

RED CHRIS JV - PURCHASE ORDER TERMS AND CONDITIONS – SUPPLY OF GOODS AND/OR SERVICES

1. Contract Formation

- (a) In consideration of the mutual promises and covenants set out in these terms and conditions, when Newcrest issues a Purchase Order to a Vendor, a contract between Newcrest and the Vendor will be formed, consisting of the Purchase Order and these terms and conditions (including the Schedule), which together are referred to in these terms and conditions as the **'Contract'**.
- (b) The Vendor is deemed to have accepted these Purchase Order terms and conditions (including any Specifications and Special Conditions contained in the Purchase Order) unless the Vendor gives written notice to Newcrest within 5 Business Days of receipt that it rejects any terms herein.
- (c) In the event of any inconsistency, conflict, ambiguity or discrepancy between the Purchase Order and these terms and conditions, the terms of the Purchase Order will take precedence.
- (d) To the extent permitted by Law, if the Vendor's terms and conditions are supplied to Newcrest in respect of the Goods and/or Services, those terms and conditions will be of no legal effect and will not constitute part of the Contract (notwithstanding any act, omission, representation, promise or other inducement of Newcrest, any Affiliate of Newcrest or Newcrest's Personnel, including if any Personnel of Newcrest accepts, signs or acknowledges those terms and conditions or attaches those terms and conditions to a Purchase Order).
- (e) The Vendor acknowledges that these terms and conditions may be updated between orders without notice to the Vendor, and any new terms or alterations to existing terms will be subject to clause 1 (b).

2. Definitions and Interpretation

- (a) In the Contract, unless the context requires otherwise:
 - 'Affiliate'** means, in relation to one entity (the first entity), any other entity which, directly or indirectly, controls, is controlled by or is under common control with, the first entity. It includes, in relation to Newcrest, any entity from time to time participating in or carrying on a joint venture business or partnership in which Newcrest or any of its Affiliates has a participating interest or is otherwise entitled to cast (or control the casting of) not less than 30% of the maximum number of votes that might be cast at a general meeting of the managing body of that joint venture or partnership.
 - 'Business Day'** means any day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia.
 - 'Confidential Information'** means any information that concerns the business, operations or affairs of Newcrest, or an Affiliate of Newcrest, that is disclosed to, or otherwise acquired by, the Vendor at any time in connection with the Contract or the supply of the Goods and/or Services, and which:
 - (i) is by its nature confidential;
 - (ii) is designated by Newcrest as confidential; or
 - (iii) the Vendor knows or ought to reasonably know is confidential, but does not include information which:
 - (iv) is or becomes public knowledge other than by a breach of the Contract or any other obligation of confidentiality;
 - (v) is in the possession of the Vendor without restriction in relation to disclosure on or before the date on which it is disclosed to, or acquired by, the Vendor; or
 - (vi) has been independently developed or acquired by the Vendor.
 - 'Control'** means, for the purposes of the definition of Affiliate, possession, directly or indirectly, of the power to direct or cause direction of management and policies through ownership of voting securities, contract, voting trust or otherwise. Control shall be deemed to exist if one entity owns, directly or indirectly, through shareholdings or otherwise, at least 50% of the voting shares of other voting units of participation in another entity.
 - 'Defect'** means any aspect of the Goods or Services not in accordance with this Contract, or any damage, error, omission, non-conformity, malfunction, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.
 - 'Defects Liability Period'** means:
 - (i) in relation to a Good, the period ending on the date which is 12 months following the Date for Delivery for the Good or the date of actual delivery of the Good to the Delivery Point (whichever occurs later);
 - (ii) in relation to a Service, the period ending on the date which is 12 months following the date on which the Service has been fully performed to Newcrest's satisfaction; or
 - (iii) the warranty period under the standard warranty terms for that Good or Service, whichever is longer.
 - 'Force Majeure Event'** means an event or circumstance beyond the reasonable control of the party claiming force majeure, not able to be overcome by the exercise of due care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the relevant event or circumstance by that party, and which could not have been reasonably foreseen.
 - 'Goods'** means the goods (if any) listed in the Purchase Order.
 - 'Governing Law'** means the laws of the Province of British Columbia, and the federal laws of Canada applicable therein.
 - 'Government Agency'** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
 - 'GST'** means any goods and services or harmonized sales tax imposed under the Excise Tax Act (Canada) and any provincial sales, retail sales and Québec sales tax imposed by a Canadian provincial Government Agency.
 - 'Intellectual Property Rights'** means any intellectual or industrial

property rights (including a patent, copyright, trade mark, industrial design, rights in confidential information, rights in relation to circuit layouts and similar rights, in each case whether or not registered) granted under any Laws anywhere in the world, but excluding any non-assignable moral rights and similar non-assignable personal rights of an author.

'Invoice' means an invoice supplied under the Contract.

'Laws' means:

- (i) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity; and
- (ii) the lawful requirements, directions or instructions of any Government Agency.

'Liabilities' means damages, fines, penalties, claims, losses, liabilities (whether accrued, actual, contingent, latent or otherwise), costs, fees and expenses of any kind (including legal costs and expenses on a full recovery basis).

'Lien' means all liens, claims, security interests or encumbrances of whatsoever nature arising from or in respect of the Goods and Services or the Site made by the Vendor or the Vendor's Personnel, including any claim of lien under the Lien Act or any claim in respect of statutory holdback funds.

'Lien Act' means the *Builders Lien Act*, SBC 1997, c. 45, as amended from time to time, or any successor legislation.

'Newcrest' means the legal entity shown on the Purchase Order.

'Newcrest Provided Items' means any materials, equipment or services to be provided by Newcrest to the Vendor for the performance of the Services.

'Personnel' means:

- (i) in relation to the Vendor, any of its employees, agents and representatives, and any Sub-Contractors and any of the employees, agents and representatives of any Sub-Contractors, involved either directly or indirectly in the supply of the Goods and/or Services; and
- (ii) in relation to Newcrest or an Affiliate of Newcrest, any of their respective past or present officers, employees, agents or representatives.

'Purchase Order' means the purchase order issued by Newcrest to the Vendor in respect of the supply of the Goods and/or Services, and includes any specifications or drawings that may be contained in it or annexed to it.

'Sanctioned Entity' means an entity that is the subject of sanctions imposed by Sanctions Laws.

'Sanctioned Individual' means a natural person who is the subject of sanctions imposed by Sanctions Laws.

'Sanctions Laws' means laws and regulatory requirements relating to the implementation of all applicable sanctions imposed by the laws, regulations and resolutions of the United Nations and the European Union and/or the laws and regulations of Australia, Canada, the United States of America, the United Kingdom and each of the countries in which Newcrest operates or trades.

'Services' means the services (if any) listed in the Purchase Order as varied in accordance with clause 14 from time to time.

'Sub-Contractor' means any person engaged by the Vendor in accordance with clause 20 to supply all or any part of the Goods and/or perform all or any part of the Services on behalf of the Vendor.

'Taxes' means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Governmental Agency including, (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, (ii) all withholdings on amounts paid to or by the relevant person, (iii) all employment insurance premiums, Canada, Québec and any other pension plan contributions or premiums, (iv) any fine, penalty, interest, or addition to tax, (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee, and (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law.

'Vendor' means the supplier of Goods and/or Services to Newcrest as nominated on the Purchase Order.

- (b) The following capitalised terms have the meaning given in the Purchase Order:
 - Currency;
 - Date for Delivery;
 - Delivery Point;
 - Total Price; and
 - Site.
- (c) Specifying anything in the Contract after the words 'includes', 'including' or 'for example' or similar expressions does not limit what else is included.
- (d) If Newcrest is a participant in an unincorporated joint venture, then Newcrest enters into this Contract as manager of the joint venture and agent of each of the other joint venture participants (from time to time) in that joint venture and Newcrest is severally liable (and will not be, nor construed to be, either jointly or jointly and severally liable) to the extent of its respective undivided interest in the joint venture for the

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acts and omissions of Newcrest. The Vendor acknowledges that the percentage interest of the joint venture participants, and the identity and number of joint venture participants, may change from time to time and Newcrest may at any time without the consent of the Vendor, novate its rights and obligations under the Contract to an incoming agent or manager on behalf of the joint venturer participants.

3. Agreement to supply Goods and/or perform the Services

- (a) The Vendor agrees to supply the Goods to and/or perform the Services for Newcrest in accordance with the terms of the Contract.
- (b) Newcrest will pay the Vendor the Total Price in accordance with the terms of the Contract.

4. Packaging and marking

- (a) The Vendor is responsible, at its cost, for packing the Goods.
- (b) The Vendor must pack and protect all Goods ready for dispatch in accordance with best industry practices and all applicable Laws and safety requirements, having regard to:
 - (i) the methods of carriage and handling;
 - (ii) the weather conditions through which the Goods will pass during the normal course of long distance transport;
 - (iii) the fact that the Goods may be stored in a sub-tropical climate; and
 - (iv) the need to facilitate inspections and repacking for on-forwarding.
- (c) Failure to comply with this clause 4 entitles Newcrest to reject the Goods and return them to the Vendor, at the Vendor's expense.
- (d) All Goods, delivery notes and other relevant documents must be clearly marked with:
 - (i) the relevant Purchase Order number;
 - (ii) the material number (where applicable); and
 - (iii) the Delivery Point specified in the Purchase Order.

5. Transport

- (a) Unless the terms of the Contract require Newcrest to arrange for the transportation of the Goods to Site, the Vendor shall be responsible (at its cost) for transporting the Goods to, and unloading the Goods at, the Delivery Point.
- (b) If Newcrest is transporting the Goods to Site, the Vendor must:
 - (i) still comply with its obligations in clause 4;
 - (ii) notify Newcrest's Representative of the details of those Goods ready for dispatch in sufficient time to enable transport to be arranged;
 - (iii) make the Goods available for transportation by Newcrest; and
 - (iv) provide transportation and loading/unloading instructions for the safe transportation of the Goods.
- (c) Transportation of the Goods by Newcrest under this clause 5 will not constitute acceptance by Newcrest of the Goods.

6. Product information

Prior to the delivery of any Goods to the Delivery Point, the Vendor must provide to Newcrest all safety information and other necessary or relevant data relating to Newcrest's use of the Goods, including material safety data sheets and operation manuals.

7. Dispatch and delivery of Goods

- (a) The Vendor must deliver the Goods to the Delivery Point by the Date for Delivery.
- (b) Without limiting clause 7(a), if there is a delay or likely to be a delay in the delivery by the Vendor of any Goods, the Vendor:
 - (i) must as soon as possible after becoming aware of the delay or likelihood of delay notify Newcrest in writing of the circumstances resulting in the delay; and
 - (ii) may request from Newcrest in writing an extension of time to the Date for Delivery to deliver the Goods to the Delivery Point, which Newcrest may grant in its absolute discretion.
- (c) Where a delay described in clause 7(b) occurs or is likely to occur for any reason and Newcrest has not granted the Vendor an extension of time to the Date for Delivery, Newcrest may in its absolute discretion by notice to the Vendor:
 - (i) cancel the Contract without incurring any Liability to the Vendor; and
 - (ii) acquire alternative supplies of any shortfall in delivery of the Goods from sources other than the Vendor.
- (d) If Newcrest acts in accordance with clause 7(c):
 - (i) any price difference which is incurred by Newcrest between the Goods that would have been supplied by the Vendor and the Goods that are actually procured from another source; and
 - (ii) transport costs incurred by Newcrest in respect of procuring the Goods from another source,
 will be a debt due and immediately payable from the Vendor to Newcrest except to the extent that the reason for the inability of the vendor to supply all or part of the Goods by the Date for Delivery was a direct result of:
 - (iii) any breach of the Contract by Newcrest or an act or negligent omission of Newcrest or an Affiliate of Newcrest; or
 - (iv) a Force Majeure Event.
- (e) The Vendor must provide executed copies of any manufacturer's or trade warranties associated with the Goods to Newcrest upon delivery and ensure that it assigns the benefit of any such unexpired manufacturer's or trade warranties to Newcrest (including any warranties from any Sub-Contractors).

8. Risk and title

- (a) Full unencumbered title to each Good will pass to Newcrest upon the earlier of:
 - (i) Newcrest making payment to the Vendor for that Good (without prejudice to the right of rejection of the Good under clause 9); and
 - (ii) the Good being delivered to the Delivery Point and accepted by Newcrest in accordance with clause 10.

- (b) Risk in each Good will remain with the Vendor until its delivery to the Delivery Point and acceptance by Newcrest in accordance with clause 10.

9. Inspection of Goods

The Vendor must ensure that Newcrest has access to the Goods for inspection at all times (including during the manufacture of the Goods) and must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Delivery Point or wherever the Goods are stored or in the course of manufacture.

10. Acceptance of Goods

- (a) Without limiting any other provision of the Contract, Newcrest must inspect the Goods within a reasonable time after delivery to the Delivery Point, and give notice to the Vendor whether or not Newcrest accepts or rejects the Goods. If Newcrest does not provide such notice within 7 Business Days after delivery to the Delivery Point, Newcrest will be deemed to have accepted the Goods.
- (b) Signed delivery documents will only mean confirmation of the number of packages or cartons delivered and will not constitute acceptance by Newcrest of the Goods.
- (c) Newcrest may reject the Goods if there are any Defects in the Goods.
- (d) Newcrest's rights to claim against the Vendor for Goods with any Defects is not limited or precluded by acceptance of the Goods by Newcrest or by payment of any money to the Vendor.

11. Performance of Services

- (a) The Vendor must perform and complete the Services by the date, specified in the Purchase Order.
- (b) The Vendor acknowledges that, unless otherwise agreed in writing with Newcrest, it must provide all Personnel and resources, including equipment and tools, in its performance of the Services. Any vehicles or machinery supplied by the Vendor must be properly registered in accordance with all Laws with the appropriate Government Agency, roadworthy and regularly inspected for mechanical safety.
- (c) Where the Services involve the supply and installation of equipment, any such equipment becomes the property of Newcrest upon the earlier of incorporation of such equipment into any of Newcrest's existing plant or equipment or payment of the Vendor's invoice that itemises the equipment in question.

12. Newcrest Provided Items

- (a) Subject to clause 12(b), Newcrest must provide and make available the Newcrest Provided Items (if any) to enable the Vendor to perform the Services.
- (b) The Vendor acknowledges and agrees that the Newcrest Provided Items:
 - (i) may be used by the Vendor for the performance of the Services but for no other purpose;
 - (ii) are provided to the Vendor for use at its and its Personnel's own risk, and the use or reliance by the Vendor or its Personnel on the Newcrest Provided Items does not in any circumstances relieve the Vendor's obligations under the Contract; and
 - (iii) to the extent applicable, must be returned by the Vendor to Newcrest in a clean and safe condition and in good working order subject only to fair wear and tear.
- (c) The Vendor acknowledges and agrees that where any Newcrest Provided Item is provided by a third party, Newcrest will not be liable to the Vendor for any liability, claim, cost, damages or expense suffered or incurred by the Vendor as a result of, or which may arise in connection with, the acts or omissions of that third party in the provision of the relevant Newcrest Provided Item.

13. Alternative Services

- (a) To the extent that the Vendor is unable to perform all or any part of the Services in accordance with the Contract for any reason, Newcrest may, in its absolute discretion, source such part of the Services from any third party ('Alternative Services').
- (b) If Newcrest exercises its rights to source Alternative Services, the incremental costs associated with sourcing the Alternative Services will be a debt due and immediately payable from the Vendor to Newcrest, except to the extent that the reason for the inability of the Vendor to perform all or part of the Services was as a direct result of:
 - (i) any breach of Contract by Newcrest or an act or negligent omission of Newcrest or an Affiliate of Newcrest; or
 - (ii) a Force Majeure Event.
- (c) Newcrest must use its commercially reasonable efforts in exercising its rights under this clause 13 to source the Alternative Services at a reasonable cost by having regard to the nature of the Services and the market for services similar to the Services at the time.

14. Variations to Services

- (a) Newcrest may at any time, issue a written direction to the Vendor which:
 - (i) increases, decreases or deletes any part of the Services;
 - (ii) changes the character, quality or quantity of any part of the Services; or
 - (iii) requires the Vendor to supply additional Services.
- (b) Subject to clause 14(d) If Newcrest issues a direction under clause 14(a), the Vendor must carry out the Services as varied by such direction.
- (c) If the Vendor becomes aware that a direction given by Newcrest is or would constitute a variation to the Services, a service is required which is additional to the Services, or that there is a need to vary the Services, the Vendor must immediately notify Newcrest in writing giving details of the nature and extent of the variation before carrying out the variation and subject to clause 14(d), only carry out the variation once Newcrest approves the variation in writing.
- (d) Newcrest and the Vendor must agree in writing on the scope and extent of the variation to the Services plus any adjustment to the Total

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Price before the Vendor carries out the varied Services.

- (e) If the parties are unable to agree on the adjustment to the Total Price within 5 Business Days of a variation being directed or approved by Newcrest, the variation will be valued by Newcrest by using the rates or prices included in the Purchase Order. Where such rates or prices are not applicable or available, the parties shall follow the process as set out in the relevant Dispute Resolution clause in clause 44(a).

15. Defects liability

- (a) The Vendor warrants the Goods and Services against any Defect during the Defects Liability Period.
- (b) Newcrest must promptly notify the Vendor of any Defect in the Goods or Services as soon as reasonably practicable after Newcrest becomes aware of that Defect.
- (c) Upon receipt of a notice from Newcrest of any Defect to any Goods or Services during the Defects Liability Period, the Vendor must:
 - (i) repair or replace the Goods free of charge; or
 - (ii) correct the Defect in the Services (including by providing additional Services necessary to correct the Defect or re-performing the Services) free of charge,
 in each case, prior to the expiration of the time specified by Newcrest in the notice.
- (d) The Defects Liability Period for the Goods or Services will be extended by the length of the period commencing with the Vendor's receipt of a notice from Newcrest under clause 15(c) and ending when the Vendor has repaired or replaced the Goods or corrected the Defect in the Services.
- (e) If the Vendor fails to repair or replace the Goods or correct the Defect in the Services within the specified period in the notice from Newcrest under clause 15(c), Newcrest may make good or engage another contractor to make good the Defect, in which case such costs will be a debt due and immediately payable by the Vendor to Newcrest.

16. Total Price

- (a) Subject to Newcrest's receipt and acceptance of the Goods in accordance with the Contract and/or the provision of the Services in compliance with the requirements of and the standards provided for in the Contract, Newcrest must pay the Total Price to the Vendor for the Goods and/or Services in the Currency.
- (b) The Total Price is deemed to include:
 - (i) any applicable GST; and
 - (ii) all expenses incurred by the Vendor in relation to the supply of the Goods and/or Services (except to the extent otherwise expressly stated).

17. Payment

- (a) Unless Newcrest agrees otherwise in writing, in order to receive any payment from Newcrest, the Vendor must issue an Invoice in compliance with this clause 17 to Newcrest at the end of the month in which the Goods are delivered and/or the Services are performed.
- (b) Subject to the other provisions of the Contract, any statutory withholding obligations and unless the parties agree otherwise, Newcrest must pay to the Vendor the amount shown on an Invoice within 30 days from the date in which an invoice issued in compliance with this clause 17 was received by Newcrest. Each Invoice shall contain reasonable details of the Goods supplied and/or the Services performed and quote the Purchase Order number provided to the Vendor by Newcrest in respect of the Goods and/or Services.
- (c) Each Invoice shall contain all documentary requirements imposed by any applicable Law for claiming input tax credits, input tax refunds or any other Tax refunds in connection with Taxes applicable to the delivery of the Goods and/or the performance of the Services.
- (d) If Newcrest disputes all or any part of the Invoice, Newcrest must pay the undisputed amount (if any) and notify the Vendor of the basis for disputing the balance before the due date for payment of the Invoice referred to in clause 17(b).
- (e) The payment by Newcrest of any amount (whether in dispute or not) will not constitute acceptance of the Goods and/or Services or admission of any liability or obligation to make that payment.

18. Set-off

Newcrest may deduct from moneys due to the Vendor any money due or payable or claimed to be due or payable from the Vendor or its Personnel to Newcrest under or for breach of the Contract or otherwise, including but not limited to:

- (a) all debts and moneys due from the Vendor or its Personnel to Newcrest;
- (b) all Liabilities which Newcrest may have paid, suffered or incurred which the Vendor or its Personnel is or are liable to bear, pay or reimburse to Newcrest; and
- (c) the amount of any Lien not removed by the Vendor, or any cost or expense incurred by Newcrest to remove such Lien.

19. Health, safety and environment

- (a) The Vendor must, and must ensure that all its Personnel:
 - (i) at all times when on Site, act in accordance with Newcrest's policies and procedures;
 - (ii) at all times comply with all applicable Laws;
 - (iii) at all times when on Site, comply with all reasonable directions of Newcrest (including in relation to health and safety, industrial relations and environmental matters);
 - (iv) obtain and maintain, at the Vendor's expense, all licences or permits required under applicable Laws for the conduct of all activities performed by them in connection with this Contract;
 - (v) adhere to accepted safe working practices and take reasonable precautions against accident or damage occurring on or to any Site from any cause;
 - (vi) minimise disruption to the operating Site;

- (vii) not harm or damage the environment in the course of undertaking activities in connection with this Contract;
- (viii) immediately report to Newcrest and clean up at its own cost any damage to the environment caused by it or its Personnel, in connection with the supply of the Goods and/or performance of the Services under this Contract (including any pollution or contamination of or outside the Site);
- (ix) ensure the safe transportation, handling, storage and usage of all substances brought onto the Site in connection with the supply of the Goods and/or performance of the Services under this Contract; and
- (x) provide all information and assistance as Newcrest reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Contract, the supply of the Goods or the performance of the Services.

- (b) If the Vendor or any of its Personnel fail to comply with any of the requirements of this clause 19, Newcrest may in its absolute discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions Newcrest thinks appropriate.
- (c) The Vendor acknowledges and agrees that if it enters onto a Site, it does so at the Vendor's own risk. The Vendor must ensure that its Personnel are also aware that they enter onto a Site at their own risk.
- (d) The Vendor and its Personnel must permit Newcrest to have access to the Vendor's premises, documentation and data and to interview the Vendor's Personnel in connection with the supply of the Goods and/or the performance of the Services, as necessary for Newcrest to verify, monitor and audit the Vendor's compliance with the health, safety and environmental conditions in this clause 19 and Newcrest's policies and procedures identified in clause 19(a)(i).
- (e) Nothing in this clause 19 limits or removes any obligation or duty imposed in the Vendor or any of its Personnel to secure or have regard to the health and safety of any of its Personnel.

20. Novation, assignment and sub-contracting by Vendor

- (a) The Vendor must not novate the Contract, assign all or any part of its rights under the Contract, or sub-contract or delegate all or any part of its obligations under the Contract (including the delivery of the Goods or the performance of the Services), without the prior written consent of Newcrest, such consent not to be unreasonably withheld.
- (b) A Sub-Contractor will be considered the agent and representative of the Vendor and no sub-contracting or assignment will relieve the Vendor of its obligations under the Contract.

21. Vendor's Covenants, Representations and Warranties

- (a) The Vendor represents and warrants to Newcrest that:
 - (i) it has good and marketable title to the Goods and the right to sell the Goods to Newcrest on the terms of the Contract;
 - (ii) Newcrest will receive good title to the Goods, free and clear of all interests including any lien, charge or encumbrance;
 - (iii) the Goods comply with all the requirements of the Contract and correspond in all respects with the specifications and the representations made by the Vendor;
 - (iv) Newcrest has the full benefit of any manufacturer's or trade warranties that may be applicable to the Goods or any part of the Goods and on delivery of the Goods the Vendor will assign the benefit of any such unexpired manufacturer's or trade warranties to Newcrest (including any warranties from any Sub-Contractors);
 - (v) the Goods are new (unless otherwise specified), of merchantable quality and free from any defects in materials, workmanship and design;
 - (vi) the Goods are fit for any purpose which Newcrest has made known to the Vendor and are also fit for the purpose for which Goods of a similar nature are commonly supplied;
 - (vii) the Goods comply with all Laws in force in the jurisdiction in which they are supplied; and
 - (viii) the use of Goods by Newcrest, including resale, will not infringe any third party Intellectual Property Rights.
- (b) In performing the Services, the Vendor and its Personnel will:
 - (i) exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of work comparable to the Services;
 - (ii) act in a workmanlike, careful, safe and proper manner;
 - (iii) hold all necessary permits, licences and authorities required by Law to supply the Services at the Site;
 - (iv) ensure the Services are fit for any purpose notified by Newcrest and in the absence of notification, for the purpose for which services of that or a similar type are commonly acquired;
 - (v) perform the Services in a timely manner; and
 - (vi) comply with all the requirements of the Contract.
- (c) The Vendor represents and warrants to Newcrest that it has not entered into the Contract (on the terms and conditions recorded herein) in reliance on any representation expressly or impliedly given by or on behalf of Newcrest, any Newcrest Personnel or any Affiliate of Newcrest, other than to the extent that a relevant representation is expressly recorded in the terms and conditions of the Contract.
- (d) The Contract does not exclude or in any way limit any warranties provided by Law in relation to the Goods or Services.

22. Vendor's insurance

- (a) Neither the existence, or substance, of this insurance clause, nor the failure of the insurance policies to respond for any reason, will limit the Vendor's liability to indemnify Newcrest and its Affiliates in accordance with this Contract.
- (b) The Vendor shall effect and maintain throughout the term of this Contract, at its own expense, the following insurances:

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- (i) General Liability Insurance – covering all legal liabilities to pay damages or compensation arising out of any bodily injury or personal to or death of any person or any loss of or damage to (including resulting loss of use) any property. Such insurance must, unless prohibited by law:
 - (A) provide cover in respect of each and every occurrence for an amount not less than CAD\$5,000,000 per occurrence;
 - (B) name as additional insureds, Newcrest (and its Personnel for their respective rights and interests) with respect to liability Newcrest and its Personnel may incur due to acts and omissions of the Vendor;
 - (C) include a cross liability clause noting that each insured party shall be considered a separate entity and that the insurance shall apply as if a separate policy has been issued to each insured party;
 - (D) cover liability arising from Newcrest’s goods in the possession or custody of the Vendor and held off the premises; and
 - (E) provide that the policy is extended to cover worker-to-worker injury liability risks;
 - (F) include a Contingent Employers Liability Clause;
 - (G) waive all rights of subrogation against Newcrest, its Affiliates and all of their respective Personnel; and
 - (H) include an extension of coverage for non-owned automobiles and unlicensed automobiles owned, leased or rented by the Vendor.
- (ii) Workers’ Compensation Insurance – covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or bodily injury or personal injury to, the Vendor’s workers or any person deemed to be a worker. Such insurance must, unless prohibited by law:
 - (A) be in the names of the Vendor and the Vendor’s sub-contractors for their respective rights and interests, and
 - (B) be endorsed to protect the interests of Newcrest as principal under the Contract for benefits under statute and at common law; and
 - (C) waive all rights of subrogation against Newcrest, its Affiliates and all of their respective Personnel.
- (iii) Motor Vehicle/Automobile Liability Insurance – to be procured by the Vendor if the performance of the Contract requires the Vendor or its Personnel to use or provide for the use of motor vehicles. Such insurance must cover all legal liability to pay damages or compensation arising out of any bodily injury or personal injury to or death of any person or any loss of or damage to any property caused by the ownership, possession, maintenance, operation or use of registered motor vehicles (which shall include any item of plant or equipment which is required to be licensed in accordance with the requirements of any statute relating to motor vehicles) belonging to or under the physical or legal care custody or control of the Vendor. Such insurance must:
 - (A) Include insurance that is compulsory under applicable Law, and be for the lesser of an amount of not less than CAD\$5,000,000; or the statutory limit, if it is higher than CAD\$5,000,000, in respect of each and every loss and unlimited in the aggregate in respect of all losses occurring during each period of insurance;
 - (B) unless prohibited by law, be endorsed to:
 - (I) insure, as an additional insured, for its vicarious contingent liability, Newcrest (and its Personnel for their respective rights and interests) with respect to liability Newcrest or its Personnel may incur due to acts and omissions of the Vendor;
 - (II) include a cross liability clause noting that each insured party shall be considered a separate entity and that the insurance shall apply as if a separate policy has been issued to each insured party; and
 - (III) not allow for subrogation claims against, or contribution from, Newcrest or its Affiliates or any of their respective Personnel.

In addition, the Vendor shall comply with all statutory requirements concerning the arrangement of compulsory motor vehicle insurance.
- (iv) Professional Liability (Errors and Omissions) Insurance (where the Vendor is providing design or other professional advice or opinions) – for an amount not less than CAD\$5,000,000, covering liability resulting in a loss to Newcrest or its Affiliates, arising from Newcrest or its Affiliates relying upon the professional services of the Vendor.
- (v) “Broad For” All Risks Property and Vendor’s Equipment Insurance – covering loss of, or damage to, all property and materials to be used, or incorporated into project by Vendor or Vendor’s Personnel (including any goods or property of Newcrest in the possession or control of Vendor), and all plant and equipment used for the performance of Vendor’s obligations under this Contract, for a limit of not less than full replacement cost. Such insurance must include extensions for Earthquake, Flood and Named Storm Wind perils. Such insurance must also cover property in transit to the Site, and must not allow for subrogation claims by the insurer against Newcrest or its Affiliates or any of their respective Personnel.
- (vi) Aviation Liability insurance, if (A) owned or chartered aircraft are to be procured by the Vendor in the performance of the Contract, or (B) Newcrest otherwise requires the Vendor or its Personnel

to use or provide for the use of any aircraft. Such insurance shall cover all legal liabilities to pay damages or compensation arising out of any bodily injury or personal injury to or death of any person or any loss of or damage to (including resulting loss of use) any property. Such insurance must, unless prohibited by law:

- (A) provide cover in respect of each and every occurrence for an amount not less than CAD\$10,000,000 per occurrence;
 - (B) name as additional insureds, Newcrest (and its Personnel for their respective rights and interests) with respect to liability Newcrest and its Personnel may incur due to acts and omissions of the Vendor;
 - (C) include a cross liability clause noting that each insured party shall be considered a separate entity and that the insurance shall apply as if a separate policy has been issued to each insured party; and
 - (D) waive all rights of subrogation against Newcrest, its Affiliates and all of their respective Personnel.
- (c) General Requirements for all Insurances
 - (i) Notwithstanding anything to the contrary, the Vendor will be responsible for and will bear the cost of any excess applicable to the insurances provided for in the insurance paragraphs above.
 - (ii) The Vendor must provide Newcrest with such evidence as Newcrest may require that the Vendor and Sub-Contractors are, and remain, insured.
 - (iii) The Vendor will ensure all insurers provide Newcrest with a minimum of 30 days’ notice of cancellation, or material change in relation to all insurances required to be effected by the Vendor.
 - (iv) In the event that the Vendor fails to effect or maintain any of the Vendor’s insurances, Newcrest may at its sole option and without being under any duty or obligation to do so:
 - (A) effect and maintain such insurances and deduct the cost thereof from any moneys due to the Vendor; and/or
 - (B) treat the failure to insure as a default under the Contract.
 - (v) The Vendor will ensure that its Sub-Contractors have the benefit of, or effect and maintain insurances similar to, the insurances required to be effected by the Vendor.
 - (vi) The Vendor and its Sub-Contractors are responsible for insuring their own vehicles, plant and equipment. No insurance coverage is provided by Newcrest.
 - (vii) This insurance clause will survive the early termination of the Contract.

23. Indemnities

- (a) Subject to clause 23(b), the Vendor must indemnify and keep indemnified Newcrest against any Liabilities arising directly or indirectly from:
 - (i) any breach by the Vendor or the Vendor’s Personnel of the Contract (including breach of any representation or warranty);
 - (ii) any negligent, reckless or intentional act or omission of the Vendor or the Vendor’s Personnel, including any such act or omission resulting in:
 - (A) damage to, or loss or destruction of, any property of Newcrest, Newcrest’s Personnel or any third party; or
 - (B) personal injury, illness or death to any person;
 - (iii) breach of Law by the Vendor or the Vendor’s Personnel;
 - (iv) any claim made or filed by the Vendor or the Vendor’s Personnel in respect of, or pursuant to, the Lien Act or any relevant legislation concerning income tax, workers’ compensation, annual leave and long service leave (including vacation and leaves required by applicable Law), any applicable award, determination or agreement of a competent court or tribunal;
 - (v) any harm or damage to the environment caused by or in connection with the delivery of Goods by the Vendor; and
 - (vi) the receipt of the Goods and/or Services, or Newcrest’s possession, use or exploitation of any materials supplied, or Intellectual Property Rights assigned or licensed, by the Vendor to Newcrest under or in connection with the Contract infringing the rights (including Intellectual Property Rights) of any person, and all claims alleging such infringement.
- (b) The Vendor will not be liable under clause 23(a) to the extent that the Liability was caused, or contributed to, by the negligent acts, negligent omissions or wilful misconduct (as applicable) of Newcrest or any Affiliate of Newcrest.
- (c) Without limiting clause 23(a), if any Lien is claimed, lodged or registered against the lands, premises or interests comprising the Site, the Vendor must at its cost and expense promptly cause such Lien to be removed, including, where applicable, by posting security. If the Vendor fails to cause such Lien to be removed within a period of time specified by Newcrest then Newcrest may take all steps necessary or desirable to remove such Lien at the Vendor’s expense and risk (including Newcrest’s legal expenses on a solicitor and own client basis).

24. Limitation of liability

- (a) Subject to clause 24(b), the aggregate liability of the Vendor to Newcrest under or in connection with the Contract shall not exceed an amount equal to the Total Price (**‘Liability Limitation’**).
- (b) The Liability Limitation in clause 24(a) does not apply to any Liability of the Vendor, including under an indemnity whether or not expressly referred to in this clause, for:
 - (i) a failure by the Vendor to effect and maintain the insurances required by the Contract;
 - (ii) events or circumstances in respect of which insurance proceeds are available, and amounts so received will not be included when calculating the Liability Limitation;

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- (iii) events or circumstances in respect of which insurance proceeds would have been available under insurance required by the Contract in relation to those events or circumstances but for:
- (A) a failure of the Vendor to obtain or maintain the insurances in accordance with clause 22;
 - (B) a failure by the Vendor to claim under the relevant insurances (or comply with the claim procedures under the relevant insurances); or
 - (C) the Vendor not complying with any provision, obligation or duty owed under the relevant insurance policy;
- (iv) personal injury, illness or death of any person;
- (v) loss of, or damage to any property of Newcrest, Newcrest's Personnel or any third party;
- (vi) infringement of any Intellectual Property Rights;
- (vii) breach of confidentiality obligations;
- (viii) fraud or dishonesty;
- (ix) unlawful or illegal acts; or
- (x) negligent, reckless or intentional act, negligent omission or wilful misconduct.
- (c) Subject to clause 24(d), Newcrest's aggregate liability to the Vendor under the Contract shall not exceed an amount equal to the Total Price.
- (d) The limitation in clause 24(c) does not apply to the liability of Newcrest to pay the Total Price in accordance with and subject to the terms of this Contract.
- 25. Exclusion of liability**
- (a) In this clause 'Excluded Loss' means:
- (i) any indirect and consequential loss; and
 - (ii) loss of use, loss of actual or anticipated revenues, loss of income or profits, loss of goodwill, loss of bargain or loss of opportunities, anticipated savings or loss of or corruption of data.
- For the purpose of the definition of 'Excluded Loss', 'indirect and consequential loss' means, and will be strictly limited to, Liability which:
- (iii) at the time of entering into the Contract, was in the contemplation of the parties as being the probable result of the event giving rise to the Liability and that comprised of special circumstances of which the parties were aware; and
 - (iv) does not arise naturally according to the usual course of things.
- (b) Subject to clause 25(c), neither party shall be liable to the other party for any Excluded Loss which may be suffered by the other party under or in connection with this Contract.
- (c) The limitation in clause 25(b) does not apply to liability of either party, including under an indemnity whether or not expressly referred to in this clause, for:
- (i) with respect to the Vendor, any Excluded Loss covered by insurance proceeds that are available under insurances required by the Contract in relation to that event or circumstance;
 - (ii) personal injury, illness or death of any person;
 - (iii) breach of confidentiality obligations;
 - (iv) fraud or dishonesty;
 - (v) unlawful or illegal acts;
 - (vi) negligent, reckless or intentional act, negligent omission or wilful misconduct; or
 - (vii) liability under an indemnity relating to infringement of Intellectual Property Rights.
- 26. Intellectual Property Rights**
- (a) To the extent that any Intellectual Property Rights subsist in the Goods or in any part of them (including in any firmware or other software embedded within or supplied with the Goods), the Vendor hereby grants to Newcrest a perpetual, irrevocable, non-exclusive, worldwide and royalty-free licence to exercise those rights as required to use, maintain, re-sell or otherwise exploit the Goods, integrate the Goods with other products, or specify requirements for goods or services related to the Goods (and to authorise Newcrest's Affiliates to do so, and to authorise third parties to do so in connection with the provision of services for, or receipt of services from, Newcrest or any of its Affiliates). This licence is transferable to any of Newcrest's successors in title to the Goods.
- (b) The Vendor hereby assigns to Newcrest all rights, title, and interests, including all Intellectual Property Rights, in any works relating to or created during the performance of the Services, including any outputs, reports, or deliverables, produced by the Vendor, except for any pre-existing Intellectual Property Rights owned by the Vendor in such works. The Vendor will ensure that its Personnel involved in the creation of such work product to waive all moral rights in favour of Newcrest and its Affiliates. For all pre-existing Intellectual Property Rights relevant to the Services or otherwise incorporated in the work produced by Vendor for Newcrest, the Vendor hereby grants to Newcrest and its Affiliates a perpetual, irrevocable, non-exclusive, worldwide and royalty-free licence necessary to enable Newcrest, its Affiliates and any third party engaged by Newcrest or its Affiliates to lawfully use those Intellectual Property Rights for Newcrest or its Affiliates' operational purposes (whether known or implied) or the purposes for which Services of that type are commonly used. For the removal of doubt, this licence extends to the use, modification, reproduction and adaptation of any outputs, reports or deliverables produced by the Vendor during the performance of the Services.
- 27. Rights Under the Lien Act**
- Without limiting clause 17, the parties acknowledge that, in British Columbia, contracts or subcontracts for the provision of certain materials and/or services may be subject to the provisions of the Lien Act.
- 28. Confidentiality**
- (a) The Vendor must not, and must ensure that the Vendor's Personnel do not, without the prior written approval of Newcrest, use Confidential Information for any purpose other than as necessary for the supply of the Goods or performance of the Services under the Contract, or otherwise disclose any Confidential Information, other than to the extent such disclosure is expressly required by Law or by the rules of an applicable stock exchange.
- (b) Except as required by Law, no media release or public announcement may be made by the Vendor in relation to the existence or subject matter of the Contract unless the Vendor first receives the prior written consent of Newcrest and Newcrest approves, in writing, the wording of such media release or public announcement and the manner of publication.
- 29. Termination**
- (a) Newcrest may terminate the Contract at any time without cause by giving no less than 24 hours written notice to the Vendor, and clause 29(d) will apply.
- (b) Without limiting clause 29(a), if the Vendor becomes insolvent, fails to provide the Goods or perform the Services in accordance with the Contract, or if the Vendor or its Personnel are negligent or engage in unlawful conduct or wilful misconduct, Newcrest may terminate the Contract by written notice.
- (c) Upon receiving a notice of termination, the Vendor will immediately cease providing the Goods and/or performing the Services and comply with Newcrest's directions including, without limitation, any direction to protect Newcrest's property in the Vendor's possession.
- (d) If Newcrest terminates the Contract under clause 29(a) (but not otherwise), subject to Newcrest's other rights under the Contract (including rights to withhold or set-off payment and to recover damages), Newcrest will pay the Vendor the value of the proportion of the Goods provided and/or the Services performed, in accordance with the Contract, up to the date of termination, which have not been paid for.
- (e) Other than as set out in clause 29(d), Newcrest will not be liable for any other Liability suffered by the Vendor as a consequence of, or arising out of, or in connection with, the termination of the Contract.
- 30. Taxes**
- (a) Excluding any GST payable by Newcrest in respect of a supply received under or in connection with this Contract, Newcrest does not assume and will not be liable for any Taxes which may be or become payable by the Vendor in respect of a supply made under or in connection with this Contract, and the Vendor will indemnify and save harmless Newcrest and the directors, officers, employees and agents of Newcrest from and against all such Taxes.
- (b) Newcrest shall be entitled to deduct and withhold from any amount payable to the Vendor under this Contract such Taxes or other amounts as Newcrest is required to deduct and withhold with respect to such payment under applicable Law. To the extent that Taxes or other amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the Vendor in respect of which such withholding was made.
- (c) Subject to clause 30(i), words or expressions used in this clause which are defined in the *Excise Tax Act* (Canada) or in the *Provincial Sales Tax Act* (British Columbia) and related imposition Acts have the same meaning in this clause.
- (d) Despite any other provision in this Contract, if the Vendor makes a supply under or in connection with this Contract on which GST is imposed to any extent (not being a supply the consideration for which is specifically described in this Contract as 'GST inclusive' or 'deemed to include any GST'):
- (i) The consideration payable or to be provided for that supply under this Contract is increased by, and Newcrest must also pay to the Vendor, an amount equal to the GST payable by the Vendor on that supply; and
 - (ii) The amount by which the GST exclusive consideration is increased must be paid to the Vendor by Newcrest at the same time as the GST exclusive consideration is payable or to be provided.
- (e) Notwithstanding any other provision of this Contract, Newcrest is not required to pay any amount unless it has received a valid tax invoice (or valid adjustment, debit or credit note, as applicable) containing all the information required under applicable legislation for Newcrest to be entitled to claim any input tax credit or refund or similar treatment, as applicable, for that taxable supply.
- (f) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit, refund or similar treatment to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
- (g) If, at any time, an adjustment event arises in respect of any supply made by a party under this Contract, a corresponding adjustment must be made between the parties. Payments to give effect to the adjustment must be made between the parties and the Vendor must issue a valid adjustment, debit or credit note, as applicable, in relation to the adjustment event.
- (h) This clause does not merge on completion or termination of this Contract.
- (i) For the purposes of this clause, 'GST' means any goods and services or harmonized sales tax imposed under the *Excise Tax Act* (Canada) and any provincial sales, retail sales and Québec sales tax imposed by a Canadian provincial Government Agency.

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31. Personal Property Security Act

- (a) The Vendor may register with the personal property registry any Security Interest over the Goods which it reasonably considers arises out of the Contract. If it does, it must, within 20 days after registration of the financing statement, provide Newcrest with a copy of the financing statement or verification statement in compliance with section 43(15) of the PPSA.
- (b) For the purposes of this clause:
 - (i) **'PPSA'** means the *Personal Property Security Act* (British Columbia) and all regulations and other subordinate legislation pursuant to it; and
 - (ii) **'Security Interest'** means a security interest under the PPSA.
- (c) Unless otherwise defined, terms and expressions in the Contract that are defined in the PPSA shall have the same meaning as in the PPSA.

32. Anti-bribery

- The Vendor must:
- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), the *Criminal Code and Corruption of Foreign Public Officials Act* (Canada), and the *Bribery Act 2010* (United Kingdom) (**'Relevant Requirements'**);
 - (b) not give or offer or promise to give, receive, or agree to give, offer, accept, or promise to give, offer or accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;
 - (c) have and maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and enforce them where appropriate;
 - (d) not prepare, approve or execute any contract or other document or make any record in connection with this Agreement that the Vendor knows, or ought reasonably know, is false, inaccurate or misleading;
 - (e) promptly report to Newcrest any request or demand for any undue financial or other advantage of any kind received by the Vendor in connection with the performance of this Contract which will or may be in breach of the Relevant Requirements; and
 - (f) procure, and be responsible for, the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with this Contract on behalf of the Vendor or under its supervision or control.

33. Sanctions

- (a) The Vendor must comply with all applicable Sanctions Laws in exercising its rights and performing its obligations under this agreement.
- (b) The Vendor must not supply to Newcrest any Goods or Services sourced in whole or in part:
 - (i) in contradiction of Sanctions Laws;
 - (ii) from a Sanctioned Entity; or
 - (iii) from a Sanctioned Individual.
- (c) The Vendor represents and warrants that:
 - (i) The Vendor is not, and is no way connected with, a Sanctioned Entity or a Sanctioned Individual; and
 - (ii) The Vendor does not, nor will it, sell any products acquired from a Sanctioned Entity or any Sanctioned Individual or acquired in contradiction of Sanctions Laws.

34. Human Rights

- (a) The Vendor agrees:
 - (i) that it will not engage in any conduct that is inconsistent with recognised international human rights Laws and standards and local Laws in the countries in which it operates, including as outlined in the United Nations Guiding Principles on Business and Human Rights;
 - (ii) that it will not use forced, bonded or involuntary labour to perform any Services in relation to this Contract; and
 - (iii) that children will not be hired to work in relation to this Contract before completing their compulsory education (as determined by any applicable local Laws) and, in any event, subject to relevant exceptions in the *Minimum Age Convention 1973*, will not be hired to work at the age of fifteen or younger; and
 - (iv) that it will not procure or sell any goods or services acquired or performed in connection with this Contract in contradiction with clauses 32(a)(i), (ii) or (iii).
- (b) The Vendor will record and report all credible allegations against it, of human rights abuses and violations of international human rights Laws and standards or local Laws, to Newcrest within a reasonable time.
- (c) The Vendor understands that the obligations contained in this clause 32 are essential to this Contract. The Vendor agrees to indemnify Newcrest and hold Newcrest harmless with respect to any liability arising from any contravention of this clause by the Vendor.
- (d) Subject to clause 32(e), if Newcrest determines that a contravention of this clause 32 has occurred, Newcrest shall notify the Vendor in writing and the Vendor shall remedy the contravention immediately and in any event by no later than fourteen days from receiving such notification. In the event that Newcrest determines that Vendor has not remedied the contravention fourteen days after receiving such notification, then Newcrest may terminate this Contract immediately and such termination shall be for cause.
- (e) If Newcrest determines that a contravention of this clause 32 has occurred, Newcrest at its absolute discretion may elect to instead terminate this Contract by providing 24 hours written notice to the Vendor of its intention to terminate under this clause 32(e). Such termination shall be effective immediately upon expiry of the 24 hour period and shall be for cause.

35. No waiver

No waiver of or variation to the Contract will be binding on the parties unless in writing signed by the parties.

36. Entire agreement

The Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter (including any terms and conditions supplied by the Vendor).

37. Amendment

The Contract will not be amended, modified, varied or supplemented except in writing signed by the parties.

38. Independent Contractor

The relationship between Newcrest and the Vendor is a relationship of principal and independent contractor. Nothing in the Contract will be construed to create a relationship of employment, agency or partnership. The Vendor does not have any authority to contract with third parties on behalf of Newcrest or to otherwise bind Newcrest, without Newcrest's prior written agreement, and nothing contained in this Contract will give or is intended to give any rights of any kind to third persons.

39. Rights cumulative

The rights and remedies of Newcrest provided in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.

40. Discretion on consent

Where the consent, approval or agreement of a party is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by that party in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.

41. Severability

Any provision in the Contract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Contract or the validity or enforceability of that provision in any other jurisdiction.

42. Costs

Each party must bear its own costs arising out of the negotiation, preparation and execution of the Contract.

43. Vienna Convention does not apply

The application of 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

44. Dispute Resolution

- (a) If any dispute, controversy or claim arises under the Contract, a party will provide written notice ("**Dispute Notice**") to the other of the matters in dispute and the parties will meet for the purpose of resolving the dispute within 21 days after the service of the notice provided under this clause 44(a).
- (b) If the dispute is not resolved within 28 days after the service of the notice provided under clause 44(a), either party may call a meeting of a member of the senior management of each of Newcrest and the Vendor (or their respective nominees) who must meet within 7 days after the service of this request for meeting, to attempt to resolve the dispute in good faith and/or to mutually agree on an alternative dispute resolution process to be undertaken by the parties in relation to the dispute.
- (c) If the dispute is not resolved within 10 days after the service of the notice provided under clause 44(b), the parties must submit the dispute to mediation. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the administrator of the ADR Institute of BC upon request by either party. Any mediation meetings and proceedings under this clause must be held at the Site or the capital city of the province in which the Site is located (at Newcrest's discretion).
- (d) Without otherwise limiting clause 44(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 44(a).
- (e) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 44(a) to 44(d) have been complied with.
- (f) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any dispute.