- 19.3 The Client shall:

- (a) be liable for any costs incurred by RHCS due to the Client's failure to comply with clause 19.1; and
- (b) obtain (at the expense of the Client) all licenses, approvals, consents (including resource consents), applications, permits and certifications that may be required for the Services.

20. Title to Documentation

- 20.1 RHCS and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership (including the ownership of any intellectual property right subsisting in the Documentation) shall not pass until:
- (a) the Client has paid RHCS all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to RHCS in respect of all contracts between RHCS and the Client.
- 20.2 Receipt by RHCS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then RHCS's ownership or rights in respect of the Documentation shall continue.
- 20.3 It is further agreed that, until ownership of the Documentation passes to the Client in accordance with clause 20.1:
- (a) the Client is only a bailee of the Documentation and must return the Documentation to RHCS immediately upon request by RHCS;
 - (b) the Client must not sell, dispose, or otherwise part with possession of the Documentation. If the Client sells, disposes or parts with possession of the Documentation then the Client must hold the proceeds of sale of the Documentation on trust for RHCS and must pay or deliver the proceeds to RHCS on demand;
 - (c) the Client shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of RHCS;
 - (d) the Client irrevocably authorises RHCS or RHCS's agent to enter any premises where RHCS believes the Documentation is kept and recover possession of the Documentation.

21. Errors and Omissions

- 21.1 The Client acknowledges and accepts that RHCS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by RHCS in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RHCS in respect of the Services.
- 21.2 In the event such an error and/or omission occurs in accordance with clause 21.1, and is not attributable to the negligence and/or willful misconduct of RHCS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Dispute Resolution

- 23.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference

each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

24. Force Majeure

24.1 Neither RHCS or the Client shall be liable for any default on a Project due to any force majeure act, event or cause other than lack of funds which is beyond the reasonable control of that party, including:

- (a) Act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
- (b) Action or inaction of any government or governmental or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and
- (c) Breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.

25. General

25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which RHCS has its principal place of business and are subject to the jurisdiction of the courts in Sydney, New South Wales.

25.3 Subject to clause 8, RHCS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RHCS of these terms and conditions (alternatively RHCS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

25.4 RHCS may license and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

25.5 The Client cannot licence or assign without the written approval of RHCS.

25.6 The Client shall not be entitled to set off against or deduct from the Contract Price any sums owed or claimed to be owed to the Owner by RHCS, nor to hold any retention/s for defect or omissions.

25.7 RHCS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of RHCS's subcontractors without the authority of RHCS.

25.8 The Client agrees that RHCS may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RHCS to provide Goods to the Client.

25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

25.10 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.