

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 the Company 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 Related Body Corporate 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:
 - 'Business Day'** means a weekday on which banks are open in the capital of the State referred to in the relevant Governing Law provision in the Schedule, excluding weekends and 27 to 31 December (inclusive).
 - 'Confidential Information'** means any information that is disclosed to, made available to, or otherwise acquired by, the Vendor at any time in connection with the Contract or the supply of the Goods and/or Services, which:
 - (i) relates to the business, operations, facilities or affairs of Newcrest or a Related Body Corporate of Newcrest;
 - (ii) relates to the clients, Personnel, contractors or service providers (other than the Vendor) of Newcrest or a Related Body Corporate of Newcrest;
 - (iii) relates to the Newcrest Provided Items;
 - (iv) is Data;
 - (v) by its nature confidential;
 - (vi) is designated by Newcrest as confidential; or
 - (vii) the Vendor knows or ought to reasonably know is confidential, but does not include information which:
 - (viii) is or becomes public knowledge other than by a breach of the Contract or any other obligation of confidentiality; or
 - (ix) is already known by, has been independently developed by, the Vendor without breach of this Contract or any other obligation of confidentiality.
 - 'Control'** means, for the purposes of the definition of Related Body Corporate, the practical capacity, exercisable by any means (formal or informal), to determine the outcome of decisions about the management, or financial or operating policies, of the entity, including by way of ownership of securities (including stocks or shares), the exercise of voting power in relation to securities (including stocks or shares), the exercise of voting power at a meeting of directors or a board of management, the ability to control the appointment or removal of directors or managers or otherwise.
 - 'Data'** means any:
 - (i) data or information which relates to the business, operations, facilities or affairs of Newcrest or its Related Bodies Corporate, in whatever form the information or data exists, including any:
 - (A) documentation or records related to such data or information;
 - (B) database in which such data or information is contained; and
 - (C) data or information captured, compiled or generated as part of the works under the Contract;
 - (ii) data or information which is provided to the Vendor by or on behalf of Newcrest, or which Newcrest makes accessible to the Vendor, in connection with the Contract or the works under the Contract;
 - (iii) outputs or derived data resulting from the processing, use, manipulation or modification of data or information described in clauses (i) and (ii) above; and
 - (iv) any copies of any data or information described in clauses (i) to (iii) above.
 - 'Data Subject'** means the person to whom Personal Information relates.
 - '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.
- 'Eligible Data Breach'** has the meaning given in the *Privacy Act 1988* (Cth).
- 'Developed IP'** means all Intellectual Property Rights (present or future) in material (in any form) or output produced under or in connection with the Contract, or in the provision of the Goods and/or Services, by or on behalf of the Vendor, but not including Vendor Background IP.
- '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 applicable governing Law set out in the Schedule.
- 'Government Agency'** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- 'Intellectual Property Rights'** means all intellectual or industrial property rights (including patent rights, copyright, trade marks, designs, rights in confidential information (including trade secrets), know how, rights in relation to circuit layouts and all other rights resulting from intellectual activity, in each case whether or not registered) granted under any Laws anywhere in the world. These rights include:
 - (i) all rights in all applications to register these rights; and
 - (ii) all renewals and extensions of these rights.
- 'Invoice'** means a tax invoice (issued in accordance with the relevant local tax Laws) 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, claims, losses, liabilities, costs and expenses of any kind (including legal costs on a full recovery basis).
- 'Modern Slavery'** has the meaning given in the *Modern Slavery Act 2018* (Cth).
- 'Moral Rights'** has the meaning given in the *Copyright Act 1968* (Cth) or similar legislation in other countries.
- 'Newcrest'** means the legal entity shown on the Purchase Order.
- 'Newcrest Background IP'** means all Intellectual Property Rights (present or future) in material (in any form) provided by or on behalf of Newcrest or any of its Related Bodies Corporate to the Vendor under the Contract, and any modifications or improvements to such material, including the Newcrest Provided Items and Data.
- 'Newcrest Provided Items'** means any materials, equipment or services to be provided by Newcrest to the Vendor for the performance of the Services.
- 'Personal Information'** means:
 - (i) personal information as defined in the *Privacy Act 1988* (Cth);
 - (ii) contact details of any person;
 - (iii) the tax file number (as defined in Part VA of the *Income Tax Assessment Act 1936* (Cth)) of any person; and
 - (iv) any other information in respect of which any Privacy Requirements apply, where collected, accessed or generated by or on behalf of Vendor or its Personnel in connection with this Contract.
- '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 a Related Body Corporate of Newcrest, any of their respective past or present officers, employees, agents or representatives.
- 'Privacy Incident'** means any actual, apparent or anticipated:
 - (i) misuse or loss of, interference with, or unauthorised access to, modification of, or disclosure of Personal Information;
 - (ii) breach of clause 29 or 30;
 - (iii) request, complaint or enquiry made by a regulatory authority or Data Subject in relation to the handling of Personal Information by Vendor; or
 - (iv) requirement of any Law which conflicts with Vendor's obligations under clause 29 or 30.
- 'Privacy Requirements'** means:
 - (i) the *Privacy Act 1988* (Cth) and the Australian Privacy Principles in the Act, the *Do Not Call Register Act 2006* (Cth), Part 6 of the *Telecommunications Act 1997* (Cth) and any other Law relating to privacy, data protection, surveillance, direct marketing, data security or the handling of Personal Information;
 - (ii) any other privacy requirements applicable to Newcrest, as notified by Newcrest to the Vendor; and
 - (iii) any reasonable direction from Newcrest in relation to those matters.
- 'Purchase Order'** means the purchase order issued by Newcrest to the Vendor in respect of the supply of the Goods and/or Services, and

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includes any specifications or drawings that may be contained in it or annexed to it.

'Related Body Corporate' 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:

- (i) an entity which is a related body corporate, related company or affiliate of the first entity under the Governing Law; and
- (ii) 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 Related Bodies Corporate 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.

'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, the United States of America, the United Kingdom and each of the countries in which Newcrest operates or trades.

'Schedule' means the Schedule – Jurisdiction Specific Conditions attached to these terms and conditions.

'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.

'Supplier Performance Commitments' refers to the Supplier Performance Commitments document hosted at [Supplier Performance Commitments \(newcrest.com\)](https://www.newcrest.com)

'Taxes' means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods and/or Services by all local, state or national Government Agencies including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, stamp duty and GST.

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

'Vendor Background IP' means all Intellectual Property Rights (present or future) in material (in any form) independently created by the Vendor (or licensed to the Vendor by a third party) which is in existence before the date of the Contract independently of the Contract, and the Vendor provides or makes available in connection with the Contract or Goods and/or Services.

- (b) The following capitalised terms have the meaning given in the Purchase Order:
 - (i) Currency;
 - (ii) Date for Delivery;
 - (iii) Delivery Point;
 - (iv) Total Price; and
 - (v) 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 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 and/or perform the Services to 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):
 - (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 a Related Body Corporate 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

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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) The Vendor acknowledges that it has been provided with Newcrest's Supplier Performance Commitments and has reviewed, understood and will comply with the Supplier Performance Commitments document.
- (d) 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:
- may be used by the Vendor for the performance of the Services but for no other purpose;
 - 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
 - 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:
- any breach of Contract by Newcrest or an act or negligent omission of Newcrest or a Related Body Corporate of Newcrest; or
 - a Force Majeure Event.
- (c) Newcrest must use reasonable endeavours 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:
- increases, decreases or deletes any part of the Services;
 - changes the character, quality or quantity of any part of the Services; or
 - 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 the scope and extent of the variation to the Services plus any adjustment to the Total Price before the Vendor carries out the varied Services.
- (e) If the parties are unable to agree 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 within the Schedule.
- 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:
- repair or replace the Goods free of charge; or
 - correct the Defect in the Services (including by providing additional Services necessary to correct the Defect or reperforming 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 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:
- any applicable Taxes (excluding GST); and
 - 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, the Vendor must render an Invoice 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, and unless the parties agree otherwise, Newcrest must pay to the Vendor the amount shown on an Invoice within 45 days after the end of the month in which the Invoice was received by Newcrest.
- (c) 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.
- (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:
- all debts and moneys due from the Vendor or its Personnel to Newcrest; and
 - 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.

19. Health, safety and environment

- (a) The Vendor must, and must ensure that all its Personnel:
- at all times when on Site, act in accordance with Newcrest's policies and procedures;
 - at all times comply with all applicable Laws;
 - 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);
 - 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;
 - adhere to accepted safe working practices and take reasonable precautions against accident or damage occurring on or to any Site from any cause;
 - minimise disruption to the operating Site;
 - not harm or damage the environment in the course of undertaking activities in connection with this Contract;
 - 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;
 - 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
 - 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, Newcrest's policies and procedures identified in clause 19(a)(i), and Anti-bribery, Sanctions Laws and human rights requirements in accordance with clauses 33,

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34 and 35.

- (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 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 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;
 - (viii) the provision of the Goods and/or Services, or the receipt, possession, use or exploitation of the Goods and/or Services or any other materials supplied by or on behalf of the Vendor, including resale, will not infringe any rights (including Intellectual Property Rights or Moral Rights) of any person;
 - (ix) in performing the Services, the Vendor and its Personnel will:
 - (A) 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;
 - (B) act in a workmanlike, careful, safe and proper manner;
 - (C) hold all necessary permits, licences and authorities required by Law to supply the Services at the Site;
 - (D) 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;
 - (E) perform the Services in a timely manner; and
 - (F) comply with all the requirements of the Contract; and
 - (x) 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 Related Body Corporate of Newcrest, other than to the extent that a relevant representation is expressly recorded in the terms and conditions of the Contract.
- (b) The Contract does not exclude or in any way limit other warranties provided by Law in relation to the Goods or Services.

22. Vendor's insurance

- (a) No provision contained in this insurance clause or the failure of the insurance policies to respond for any reason, will limit the Vendor's liability to indemnify Newcrest 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:
- (i) Public and Product liability Insurance – covering all legal liabilities to pay damages or compensation arising out of any 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 public liability and in the annual aggregate for products liability for an amount not less than A\$20,000,000 and in respect of public liability must be unlimited as to the number of claims which can be made under the policy;
 - (B) insure as principal under the contract for its vicarious contingent liability, Newcrest (and its Personnel for their respective rights and interests) with respect to liability Newcrest 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 Newcrest's goods in the possession or custody of the Vendor and held off the premises or Site for an amount not less than the replacement value of those goods; and
 - (E) provide that the policy is extended to cover worker-to-worker injury liability risks.
 - (ii) Workers' Compensation Insurance – covering all liabilities, whether arising under statute, common law or civil law, in

relation to the death of, or injury to, 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;
 - (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 express or implied rights of subrogation against all insured parties.
- (iii) Motor Vehicle/Automobile Third Party Liability Insurance – covering all legal liability to pay damages or compensation arising out of any injury to or death of any person or any loss of or damage to any property caused by the ownership, possession, 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) be for the lesser of an amount of not less than A\$20,000,000; or the statutory limit in the relevant country, state or territory, 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 principal under the contract, for its vicarious contingent liability, Newcrest (and its personnel for their respective rights and interests) with respect to liability Newcrest may incur due to acts and omissions of the Vendor; and
 - (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.
- In addition, the Vendor shall comply with all statutory requirements concerning the arrangement of compulsory motor vehicle insurance.
- (iv) Professional Indemnity Insurance (where the Vendor is providing specialist advice or opinions) – for an amount not less than A\$10,000,000, covering liability resulting in a financial loss to Newcrest, arising from Newcrest relying upon the opinion, advice or guidance from the Vendor.
- (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 clauses 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) 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.
 - (iv) This insurance clause will survive the early termination of 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.

23. Indemnities

- (a) Subject to clause 23(b), the Vendor indemnifies, and keeps indemnified, Newcrest against any Liabilities directly or indirectly suffered or incurred by Newcrest or any Related Body Corporate or Newcrest in connection with:
- (i) any breach by the Vendor or the Vendor's Personnel of the Contract (including breach of any warranty);
 - (ii) any breach by the Vendor or the Vendor's Personnel of clause 28 or other obligation of confidentiality;
 - (iii) any breach by the Vendor or the Vendor's Personnel of clause 29 or 30 or other breach or privacy;
 - (iv) 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;
 - (v) breach of Law by the Vendor or the Vendor's Personnel;
 - (vi) any claim made by the Vendor or the Vendor's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
 - (vii) the provision of the Goods and/or Services, or the receipt, possession, use or exploitation of the Good and/or Services or any materials supplied, or Intellectual Property Rights assigned or licensed by or on behalf of the Vendor to Newcrest under or in connection with the Contract infringing the rights (including Intellectual Property Rights or Moral Rights) of any person, and all claims (actual or threatened) alleging such infringement.

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- (b) Newcrest holds the benefit of 24(a) for itself and on trust for each Related Body Corporate of Newcrest.
- (c) 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 Related Body Corporate of Newcrest.
- 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:
- a failure by the Vendor to effect and maintain the insurances required by the Contract;
 - events or circumstances in respect of which insurance proceeds are available, and amounts so received will not be included when calculating the Liability Limitation;
 - 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 failure of the Vendor to obtain or maintain the insurances in accordance with clause 22;
 - a failure by the Vendor to claim under the relevant insurances (or comply with the claim procedures under the relevant insurances); or
 - the Vendor not complying with any provision, obligation or duty owed under the relevant insurance policy;
 - personal injury, illness or death of any person;
 - loss of, or damage to any property of Newcrest, Newcrest's Personnel or any third party;
 - infringement of Intellectual Property Rights or Moral Rights;
 - breach of confidentiality or privacy obligations;
 - fraud or dishonesty;
 - unlawful or illegal acts; or
 - negligent, reckless or intentional act or negligent omission.
- (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:
- any indirect and consequential loss; and
 - loss of use, loss of actual or anticipated revenues, loss of income or profits, loss of goodwill, loss of bargain or loss of opportunities, or anticipated savings.
- For the purpose of the definition of 'Excluded Loss', 'indirect and consequential loss' means, and will be strictly limited to, Liability which:
- 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
 - 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:
- 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;
 - personal injury, illness or death of any person;
 - infringement of Intellectual Property Rights or Moral Rights;
 - breach of confidentiality obligations;
 - fraud or dishonesty;
 - unlawful or illegal acts; or
 - negligent, reckless or intentional act or negligent omission.
- 26. Intellectual Property Rights**
- (a) The Vendor Background IP and Developed IP remain the property of the Vendor.
- (b) The Vendor grants Newcrest a perpetual, irrevocable, non-exclusive, worldwide, transferable, assignable, and royalty-free licence (including the right to sub-licence) to exercise all rights in the Vendor Background IP and Developed IP for any purpose in connection with the Contract, the Good and Services, or the business of Newcrest and its Related Bodies Corporate. For clarity, this includes the right for Newcrest and its sub-licensees to use, reproduce, modify, maintain, re-sell or otherwise exploit the Goods and Services and any outputs, reports or deliverables produced by the Vendor during the performance of the Services, integrate the Goods with other products, or specify requirements for goods or services related to the Goods.
- (c) The Newcrest IP remains the property of Newcrest.
- (d) Newcrest grants the Vendor a non-exclusive, royalty-free, revocable, non-transferable, non-assignable licence to use the Newcrest IP to the extent required to provide the Goods and/or Services under the Contract.
- 27. Data**
- (a) Data remains the property of Newcrest, and Newcrest owns all rights (including Intellectual Property Rights) in and to the Data immediately from creation (including part creation).
- (b) The Vendor hereby unconditionally assigns, and must procure that the Vendor's Related Bodies Corporate and Vendor Personnel unconditionally assign, to Newcrest all Intellectual Property Rights in and to the Data from creation (including part creation). If required by Newcrest, the Vendor must not in any way use or reproduce the Data (in whole or in part or form) except to the limited extent necessary for the provision of the Goods and/or Services under the Contract.
- 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 provision of Goods and/or Services to Newcrest under the Contract; or
 - disclose any Confidential Information, other than:
 - to the Vendor's Personnel who need to know the Confidential Information for the provision of the Goods and/or Services to Newcrest under the Contract; or
 - to the extent such disclosure is expressly required by Law or by the rules of an applicable stock exchange, provided that the Vendor discloses the minimum amount of Confidential Information required to satisfy the Law or rule and, before disclosing any information, the Vendor provides a reasonable amount of notice to Newcrest and exhausts all reasonable steps (whether required by Newcrest or not) to maintain such Confidential Information in confidence.
- (b) The Vendor must, promptly after request by Newcrest or termination or expiry of the Contract, return or destroy (and certify such destruction of) any Confidential Information in possession, custody or control of the Vendor or any of its Related Bodies Corporate.
- (c) Except as required by applicable Law, the Vendor must not make any media release or public announcement in relation to the existence or subject matter of the Contract unless the Vendor receives the prior written approval of Newcrest and Newcrest approves, in writing, the wording of such media release or public announcement and the manner of publication.
- (d) The Vendor must take all things reasonably necessary or prudent to safeguard the confidentiality of the Confidential Information.
- (e) This clause 29 will survive the termination or expiry of the Contract.
- 29. Handling Personal Information**
- Notwithstanding any permitted handling of Confidential Information, the Vendor must:
- comply with the Privacy Requirements, including those relating to data quality and data security;
 - not use or disclose Personal Information for any purpose other than:
 - to the extent necessary to comply with any obligations of the Vendor under this Contract;
 - with the prior written approval of Newcrest; or
 - as required by Law;
 - without limiting clause 29(a), not disclose Personal Information except to those Sub-Contractors of the Vendor agreed to specifically in writing by Newcrest;
 - not access, transfer or make accessible Personal Information in any jurisdiction outside Australia without Newcrest's prior written consent;
 - not do any act or engage in any practice which would be a breach of a Privacy Requirement if done or engaged in by Newcrest;
 - to the extent that the Vendor is not itself directly subject to a particular Privacy Requirement, indemnify, keep indemnified and hold harmless Newcrest and its related bodies corporate and their Personnel, directors and officers in relation to any Liabilities of any nature or kind incurred and arising out of in connection with a breach by Vendor of clause 29(e);
 - protect Personal Information to at least the same standard that the Vendor would protect similar information in relation to its own customers and contacts;
 - before collecting Personal Information about a Data Subject from the Data Subject or a third party, the Vendor must obtain directions from Newcrest as to any notifications, consents or other requirements Newcrest may have;
 - on termination or expiry of this Contract or on request by Newcrest return to Newcrest or securely destroy (at Newcrest's election) all copies or other records containing Personal Information;
 - give Newcrest or its nominee access to all premises, Personnel, materials and systems to assess the Vendor's compliance with all or any part of this clause 29; and
 - where disclosing or otherwise making available Personal Information to any third party ensure that the third party agrees to and complies with this clause 29 to the same extent as the Vendor (except that the third party may not further disclose Personal Information without Newcrest's agreement).
- 30. Privacy Incident**
- In the event of a Privacy Incident, the Vendor must:
- immediately notify Newcrest (providing full details and ongoing updates as available);
 - where the Privacy Incident is or may be an Eligible Data Breach of either party, follow the relevant guidance issued by the Office of the Australian Information Commissioner in conjunction with this clause 30;
 - conduct a prompt and thorough investigation and assessment of the Privacy Incident;
 - co-operate with Newcrest's requests in respect of investigating, responding to, reporting and remediating the Privacy Incident; and
 - not make or publish any statement or communication concerning the Privacy Incident, including contacting any relevant regulatory authority, without obtaining Newcrest's prior written consent or instruction,

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unless Newcrest fails to provide its consent or instruction within a reasonable time and the statement or communication is required by Law.

31. 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 31(d) will apply.
- (b) Without limiting clause 31(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 31(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 31(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.

32. Personal Property Securities Act

- (a) The Vendor may register any Security Interest over the Goods which it reasonably considers arises out of the Contract. If it does, it must provide to Newcrest a copy of the relevant verification statement in compliance with section 157 of the PPSA.
- (b) The Vendor and Newcrest agree for the purposes of section 275(6)(a) of the PPSA that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA (except as provided for in section 275(7)). The parties acknowledge and agree that the information set out in the Contract is confidential in nature and that each party owes the other a duty of confidence in relation to the information set out in the Contract.
- (c) For the purposes of this clause:
 - (i) 'PPSA' means the *Personal Property Securities Act 2009* (Cth) and all regulations and subordinate legislation pursuant to it; and
 - (ii) 'Security Interest' means a security interest under the PPSA.
- (d) Unless otherwise defined, terms and expressions in the Contract that are defined in the PPSA shall have the same meaning as in the PPSA.

33. 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), and the *Bribery Act 2010* (United Kingdom) ('**Relevant Requirements**');
- (b) not give or offer or promise to give, receive, or agree to 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 to 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.

34. 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.
- (d) If Newcrest determines that a contravention of this clause 34 has occurred, Newcrest at its absolute discretion may terminate this Contract by providing seven days' written notice to the Vendor of its intention to terminate under this clause 34(d). Such termination shall be effective immediately upon expiry of the seven-day period and shall be with cause.

35. 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) the Vendor will comply with all applicable modern slavery laws and take steps to meet international standards in relation to Modern Slavery;
- (iii) that it will not use forced, bonded or involuntary labour, or any other form of Modern Slavery, to perform any Services in relation to this Contract;
- (iv) 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;
- (v) that it will not procure or sell any goods or services acquired or performed in connection with this Contract in contradiction with clauses 35(a)(i), (ii), (iii) or (iv); and
- (vi) the Vendor will take reasonable steps to ensure it and its own vendors have adequate policies and procedures in place to prevent Modern Slavery.

- (b) The Vendor will record and report all credible allegations against it, of human rights abuses, instances of Modern Slavery, and violations of international human rights Laws and standards or local Laws, to Newcrest within a reasonable time.
- (c) The Vendor will, on request, provide a copy of any modern slavery statement it is required to prepare under modern slavery laws.
- (d) The Vendor understands that the obligations contained in this clause 35 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.
- (e) Subject to clause 35(f), if Newcrest determines that a contravention of this clause 35 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.
- (f) If Newcrest determines that a contravention of this clause 35 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 35(f). Such termination shall be effective immediately upon expiry of the 24 hour period and shall be for cause.

36. Small business remedies

Without limiting any remedies available under the *Competition and Consumer Act 2010* (Cth), if the Vendor believes a term contained in this Purchase Order is "unfair" as defined under the Australian Consumer Law, any dispute will be addressed at first instance via the process set out in the relevant Dispute Resolution clause within the Schedule.

37. No waiver

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

38. 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).

39. Amendment

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

40. 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.

41. 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.

42. 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.

43. Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty that may be payable, including any related fines and penalties, in any relevant jurisdiction on, or in connection with the Contract must be borne by the Vendor.

44. Vienna Convention does not apply

The 1986 United Nations Convention on contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 and opened for signature and also for accession on 11 April 1980 and any Act or other Law which gives effect to this convention do not apply to the Contract.

SCHEDULE – JURISDICTION SPECIFIC CONDITIONS

1. Newcrest Mining Limited

If the Newcrest entity entering into the Contract is **Newcrest Mining Limited**, the following provisions will also apply:

- 1.1 **Governing Law**
The Contract is governed by and is to be interpreted in accordance with the Laws applicable in the State of Victoria, Australia and the parties unconditionally submit to the jurisdiction of the courts in that State.
- 1.2 **Taxes**
- (a) Words or expressions used in this clause 1.2 which are defined in the GST Act and related imposition Acts have the same meaning in this clause 1.2.
 - (b) Any consideration to be paid or provided for a supply made under or in connection with this Contract, unless specifically described in this Contract as "GST inclusive", does not include an amount on account of GST.
 - (c) Despite any other provision in this Contract, if a party ("**Supplying Party**") 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"):
 - (i) the consideration payable or to be provided for that supply under this Contract is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supplying Party, an amount equal to the GST payable by the Supplying Party on that supply;
 - (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party by the Recipient at the same time as the GST exclusive consideration is payable or to be provided; and
 - (iii) notwithstanding any other provision of this Contract, the Recipient is not required to pay any amount unless it has received a valid tax invoice (or valid adjustment note) for that taxable supply.
 - (d) 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 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.
 - (e) 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 Supplying Party must issue a valid adjustment note in relation to the adjustment event.
 - (f) If a party is member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member of the group is entitled.
 - (g) This clause 1.2 does not merge on completion or termination of this Contract.
 - (h) For the purposes of this clause 1.2, "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.3 **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 1.3(a).
 - (b) If the dispute is not resolved within 28 days after the service of the notice provided under clause 1.3(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 1.3(b), the parties must submit the dispute to mediation administered by the Resolution Institute, such mediation to be conducted in accordance with, and subject to, the Resolution Institute Mediation and Conciliation Rules. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the President of the Resolution Institute. Any mediation meetings and proceedings under clause 1.3(c) must be held at the Site or the capital city of the state in which the Site is located (at Newcrest's discretion).
 - (d) Without otherwise limiting clause 1.3(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 1.3(a).
 - (e) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 1.3(a) to (d) have been complied with.
 - (f) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any dispute.

2. Cadia Holdings Pty Ltd (trading as Cadia Valley Operations)

If the Newcrest entity entering into the Contract is **Cadia Holdings Pty Ltd**, the following provisions will also apply:

- 2.1 **Governing Law**
The Contract is governed by and is to be interpreted in accordance with the Laws applicable in the State of New South Wales, Australia and the parties unconditionally submit to the jurisdiction of the courts in that State.
- 2.2 **Taxes**
As per clause 1.2 of this Schedule.
- 2.3 **Dispute Resolution**
As per clause 1.3 of this Schedule.

3. Newcrest Operations Limited

If the Newcrest entity entering into the Contract is **Newcrest Operations Limited**, the following provisions will also apply:

- 3.1 **Governing Law**
The Contract is governed by and is to be interpreted in accordance with the Laws applicable in the State of Western Australia and the parties unconditionally submit to the jurisdiction of the courts in that State.
- 3.2 **Taxes**
As per clause 1.2 of this Schedule.
- 3.3 **Dispute Resolution**
As per clause 1.3 of this Schedule.

4. Lihir Gold Limited

If the Newcrest entity entering into the Contract is **Lihir Gold Limited**, the following provisions will also apply:

- 4.1 **Governing Law**
- (a) If the Vendor is domiciled in Papua New Guinea, the Contract shall be governed by and is to be interpreted in accordance with the Laws applicable in Papua New Guinea.
 - (b) If the Vendor is domiciled in a jurisdiction other than Papua New Guinea, the Contract shall be governed by and is to be interpreted in accordance with the Laws applicable in the State of Victoria, Australia and the parties unconditionally submit to the jurisdiction of the courts in that State.
- 4.2 **Taxes**
- (a) **Liability for Tax**
 - (i) Newcrest will pay the Vendor net of the amount of Newcrest's liability for any Tax (such as PNG foreign contractor withholding tax but excluding GST or any tax of general application imposed on net income) in respect of any supply made by the Vendor under this Contract.
 - (ii) Any consideration to be paid or provided for a supply made under or in connection with this Contract is expressed inclusive of all Tax, other than GST, in force at the commencement of the Contract.
 - (b) **Withholding Tax**
 - (i) Where the Vendor informs Newcrest that payments to be made by Newcrest to the Vendor under these general conditions are not liable to taxation in Papua New Guinea and requests that no withholding tax be deducted from payments under this agreement (such as foreign contractor's withholding tax), if Newcrest complies with that request, the Vendor indemnifies and keeps indemnified Newcrest for any costs and any liability to the PNG taxation authorities.

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- (ii) Newcrest is not obliged to comply with a request by the Vendor not to deduct any withholding amounts unless it has been provided with sufficient evidence (in its absolute discretion) that such withholdings are not in fact required based on written evidence from the PNG Internal Revenue Commission.
 - (iii) Should Newcrest be required to withhold any amounts on account of any tax, the corresponding withheld amount will be taken as a reduction in the consideration to be paid or provided to the Vendor, and Newcrest shall provide the Vendor with a receipt.
 - (iv) The Vendor has responsibility for applying to the PNG Internal Revenue Commission for an income tax file number, necessary for appropriate remittance of any withholding amounts.
 - (v) Newcrest will not make any payments under the contract until either the PNG Internal Revenue Commission has confirmed in writing to Newcrest or until Newcrest has assessed whether withholding tax applies or not, or the Vendor provides written evidence from the PNG Internal Revenue Commission that they are not subject to withholding tax (this may apply where the Vendor has agreed with the PNG Internal Revenue Commission that they will lodge a tax return in PNG).
- (c) **GST**
- (i) In this clause 4.2(c):
 - (A) **"Australian GST Law"** has the meaning given to the term "GST Law" by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (B) **"Consideration"** has the meaning given by the Australian GST Law or the PNG GST Law;
 - (C) **"Goods"** has the meaning given to that term by the Australian GST Law or the PNG GST Law, as applicable;
 - (D) **"GST"** means GST as that term is defined by the Australian GST Law or the goods and services tax referred to in the PNG GST Law, as applicable;
 - (E) **"GST Amount"** means, in relation to a Taxable Supply, the amount of GST payable in respect of that Taxable Supply under either the Australian GST Law or the PNG GST Law as the case may be;
 - (F) **"GST Group"** has the meaning given by the Australian GST Law or the PNG GST Law (as applicable);
 - (G) **"Input Tax Credit"** means an input tax credit as that term is defined in the Australian GST Law or a credit for input tax as that term is defined in the PNG GST Law, as applicable and a reference to an Input Tax Credit entitlement of a Party includes, as applicable:
 - (I) an input tax credit for an acquisition made by that Party but to which another member of the same GST Group is entitled; or
 - (II) a credit for input tax for a supply which is made to that Party but which is deemed by the PNG GST Law to be made to the representative member or a group of companies;
 - (H) **"PNG GST Law"** means the *Goods and Services Tax Act 2003* (PNG);
 - (I) **"Recipient"** has the meaning given to that term by the Australian GST Law or the PNG GST Law, as applicable;
 - (J) **"Tax Invoice"** has the meaning given by the Australian GST Law or the PNG GST Law, as applicable; and
 - (K) **"Taxable Supply"** means a taxable supply as that term is defined in the Australian GST Law (excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Act 1999)* (Cth)) or a supply upon which goods and services tax is imposed by the PNG GST Law, as applicable.
 - (ii) Any consideration to be paid or provided for a supply made under or in connection with this Contract, unless specifically described in this Contract as "GST inclusive", does not include an amount on account of GST.
 - (iii) The Vendor will make all reasonable endeavours to ensure the supply of any Goods is GST-free under Australian GST Law. In this regard and where applicable to supply of equipment with the Services, the Vendor warrants that it will export any Goods within 60 days of the earlier of receiving any consideration for the supply or issuing an invoice for the supply and that it will hold sufficient documentary evidence to substantiate the export of the Goods within the 60 day timeframe.
 - (iv) Despite any other provision in this Contract, if a party ("**Supplying Party**") 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"):
 - (A) the consideration payable or to be provided for that supply under this Contract is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supplying Party, an amount equal to the GST payable by the Supplying Party on that supply;
 - (B) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party by the Recipient at the same time as the GST exclusive consideration is payable or to be provided; and
 - (C) notwithstanding any other provision of this Contract, the Recipient is not required to pay any amount unless it has received a valid tax invoice (or valid adjustment note) for that taxable supply.
- (d) **Reimbursements**
- (i) 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 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.
 - (ii) No amount is required to be reimbursed to a party where that party fails to take reasonable steps to avail itself of an input tax credit including, but not limited to, a failure to register for GST in such cases where there is an entitlement of that party to register for GST.
- (e) **Adjustment Events**
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 Supplying Party must issue a valid adjustment note in relation to the adjustment event.
- (f) **No Merger**
This clause does not merge on completion or termination of this Contract.
- (g) **Survival of obligation**
For the avoidance of doubt, the obligations in respect of GST and other Taxes set out under these clauses survive the termination of this Contract.
- 4.3 **Dispute Resolution (Vendors domiciled in Papua New Guinea)**
- (a) This clause 4.3 only applies if the Vendor is domiciled in Papua New Guinea.
 - (b) 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 4.3(a).
 - (c) If the dispute is not resolved within 28 days after the service of the notice provided under clause 4.3(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.
 - (d) If the dispute is not resolved within 10 days after the service of the notice provided under clause 4.3(b), the parties must submit the dispute for final resolution by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this clause 4.3. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.
 - (e) Without otherwise limiting clause 4.3(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 4.3(a).
 - (f) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clause 4.3(a) to (d) have been complied with.
 - (g) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).
- 4.4 **Dispute Resolution (Vendors domiciled outside Papua New Guinea)**
- (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 4.4(a).
 - (b) If the dispute is not resolved within 28 days after the service of the notice provided under clause 4.4(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

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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 4.4(b), the parties must submit the dispute to mediation administered by the Resolution Institute, such mediation to be conducted in accordance with, and subject to, the Resolution Institute Mediation and Conciliation Rules. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the President of the Resolution Institute. Any mediation meetings and proceedings under this clause 4.4(c) must be held in Brisbane.
- (d) Without otherwise limiting clause 4.4(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 4.4(a).
- (e) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 4.4(a) to (d) have been complied with.
- (f) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any dispute.

5. PT Nusa Halmahera Minerals

If the Newcrest entity entering into the Contract is **PT Nusa Halmahera Minerals** or **PT Puncakbaru Jayatama**, the following provisions will also apply:

5.1 Governing Law

The Contract is governed by and is to be interpreted in accordance with the Laws applicable in the Republic of Indonesia.

5.2 Taxes

(a) Tax Registration

- (i) The domestic Vendor must do all things necessary to ensure that it is registered as an Indonesian taxable firm for Indonesian Tax purposes (including for VAT purposes), and must provide PTNHM with copies of its Tax Identification Number (“NPWP”), Taxable Entrepreneur Number (“NPPKP”), and a copy of the statement letter that has been submitted to the Indonesian Tax Office (“ITO”) regarding the person with authorization to sign the VAT tax invoice (“Faktur Pajak”) and copy of the latest ITO approval letter on Faktur Pajak’s serial numbers.
- (ii) If for any reason the domestic Vendor ceases to be so registered, the Vendor must notify PTNHM within 7 days. In case the Vendor doesn’t notify and PTNHM suffers losses or penalty due to it, PTNHM shall be entitled to reimburse it to the Vendor.
- (iii) The foreign Vendor must do all things necessary to provide a Certificate of Residency and a standard ITO-1 Form that is issued and approved by the competent tax authority of the Vendor’s home country on the date prior to sign the Contracts and a written statement from the Vendor that it does not have any ‘permanent establishment’ in Indonesia.

(b) Amounts payable exclusive of VAT

- (i) The Total Price shall be exclusive of VAT. If VAT is applicable on the Total Price, the amount of VAT payable will be separately recorded in the Vendor’s Invoice tax invoice and the Vendor shall provide:
 - (A) 3 original copies of a completed and signed Faktur Pajak form (stipulating the amount of VAT payable in Indonesian Rupiah);
 - (B) sufficient sets (at least 5) of a completed but not signed Tax Payment Slip (“SSP”) form; and
 - (C) all forms shall be appropriately completed in accordance with the latest VAT Laws and regulations and provided in a timeframe required by such regulations and in a manner sufficient to provide the PTNHM with an Input Tax Credit equal to the amount of VAT applicable on the Total Price.
- (ii) Following the receipt of such invoice and forms, PTNHM, in accordance with its obligations as a duly designated VAT collector, shall on a timely basis pay the appropriate amounts of VAT to the State Treasury. PTNHM shall further provide the Vendor with two (2) original 1st page and 3rd page of SSP (appropriately endorsed by the ITO). Such SSP is to be considered as proof of payment of VAT on the Total Price.

(c) Adjustment Events

- (i) The Vendor must notify PTNHM of any Adjustment Event within 14 days of the Vendor first becoming aware of the Adjustment Event.
- (ii) The Parties shall discuss in good faith appropriate means of addressing the Adjustment Event in accordance with the requirements of the VAT Law. If required by PTNHM or the ITO following an Adjustment Event, the Vendor must, in accordance with the VAT Law and the requirements of clause 5.2(b)(ii) above, issue a revised Invoice, revised Faktur Pajak sets of completed but not signed SSPs, to PTNHM that correctly reflects the amount of VAT (if any) payable on the supply (and cancelling or replacing, as appropriate, the original invoice and forms) within such timeframe as is reasonably requested by PTNHM or the ITO, or required by the VAT Law, as the case may be.
- (iii) Following the issuance of the revised invoice and forms to the PTNHM under clause 5.2(c)(i) above:
 - (A) each Party shall file revised VAT returns to ITO that correctly reflects the amount of VAT (if any) payable on the supply that is the subject of the Adjustment Event;
 - (B) where the result of the Adjustment Event is that VAT has been underpaid on the supply in the earlier tax period:
 - (I) PTNHM, in accordance with its obligations as a duly designated VAT collector, shall on timely basis pay the appropriate additional amounts of VAT to the State Treasury, and provide an original SSP in accordance with clause 5.2(b)(i) above reflecting such additional payment; and
 - (II) the Vendor shall reimburse PTNHM for any amount payable to the ITO as a penalty in respect of the underpayment; and
 - (C) where the result of the Adjustment Event is that VAT has been overpaid on the supply in the earlier tax period, PTNHM shall be entitled to receive any refund from the ITO in respect of such overpayment and the Vendor shall promptly remit any refund received by it from the ITO in respect of such overpayment.

(d) Tax Savings

If there is a Tax Saving:

- (i) the Vendor must calculate and notify PTNHM in writing of the Tax Saving within 7 days of the Vendor first becoming aware of the Tax Saving; and
- (ii) the Total Price will be reduced by an amount equal to the Tax Saving.

(e) Input Tax Credit

If an amount is or becomes payable, whether by way of reimbursement, indemnity, damages or otherwise:

- (i) if the amount is calculated by reference to costs, expenses or losses suffered, the amount of the costs, expenses or losses will be the actual amount less the amount of any Input Tax that is capable of being credited against Output Tax (or otherwise refunded by the ITO). Any Input Tax will be assumed to be capable of being fully credited against Output Tax, whether in current or future tax periods, or otherwise refunded by the ITO, unless the party that paid the Input Tax can demonstrate that its entitlement is otherwise before entering into the Contract; and
- (ii) if the amount is calculated by reference to any loss of revenue or profits, the revenue will be taken to be revenue which would have been earned exclusive of VAT.

(f) Indonesian Withholding Tax

- (i) The Total Price shall be inclusive of any Indonesian withholding tax (“WHT”) and accordingly the PTNHM will not be liable to pay the Vendor any amount on account of any amount deducted in accordance with this clause.
- (ii) PTNHM may be obligated to deduct an amount for WHT at the appropriate prevailing rate under applicable Income Tax Law or the PTNHM’s Contract of Work (whichever the PTNHM determines is applicable), from certain payments made by PTNHM to the Vendor, unless the Vendor provides PTNHM with a valid certificate of tax exemption from WHT issued by the ITO.
- (iii) The foreign Vendor can claim a reduction or exemption of WHT withholding in certain conditions. The Reduction or exemption of withholding tax will only be executed by PTNHM if the Vendor is able to certify its eligibility (in accordance with clause 5.2(a)(iii)) to claim exemption from withholding tax as required by the prevailing double tax agreement and/or Indonesian taxation Laws, including that the aggregate of days to be present in Indonesia is not more than the time test as set out in the double tax agreement. If such a claim is found incorrect at any time due to a material misrepresentation by the Vendor, the Vendor is fully liable to compensate PTNHM for any tax, penalties and costs arising from the said incorrect claim. PTNHM retains the right to apply the withholding tax where no such certification is available for PTNHM at the time of payment and has no obligation to reverse said withholding.
- (iv) In the event PTNHM decides that a WHT is appropriate, PTNHM shall remit appropriate amounts of WHT PPh to the Indonesian Tax Authorities on behalf of the Vendor. PTNHM shall further provide the Vendor with the receipt and such receipt is to be considered as conclusive proof of payment of WHT on the Total Price.

(g) Definitions

- (i) For the purposes of this clause, the following definitions apply:

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- (A) **Adjustment Event** means an event whereby the tax payable or required to be remitted is amended, varied or changed after the initial tax has been paid and includes the situation where a supply becomes taxable or ceases to be taxable.
- (B) **Indonesian Tax Office** means the Government Agency(ies) responsible for administration of the tax Laws in Indonesia.
- (C) **Input Tax Credit** means the amount by which the recipient of a supply can obtain credit for payment of the VAT.
- (D) **Tax Saving** means the amount by which the cost of the Vendor performing the Services (disregarding any VAT payable by the Vendor) is reduced as a result of any change in the liability of the Vendor to pay any Taxes or the rate at which any such Taxes are levied after the date of this Contract.
- (E) **VAT** means value added tax under the VAT Law.
- (F) **VAT Law** means Law No. 8 of 1983 concerning VAT on Goods and Services and Sales Tax on Luxury Goods as amended by Law No. 11 of 1994, as lastly amended by Law No.42 of 2009, including the regulations promulgated thereunder.

5.3 Dispute Resolution

- (a) Any dispute or controversy arising under the Contract or relating to or in connection with the Contract or the work under the Contract, including any question regarding the existence, validity or termination of the Contract (**‘Dispute’**) must be dealt with in accordance with this clause 5.3.
- (b) The party claiming the Dispute must give a written notice of the Dispute to the other party which shall adequately identify the matters the subject of the dispute, include all facts on which that party relies in relation to that Dispute and or difference and the legal basis thereof (**‘Dispute Notice’**).
- (c) Within 7 days after service of a Dispute Notice, PTNHM’s representative and the Vendor’s representative must meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.
- (d) If the Dispute has not been resolved pursuant to clause 5.3(a) within 21 days after the service of the Dispute Notice, a member of the senior management of each of PTNHM and the Vendor (or their respective nominees) must meet within 28 days after the service of the Dispute Notice (or within such longer period as the parties may agree), to attempt to resolve the Dispute in good faith.
- (e) If, within 21 days after the first meeting of the senior management pursuant to clause 5.3(b), the Dispute has not been resolved, the matter must be referred to arbitration, by either party, for final determination in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. Each arbitration pursuant to this clause 5.3(e) shall be in the English language, and:
 - (i) the arbitration shall be conducted in Singapore before one arbitrator;
 - (ii) liability for the costs of the arbitration shall be determined by the arbitrator; and
 - (iii) the award of the arbitrator shall be final and binding on the parties.
- (f) Subject to this clause, the parties acknowledge and agree that neither party may refer any Dispute to a court.
- (g) Following determination of a Dispute by arbitration pursuant to clause 5.3(e), either party may refer the matter to the Clerk’s Office of the District Court of Central Jakarta for the purposes of enforcing the arbitration award, and each party irrevocably submits to the jurisdiction of that office for the purposes of enforcement of the arbitration award.
- (h) Nothing in clause 5.3 prevents a party from seeking urgent injunctive or interlocutory relief.
- (i) Despite the existence of a Dispute, each party must continue to perform its obligations under the Contract. Neither the commencement nor conduct of any dispute settlement procedure shall cause any interruption to the work under the Contract.
- (j) Without prejudice to any other rights or remedies available to it under the Contract, PTNHM may, in its discretion and pending resolution of the dispute, withhold payment of monies otherwise due under progress payments in respect of the matter that is the subject of a dispute settlement procedure.

6. LGL Mines Cote d’Ivoire Société Anonyme, LGL Resources Cote d’Ivoire Société Anonyme or LGL Holdings Cote d’Ivoire Société Anonyme

If the Newcrest entity entering into the Contract is **LGL Mines Cote d’Ivoire Société Anonyme, LGL Resources Cote d’Ivoire Société Anonyme or LGL Holdings Cote d’Ivoire Société Anonyme**, the following provisions will also apply:

6.1 Governing Law

The Contract is governed and interpreted in accordance with the Laws in force from time to time in Cote d’Ivoire.

6.2 Taxes

For the purposes of this Contract, the definition of Taxes includes any tax, contribution, levy, royalty, rate, duty, fee, impost, customs or other charge imposed or assessed in respect of the Services by any governmental, semi-governmental, national or local or other body authorised by law whether in the Vendor’s country of origin, Australia, Ivory Coast (République de Côte d’Ivoire) or elsewhere to impose such Tax (hereafter the **“Tax Authorities”**). Without limiting the generality of the foregoing, Tax includes any withholding tax (including withholding tax on non-commercial profits (bénéfices non commerciaux (BNC)), goods and services tax, value added tax, registration duty, stamp duty, payroll taxes, social security contributions, customs duties, any petroleum resource tax or any tax respecting environmental effects including a carbon tax.

(a) Taxes

- (i) Any consideration to be paid or provided for a supply made under or in connection with this Contract is expressed inclusive of all Tax, other than value added tax referred to below (hereafter referred to as **“VAT”**).
- (ii) Vendor shall be responsible for all liabilities or claims for Taxes that any Tax Authorities may assess or levy against the Vendor in relation to this Contract and shall comply with all applicable tax laws on a timely basis and take all actions necessary to make any payments that it is required to make on account for Tax. Vendor shall maintain (and ensure that Vendor group maintain) all records that it is required to maintain by applicable laws for Tax purposes and keep them for the applicable statutes of limitations.
- (iii) Should Newcrest be required to withhold any amounts on account of any Tax, the corresponding withheld amount will be taken as a reduction in the consideration to be paid or provided to the Vendor, and Newcrest shall provide the Vendor with a receipt of the Tax withheld and remitted to the Tax Authorities (or other proof of payment if receipts are not available), but will not reimburse the Vendor for withheld Taxes.
- (iv) If Vendor claims a Tax exemption or reduction that may affect any obligations of Newcrest, Vendor shall disclose this exemption or reduction to Newcrest on a timely basis and provide Newcrest with all documentation pertaining to such Tax exemption or reduction requested by Newcrest.

(b) Value Added Tax and Similar Taxes

- (i) Any consideration to be paid or provided under or in connection with this Contract is exclusive of any applicable VAT or other similar transaction tax.
- (ii) Despite any other provision in this Contract, if VAT or any other similar transaction tax is payable to any extent on any consideration paid under or in connection with this Contract:
 - (A) the consideration payable or to be provided is increased by, and the recipient must also pay to the Vendor, an amount equal to the VAT or other tax payable;
 - (B) the amount by which the consideration is increased must be paid to the Vendor by the Recipient at the same time as the consideration is payable or to be provided (except to the extent the recipient is responsible under applicable tax laws for self-assessing and paying the VAT or other tax due); and
 - (C) notwithstanding any other provision of this Contract, the recipient is not required to pay any amount in respect of VAT or similar tax unless (i) such amount has been separately identified on Vendor’s invoice and (ii) the recipient has received a valid tax invoice, valid adjustment note or other valid documentation that may be required to be issued under the law of the particular jurisdiction in which the VAT or similar tax is payable and that may allow the recipient to validly claim the deduction or refund of any VAT or similar tax payable.
- (iii) 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 tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
- (iv) Notwithstanding the above provisions, Newcrest is only required to gross up a payment if and to the extent that Newcrest is entitled to claim a corresponding credit, refund or rebate in respect of the grossed up amount.

(c) General

- (i) 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 note or other valid document required to be issued by the law of the jurisdiction in which the VAT or similar tax is payable in relation to the adjustment event.

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- (ii) If requested by Newcrest (acting reasonably), the Vendor must promptly provide Newcrest with all relevant information and assistance to allow Newcrest to demonstrate that Taxes paid to or withheld from the Vendor have been applied correctly and in accordance with the Law.
 - (iii) This clause 6.2 does not merge on completion or termination.
- 6.3 **Dispute Resolution**
- (a) If any dispute, controversy or claim arises under the Contract, a party will provide written 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 6.3(a).
 - (b) If the dispute is not resolved within 28 days after the service of the notice provided under clause 6.3(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) Subject to clause 6.3(d), for any dispute or difference whatsoever arising out of or in connection with this Contract which is not resolved under the process set out in clause 6.3(a) and 6.3(b) above, the parties agree to refer the dispute or difference to an arbitrator to be agreed upon by the parties for arbitration in accordance with the OHADA Uniform Act on Arbitration (as amended or replaced from time to time).
 - (d) Unless otherwise agreed in writing between the parties:
 - (i) there shall be one arbitrator;
 - (ii) the language of the arbitration shall be English;
 - (iii) arbitration proceedings conducted pursuant to this clause shall be held in Abidjan, Côte d'Ivoire; and
 - (iv) each party is to bear their own costs of the arbitration (unless the arbitrator determines otherwise).
 - (e) Without otherwise limiting clause 6.3(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 6.3(a).
 - (f) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 6.3(a) and (d) have been complied with.
 - (g) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

7. Newcrest (Fiji) Limited or Newcrest Exploration (Fiji) Limited

If the Newcrest entity entering into the Contract is **Newcrest (Fiji) Limited** or **Newcrest Exploration (Fiji) Limited**, the following provisions will also apply:

- 7.1 **Governing Law**
The Contract is governed by and is to be interpreted in accordance with the Laws applicable in Fiji and the parties unconditionally submit to the jurisdiction of the courts in that State.
- 7.2 **Taxes**
- (a) If VAT is payable on a taxable supply made under the Contract, the amount of VAT payable in respect of that supply must be paid as additional consideration at the same time as payment is required to be made under the Contract in respect of the supply. This clause does not apply to the extent that the consideration for the taxable supply is expressly agreed to be VAT inclusive.
 - (b) Any reference in the calculation of any amount payable under the Contract to a cost, expense or other Liability incurred by a party must exclude the amount of any input tax credit entitlement in relation to that cost, expense or other Liability. A party will be assumed to have an entitlement to full input tax credits unless it demonstrates otherwise prior to the date on which payment must be made.
 - (c) No amount is payable by Newcrest until it has received an Invoice.
 - (d) The Vendor shall be solely responsible for and indemnify Newcrest against the payment of all taxes, levies and charges imposed on the Vendor or Newcrest in relation to the Services or in respect of the payments made under this Contract or in respect of personnel used by the Vendor to perform the Services. Newcrest may withhold or deduct from the whole or part of payments due to the Vendor any amount which the Company is required to withhold or deduct by any taxing authority. This amount will be treated as having been paid to the Vendor when it is withheld or deducted. If the Vendor is a Fiji resident company then, in accordance with Fijian laws, provisional tax of 15% of invoiced VAT exclusive amount will be deducted by Newcrest and paid to Fiji Revenue & Customs Authority ("FCRA"), unless the Vendor is a holder of a certificate of exemption.
- 7.3 **Dispute Resolution**
- (a) If any dispute, controversy or claim arises under the Contract, a party will provide written notice to the other of the matters in dispute and the parties will meet for the purpose of resolving the dispute ("**Dispute Notice**") within 21 days after the service of the notice provided under this clause 7.3(a).
 - (b) If the dispute is not resolved within 28 days after the service of the notice provided under clause 7.3(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 7.3(b), the parties must submit the dispute to mediation administered by the Resolution Institute, such mediation to be conducted in accordance with, and subject to, the Resolution Institute Mediation and Conciliation Rules. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the President of the Resolution Institute. Any mediation meetings and proceedings under this clause must be held at the Site or the capital city of the state in which the Site is located (at Newcrest's discretion).
 - (d) Without otherwise limiting clause 7.3(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 7.3(a).
 - (e) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 7.3(a) to (d) have been complied with.
 - (f) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

8. Newcrest New Zealand Exploration Pty Ltd

If the Newcrest entity entering into the Contract is **Newcrest New Zealand Exploration Pty Ltd**, the following provisions will apply:

- 8.1 **Governing Law**
The Contract is governed by and is to be interpreted in accordance with the Laws applicable in New Zealand and the parties unconditionally submit to the jurisdiction of the courts in New Zealand.
- 8.2 **Taxes**
- (a) **GST exclusive amounts**
All amounts payable under or in connection with this Contract are exclusive of GST unless indicated otherwise. Terms used in this clause have the meanings given to them in the GST Law.
 - (b) **Payment of GST**
 - (i) A recipient of a taxable supply under or in connection with this Contract must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply.
 - (ii) The recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a Tax Invoice (or an adjustment note) for that taxable supply.
 - (c) **Reimbursements**
Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another Party under this Contract, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in relation to that cost or expense) plus the amount in relation to GST payable by the recipient as calculated under this clause.
 - (d) **Later adjustment to price or GST**
If there is an adjustment event under the GST Law in relation to a supply which results in the amount of GST on a supply being different from the amount already recovered by the supplier in respect of GST, then, within 10 Business Days of becoming aware of the adjustment event, the supplier must:
 - (i) refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Inland Revenue; and
 - (ii) issue an adjustment note or Tax Invoice reflecting the adjustment event in relation to the supply to the recipient within 20 Business Days of the adjustment event.
 - (e) **Indemnities**
 - (i) If a release of an indemnity under or in connection with this Contract gives rise to a liability to pay GST, the indemnified amount must include that GST.

PURCHASE ORDER TERMS AND CONDITIONS – SUPPLY OF GOODS AND/OR SERVICES

- (ii) If a Party has a claim under or in connection with this Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

(f) **Section 8(4) of the Goods and Services Tax Act 1985 (New Zealand)**

Section 8(4) of the *Goods and Services Tax Act 1985* (New Zealand) does not apply to deem a supply of goods and services from a non-resident supplier to a person to be made outside New Zealand.

8.3 Dispute Resolution

- (a) If any dispute, controversy or claim arises under the Contract, a part will provide written noted (“**Dispute Notice**”) to the other of the matters ion 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 8.3(a).
- (b) If the dispute is not resolved within 10 days after the service of the notice provided under clause 8.3(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 8.3(b), the parties must submit the dispute to mediation administered by the Arbitrators’ and Mediators’ Institute of New Zealand Inc, such mediation to be conducted in accordance with, and subject to, the Arbitrators’ and Mediators’ Institute of New Zealand Inc Mediation Protocol. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the President of the Arbitrators’ and Mediators’ Institute of New Zealand Inc. Any mediation meetings and proceedings under clause 8.3(c) must be held at the Site or in any such city as Newcrest may decide in its absolute discretion.
- (d) Without otherwise limiting clause 8.3(b), the parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to clause 8.3(a).
- (e) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in clauses 8.3(a) to 8.3(d) have been complied with.
- (f) The Vendor must continue to perform its obligations under the Contract notwithstanding the existence of any dispute.

9. Speak Out Program

Our Code of Conduct is Newcrest’s blueprint for the way we do business. It covers a wide variety of topics that fall into four main areas: How We Engage With Each Other At Work, How We Engage With Our Communities, How We Do Business and How We Use Newcrest Resources.

It details what we stand for, how we interact with our stakeholders and what they can expect from us. We encourage and support the reporting of misconduct and unethical behaviour and are committed to fostering an environment that affords appropriate protection from retribution for those stakeholders who wish to make a disclosure or air a concern.

Newcrest’s Speak Out program is hosted by an independent third party provider, EthicsPoint. You are encouraged to submit reports relating to breaches of our Code of Conduct, as well as asking for guidance related to policies. The information you provide will be sent to us by EthicsPoint on a totally confidential and anonymous basis if you should choose. See www.newcrest.ethicspoint.com FAQs for more information.