

## 1. PRE-GATE SERVICES:

### 1.1. Client subcontractors:

- (a) Tellus must give its prior written approval (not to be unreasonably withheld) before the Client may use a subcontractor to conduct a Pre-Gate Service (including Transportation). Such approval from Tellus will not cause Tellus to assume or owe any duty of care or other responsibility, liability or obligation to the Client in relation to the selection, or any act or omission, of a subcontractor. Regardless of any other section in this Agreement, the Client must be responsible for the acts or omissions of the subcontractor and agrees to indemnify Tellus for any Loss incurred by Tellus in relation to the acts or omissions of such subcontractor.
- (b) Tellus may, acting on reasonable grounds, revoke the approval given in section 1.1(a).
- (c) In addition to section 1.1(a), the Client must ensure that any subcontractor the Client engages:
  - i. is properly qualified, insured and experienced in the Pre-Gate Services it will be providing for the applicable Waste;
  - ii. has systems, practises and sufficient information, instruction, training and supervision to ensure compliance with relevant Applicable Requirements;
  - iii. where the subcontractor will utilise the Access Road, has signed a Road Access Agreement and has the relevant insurance requirements as set out in the Road Access Agreement.
- (d) Prior to Transporting any Waste to the Repository, the Client must provide Tellus with a plan detailing the planned supply and Transport of Waste (including the party responsible for Transporting the Waste) and, if requested by Tellus, a risk assessment for such Transport (a "Delivery Plan"). Once approved by Tellus, the Client must comply with the Delivery Plan.

### 1.2. Tellus-engaged subcontractors: In connection with subcontractors (including to perform Transportation of the Waste to the Repository) that Tellus engages on behalf of the Client to conduct Pre-Gate Services, the Client agrees that:

- (a) Tellus engages any such subcontractor as an agent of the Client and that any such subcontractor is the Client's subcontractor;
- (b) Client is liable for the acts and omissions of such subcontractor;
- (c) to the extent that Tellus arranges any Transportation of Waste to the Repository, the Client is the consignor and prime contractor for that Transportation;
- (d) to the extent permissible under Laws, Tellus has no responsibility in relation to the Transport of the Waste by the Client to the Repository; and
- (e) Tellus may pass on the cost of any fuel surcharge (with no additional margin to be added) imposed by a subcontracted Transporter to the Client.

### 1.3. Other:

- (a) Unless otherwise agreed by the parties, the Client must Package the Waste and ensure that such Packaging is in good condition, suitable for Transport and comply with relevant Laws.
- (b) Unless otherwise agreed by the parties, any equipment relating to Transportation must not require washing or cleaning services by Tellus. If such services are required by the Client, Tellus may invoice the Client for any Costs in accordance with section 3.9 (*Costs Incurred*).
- (c) The parties agree the Waste will not be unreasonably difficult to unload from the Transportation vehicle on arrival at the Repository, otherwise Tellus may invoice the Client for any Costs in accordance with section 3.9 (*Costs Incurred*).

## 2. TRANSPORTING WASTE TO THE REPOSITORY:

### 2.1. Request to Ship Waste:

- (a) Prior to the Transport of any Waste, the Client must (i) submit a ("Request to Ship Waste Notice") and (ii) warrants each time

it submits a Request to Ship Waste Notice that the statements in section 3.4(a) are true in respect of that Waste.

- (b) Upon receiving a Request to Ship Waste Notice and payment of the Initial Deposit, Tellus must either:

- i. approve it by issuing an ("Authorisation to Ship Waste Notice"); or
- ii. acting reasonably, reject it and provide reasons why the Request to Ship Waste Notice cannot be approved (and the parties acknowledge that a reasonable rejection includes any non-conformance with Applicable Requirements and/or the applicable Delivery Plan).

### 2.2. General Requirements: The Client must not allow Waste to undergo any Transport unless:

- (a) Tellus has approved a Request to Ship Waste for that Waste in accordance with section 2.2(b) and issued an Authorisation to Ship Waste;
- (b) The Waste complies with all Applicable Requirements; and
- (c) The Client ensures that the Transportation and any party conducting Transportation will comply with all Applicable Requirements (including that all required Approvals have been obtained).

### 2.3. Access Road Closure: Tellus or any applicable regulator, in its sole discretion, may temporarily close an Access Road due to concerns regarding safety or potential damage to such road and Tellus will use its best efforts to promptly notify the Client of any closure, however, in any event, neither Tellus nor such regulator will incur any liability for such closure.

## 3. ACCEPTING WASTE AT THE REPOSITORY:

### 3.1. Offloading:

- (a) Once Waste has been delivered to the Repository, assuming it complies with the Applicable Requirements, Tellus must offload the Waste from the transporting vehicle.
- (b) If such Waste does not comply with Applicable Requirements and/or is not properly packaged, labelled or described, then, in each case, Tellus is not obligated to accept or offload such Waste and Tellus may issue a Quarantine Notice or a Waste Rejection Notice.

### 3.2. Waste Receipt: If Waste has been offloaded in accordance with section 3.1 (*Offloading*), Tellus will issue a notice to the Client confirming that Waste has been delivered to the Repository (a "Waste Receipt Notice").

### 3.3. On-site Verification: Tellus may, in its sole discretion and at any time, conduct On-site Verification of the Waste.

### 3.4. Accept, Reject or Quarantine: After issuing the applicable Waste Receipt, Tellus must provide the Client with a notice either:

- (a) Confirming that the Waste (i) meets all Applicable Requirements and (ii) has been accepted by Tellus to be Secured (a "Waste Acceptance Notice"), *provided that*:
  - i. *Confirms Ownership:* The Client warrants and covenants upon Tellus issuing a Waste Acceptance Notice that the Client (i) is the Owner of such Waste or has the power to transfer ownership in such Waste (and such Waste is not subject to any security interest) and (ii) transfers ownership in such Waste to Tellus upon the issuance of the applicable Waste Acceptance Notice.
  - ii. *Proof of Ownership:* Additionally, the Client must, upon Tellus' request, provide Tellus with evidence reasonably acceptable to Tellus that title and risk to Waste have transferred to Tellus as required by the previous section.
- (b) Documenting, according to reasonable evidence that the Waste does not comply with Applicable Requirements and, thus, cannot be accepted by Tellus (a "Waste Rejection Notice")
- (c) Documenting, according to reasonable evidence, that Tellus will, in its discretion, conduct further On-site Verification and/or treat, contain, or repackaging such Waste (each such notice is a "Quarantine Notice").

### 3.5. Upon Issuing a Waste Acceptance Notice: After issuing a Waste Acceptance Notice, Tellus will:

- (a) Secure the Waste; and
- (b) Once all relevant fees have been paid, if such Waste is to be Permanently Isolated, issue a Tellus PIC™.

- 3.6. **Upon Issuing a Waste Rejection Notice:** After issuing a Waste Rejection Notice:
- Tellus may direct the Client to, and then the Client must, lawfully and safely remove the Waste subject to the Waste Rejection Notice within 30 days or other period required by applicable Laws.
  - If the Client does not comply with section 3.6(a), then Tellus may, in its sole discretion:
    - take any steps necessary to remove, dispose of, or to return to the Client, such Waste and invoice the Client for any such Costs incurred in accordance with section 3.9 (*Costs Incurred*);
    - report the circumstances to any relevant authority; and/or
    - support any resultant actions or enforcement.
- 3.7. **Upon Issuing a Quarantine Notice:** After issuing a Quarantine Notice, Tellus will take actions to ensure appropriate compliance with Applicable Requirements and then will:
- invoice the Client for any Costs in accordance with section 3.9 (*Costs Incurred*); and
  - either issue a (i) Waste Acceptance Notice or (ii) Waste Rejection Notice.
- 3.8. **Redundant Packaging:**
- Tellus may, at any time, demand that Client remove any redundant packaging accompanying the Waste that is not being Secured according to the Agreement (e.g. containers, intermediate bulk containers, dunnage, pallets, ropes and plastic wrapping) and the Client must promptly comply with such demand in a lawful manner.
  - If the Client does not comply with section 3.8(a), then Tellus may, in its sole discretion, dispose of such redundant packaging and invoice the Client for any Costs in accordance with section 3.9 (*Costs Incurred*). For the avoidance of doubt, if Tellus disposes of redundant packaging under this section, the Client agrees that it will have no further claim against Tellus for such redundant packaging and will indemnify Tellus against any claims by an owner of such redundant packaging.
  - Sections 3.8(a) and 3.8(b) will not apply to the extent Tellus has agreed to dispose of such redundant packaging in the Agreement.
- 3.9. **Costs Incurred:** The Client acknowledges that Tellus and the Client may incur unanticipated costs or fees, including for example, cleaning of equipment, container hire charges, packaging disposal, unplanned additional Tellus labour hours for difficult unloading and/or storage charges ("*Costs*") under this section 3 or elsewhere in the Agreement and (i) Tellus may invoice the Client for such Costs at market rates with a reasonable mark-up, and (ii) the Client must pay such invoice in accordance with section 6 (*Fees and Taxes*).

#### 4. RISK AND TITLE TO WASTE

- 4.1. **Risk:** The Client retains all risk relating to Waste until Tellus issues a Waste Acceptance Notice in respect of that Waste, at which point, Tellus takes all risk relating to such Waste, subject to this Agreement, including sections 11.14(a) (*Other*) and 9 (*Liability and Indemnity*).
- 4.2. **Title**
- Title to Waste remains with the Owner until Tellus issues a Waste Acceptance Notice in respect of that Waste (at which point, title transfers to Tellus and the Client then has no rights whatsoever in such Waste).
  - Title to any redundant Waste packaging used to Transport such Waste to the Repository (e.g. including any containers or pallets) remains with the Client and does not pass to Tellus.
- 4.3. **Non-Conforming Waste:** Notwithstanding anything in the Agreement (including sections 4.1 and 4.2), title and risk for any Waste that does not comply with Applicable Requirements at all times remains with the Client (even if, for example, Tellus has physical possession of such Waste or has issued a Quarantine or Waste Rejection Notice), unless or until (i) Tellus agrees to accept such waste and (ii) applicable regulators confirm in writing that Tellus can accept such waste.

#### 5. SITE ACCESS

- 5.1. **Site Procedures:** Each party must provide the other party (the "*Accessing Party*") with all relevant site policies and procedures prior to the Accessing Party first accessing a site. The Accessing Party must comply with such site policies and procedures and any reasonable direction of the other party or the person in control of the relevant site.

#### 6. FEES AND TAXES

##### 6.1. Payment Terms:

- Upon receiving a Request to Ship Waste Notice, Tellus will issue an initial invoice to the Client, which will include the amount of the Initial Deposit. Before Tellus issues an Authorisation to Ship Waste Notice for such Waste, the Client must pay the Initial Deposit for such Waste. After issuing a Waste Acceptance Notice, Tellus will invoice the Client for the balance of fees (i.e. minus the Initial Deposit) to Secure such Waste.
- Subject to section 6.1(a) above, the Client must pay all fees under the Agreement by electronic funds transfer to an account nominated by Tellus within 30 days of invoice and do so unconditionally and in full without any set-off, counterclaim or other deduction. The Client must notify Tellus of any amounts disputed in good faith (along with the basis for the dispute) within 10 days of receiving the invoice for such amount. Notice of any disputed invoice amount will not release the Client from the obligation to pay any undisputed balance of the invoice under the terms specified in the Agreement. Any portion of an invoice not disputed within 10 days must be deemed accepted by the Client and all such disputes arising thereafter are waived. The Client must pay interest at the Bank Bill Rate plus 2% (the "*Default Rate*") where the Client does not pay an invoice according to these terms. Interest charged for a late payment is calculated daily at the Default Rate on a 365-day year basis and is compounded monthly.
- Tellus is not obliged to perform any Service concerning the Waste (including, but not limited to, issuing an Authorisation to Ship Waste Notice, a Tellus PIC™ or any other certificate or notice) if the Client has breached this section 6.

- 6.2. **Consumer Price Index Adjustment:** On each Adjustment Date during the Term, Tellus may adjust each of the rates and charges (except for transportation rates which have price adjustments otherwise specified within this Agreement) in this Agreement by the following formula, rounded to the nearest whole cent and only if such adjustment would result in the same or a higher rate or charge.

$$R_{\text{new}} = R_{\text{base}} \times \left( A + 1 + \frac{CPI_{\text{new}} - CPI_{\text{base}}}{CPI_{\text{base}}} \right)$$

##### Where:

**A** is 0.03 and represents the adjustment rate.

**Adjustment Date** means each date during the Term that is a 12-month anniversary of the Agreement Date.

**Consumer Price Index** means the latest published and available "All groups CPI – Weighted average of eight capital cities – annual" dataset produced by Australian Bureau of Statistics.

**CPIbase** is (a) for the first Adjustment Date in the Term, the Consumer Price Index for the 3-month period ending immediately before the Agreement Date, and (b) for each subsequent Adjustment Date, the Consumer Price Index for the 3-month period ending immediately before the Adjustment Date for the previous 12-month period within the Term of the Agreement.

**CPInew** is the Consumer Price Index for the 3-month period ending immediately before the current Adjustment Date.

**Rbase** is (a) for the first Adjustment Date in the Term, the rate or charge listed within the Agreement, and (b) for each subsequent Adjustment Date, the rate or charge as adjusted on the previous Adjustment Date.

**Rnew** is the new rate or charge to apply under this Agreement for the 12-month period that follows each Adjustment Date.

## 7. OTHER EVENTS

### 7.1. Emergencies:

- (a) If an Emergency occurs concerning Waste at the Repository or the Access Road then Tellus will implement its Emergency Response Procedure, if permitted under Applicable Requirements.
- (b) Once the Emergency is contained (by Tellus or otherwise), Tellus and the Client must continue to perform their obligations under the Agreement in respect of the Waste impacted by the Emergency.
- (c) If an Emergency concerning Waste (i) occurs prior to issuance of a Waste Acceptance Notice for such Waste, (ii) is caused by a Latent Waste Issue, or (iii) was caused or contributed to by a negligent act or omission of the Client, then in each case Tellus will invoice the Client for reasonable Costs related to implementing the Emergency Response Procedure in accordance with section 3.9 (*Costs Incurred*), except to the extent that the Emergency was caused or contributed to by an act or omission of Tellus, in which case Tellus must bear such costs to the extent its act or omission caused or contributed to the Emergency.

### 7.2. Repairs and Maintenance

- (a) Tellus may suspend, delay or curtail the provision of any Service (except in respect of Waste for which Tellus has issued a Waste Acceptance Notice) if (i) in Tellus' reasonable opinion, such action is necessary to undertake repairs, maintenance or other works to a Repository, an Access Road or the surrounding environment; and (ii) Tellus gives the Client reasonable notice considering the circumstances.
- (b) To the fullest extent permitted by Law, the exercise of any right by Tellus under this section 7.1(a) will not create any liability, duty or obligation of Tellus to the Client and the Client releases Tellus accordingly.

### 7.3. Force Majeure

- (a) A "Force Majeure Event" means an event or cause beyond the reasonable control of the affected party (the "Affected Party"), other than to the extent caused or contributed to by the Affected Party, including any one of the following events or any combination of these events:
  - i. riot, war, civil disorder, acts of terrorism or armed conflict arising within and affecting Australia;
  - ii. national and international health epidemics and or environmental crisis;
  - iii. industrial disputes that apply generally to an applicable Australian State or industry;
  - iv. fire, flood, earthquake or other act of God;
  - v. exceptionally adverse weather conditions; and
  - vi. official strike, lockout, picketing, demonstration, blockade, embargo or other protest or action taking place at the Repository or directly affecting access to the Repository.
- (b) If the Affected Party is prevented or substantially delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event, the Affected Party must immediately notify the other party with details of the Force Majeure Event, at which point the obligations of the Affected Party under the Agreement are suspended to the extent that they are rendered impossible to be performed by the relevant Force Majeure Event for as long as the Force Majeure Event continues.
- (c) If a Force Majeure Event (or a series of Force Majeure Events) continues for a period of 10 weeks and affects the provision of the Affected Party's obligations under the Agreement in a material way, either Party may terminate the Agreement subject to compliance with section 8.4 (*Notice and Opportunity to Cure*).

## 8. TERM AND TERMINATION

- 8.1. Term: Unless terminated according to this section 8 and subject to 11.12 (*Survival*), the Agreement will continue until all the Waste has been Secured at the Repository.
- 8.2. Tellus' Termination for Cause: Subject to compliance with section 8.4 (*Notice and Opportunity to Cure*) where applicable, Tellus

may terminate the Agreement upon the occurrence of any of the following events:

- (a) an Insolvency Event of the Client and/or any Guarantor;
  - (b) the Client supplies Waste to Tellus that presents a Latent Waste Issue;
  - (c) the Client commits a material or persistent breach of any provision of the Agreement, including any obligation under the Agreement to pay money; or
  - (d) the Client breaches any of its obligations under a Law or Approval.
- 8.3. Client's Termination for Cause: Subject to compliance with section 8.4 (*Notice and Opportunity to Cure*) where applicable, the Client may terminate the Agreement upon the occurrence of any of the following events:
- (a) an Insolvency Event occurs in respect of Tellus; and/or
  - (b) Tellus commits a material or persistent breach of any provision of the Agreement.
- 8.4. Notice and Opportunity to Cure:
- (a) Before a party terminates under section 8.2 or 8.3 (but not under section 8.2(a) or 8.3(a)), it must first give the non-terminating party at least 21-days' written notice of its intent to terminate and reasons for such termination.
  - (b) If the non-terminating party, to the satisfaction of the terminating party acting reasonably, sufficiently cures the breach that led to the termination notice (including, subject to section 9.2 (*Limitations on Liability*) by compensating the terminating party for actual Losses and liabilities arising from the breach) prior to the end of such 21-day notice period, then the Agreement subject to such termination notice will not terminate. If the breach is not sufficiently cured according to the previous sentence, then the termination of the Agreement is effective at the end of such 21-day notice period (the "Termination Date").
- 8.5. Consequence of Termination: Subject to section 12.12 (*Survival*), upon termination or expiration of the Agreement, all rights and obligations of each party under the Agreement immediately cease as of such date and Tellus may refuse Waste that has dispatched or is in Transport; notwithstanding the previous sentence, subject to the Agreement, Tellus must continue to perform any Services for Waste for which a Waste Acceptance Notice has previously been issued.

## 9. LIABILITY AND INDEMNITY

### 9.1. No Waiver:

- (a) The Client acknowledges and agrees that no act or omission by Tellus (including, for example, the approval of a Delivery Plan, Request to Ship Waste Notice or any other review, inspection, notification, approval, confirmation or acceptance by or on behalf of Tellus) will (i) relieve the Client of any of its obligations or liabilities under Applicable Requirements or (ii) impair, waive, limit or render unenforceable any Client warranty or obligation.
- (b) The Client acknowledges and agrees that its obligations, duties and liabilities in Applicable Requirements are not limited or reduced by reason of the contracting out or subcontracting of any activity and that the Client remains fully responsible for and liable for the acts of its Personnel.

### 9.2. Limitations on Liability:

- (a) Neither party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any cause of action whatsoever or howsoever arising to the other for any Consequential Damages.
- (b) Tellus' maximum aggregate liability to the Client in contract (including under section 9.6 (*Tellus' Indemnities*)), tort (including negligence), for breach of statutory duty, or otherwise, howsoever arising, in connection with the Services is limited to the greater of the fee charged for the Service that gave rise to such liability and \$1 million.
- (c) The Client's maximum aggregate liability to Tellus in contract (including under section 9.5 (*Client's Indemnities*)), tort (including negligence), breach of statutory duty, or otherwise, howsoever arising, in connection with the Service is limited to the greater of three times the aggregate of the fees payable to Tellus under this Agreement and \$10 million.

- (d) The limitations of liability in this section 9.2 do not apply in the case of:
- i. Liability arising from Waste that presents a Latent Waste Issue;
  - ii. Gross negligence, wilful misconduct, fraud and/or breach of laws;
  - iii. Death or personal injury to any person;
  - iv. A breach of section 11.8 (*Confidentiality*) and/or 11.9 (*IP*); and/or
  - v. Any liability that is recovered under a policy of insurance, or any liability that would have been recoverable under a policy of insurance (where such policy of insurance was required to be maintained under the Agreement).
- 9.3. **Duty to Mitigate:** Each party must use reasonable endeavours to mitigate any Loss, damage, cost or expense that arises directly or indirectly in connection with a breach of Applicable Requirements by the other party.
- 9.4. **Proportionate Liability:** The parties agree that, to the extent permitted by Law, the operation of any legislative proportionate liability regime (including Part 1F of the *Civil Liability Act 2002 (WA)*) is excluded in relation to all and any rights, obligations and liabilities under or in connection with Applicable Requirements, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort (including negligence) or otherwise.
- 9.5. **Client's Indemnities**
- (a) The Client must (on a joint and several basis) indemnify and keep indemnified each of Tellus, its Related Bodies Corporate and their directors and Personnel (together, the "**Tellus Indemnified Parties**") from and against any Claim made or commenced and/or any Losses that any of the Tellus Indemnified Parties incurs or suffers arising out of or related to:
- i. any breach of any provision of this Agreement or an Applicable Requirement by the Owner, the Client, its Related Bodies Corporate and/or any of their Personnel (together, the "**Client Indemnifying Parties**"); or
  - ii. where the relevant Claim or Loss is related to and/or resulted from a Latent Waste Issue.
- (b) Notwithstanding section 9.5(a), the Client's liability to indemnify the Tellus Indemnified Parties will be reduced to the extent that the applicable Claim or Loss is suffered or incurred because of the negligence, wilful misconduct and/or breach of Applicable Requirements by a Tellus Indemnified Party.
- 9.6. **Tellus' Indemnities:**
- (a) Tellus must indemnify and keep indemnified each of the Client, its Related Bodies Corporate and their directors and Personnel (together, the "**Client Indemnified Parties**") from and against any Claim made or commenced and/or any Losses that any of the Client Indemnified Parties incurs or suffers arising out of or related to any breach of any provision of this Agreement or an Applicable Requirement by Tellus, its Related Bodies Corporate and/or any of their Personnel (together, the "**Tellus Indemnifying Parties**").
- (b) Notwithstanding section 9.6(a):
- i. The liability of Tellus to indemnify the Client Indemnified Parties will be reduced to the extent that the applicable Claim or Loss is suffered or incurred because of the negligence, wilful misconduct and/or breach of Applicable Requirements by a Client Indemnified Party.
  - ii. The Client releases and discharges Tellus and each Tellus Indemnifying Party from any Claim or Loss that the Client has or may have against such party related to a Client Indemnified Party accessing the Repository or using the Access Road.
  - iii. For the avoidance of doubt, "Client Indemnified Parties" does not include Tellus acting as agent for the Client pursuant to section 1.2(a) and "Tellus Indemnifying Parties" does not include a subcontractor engaged by Tellus acting as agent of the Client to perform Pre-Gate Services as subcontractor for the Client.

- 9.7. Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the Agreement.

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## 10. IMPACTS OF CHANGES IN LAW

- 10.1. **Consequences of a Change in Law:** Where a Qualifying Change in Law occurs, Tellus is entitled to payment from the Client of the Qualifying Cost Increase arising as a result of that Qualifying Change in Law.
- 10.2. **Process to Request a Payment:** Tellus must request any applicable Qualifying Cost Increase in writing and the Client must pay such amount in the form of, as requested in Tellus' sole discretion (acting reasonably), either: a lump sum; a fee adjustment for future or yet-to-be invoiced Services; or if Tellus, in its reasonable opinion, believes that such Qualifying Cost Increase will be more than a one-time occurrence, then a permanent adjustment to the fee or charge impacted by such Qualifying Cost Increase.

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## 11. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 11.1. **Client Affirmations:** The Client represents, warrants and covenants to Tellus that on each of the Agreement Date, the date the Client submits a Request to Ship Waste Notice and the date on which Tellus issues an Authorisation to Ship Waste Notice that:
- (a) the Client has the full power, authority and technical, commercial and financial standing to carry out its obligations under the Agreement;
  - (b) none of the Client's obligations under the Agreement conflict with Laws that apply to the Client or the Client's other agreements or organisational documents;
  - (c) any relevant information provided to Tellus prior to the date of such document is and remains true and correct;
  - (d) no Latent Waste Issue exist with respect to the applicable Waste;
  - (e) the results of any Characterisation of the Waste provided to Tellus gives accurate and detailed information about the characteristics of the applicable Waste;
  - (f) each Pre-Gate Service that is the responsibility of the Client or its Personnel or representatives has been completed for such Waste in full compliance with Applicable Requirements;
  - (g) the Client has full title to such Waste free and clear of any security interests and there are no facts or circumstances with respect to such Waste that could result in the creation of any security interests; and
  - (h) the Transport for such Waste complied with all Applicable Requirements and does not expose the Client, Tellus, their Personnel or any third party to liability or obligations under any Law.
- 11.2. **Tellus Affirmations:** Tellus represents, warrants and covenants to the Client that on each of the Agreement Date, the date the Client submits a Request to Ship Waste Notice and the date on which Tellus issues an Authorisation to Ship Waste Notice that Tellus has the full power, authority and technical, commercial and financial standing to carry out its obligations under the Agreement and Applicable Requirements.
- 11.3. **Independent Affirmations:** Each representation, warranty and covenant to be given under this section 11.1 is separate and independent and, unless expressly provided, is not limited by reference to any other representation, warranty, covenant or provision of this Agreement. The Client must immediately inform Tellus if a representation, warranty or covenant is at any time no longer accurate but could reasonably still be relevant to Tellus.

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## 12. OTHER

- 12.1. **Amendments:** Any amendment, waiver or modification to the Agreement must be in writing and signed by both parties to be valid.
- 12.2. **Assignment:** A party may only assign or create an interest in any of its rights or obligations under the Agreement with the prior written consent of the other party (which must not be unreasonably withheld); notwithstanding the previous sentence, Tellus may:

- (a) assign or novate the Agreement to a Related Body Corporate and, on request, the Client must action anything reasonably necessary for effecting that assignment or novation; and/or
- (b) give a security interest over all or any of its rights, benefits and obligations under the Agreement for the benefit of Tellus' financiers.
- 12.3. Taxes: Except as otherwise provided by the Agreement, all consideration payable under the Agreement is expressed exclusive of goods and services tax or similar value added tax ("GST") and all Commonwealth, State, Territory or government taxes, levies, duties and charges that may be imposed or levied from time to time as a result of the provision of Services, including any waste levy; if any of the foregoing tax or amount is or becomes payable on any supply under the Agreement, you must pay Tellus such amounts at the same time as payment of the associated fees or upon our request.
- 12.4. Insurance
- (a) At all times that Services are being provided under the Agreement, the Client (and its subcontractors, as applicable) must maintain the following insurances with an insurance company represented in Australia that is rated no less than A-minus by S&P or an equivalent rating by any internationally recognised rating agency:
- i. third party public and product liability insurance of no less than \$20 million per occurrence and unlimited in the aggregate during any one period of insurance (except for product liability and environmental liability, which may be limited in the aggregate per policy year) to cover the Client's legal liability for personal injury and damage (this policy should, as a minimum, cover sudden, accidental, unintended and unexpected pollution, injury of, or illness to, or death of any person and loss or damage to property);
  - ii. employer's indemnity insurance, including workers compensation insurance, in accordance with applicable Law and for a minimum of \$50 million any one occurrence and, where available under Law, a principal's indemnity in favour of Tellus and a waiver by the insurer of all rights of subrogation against Tellus.
- (b) Tellus must be and remain a beneficiary under or arrange and maintain the following insurances with an insurance company represented in Australia that is rated no less than A-minus by S&P or an equivalent rating by any internationally recognised rating agency:
- i. as are required by Law and applicable regulations; and
  - ii. third party public and product liability insurance of no less than \$20 million per occurrence and in the aggregate for product liability and environmental liability.
- (c) The Client must ensure that its public and products liability insurance policy held by the Client in connection with the Waste or its handling, storage or transport of the Waste would include Tellus as a principal insured. This policy should also include (i) a cross liability clause so that such policy applies to each insured as if a separate policy had been entered into with each insureds, without increasing the applicable deductible or the overall limit of indemnity under such insurance and (ii) non-imputation and severability clauses so that any non-disclosure, breach, default, act or omission by one insured does not prejudice the rights of any other insured to claim or be indemnified under such Insurance.
- (d) Promptly after a request by a party, the other party must provide certificates of currency evidencing the coverage in accordance with the insurances required under this section 12.4.
- 12.5. No Waiver
- (a) The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party under the Agreement does not operate as a waiver of that power or right, nor does any single exercise of the power or right preclude any other exercise of it or the exercise of any other power or right under the Agreement.
- (b) None of the provisions of the Agreement are to be considered waived by a party unless such waiver is given in writing and signed by a duly authorised representative of the party making the waiver. No such waiver is a waiver of any past or future default or breach unless expressly set out in such waiver.
- 12.6. Recordkeeping and Audits:
- (a) Each party must maintain adequate records demonstrating compliance with their respective obligations under the Agreement.
  - (b) A requesting party ("Requesting Party") may, at the Requesting Party's expense and upon giving the other party fifteen Business Days' notice, arrange for the Requesting Party's Personnel or representatives to audit the other party's records, work procedures, processes or sites/locations related to the Agreement; *provided* that such audit will be at a mutually agreed upon time and may only be reasonable intervals.
- 12.7. Notices: Except as otherwise provided in the Agreement, all notices, requests, demands or other communications required or permitted to be given or made under hereunder must be in writing, in English and must be delivered to the Tellus Representative's and/or Client Representative's email addresses included on the front page of the Agreement. Notice sent by email on or before 5:00 pm is deemed effective on the day such email is transmitted and if sent after 5:00 pm is deemed effective one business day after transmission.
- 12.8. Confidentiality
- (a) Each party must ensure that the terms of the Agreement and any other material in connection with the Agreement that would typically be treated by a prudent business person as confidential must be kept confidential ("Confidential Information") and must protect such information with no less diligence than that which it protects its own confidential or proprietary information. Neither party will use Confidential Information for any purpose other than in connection with the Agreement. Either party may nonetheless disclose Confidential Information to its Personnel, Related Bodies Corporate and representatives who have a need to know such information, assuming such persons and entities are bound by similar provisions of confidentiality contained in the Agreement; furthermore, each party is responsible for those persons and entities with which it shares such Confidential Information. Neither party may make any press release or disclosure concerning the Agreement without the other party's written consent.
  - (b) Additionally, either party may, in its sole and absolute discretion, report the existence and details of any breach or reasonably suspected breach of an Applicable Requirement to any relevant authority and such disclosure shall not be deemed as a violation of this section 12.8 (*Confidentiality*).
  - (c) The Client acknowledges and agrees that all information disclosed to the Client by or on behalf of Tellus does not form part of the Agreement and was provided for information purposes only; furthermore, with respect to such information, Tellus does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the Client with respect to the suitability, completeness, accuracy or adequacy of any such information and the Client releases Tellus' Indemnified Parties from any Claim in respect of such information.
- 12.9. IP: Nothing in the Agreement affects the ownership of any Intellectual Property of either Party and for the avoidance of any doubt the Client acknowledges and agrees that all assets and Intellectual Property Rights in Tellus' business are owned by Tellus.
- 12.10. Governing Law: The Agreement is governed by the Laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and courts of appeal from them for determining any dispute concerning the Agreement.

### 12.11. Disputes

- (a) If a dispute arises between the parties out of or in connection with the Agreement, either party may give the other a written notice of the dispute, which must adequately identify the details of the dispute.
- (b) Within 10 Business Days after a notice issued under section 12.11(a) is received by the addressee (or a longer period agreed to by the parties in writing), the parties must ensure that a senior officer of each party undertakes good faith negotiations using reasonable endeavours to resolve the dispute prior to referring the dispute to arbitration or litigation.
- (c) Nothing in this section 12.11 prejudices the right of a party to seek urgent injunctive or declaratory relief for any matter in connection with the Agreement.
- (d) Despite the existence of a dispute, each party must continue to perform their obligations under the Agreement unless otherwise terminated in accordance with section 8 (*Term and Termination*).

12.12. Survival: Sections 4 (*Risk and Title to Waste*), 6 (*Fees and Taxes*), 7 (*Other Events*), 8 (*Term and Termination*), 9 (*Liability and Indemnity*), 12 (*Other*), 13 (*Interpretation*) and Schedule 1 and any rights or obligations that are expressed to continue after termination of the Agreement and any other section of the Agreement which, by its nature, should survive the termination of the Agreement, survive the termination of the Agreement.

12.13. Severability: If a court or administrative body of competent jurisdiction finds any provision of the Agreement to be invalid or unenforceable, then such provision will be divisible from and deemed to be deleted from the Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect.

### 12.14. Other

- (a) Where there is any inconsistency between the T&Cs and a cover page to this Agreement which has been signed by both parties, the cover page to this Agreement will prevail.
- (b) If there is no signed cover page, but the parties agreed on a quote provided by Tellus to the Client, where there is any inconsistency between the T&Cs and the quote, the details in the quote will prevail.
- (c) The Agreement contains the entire understanding between the parties as to the subject matter contained therein. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded and have no effect.
- (d) The Agreement may be executed in counterparts.
- (e) The rights and remedies provided in the Agreement are cumulative with and do not exclude any rights and remedies provided by Law.
- (f) In the interpretation of the Agreement, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafting this document or any provision of it.
- (g) For purposes of the Agreement, each party is, and must perform its obligations as an independent contractor and nothing in the Agreement will create, or be construed to create, any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties.

**13. INTERPRETATION:** Unless the context otherwise requires, in the Agreement: "including" and similar expressions are not words of limitation; words in the singular include the plural and vice versa; headings and labels are for convenience only and do not affect the interpretation of the Agreement; "\$" and "dollars" means Australian dollars; monetary amounts specified in the Agreement exclude any applicable escalation or adjustments permitted under such documents; "as amended" means "as amended from time-to-time"; a reference to: a "day" means a calendar day, unless otherwise specified; a document includes all amendments or supplements to, or replacements or novations of, that document; any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them; a person includes any

company or other Related Body Corporate, partnership, joint venture, association, and any governmental agency; and to time of day is a reference to Perth time; if the date on or by which any act must be done under the Agreement is not a Business Day, the act must be done on or by the next Business Day; and in the Agreement, unless expressed or implied to the contrary, a term or expression starting with a capital letter has the meaning set out in Schedule 1 (*Dictionary*).

## SCHEDULE 1

**Access Road** means the Mount Walton access road within Access Reserve 44102, from the Great Eastern Highway intersection to the southern boundary of Reserve 42001, which is used to access the Repository.

**Accessing Party** is defined in section 5.1.

**Affected Party** is defined in section 7.3.

**Agreement** refers to these T&Cs, and (i) the quote agreed between Tellus and the Client, or (ii) a cover page to this Agreement which has been signed by both parties. If a cover page to this Agreement has been signed by both parties, the quote agreed between Tellus and the Client will not form part of the Agreement (unless otherwise agreed by the parties).

**Agreement Date** is defined on the signed cover page to this Agreement or is the date that the Client accepts Tellus' quote (in cases where no signed cover page forms part of this Agreement).

**Applicable Requirements** includes the Agreement, any applicable Law and/or Approval, Transport Laws, approved Request to Ship Waste Notice, Site Procedure for the Repository, an Authorisation to Ship Waste Notice, approved Delivery Plan, the Waste Acceptance Criteria, and any applicable Road Access Agreement.

**Approval** means consents, authorisations, registrations, certificates, permissions, permits, licences, approvals, registrations, determinations, administrative decisions or exemptions which are required from, by or with any authority or under any Law (including any conditions or requirements under any of them).

**Authorisation to Ship Waste Notice** is defined in section 2.2(b).

**Bank Bill Rate** means the one-month Australian Bank Bill Swap Reference Mid-Rate specified by Thomson Reuters Monitor Service Page BBSW at or about 10.00 am (Sydney time) on the first Business Day of each month or, if the foregoing is not available, a reasonable alternative source determined by Tellus.

**Business Day** means any day other than a Saturday, Sunday, or public holiday in South Australia, Northern Territory, Western Australia or New South Wales.

**Characterise, Characterised or Characterising** means a service to characterise Waste to determine information about its composition and physical, radiological and chemical characteristics.

**Claim** means any threatened or actual claim, action, demand, proceeding, judgment or order (including for the payment of money or damages) however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes, but is not limited to, an action, claim demand or proceeding based in contract or tort, or under statute, arising under an indemnity, based on personal injury or death or arising from the termination (or attempted termination) of the Agreement.

**Client Indemnified Parties** has the meaning given to it in section 9.6.

**Client Indemnifying Parties** has the meaning given to it in section 9.5.

**Collection Point** means the location where Waste is to be picked up for Transport, as agreed between the parties.

**Confidential Information** has the meaning given to it in section 12.8(a).

**Consequential Damages** means any special, punitive, exemplary, incidental or similar damages, or any actual or alleged loss of profit, loss of revenue, loss of goodwill, loss of future opportunities and loss of anticipated savings by a party whether arising in contract, tort (including negligence) or equity or under statute or any other cause of action whatsoever or howsoever arising and in each case whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

**Consumer Price Index** means the All Groups Consumer Price Index, Index numbers, quarterly, for Perth by the Australian Bureau of Statistics.

**Costs** has the meaning given to it in section 3.9.

**Default Rate** is as defined in section 6.1.

**Delivery Plan** is defined in section 1.3.

**Emergency** means an occurrence of events and/or circumstances that presents a risk of material harm to: (i) the public or other persons; (ii) any land (including any transport routes, a Repository and any adjoining property); and/or (iii) the environment, and, in each case, includes where Waste or other substance is spilled or escapes from its container/packaging and any accident during Transport.

**Emergency Response Procedure** means Tellus' procedure for responding to emergencies at the Repository or on the Access Road.

**Force Majeure Event** is defined in section 7.3.

**Initial Deposit** means, for any Waste to be transported to Tellus, 50% of the estimated fees owed to Tellus in respect of the Waste together with any expected applicable taxes.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a person: (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days of it being made; (b) a liquidator or provisional liquidator is appointed; (c) an administrator is appointed to it under Part 5.3A of the *Corporations Act 2001* (Cth); (d) a Controlling Officer (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to it or any of its assets; (e) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent; (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sub-section 459C(2) or section 585 of the *Corporations Act 2001* (Cth)) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable; and/or (g) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Intellectual Property Rights** means the rights comprised in any patent, copy right, design, trademark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, know how or confidential information throughout the world for the full period of the rights and all renewals and extensions.

**Latent Waste Issue** means that the Waste does not comply with the Waste Acceptance Criteria.

**Law** means: (i) International, federal, Commonwealth and State legislation including regulations, bylaws or other subordinate legislation; (ii) principles of common law and equity; (iii) requirements of authorities and Approvals; and (iv) guidelines, policies and codes that have been approved or registered under any applicable Law and/or authorities.

**Loss** means any damage, loss (excluding Consequential Damages), cost (including legal costs on a solicitor/own client basis), charge, expense, duty, obligation and/or liability, either direct or indirect.

**On-site Verification** means methods conducted by Tellus or its designee at the Repository to characterise Waste (i) to verify the accuracy of any previous Characterising or Testing completed on such Waste, and/or (ii) to assess its composition and physical, radiological and chemical characteristics.

**Owner** means (i) if Waste is owned by the Client, the Client or (ii) if Waste is owned by any other person, that person.

**Packaging or Packaged** means an activity where the Client (or other party approved by Tellus in writing) packages Waste to allow for Transport.

**Permanent Isolation, Permanently Isolating or Permanently Isolated** means the indefinite and permanent isolation below ground of Waste at the Repository.

**Personnel** means each and every employee, officer, agent or subcontractor of an entity and its Related Bodies Corporate.

**Pre-Gate Services** means any agreed services that occur before arriving at the Repository, including consulting, contracting, project managing and/or procurement of Characterising, Testing, Packaging and Transporting services required before the repository gate, as applicable.

**Qualifying Change in Law** means:

- (a) any change in (or new) Law that: (i) directly results in an increase in the costs of Tellus' delivery of the Services over and above Tellus' costs immediately prior to the Qualifying Change in Law; (ii) was not reasonably foreseeable by Tellus on the Agreement Date; and (iii) was not directly caused or contributed to by the conduct of Tellus after the Agreement Date;
- (b) the introduction in legislation of a tax, duty, charge, levy, excise, impost, fee, expense or other financial requirement relating to the existence or abatement of greenhouse gas emissions, or fuel or energy use, and includes any financial requirement arising from the *National Greenhouse and Energy Reporting Act 2007* (Cth) or a waste levy or tax (however described), which change directly results in an increase in costs of Tellus' delivery of the Services over and above Tellus' costs immediately prior to the Qualifying Change in Law; and/or
- (c) a change or addition to the conditions of an Approval, which change or addition: (i) directly results in an increase in the costs of Tellus' delivery of the Services over and above Tellus' costs immediately prior to the Qualifying Change in Law; and (ii) was not directly caused or contributed to by the conduct of Tellus.

**Qualifying Cost Increase** means a dollar figure equal to the amount of increased costs for Tellus to provide a Service compared to the same costs that applied to such Service at the (x) Agreement Date or (y) date immediately before the Qualifying Change in Law (whichever is greater). Additionally, such Qualifying Cost Increase must:

- (a) be the direct consequence of a Qualifying Change in Law,
- (b) be no greater than what would have been incurred by a competent contractor having taken all commercially reasonable and feasible steps to mitigate the impact of such Qualifying Change in Law, and
- (c) deduct any savings, reductions in costs or increases in income Tellus will receive from such Service as a consequence of or relating to the Qualifying Change in Law.

**Quarantine Notice** is as defined in section 3.4(a).

**Related Body Corporate** has the meaning given to it in the *Corporations Act* (Cth).

**Repository** means the Sandy Ridge geological repository.

**Request to Ship Waste Notice** is defined in section 2.2(a).

**Road Access Agreement** means the form of agreement to be provided by Tellus that details the requirements and restrictions concerning accessing the Access Road.

**Secure or Securing** means the service of either Storing or Permanently Isolating the Waste, as agreed between the parties.

**Services** means services Tellus provides to a Client under this Agreement (as specified in the cover page to this Agreement signed by both parties, or if no cover page, as specified in the quote agreed between the parties) including Pre-Gate Services and services related to Securing the Waste.

**Site Procedures** means: (i) in respect of a Repository, Tellus' requirements, policies and procedures concerning access to the Repository by the Client and its Personnel, as amended; and/or (ii) in respect of a non-Tellus owned or operated site where Waste is stored or generated or from which it is Transported, the Client's or Owner's requirements, policies and procedures concerning Tellus or its Personnel's access to such site, as notified by the Client to Tellus from time to time.

**Storage or Store or Storing** means the temporary storage of Waste at the Repository.

**Tellus Indemnified Parties** has the meaning given to it in section 9.5.

**Tellus Indemnifying Parties** has the meaning given to it in section 9.6.

**Tellus PIC™** means a Tellus Permanent Isolation Certificate™.

**Term** is as defined in section 8.1.

**Termination Date** is defined in section 8.4.

**Test or Testing** means a service to periodically test Waste to determine information about its composition and physical and chemical characteristics to determine whether such Waste complies with Waste Acceptance Criteria and/or whether Waste has changed significantly since it was Characterised.

**Transporting or Transportation or Transport** means a service procured by the Client (or other party approved by Tellus in writing) to transport Waste

that has been Packaged from a Collection Point to the Repository, including, as applicable, any related scheduling, loading, unloading, restraining of the load and interim storage.

**Transport Laws** means (i) the requirements and obligations under the Laws and government policies that regulate the safe transport of goods by heavy vehicle on roads within Australia, including the *Heavy Vehicle National Law and Regulations and Road Traffic (Administration) Act 2008* (WA) and *Road Traffic (Vehicles) Act 2012* (WA) and any other similar laws in any State or Territory, and related industry codes of practice; (ii) *Dangerous Goods Safety Act 2004* (WA), the *Dangerous Goods Safety Regulations 2007* (WA) and any other analogous or applicable Law or regulations in any State or Territory of Australia; (iii) the *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998* (Cth) or its equivalent as enacted in each State and Territory; and (iv) the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, the *Code for the Safe Transport of Radioactive Material, RPS C-2 (Rev. 1)*, the *Load Restraint Guide for Heavy Vehicles* and the *IAEA Safety Standards: Regulation for the Safe Transport of Radioactive Material*, in each case, as amended from time to time, to the extent they apply to the Services.

**Waste** means any waste, which may be further described in the signed cover page to this Agreement or in Tellus' quote to the Client (in cases where no signed cover page formed part of this Agreement).

**Waste Acceptance Criteria** means the criteria outlining Tellus' requirements for accepting Waste and the types of waste that Tellus can accept at its Repository.

**Waste Acceptance Notice** is as defined in section 3.4(a).

**Waste Receipt Notice** is defined in section 3.2.

**Waste Rejection Notice** is as defined in section 3.4(c).