

## **PURCHASE TERMS AND CONDITIONS**

**"Agreement"** means the Purchase Order, which is incorporated herein by this reference, together with these Purchase Terms and Conditions.

**"Effective Date"** means (a) with respect to an electronic Purchase Order, the date on which Supplier electronically accepts such electronic Purchase Order in accordance with the acceptance terms set forth therein, and (b) with respect to a printed Purchase Order, the "Order Date" set forth at the top of page one of such printed Purchase Order.

**"Newmont"** means (a) with respect to an electronic Purchase Order, the entity listed as the "Sold-to-Party" in the Partner Information box in such electronic Purchase Order, and (b) with respect to a printed Purchase Order, the Newmont-related entity named at the top of page one of such printed Purchase Order.

**"Purchase Order"** means either an electronic Purchase Order or a printed Purchase Order, in either case as issued by Newmont and executed or otherwise legally accepted by both parties and which references and incorporates these Purchase Terms and Conditions, together with any statement of work, scope of work, work order, or similar type of ancillary contractual document that is attached or linked thereto and executed or otherwise legally accepted by both parties.

**"Supplier"** means (a) with respect to an electronic Purchase Order, the individual or entity to whose SRM Portal account such electronic Purchase Order has been posted, and (b) with respect to a printed Purchase Order, the entity designated as "Supplier" on page one of such Purchase Order.

In consideration of the mutual promises and conditions contained in this Agreement, including the definitions set forth above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **TERM.** This Agreement shall be effective commencing as of the Effective Date and continuing until the last to occur of delivery of all Goods or completion of all Services; provided, however, that if Supplier delivers no Goods and never commences Services, then this Agreement shall terminate one year from the Effective Date (the "**Term**"), unless terminated earlier as permitted herein. The Term may only be extended by a written agreement between the parties.

2. **GOODS.**

2.1 Supplier shall sell to Newmont, and Newmont shall purchase from Supplier, the goods, articles, or materials specified in the Purchase Order ("**Goods**"). The transactions with respect to Goods which are effected pursuant to this Agreement shall be deemed "sales of goods" under the Uniform Commercial Code. Supplier shall not send to Newmont any goods, articles, or materials which are not authorized by the Purchase Order. Newmont objects to the inclusion of any different or additional terms by Supplier in Supplier's acceptance of this Agreement, and Newmont's willingness to proceed with the transaction set forth in this Agreement is expressly made conditional upon Supplier's acceptance of the terms of this Agreement. If Supplier includes or attaches any different or additional terms in Supplier's purported acceptance of this Agreement, commences performance of any Services, or tenders Goods, a contract shall result upon the terms and conditions as stated in this Agreement, without inclusion of any different or additional terms or conditions. Supplier shall not substitute, or ship more or less than the quantity of, Goods, or perform services in addition to the Services, specified in the Purchase Order without the prior written approval of Newmont. All Goods shall be subject to inspection by Newmont at all reasonable times for progress and conformance with the requirements of this Agreement. Supplier expressly grants Newmont the right to access, during normal business hours, all facilities and premises wherein the Goods are manufactured or prepared for the purposes of such inspection.

2.2 Supplier warrants and covenants to Newmont that (A) all Goods shall be, at the time of delivery to Newmont and for the time period specified in the Purchase Order (the "**Warranty Period**"): (I) as described and specified in this Agreement, including in compliance with the standards of quality specified in the Purchase Order or, if none are so specified, with those specifications which are customary in the industry for similar goods; (II) free of defects in design, materials, construction, and workmanship and of standard quality for the industry unless otherwise agreed in a written document signed by Newmont; (III) in compliance with all applicable laws, regulations, decrees, codes, ordinances, resolutions, or other acts of any applicable governmental authority, whether federal, regional, state, county, local, or other governmental agency (collectively, "**Laws**"); and (IV) fit for their intended purpose, and (B) Supplier shall have good and marketable title to all Goods, free and clear of any and all liens, restrictions, reservations, security interests, claims and encumbrances at the time title to such Goods passes to Newmont pursuant to the provisions of this Agreement. If no Warranty Period is specified in the Purchase Order, the Warranty Period shall be 18 months from Newmont's acceptance of the Goods, determined as provided in Section 7.1, or 12 months from the date such Goods are placed in regular operation, whichever is earlier.

2.3 Supplier shall package all Goods in accordance with the packaging specifications set forth in the Purchase Order. If no such specifications are set forth in the Purchase Order, Supplier shall package all Goods in such a manner as to ensure preservation of such Goods during transportation and storage, having due regard for the conditions and environment at the areas through which the Goods will traverse and be delivered, including climate, roads, and requirements for multiple handling. In packaging, marking and transporting Goods, Supplier shall abide by all Laws regarding the transportation of the Goods and the protection of safety, health and the environment. All hazardous Goods shall be clearly labeled. If the Goods include or constitute dangerous, hazardous or toxic items, Supplier shall include Material Safety Data Sheets and clearly mark or label the Goods with appropriate information, provide necessary shipping certification and otherwise comply with all shipping Laws. Supplier shall ensure that all packaging, invoices, and bills of lading indicate the applicable country of destination, point of destination, Purchase Order number, description and quantity of Goods enclosed, names of Supplier and Newmont, and such other information as may be customary in the industry for packaging of similar goods. Costs arising from Supplier's failure to follow required packaging, marking

and transporting procedures and instructions shall be at Supplier's expense. If requested by Newmont, Supplier shall give Notice to Newmont of the date of shipping, Purchase Order number, number of transportation units used (railway cars, trucks, containers, or other), bill of lading number, description of Goods, number of crates, and cargo weight, such Notice to be given within such reasonable time period after the Goods are dispatched from their point of origin as Newmont may request.

2.4 Supplier shall deliver the Goods to the location specified in the Purchase Order (the "Designated Location"). If Supplier is to transport or arrange transport of the Goods, Supplier shall do so by such method as is specified in the Purchase Order, and in accordance with any other delivery terms specified in the Purchase Order; provided, however, that if no method is specified in the Purchase Order, Supplier shall transport Goods by such method as is customary in the industry for transportation of similar goods. Newmont's count shall be accepted as final and conclusive on shipments not accompanied by Supplier's itemized delivery docket/packaging list. All Goods received in excess of the number specified in the Purchase Order shall be subject to return for credit at Supplier's cost. Costs arising from Supplier's failure to follow required shipping instructions shall be at Supplier's expense. Supplier shall comply with the delivery time requirements set forth in the Purchase Order. If no delivery time requirements are specified in the Purchase Order, Supplier shall deliver Goods by such time as is customary in the industry for delivery of similar goods via the delivery method used. Delivery terms for Goods shall be as specified in the Purchase Order. Supplier shall not deliver any Goods ahead of schedule except upon Newmont's request.

2.5 If Goods are to be used or consumed by Supplier, or incorporated into a project or other work, in connection with other work being performed for Newmont by Supplier ("Consumable Goods"), the risk of loss of such Consumable Goods shall remain with Supplier until such Consumable Goods are used or consumed by, or the project or work has been completed to the satisfaction of Newmont by, Supplier. Otherwise, risk of loss of Goods shall remain in Supplier until Newmont's physical receipt of Goods at the Designated Location. If, pursuant to warranty or otherwise, Supplier repairs any Goods, at the Designated Location or anywhere else, risk of loss in such Goods shall pass back to Supplier when the repair work commences or Supplier takes possession of the Goods for such repair work, whichever is earlier, until the repair is complete and the Goods returned to the Designated Location and the Goods are safely reinstalled and accepted by Newmont, whereupon risk of loss will pass again to Newmont. Risk of loss shall transfer as set forth in this Section 2.5 notwithstanding any contrary risk of loss transfer typically associated with any Incoterm specified in the Purchase Order; provided, however, that if the Purchase Order specifically states that risk of loss shall transfer in accordance with the stated Incoterm, then that provision shall control.

2.6 Title to Goods shall pass to Newmont upon the earlier of (A) payment in full by Newmont for such Goods, (B) receipt by Newmont of such Goods at the Designated Location, or (C) incorporation of such Goods into any premises owned, operated, or otherwise controlled by Newmont ("Newmont Premises"). Supplier shall clearly identify Goods as property of Newmont by conspicuously marking or tagging, and Newmont shall have the right to inspect and verify that Goods have been identified as Newmont's property.

3. **SERVICES.** The provisions of this Section 3 shall apply only if the Purchase Order specifies delivery, installation, maintenance, or other services incidental to the Goods to be provided by Supplier (the "Services").

3.1 Supplier shall perform the Services and, except as otherwise specified in the Purchase Order, Supplier, at its sole expense, shall provide all labor, supervision, materials, equipment, consumables, insurance, transportation, and such other items and services as are necessary to perform the Services, and shall be solely responsible for demobilization, job site cleanup, and disposition of all residual materials once Services are completed. Supplier acknowledges that Newmont is relying solely on the skill and expertise of Supplier and its employees and agents for proper performance of the Services. Any reviews, inspections or approvals that are required, allowed, or otherwise undertaken by Newmont with respect to any of the Services shall in no way (A) alter Newmont's right and ability to rely on the skill and expertise of Supplier, (B) alter, diminish, waive, or relieve Supplier of any obligation or responsibility under this Agreement, or (C) constitute an assumption by Newmont of any of Supplier's obligations or responsibilities. The period of performance for Services shall be as set forth in the Purchase Order. Supplier shall keep Newmont informed at all times as to the progress of the Services. If Supplier believes that any of the Services will not be completed in accordance with the applicable schedule requirements, Supplier promptly shall give Notice to Newmont of such anticipated delay. Supplier shall, after consultation with and at the direction of Newmont, take such remedial steps as necessary to expedite the Services so that the Services are completed in accordance with such schedule requirements. Supplier understands that performance of the Services may need to be coordinated with Newmont and its vendors and other contractors, and Supplier shall coordinate its performance of Services and otherwise cooperate with Newmont and its other vendors and contractors in this regard.

3.2 Supplier warrants that (A) it is fully competent and possesses the requisite skill, knowledge, resources, experience and expertise to perform the Services in accordance with the standards and the degree of skill and judgment which is normally exercised in the United States mining and metals industry and other relevant industry by those engaged in the performance of services similar in nature to the Services, (B) the Services shall be performed in accordance with said standards, skill and judgment, (C) the Services shall be performed in strict compliance with the requirements of this Agreement, including any specifications set forth in the Purchase Order, (D) all Services performed shall be free from defect, (E) Supplier is properly qualified, licensed, trained, organized, and financed to perform the Services, (F) in performing the Services, Supplier shall not install or otherwise cause to exist on any of Newmont's computer systems (hardware or software components) any computer instructions, circuitry, or other technological means whose purpose or effect is to disrupt, damage, or interfere with any Newmont computer facilities or equipment, or to provide unauthorized access to Newmont's computer facilities or equipment, including any code containing viruses, Trojan horses, worms, traps, back doors, disabling devices or like destructive code or code that self-replicates, and (G) Supplier shall comply with Newmont's Computer Use Policy if, in the course of performing the Services, Supplier has access to Newmont's information technology equipment or systems, as such policy may be amended from time to time by Newmont, in its sole discretion, and provided to Supplier.

3.3 Supplier assumes full responsibility for the payment of all wages, payroll burdens, fringe benefits, and payroll taxes as to

its employees, servants, and agents engaged in the performance of the Services, including payroll deductions for income tax, workers' compensation premiums, and unemployment insurance. Supplier shall ensure that Supplier, Supplier's subcontractors, and their respective employees and agents (collectively, "Supplier Parties") at all times have applicable visas, work permits, and other documentation necessary for performance of the Services, and that all immigration requirements applicable to such Supplier Parties are complied with.

3.4 Supplier shall comply with all Laws that are applicable to Supplier's performance of the Services, including Laws addressing the preservation of health, safety, and the environment, including the Mine Safety and Health Act of 1977 ("MSHA") and Occupational Safety and Health Act of 1970 ("OSHA"), each as amended, and Supplier shall ensure that each Supplier Party is properly licensed and certified if and as required by Laws, including any MSHA and OSHA certifications.

3.5 Supplier shall perform the Services as an independent contractor in accordance with its own methods, the terms of this Agreement. Supplier shall have complete charge of its personnel engaged in the performance of the Services. Individuals employed or subcontracted by Supplier shall not be deemed for any purpose to be an employee, agent, servant, worker, or representative of Newmont and shall not have authority to enter into agreements on behalf of Newmont or otherwise bind Newmont in any manner. No Supplier Party shall be eligible for any retirement plan, insurance program, or any other employee benefits provided to employees of Newmont. NO SUPPLIER PARTY SHALL BE ENTITLED TO ANY BENEFITS ON ACCOUNT OF OCCUPATIONAL ACCIDENTS NOR TO ANY OTHER WORKERS' COMPENSATION, LABOR RIGHTS BENEFITS, OR SIMILAR BENEFITS PROVIDED BY NEWMONT TO ITS EMPLOYEES. It is not the intent of the parties to create, nor shall this Agreement be construed as creating, a partnership, joint venture, employment relationship, agency relationship, or association, or to render the parties liable as partners, co-venturers, or principals.

3.6 Within five days after (A) the effective date of expiration or termination of this Agreement, or (B) if earlier, the completion of all Services under this Agreement, Supplier shall return to Newmont all identification and access badges, codes, VPN tokens, and similar items provided to Supplier by Newmont in connection with the applicable Services (except to the extent the same are applicable to on-going Services).

3.7 Supplier understands that Newmont is committed to conducting all of its mining operations and related activities in an environmentally and socially responsible manner. To that end, Supplier shall make all commercially reasonable efforts to (i) perform the Services in a manner aligned with such principles, including the use of pollution-controlled equipment and facilities if, and as applicable, (ii) to assess the potential impact of its activities on local communities and, when applicable, to integrate mitigation measures into its work plans, including ensuring that such measures are appropriately budgeted, (iii) to timely address third party complaints received by it in connection with any work or goods provided hereunder (including from employees, subcontractors, suppliers, and local community members), (iv) to identify opportunities that incorporate local procurement and employment, and (v) to the extent involving activities conducted for or on behalf of Newmont, to coordinate engagement with local community stakeholders through Newmont's site-level Social Responsibility department. In addition, Supplier commits to respect human rights in line with the Universal Declaration of Human Rights ("Human Rights"). Supplier represents, warrants, and covenants to Newmont, as of the date hereof, and the date that each invoice is submitted to Newmont hereunder, that no violation of Human Rights exists in any of its or its affiliates' own operations or, to its knowledge, within the operations of any of its or its affiliates' subcontractors and vendors ("Representation"). If, during the Term, Supplier becomes aware of any breaches of the Representation, it will promptly provide Notice thereof to Newmont. Notwithstanding any other provision of this Agreement, Newmont may immediately suspend this Agreement in the event it should receive information which, in its sole discretion, it determines to be evidence of a breach by Supplier of any undertaking set forth above. In the event of receipt of such Notice or evidence and/or such suspension, Newmont shall consult with Supplier and may thereafter immediately terminate this Agreement if Newmont, in its sole discretion, is reasonably satisfied that such a breach has occurred. In the event of such termination, Newmont shall have no liability to Supplier under this Agreement for any fees, reimbursements, or other compensation under this Agreement or for any other loss, cost, claim, or damage resulting, directly or indirectly, to Supplier from such termination, other than for Services already performed and/or goods already delivered.

3.8 All records, reports, data, and other information, and all copies thereof and notes related thereto, prepared, generated, researched, developed, compiled, or obtained from any source whatsoever by or through Supplier in connection with performance of the Services, including drawings, sketches, specifications, tracings, diagrams, evaluations, calculations, data books, schedules, operating instructions, and requisitions (the "Data"), but specifically excluding any of the same which was in existence as of the Effective Date or which is independently developed after the Effective Date by Supplier, shall be promptly disclosed to Newmont and, without further consideration, shall be, to the extent legally possible, the property of Newmont and are hereby assigned by Supplier to Newmont. All right, title, and interest in and to all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations, and improvements conceived or reduced to practice, whether by Supplier alone or with others, in connection with performance of the Services (collectively, the "Inventions"), but specifically excluding any of the same which was in existence as of the Effective Date or which is independently developed after the Effective Date by Supplier, shall be owned by Newmont, and Supplier hereby sells, assigns, and conveys to Newmont any and all right, title, and interest of Supplier in and to the Inventions, and Newmont shall have the sole and exclusive right to pursue or not pursue patent protection or other forms of protection for the Inventions in the United States or elsewhere. Supplier shall promptly disclose to Newmont full details concerning each Invention. All copyrightable subject matter prepared in connection with performance of the Services (but specifically excluding any of the same which was in existence as of the Effective Date or which is independently developed after the Effective Date by Supplier), whether by Supplier alone or with others, and all copyrights therein in the United States and other countries, shall be owned by Newmont. Each and every work and each and every contribution to a work prepared by Supplier in connection with performance of the Services that is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. Notwithstanding the foregoing, Supplier hereby sells, assigns, and conveys to Newmont any and all right, title, and interest of Supplier in and to copyrights, including the right to make derivative works and all rights in relation to all mediums of expression now or hereafter known, to any and all works prepared in connection with performance of the Services, including any

software, firmware, technical manuals, technical drawings, promotional materials, reports, and product and process specifications. Supplier shall deliver to Newmont a copy of each and every work eligible for copyright protection, and in the case of software and firmware, Supplier shall deliver to Newmont a copy of the source code and flowcharts reasonably demonstrating operation of the software or firmware. To the extent any deliverable provided to Newmont by Supplier pursuant to this Agreement contains any intellectual property other than Data or Inventions, Supplier hereby grants to Newmont and its affiliates a non-exclusive, irrevocable, fully-paid, global license to use the same for the purpose of conducting Newmont's and its affiliates' internal business operations. Supplier shall take such further actions, including execution of documents, as reasonably requested by Newmont, and at Newmont's expense, to effectuate the purpose and intent of this Agreement with respect to the rights, ownership, and interests of Newmont provided in this Section 3.8, including cooperation with Newmont to prepare, file, and prosecute patent applications, to enforce patents, and to register and enforce copyrights, as well as to execute assignments, and other documents to establish or evidence Newmont's rights, ownership, and interests hereunder. Nothing in this Agreement shall be construed as limiting Supplier's ownership of or rights to use its basic know-how, experience and skills, and the experience and skills of its employees, whether or not acquired during performance of the Services, to perform services for any other party.

3.9 If Newmont authorizes Supplier to use any of Newmont's equipment in the performance of the Services, the terms and conditions of this Section 3.9 shall govern such use. Supplier shall designate in writing those individuals authorized to use Newmont's Equipment to perform the Services (the "Permitted Operators"). The list of Permitted Operators shall be subject to Newmont's approval. The Permitted Operators shall be authorized to use only that equipment specifically designated in writing by Newmont for use by the Permitted Operators ("Newmont's Equipment") and only for the purpose of performing the Services. The Permitted Operators shall comply with all restrictions on use of Newmont's Equipment as may be imposed from time to time by Newmont. Prior to use of Newmont's Equipment, Supplier shall ensure that (i) each Permitted Operator has received hazard, health, and safety training commensurate with the risks to be encountered in using Newmont's Equipment, and (ii) if required by Newmont, each Permitted Operator has received additional training from Newmont's personnel in the safe and proper operation of Newmont's Equipment. Supplier shall be solely responsible and liable for all damage to Newmont's Equipment incurred during or caused by use of Newmont's Equipment by Permitted Operators. When required by Newmont, Supplier shall perform maintenance work on Newmont's Equipment in compliance and conformity with the manufacturer's and Newmont's maintenance standards, intervals, and procedures. Supplier shall be solely responsible and liable for any damage to Newmont's Equipment caused by Supplier's failure to perform required maintenance work. Prior to any use of Newmont's Equipment, Supplier shall provide evidence satisfactory to Newmont that Supplier's insurance policies as required by this Agreement specifically (a) extend to injury, damage, or loss caused by Supplier's use of Newmont's Equipment, and (b) cover the full replacement value in the event of damage to Newmont's Equipment. Supplier assumes all risk of and responsibility for any Losses (including injury to or death of any person) caused by Supplier's use of Newmont's Equipment. Supplier discharges and releases each Newmont Party from any and all Claims and Losses, of any nature whatsoever, relating to Supplier's use of Newmont's Equipment. Supplier covenants that Supplier shall not at any time in the future, directly or indirectly, commence or prosecute any Claim against any Newmont Party in any way related to Supplier's use of Newmont's Equipment. The indemnity obligations set forth in Section 14 of this Agreement shall apply with respect to Supplier's use of Newmont's Equipment.

4. **SITE AND WORKPLACE REQUIREMENTS.** The provisions of this Section 4 shall apply only if, in the course of performing any of the Services, Supplier or any Supplier Party is present on Newmont Premises. In such event, Supplier shall ensure that it and each Supplier Party present on any Newmont Premises act in strict accordance with this Section 4.

4.1 Supplier acknowledges having reviewed Newmont's Code of Conduct and Supplier Code of Conduct, both of which are available under the About Us/Governance and Ethics tabs at [www.Newmont.com](http://www.Newmont.com). When Supplier is engaged in activities on Newmont's behalf, Supplier shall abide by the principles expressed in both codes of conduct. Supplier shall (A) at all times when Supplier is present on Newmont Premises, comply with the applicable provisions of Newmont's site and workplace policies, standards, and procedures, including requirements relating to the areas of health, safety, and loss prevention, in each case, as such document may be amended from time to time by Newmont, in its sole discretion, and provided to Supplier (including in connection with any job hazard analysis training that may be provided to Supplier's personnel by Newmont), (B) conduct all activities on Newmont Premises so as to avoid or minimize delay or interference with any other person or entity performing work or services, (C) perform the Services only during regular working hours (as communicated to Supplier by Newmont) unless prior written consent is obtained from Newmont, and (D) keep Newmont Premises clean and free of any debris and rubbish caused by the Services and on completion of the Services leave such Newmont Premises clean and ready for use. Any personnel of Supplier or of its subcontractors which Newmont deems objectionable shall be removed from the jobsite and from performance of any further Services by Supplier upon Newmont's request without additional cost to Newmont. Without limiting the generality of the foregoing provisions, if Supplier will be present in any high risk and/or sensitive areas, such as the refinery, carbon handling areas, leach prep ponds, refractory ore treatment plant, or any other area designated by Newmont as high risk and/or sensitive (collectively, "High Risk Areas"): (I) Supplier shall submit to Newmont's security department's investigating officer a list of Supplier's personnel assigned to work in the High Risk Area, which list shall include each individual's full name and date of birth; Newmont may use such information to obtain a criminal background check on such individuals, the cost of which shall be charged to, and paid by, Supplier; (II) such Supplier's personnel shall report in person to Newmont's security department's investigating officer and may be required to show a driver's license or other government-issued identification, to be fingerprinted, and to sign a release form for security clearance purposes prior to commencement of any Services; and (III) each of Supplier's personnel entering a High Risk Area shall be subject to a high tech metal detector and/or hand scanner detection search for the detection of metals prior to entering a High Risk Area and upon exiting the High Risk Area. Supplier represents that it has received copies of the following Newmont policies: Acceptable Technology Use Standard.

4.2 While on Newmont Premises (including in any Newmont owned or leased motor vehicles), Supplier Parties shall not (i) possess, sell, manufacture, dispense, or distribute any controlled substance, unauthorized prescription medication, or any other chemical substance that may affect an individual's mood, senses, responses, or motor functions, or may alter or affect a person's perception, performance, judgment, reactions, or senses, including alcohol and medical marijuana (collectively, "Chemical");

Substances"), (ii) consume or use any Chemical Substance, or (iii) possess any firearm. Any such individuals who exhibit behavior while on Newmont Premises which gives rise to a reasonable suspicion of consumption or use of a Chemical Substance may be requested by Newmont to submit to one or more Chemical Substance screening tests, to be conducted or otherwise arranged by Supplier and conducted at Supplier's sole expense. In such event, Newmont will request that the individual review and sign a waiver or consent to test document. An individual's refusal to sign such waiver or document or refusal to submit to any such screening test will be deemed admission by such individual of consumption or use of a Controlled Substance. At the request of Newmont, Supplier shall immediately remove from any job site and from participation in any aspect of the Services any of its or its subcontractor's or supplier's personnel that Newmont determines, in its sole, absolute, and non-reviewable discretion, pose a danger to the safety or health of those around them (including because of the individual's violation of the first sentence of this Section 4.2 or are otherwise unfit or incompetent to perform the Services. If requested by Newmont, Supplier shall conduct drug testing of its employees and agents, and ensure that its subcontractors and, if they have personnel coming onto Newmont's Premises, its suppliers conduct drug testing of their employees and agents, within one month prior to initial admission of such personnel to Newmont Premises for performance of the Services. Upon Newmont's request, Supplier shall provide to Newmont all appropriate documents showing that Supplier is in compliance with the requirements of this Section 4.2.

4.3 Supplier hereby expressly acknowledges that (A) certain Newmont Premises are operational mine sites, plant sites, exploration sites and/or laboratories which, in the normal course of business, contain certain physical conditions which are, by their inherent nature, dangerous, including blasting operations, open pits, high walls, heavy machinery, high-voltage electrical equipment, and other chemical and industrial hazards ("Inherent Dangers"), (B) it has had the opportunity to undertake any desired investigation of such sites, and (C) it is fully aware of and understands the risks associated with its performance of the Services at a site with Inherent Dangers and hereby assumes all such risks associated with the performance by Supplier Parties of the Services, and the presence of any Supplier Party's invitees, at such a site to the extent the same are caused by any Inherent Danger (collectively, "Assumed Risks"). Supplier (I) discharges and releases Newmont, its affiliates and their respective directors, officers, employees, and agents (each, a "Newmont Party") from any and all losses, settlements, judgments, awards, damages, costs, and other liabilities (including for injury, bodily or otherwise, to or death of persons and loss, damage to, or destruction of property), (including costs and reasonable attorneys' fees) of any nature whatsoever ("Losses") that Supplier, or any Supplier Party or Supplier invitee claiming through Supplier, may have now or in the future as a result of Assumed Risks; and (II) covenants that Supplier shall not at any time in the future, directly or indirectly, commence or prosecute against any Newmont Party any claims, suits and other actions ("Claims") for Losses incurred as a result of Assumed Risks; provided, however, that the foregoing release and covenant shall not apply with respect to Losses to the extent caused by Newmont's gross negligence or willful misconduct.

4.4 It is possible that Newmont, in its reasonable discretion, may determine that an evacuation of any or all personnel from a Newmont worksite or other work location (a "Site") is necessary for health, safety, or any other reason (an "Evacuation"). Under such circumstances, Newmont generally employs the services of one or more third party contractors ("Evacuation Providers") to carry out all aspects of the Evacuation. In such event, Newmont shall use reasonable, good faith efforts to notify Supplier of the impending Evacuation and, either at the request of Supplier or of Newmont safety personnel in the event of a safety emergency or at the request of Supplier, medical personnel, or Newmont health and safety personnel in the event of a medical emergency, Newmont shall use reasonable, good faith efforts to notify the Evacuation Providers of the presence of Supplier Party personnel or invitees at the Site and direct Evacuation Providers to provide, at Supplier's sole expense, evacuation services (of a substantially similar type as that provided to Newmont's personnel) to Supplier Party personnel or invitees ("Evacuation Services"). Supplier hereby assumes all risks of and responsibility for any Losses (including damage (property or otherwise), injury, or death), excluding, however, any of the same to the extent caused by the gross negligence or willful misconduct of Newmont, to any Supplier Party personnel or invitees based on or arising out of any Evacuation Provider's provision or lack of provision of Evacuation Services (collectively, "Evacuation Injuries"). Supplier (A) hereby discharges and releases each Newmont Party from any and all Claims and Losses, of any nature whatsoever, that Supplier or any Supplier Party or Supplier Party's invitee claiming through Supplier may have now or in the future as a result of Evacuation Injuries, (B) covenants that Supplier shall not at any time in the future, directly or indirectly, commence or prosecute any action, suit, or other proceeding against any Newmont Party related to the same, and (C) shall indemnify and hold harmless each Newmont Party from and against any and all third party Claims, and shall reimburse each Newmont Party for any and all Losses reasonably incurred by such Newmont Party in connection with investigating, mitigating or defending against any such third party Claims, which Claims or Losses are sustained or incurred by or asserted against any of them and arise out of, in connection with, or are based on allegations, whenever made, related to the Evacuation Services or Evacuation Injuries, excluding, however, any such Claims or Losses to the extent caused by the gross negligence or willful misconduct of Newmont. In addition, Supplier acknowledges that any and all Evacuation Services shall be provided at Supplier's sole cost and expense and Supplier shall be solely liable to Evacuation Providers for all such costs and expenses. If any Evacuation Providers charge Newmont for provision of Evacuation Services to Supplier Party personnel or invitees, Supplier shall promptly, upon receipt of an invoice from Newmont, reimburse Newmont for the same. If such charge includes amounts due for services provided to non-Supplier Party personnel/invitees, Supplier shall be responsible only for its pro rata share thereof (based on the number of Supplier Party personnel and invitees evacuated in relation to all personnel evacuated).

## 5. PRICE OF GOODS; FEES FOR SERVICES; INVOICE; PAYMENT.

5.1 The prices of Goods shall be as specified in the Purchase Order (in each case, the "Price"). Supplier shall not invoice any Goods at any Price higher than that set forth in the Purchase Order without the prior written consent of Newmont. The Price shall remain firm and fixed for the duration of this Agreement and, unless specifically stated therein, shall not be subject to any escalation, additional charges or any other increases of whatsoever description. Unless specifically excluded under the Purchase Order and except as otherwise specified in Section 15 below, the Price of Goods shall include all costs, royalties and license fees, taxes, customs duties, fees or charges of any kind incurred by Supplier, including charges and expenses in connection with the packaging, marking, crating, handling and shipping of such Goods and their carriage to the Designated Location. Supplier shall ensure that the Price charged to Newmont for any Goods is the lowest price charged by Supplier to any purchaser of such Goods.

5.2 If Services are to be performed, as specified in the Purchase Order, the fees for such Services shall be as specified in the Purchase Order (in each case, the "Fees"). Unless otherwise specified in the Purchase Order, the Fees shall remain firm and fixed for the duration of this Agreement and unit and rate based pricing shall not be adjusted irrespective of any variations in the quantity of Services. If, and to the extent specifically, set forth in the Purchase Order, Newmont also shall reimburse Supplier for the actual amount of reasonable and necessary expenses incurred in the performance of the Services; provided, however, that any individual expense in excess of U.S. \$250 must be approved in writing in advance by Newmont in order to be reimbursable.

### 5.3 Invoice Procedures.

A. If Supplier is a registered user of Newmont's electronic Purchase Order and Service Order system ("SRM"), Supplier shall invoice Newmont in accordance with the requirements of SRM. Without limiting the generality of the foregoing sentence, Supplier shall (i) electronically create a service entry confirmation for all Services in SRM prior to invoicing Newmont for such Services, (ii) electronically create an invoice for Services in SRM only after receiving an approved service confirmation from Newmont via SRM, and (iii) electronically create an invoice for Goods in SRM only after receiving an approved goods receipt confirmation from Newmont via SRM.

B. The provisions of this Section 5.3.B shall apply if Supplier is not a registered user of SRM. Supplier shall submit invoices electronically, on a monthly basis, to Newmont Accounts Payable at such address as has been provided to Supplier by Newmont. If Newmont fails to provide such address to Supplier, Supplier shall submit invoices electronically to [CorpAP@Newmont.com](mailto:CorpAP@Newmont.com). All such invoices must reference the PO or SO Number ("PO#") assigned to the Purchase Order and/or Change Order applicable to the Goods and/or Services. Invoices shall contain a reasonable itemization of the Goods provided and of the Services rendered and charges made for those Goods and Services and of travel and other expenses incurred. Copies of receipts, statements, and any other documents that verify the accuracy of such invoice shall also be included. Services that have been performed at regional Newmont sites must be itemized and will include travel, expenses and services for that specific site or region. Invoices received that do not comply with invoicing procedures and details set forth above will be rejected and treated as "disputed" until the invoice is re-submitted correctly. Supplier must correct all invoice compliance issues and resubmit the corrected invoice to the correct address. Payment terms will begin upon the date Newmont receives the corrected invoice, submitted to the correct address. Common invoicing problems to avoid:

- NO PO#: Valid PO# is not listed on invoice.
- PO# COMPLETE: PO# referenced on invoice has been invoiced in its entirety.
- INCORRECT/INVALID PO#: PO# referenced on invoice is incorrect or invalid.
- NO PO LINE #: Invoice contains multiple line items. Invoice line-items must correspond to the relevant line item(s) on associated PO#. For assistance, please contact the individual Newmont Buyer listed in the Purchase Order or such other Newmont contract representative as may be designated in writing by Newmont to Supplier.
- INCORRECT/INVALID PO LINE#: PO# line number stated on invoice is incorrect or invalid.

5.4 Unless different payment terms are set forth in the Purchase Order, payment terms of two percent, 10 days, net 45 days will apply to this Agreement. Payment terms will be computed from the date a correct invoice is received by Newmont; provided, however, that (A) disputed amounts may be withheld pending resolution of the dispute, (B) Newmont shall not be obligated to pay any amounts for Services or Goods if it has not received an invoice for such Services or Goods within 90 days after completion of such Services or delivery of such Goods, and (C) if Supplier fails to comply with its obligations set forth in Section 3.6, above, Newmont may withhold from an invoice any amount reasonably necessary to replace such missing items and revise applicable security access codes and other procedures. Disputed amounts, when reconciled, shall be invoiced and paid as part of the next following monthly invoice. If the parties are unable to reach a mutual reconciliation with respect to disputed invoiced amounts, Newmont shall be entitled to withhold payment of disputed invoiced amounts until such time as a court of competent jurisdiction enters an order, judgment, or other final ruling determining the parties' rights and liabilities, at which time Newmont shall, as appropriate, retain, pay to Supplier, or credit against other amounts owed by Supplier to Newmont the disputed invoiced amounts in accordance with the final ruling.

5.5 Newmont reserves the right to make payments due hereunder directly to suppliers or subcontractors of Supplier if Newmont, in its reasonable discretion, believes that Supplier has not paid or is likely not to timely pay the amounts due to them for Goods or Services provided to Newmont. Supplier shall provide Notice to Newmont within five working days after any occurrence that Supplier believes may give rise to a Claim by Supplier for additional time or money. Failure to give such Notice to Newmont in the manner set forth in this Section 5.5 shall constitute a waiver of any such Claim that Supplier may have. The making of payment shall not prejudice Newmont's right to reject Goods or Services that do not comply with the requirements of this Agreement. Newmont shall have the right to setoff amounts owing from Supplier to Newmont against payment under this Agreement. In addition, if Newmont reasonably believes it might become obligated to pay any amount to a third party or incur other costs, expenses or losses as a result of Supplier's negligence, or failure to fulfill obligations under this Agreement, Newmont shall have the right, in addition to any other remedy available in law or in equity, to setoff and deduct from monies due or to become due to Supplier the sum that is reasonably necessary to cover such amounts, costs, expenses and losses. Any sums so deducted that are subsequently determined to be due Supplier shall thereafter be due and promptly paid to Supplier.

## 6. CHANGE ORDERS.

6.1 Newmont reserves the right at any time to change, by Notice to Supplier, any of the following: (A) the quantity of Goods; (B) methods of shipment and/or packaging; (C) place and/or time of delivery; (D) scope of the Services; and (E) any other matters affecting the Purchase Order. Any such modification shall be evidenced by a Change Order to the Purchase Order, as issued by Newmont and executed or otherwise legally accepted by both parties (each, a "Change Order"), which shall specify the compensation agreed upon by the parties for such changes. If any Change Order causes an increase or decrease in the cost of, or

the delivery schedule for, the applicable Goods or Services, Supplier shall make an equitable adjustment in the applicable Prices, Fees, delivery schedule, or any of the foregoing (an "Adjustment"), subject to Newmont's prior written approval which shall not be unreasonably withheld. Supplier shall submit to Newmont satisfactory evidence (as determined by Newmont in its sole reasonable discretion) from which such Adjustments may be determined. Any claims by Supplier for an Adjustment under this Section 6.1 shall be deemed waived unless asserted to Newmont within 10 days after Supplier's receipt of the applicable Change Order.

6.2 If Newmont reviews and comments on Supplier's technical documents, and implementation of Newmont's comments would cause an increase or decrease in the cost of, or delivery schedule for, the applicable Goods or Services, Supplier shall make an equitable Adjustment, subject to Newmont's prior written approval which shall not be unreasonably withheld. Supplier shall submit to Newmont satisfactory evidence (as determined by Newmont in its sole reasonable discretion) from which such Adjustments may be determined. Any claims by Supplier for an Adjustment under this Section 6.2 shall be deemed waived unless asserted to Newmont within 30 days from Supplier's receipt of Newmont's comments. No Adjustments shall be made under this Section 6 unless Newmont confirms the change in writing.

## **7. ACCEPTANCE: REPLACEMENT GOODS: REPERFORMANCE OF SERVICES.**

7.1 Acceptance of the Goods or any portion of the Services shall be deemed to occur on the earlier of (A) the date on which Newmont notifies Supplier of acceptance, or (B) the date which is 60 days from the date of completion of the Services or delivery of the Goods, as applicable, unless prior to such date Newmont has notified Supplier that it has rejected such Services or Goods or that there is a defect in the Services or Goods. Acceptance of the Services and Goods shall not otherwise be implied or assumed. Newmont's making or failure to make an inspection, examination, or test of, or Newmont's payment for or acceptance of, Goods or Services shall in no way relieve Supplier from its obligation to conform to all of the requirements of this Agreement and shall in no way impair Newmont's right to reject or revoke acceptance of Non-Conforming Goods or Non-Conforming Services or to avail itself of any other remedies to which Newmont may be entitled, notwithstanding Newmont's knowledge of the non-conformity, its substantiality, or the ease of its discovery.

### **7.2 Goods.**

7.2.1 If, in Newmont's sole reasonable determination, Goods do not materially conform to Supplier's warranties set forth in Section 2.2(A), above ("Non-Conforming Goods"), Newmont may either: (A) give Supplier Notice thereof prior to the expiration of the Warranty Period and Supplier shall promptly, at Newmont's option but Supplier's sole cost and expense, (I) repair such Non-Conforming Goods to Newmont's reasonable satisfaction, or (II) replace the same with Goods conforming to Supplier's warranties and compensate Newmont for all costs incurred by Newmont in connection with such Non-Conforming Goods (including freight charges); or (B) retain the Non-Conforming Goods. All repaired and replaced Goods shall themselves be subject to Supplier's warranties set forth in Section 2.2, above, and Supplier's obligations under this Section 7.2 through the end of the original Warranty Period or 60 days from Newmont's acceptance of the repaired or replaced Goods (determined as provided in Section 7.1), whichever is later. If Newmont chooses option (A) and Supplier fails to repair or replace the Non-Conforming Goods within a commercially reasonable period of time (not to exceed 10 days), Newmont may, at its sole option by giving Notice thereof to Supplier, repair the Non-Conforming Goods itself or through a third party or reject such shipment in whole or in part and obtain Replacement Goods pursuant to Section 7.2.2, below. Regardless of which of the foregoing remedies Newmont chooses, Supplier shall be liable for all reasonable costs incurred by Newmont as a result thereof, including labor and freight. If Newmont chooses option (B), Newmont shall have a reasonable amount of time (not to be less than 45 days) to calculate and submit to Supplier a claim for any costs or liabilities incurred as a result of its receipt of Non-Conforming Goods (the "Goods Claim Amount"). Newmont may: (i) deduct the Goods Claim Amount from the invoice amount applicable to such Non-Conforming Goods; (ii) if Newmont previously paid such invoice amount or portion thereof, require Supplier to reimburse Newmont for the Goods Claim Amount; or (iii) set off the Goods Claim Amount against any other amount owing to or invoiced by Supplier.

7.2.2 If Supplier fails to supply any Goods or Newmont rejects Non-Conforming Goods in accordance with Section 7.2.1, above, Newmont shall be entitled to purchase replacements for such Goods from a third-party supplier ("Replacement Goods"). In such event, Supplier shall pay to Newmont, promptly upon receipt of Newmont's invoice therefor: (A) the difference, if any, between the higher price paid by Newmont for the Replacement Goods and the Price that Newmont would have paid to Supplier under the terms of the Purchase Order for such Goods; plus (B) an outside purchasing fee of U.S.\$50 per Replacement Good, which fee is intended to offset the additional costs to Newmont of having to purchase from a third-party supplier.

### **7.3 Services.**

7.3.1 If, in Newmont's sole reasonable determination, Services do not materially conform to Supplier's warranties set forth in Sections 3.2(B), (C), and (D), above ("Non-Conforming Services"), Newmont may give Supplier Notice thereof, within 60 days from Newmont's acceptance of such Service, determined as provided in Section 7.1, and Supplier shall promptly, at Supplier's sole cost and expense, re-perform such Non-Conforming Services to Newmont's reasonable satisfaction. Supplier shall, upon receipt of Newmont's Notice, promptly furnish, at no cost to Newmont, all labor, equipment, supervision, and materials at the jobsite necessary to correct the Non-Conforming Services. All re-performed Services shall themselves be subject to Supplier's warranties set forth in Section 3.2, above, and Supplier's obligations under this Section 7.3 for a period of 60 days from Newmont's acceptance of the re-performed Services, determined as provided in Section 7.1.

7.3.2 If Supplier fails to re-perform the Non-Conforming Services within a commercially reasonable period of time (not to exceed 10 days), Newmont may, at its sole option by giving Notice thereof to Supplier, re-perform the Non-Conforming Services itself or obtain replacement services from another service provider. Regardless of which of the foregoing options Newmont chooses, Supplier shall be liable for all reasonable costs incurred by Newmont as a result thereof, including the difference, if any, between the higher price paid by Newmont for the replacement Services and the Fees that Newmont would have paid to Supplier



under the terms of the Purchase Order for such Services. Newmont shall have a reasonable amount of time (not to be less than 45 days) to calculate and submit to Supplier a claim for any such costs or liabilities incurred (the "Services Claim Amount"). Newmont may: (A) deduct the Services Claim Amount from the invoice amount applicable to such Non-Conforming Services; (B) if Newmont previously paid such invoice amount or portion thereof, require Supplier to reimburse Newmont for the Services Claim Amount; or (C) setoff the Services Claim Amount against any other amount owing to or invoiced by Supplier.

#### **8. SUPPLIER'S ADDITIONAL COVENANTS.**

8.1 Supplier shall comply with all Laws applicable to this Agreement, including all labor and tax Laws and Laws addressing bribery and corruption.

8.2 Without limiting the generality of Section 8.1:

(A) Supplier represents, warrants and covenants to Newmont, as of the Effective Date and the date that each invoice is submitted to Newmont, that in carrying out its responsibilities, neither Supplier, nor any of its equity holders, beneficial owners, partners, officers, directors, employees, agents, or representatives shall, directly or indirectly, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value: (1) to (a) any official or employee of any government, or any department, agency, or instrumentality thereof, (b) any political party or official thereof, or any candidate for political office, (c) any official or employee of any public international organization (as defined in 22 USC Section 288), or (d) any person acting in an official capacity for or on behalf of such government, department, agency, instrumentality, party, or public international organization, in each case for the purpose of influencing any act or decision of such party, or of such official, employee or candidate in his official capacity, or inducing such official, employee, party or candidate to do or omit to do any act in violation of the lawful duty of such official, employee, party or candidate, or securing any improper advantage, or inducing such official, employee, party or candidate to use his or its influence with a government or instrumentality thereof to improperly or illegally affect or influence any act or decision of such government or instrumentality; or (2) to an officer, employee, agent, or representative of another company or organization, with the intent to influence or reward the recipient's action(s) with respect to his company's or organization's business, or to gain a commercial benefit to the detriment of the recipient's company or organization, or to induce or reward the improper performance of the recipient's duties.

(B) Notwithstanding any other provision of this Agreement, Newmont may immediately suspend this Agreement in the event it should receive information which, in its sole discretion, it determines to be evidence of a breach by Supplier of any undertaking above. In the event of receipt of such evidence and/or such suspension, Newmont shall consult with Supplier and may thereafter immediately terminate this Agreement if Newmont, in its sole discretion, is reasonably satisfied that such a breach has occurred. In the event of such termination, Newmont shall have no liability to Supplier under this Agreement for any fees, reimbursements, or other compensation under this Agreement or for any other loss, cost, claim, or damage resulting, directly or indirectly, to Supplier from such termination, other than for Services already performed and/or Goods already delivered.

8.3 Supplier represents and warrants to Newmont that the following conditions exist as of the date of this Agreement and shall continue to exist during and after the Term: (A) there is no actual or potential conflict between Supplier's performance of the Services or obligations owed by Supplier under this Agreement and any obligation that Supplier may have to any third party with respect to confidentiality, intellectual property, or otherwise, and (B) Supplier has no current or potential rights that could be infringed or otherwise violated through Newmont's use of the Goods or use of results of the Services.

#### **9. INSURANCE.**

9.1 Supplier shall procure and maintain at its own expense, during the Term and for such additional periods of time as required below, the following insurance coverage:

9.1.1 Worker's Compensation and Employer's Liability Insurance, covering all claims by or in respect to the employees of Supplier providing: (I) coverage for the statutory limits as required by applicable laws; (II) sufficient endorsements to extend the full policy coverage to all areas in which operations or Services are to be conducted hereunder (including if applicable, international operations); and (III) Employer's Liability Insurance with minimum limits of U.S. \$1,000,000 for all personal injuries and death in one accident.

9.1.2. Commercial General Liability insurance, with a limit of not less than U.S. \$5,000,000 each occurrence and \$5,000,000 annual aggregate. This Commercial General Liability insurance shall include: (I) where an exposure exists, explosion, collapse, and underground (XCU) coverage; and (II) cross-liability coverage. If Supplier's liability policy(ies) does not contain a separation of insured provision, it shall be endorsed to provide cross-liability coverage.

Clauses 9.1.3 through 9.1.7 below, apply only if applicable, as specified within the language of each such clause.

9.1.3 Automobile Liability Insurance, covering owned, non-owned, and hired vehicles which either are used by Supplier on Newmont Premises or are otherwise used in the performance of the Services, covering bodily injury and property damage, with a combined single limit of not less than U.S. \$5,000,000 each occurrence; in addition, for all vehicles which will carry Goods which may be categorized as pollutants under Laws, the policy shall also include sudden and accidental pollution coverage for hauled materials resulting from an accident and an MCS-90 endorsement with the appropriate coverage limit for the type of Goods being transported.

9.1.4 Comprehensive Aircraft Liability Insurance, if any of the Services involve use of a chartered or private aircraft, Comprehensive Aircraft Liability Insurance (carried by Supplier or, if Supplier is not the owner of the aircraft, by the aircraft owner),



including Passenger Liability without any seat limitation, with limits of not less than U.S.\$4,000,000, per seat, combined single limit for bodily injury and property damage, per occurrence.

9.1.5 Professional Indemnity/Errors and Omissions Liability Insurance, for any of the Services which involve medical, legal, accounting, engineering, or similar types of professional services which are typically insurable under professional indemnity policies, covering liability for financial loss or damage due to an act, error, omission, breach of duty, or negligence resulting from errors or omissions in the delivery of professional services with a minimum limit per event of U.S.\$5,000,000.

9.1.6 Medical, Accident, and Travel Insurance, covering all Supplier personnel who will travel, in connection with performance of the Services, to any mine site, exploration site, or non-US location, including coverage of any cost associated with comprehensive emergency medical evacuation, treatment, and repatriation, including repatriation of mortal remains and any costs related thereto. In the alternative, Supplier may choose to not obtain the insurance required by this clause, in which event, Supplier shall indemnify, defend, and hold harmless each Newmont Party against and from any and all Claims and Losses incurred in connection with Supplier personnel traveling, in connection with the performance of the Services, to any mine site, exploration site, or non-US location; provided, however, that the foregoing indemnification shall not apply to the extent such Claim or Loss arises out of or is caused by Newmont's negligence or willful misconduct.

9.1.7 Marine Hull and Protection & Indemnity Insurance, if Supplier is chartering a vessel in connection with performance of the Services, for full loss or damage coverage of not less than the value of the vessel in use. All chartered vessels must be members of the International Protection & Indemnity Association Group.

9.1.8 Unless otherwise specified in the Purchase Order, Newmont shall arrange Marine Transit and/or Inland Transit Insurance coverage that insures all Goods that are transported by air, sea, or land from any place in the world to the Designated Location. If directed by Newmont, Supplier shall obtain such insurance. This provision shall apply notwithstanding any contrary responsibility for such insurance that may typically be associated with any Incoterm specified in the Purchase Order; provided, however, that if the Purchase Order specifically states that responsibility for such insurance shall be borne in accordance with the stated Incoterm, then that provision shall control.

9.2 The forms of the policies, the companies issuing the same, and all other matters with respect to the adequacy of protection shall be subject to the prior and continuing approval of Newmont. Supplier shall deliver to Newmont, at least five business days prior to commencement of the Services, certificate(s) of insurance for all of the above-required insurance policies containing the following: (A) evidence that coverage is on an occurrence, not claims made, basis (not required for Professional Indemnity/Errors and Omissions Liability Insurance); (B) evidence that Newmont is listed as an additional insured or has its interest noted on the insurance policy with respect to the Commercial General Liability insurance, Automobile Liability insurance, and Comprehensive Aircraft Liability insurance and that Newmont Mining Corporation is listed as an additional insured or has its interest noted on the insurance policy with respect to Comprehensive Aircraft Liability insurance; (C) a statement that the insurance provider has waived subrogation rights with respect to Newmont (not required for Professional Indemnity/Errors and Omissions Liability Insurance); and (D) a statement that the policy will not be materially changed or canceled without at least 30 days' prior Notice, by registered or certified mail, to Newmont.

9.3 The effecting of the insurance set out herein shall not in any way limit, alter, or affect the liability and obligations of Supplier under this Agreement.

9.4 Notwithstanding anything herein to the contrary, any policies written on a claims made basis must provide cover in respect of claims arising out of this Agreement for at least 7 years from the expiration or termination of this Agreement.

9.5 In the event that Supplier is permitted to subcontract any of the Services, Supplier shall require the types of insurance coverage set forth in this Section 9 (or such coverage as may be acceptable to Newmont) from its subcontractors and shall require and ensure that subcontractors certify insurance coverage to Newmont prior to commencement of any Services. In the event that any supplier of Supplier is going to go onto Newmont's Premises in connection with the Services, Supplier shall require the types of insurance coverage set forth in Sections 9.1.1., 9.1.2., and 9.1.3. (or such other coverage as may be acceptable to Newmont) from such supplier and shall require and ensure that such suppliers certify insurance coverage to Newmont prior to commencement of any Services.

9.6 Supplier shall effect all insurance policies required under this Agreement with insurance providers that have a Best rating of B+ XII (or equivalent) or better. Should any insurance company which is providing insurance required by this Agreement fall below a Best B+ XII (or equivalent) rating, Supplier shall promptly give Notice to Newmont and, as soon as practicable, effect coverage with another insurance provider that has a Best rating of B+ XII (or equivalent) or better.

9.7 Supplier may insure or self-insure its tools and equipment as it deems appropriate. Whether Supplier insure or self-insures such tools and equipment, the Supplier hereby releases from liability, and waives all rights of recovery (including rights of subrogation) from and against, each Newmont Party for all loss or damage to such tools and equipment irrespective of the theory upon which any claim is brought. Supplier shall include in all subcontracts a provision equivalent to this Section 9.7 affording each Newmont Party a release from and waiver of liability for loss or damage to subcontractors' tools and equipment.

10. **TERMINATION.** Newmont may immediately terminate this Agreement at any time, for its convenience, by giving Notice of the same to Supplier, which Notice shall specify the effective date of termination (the "Termination Date"). Upon Supplier's receipt of any such Notice (the "Termination Notice Date"), Supplier shall, unless the Notice requires otherwise, (A) promptly discontinue work on applicable Goods as of the Termination Notice Date, and on applicable Services as of the Termination Date; (B) place no further orders for Goods covered by the terminated documents; (C) promptly make reasonable efforts to either obtain

cancellation on terms satisfactory to Newmont of all orders to sub-suppliers for Goods or assign those orders to Newmont; and (D) assist Newmont, at Newmont's expense and upon Newmont's request, in the maintenance, protection, and disposition of Goods already acquired by Newmont under this Agreement. Upon termination by Newmont under this Section 10, Supplier shall be paid: (I) the unit Price for each item of Goods for which title has passed to Newmont in accordance with the provisions of Section 2.6, above, prior to the Termination Date; (II) Supplier's actual costs incurred for Goods in the process of manufacture as of the Termination Notice Date, including unused materials and castings, which are identified to and being manufactured or fabricated specifically and solely as a result of this Agreement, if any; and (III) for the applicable Services performed and related allowable expenses incurred by Supplier through the Termination Date. Notwithstanding the foregoing: (a) Newmont shall not be liable for any Goods which Newmont can show, to Supplier's reasonable satisfaction, are Non-Conforming Goods, for which the provisions of Section 7.2, above, shall control; (b) Newmont shall not be liable for any Services which Newmont can show, to Supplier's reasonable satisfaction, are Non-Conforming Services, for which the provisions of Section 7.3, above, shall control, and (c) the amount payable by Newmont shall not exceed the total Price of Goods or Fees for Services specified in the Purchase Order less any payments previously made thereon by Newmont and shall not, in any event, include any consideration for loss of anticipated profits on the terminated portion of Goods or Services. Supplier shall invoice Newmont for the foregoing allowable charges in accordance with the requirements set forth in this Agreement and Newmont shall pay Supplier within 90 days of its receipt of a correct invoice.

11. **DELAY.** Time is of the essence to this Agreement. The delivery and performance dates specified in the Purchase Order are of critical importance to avoid substantial loss and inconvenience to Newmont. Supplier agrees that such time schedules are reasonable. In the event of delay or anticipated delay in delivery or performance, from any cause, Supplier shall promptly give Notice to Newmont of the delay or anticipated delay and shall undertake to shorten or make up the delay by all reasonable means, at Supplier's sole cost and expense; provided, however, that if such delay results from a Force Majeure Event and Newmont requests that Supplier try to overcome the delay or advance the delivery date, the costs and expenses thereof shall be paid by Newmont to the extent the same are attributable to action authorized by Newmont in advance. Material slippage in Supplier's delivery or performance schedule shall be deemed to be reasonable grounds for Newmont's insecurity, in which event Newmont may demand that Supplier provide adequate assurances that Supplier will perform on time.

12. **FORCE MAJEURE.** Any of the following shall be deemed a "Force Majeure Event" under this Agreement: governmental regulation, labor dispute, strike, war, riot, insurrection, civil commotion, explosion, fire, flood, storm or any act of God, delay of common carriers, embargo, or other causes beyond a party's reasonable control. Supplier shall not be liable for any delay in delivery or performance of, or failure to deliver or perform, any Goods or Services if such delay or failure is caused by a Force Majeure Event. Where only a part of Supplier's capacity to perform is excused under this Section 12, Supplier shall make a fair allocation of production and deliveries among the various customers then under contract for similar goods or services during the Force Majeure Event period. Newmont shall not be liable for failure to take delivery of Goods or failure to allow performance of Services if such failure is caused by a Force Majeure Event. Supplier shall not be obligated to sell, nor Newmont obligated to purchase, at a later date, that portion of Goods or Services that Supplier is unable to deliver or perform, or Newmont is unable to take delivery of, because of a Force Majeure Event. The party which will be unable to perform its obligation hereunder as a result of a Force Majeure Event shall give the other party Notice within 10 days from the beginning of such Force Majeure Event with reasonably full particulars thereof and the probable extent to which it will be unable to perform or be delayed in performing its obligations. The party giving such Notice shall use its good faith, commercially reasonable efforts to mitigate the effects of such Force Majeure Event as soon as possible after the occurrence thereof. If it appears that a time for delivery or performance will be extended for more than 20 days by reason of a Force Majeure Event, the party receiving Notice under the prior sentence shall have the right to terminate, by Notice to the other party, any portion of the Purchase Order covering the delayed performance and receive a refund of any amounts paid with respect to the obligations not performed.

13. **GENERAL INDEMNITY.** To the fullest extent permitted by applicable law, Supplier shall indemnify, defend, and hold harmless each Newmont Party against and from any and all Claims and Losses, including (i) injury, bodily or otherwise, to or death of persons, (ii) damage to or destruction of property belonging to Supplier, Newmont, or others, (iii) violation of any Laws, (iv) environmental liabilities, and (v) MSHA fines or penalties, to the extent the same arises out of or are caused by Supplier's breach of this Agreement or any Supplier Party's or Supplier Party's invitee's acts, omissions, or performance of the Services.

14. **INTELLECTUAL PROPERTY INDEMNITY.** Supplier warrants, represents, and covenants to Newmont that all Goods, the sale thereof by Supplier to Newmont, the use thereof by any Newmont Party, the performance of the Services, the use by Supplier of materials, methods, products, or equipment in performing the Services, and Newmont's use of any materials, methods, products, or equipment provided to Newmont by Supplier in connection with the Services do not and will not infringe, directly or indirectly, on any patents or violate any copyrights, trademarks, trade secrets, or any other intellectual property rights ("Third Party Rights"), or cause any Newmont Party to be liable for any fees or royalties arising under any Third Party Rights. Supplier shall, at its sole cost and expense, indemnify, defend, and hold harmless all Newmont Parties from and against any and all Claims of infringement or violation of any Third Party Rights and all Losses related thereto arising with respect to any Goods, the sale to or use thereof by Newmont, the performance of the Services, the use of materials, methods, products or equipment in performance of the Services by any Supplier Party, or Newmont's use of any materials, methods, products, or equipment provided to Newmont by Supplier in connection with the Services. In the event Goods or any part thereof are alleged to infringe or violate any Third Party Rights, at Newmont's request, Supplier either shall obtain, at its sole cost and expense, an irrevocable, license-free license for the applicable Newmont Party to legally use such Goods on the same terms and conditions under this Agreement, shall modify such Goods to be non-infringing but with equivalent functionality and performance, or shall replace such Goods with other non-infringing Goods with equivalent functionality and performance; provided, however, that such license, modification, or replacement shall in no way amend or relieve Supplier of its warranties and obligations set forth in this Agreement.

15. **TAXES.** Supplier shall be solely responsible for all income, withholding and similar taxes levied upon the remunerations earned by Supplier hereunder. Without limiting the generality of the foregoing, Supplier accepts any and all withholdings that

Newmont may be obligated to make, pursuant to applicable law, from compensation payments to Supplier under this Agreement. If Supplier is exempt from any such withholding taxes, it shall make available to Newmont such documentation and other information as may be required by the applicable taxing authority in order to establish Supplier's exemption. Any use, sales, or similar taxes imposed by any governmental authority on or measured by any transaction between Supplier and Newmont pursuant to this Agreement shall be paid by Newmont in addition to the Prices and Fees (unless the Prices or Fees specifically include such taxes, as set forth on the Purchase Order). Supplier shall cooperate with Newmont in opposing the imposition of such taxes on any Goods or Services, the legality of which is reasonably contested by Newmont, and in securing any abatement or refund thereof sought by Newmont. Supplier shall pay all other taxes imposed on any Goods or Services before transfer of title or performance thereof to or for Newmont.

16. **CONFIDENTIALITY.** Supplier, for itself and on behalf of each Supplier Party and their respective assigns, agrees (A) to treat as confidential and proprietary, (B) not to disclose to others, during or subsequent to the Term, and (C) not to use, except for purposes of performing the Services, without the express prior written consent of Newmont, which consent may be withheld for any reason whatsoever, any information, whether verbal or written, of any description whatsoever (expressly including any technical information, experiments, or data) regarding plans, programs, plants, processes, products, minerals, real property interests, costs, equipment, operations, or customers of Newmont or its affiliates, or which has been expressly identified by Newmont as being confidential in nature, that may come within the knowledge of such Supplier Party in the performance of this Agreement, including all Data and Inventions (collectively, "**Confidential Information**"). Supplier shall take all necessary precautions, contractual and otherwise, to prevent unauthorized disclosure or use of Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information that: (I) is, or shall have been, in the possession of Supplier and not subject to a confidentiality obligation prior to disclosure thereof to Supplier in connection with this Agreement; (II) through no act or omission of Supplier becomes published or otherwise available to the public under circumstances such that the public may utilize the same without any direct or indirect confidentiality obligation to Newmont or its affiliates; or (III) is acquired by Supplier from any third party rightfully possessed of the same and having no direct or indirect confidentiality obligation to Newmont or its affiliates, with respect to the same; provided, however, that the foregoing exceptions shall not apply with respect to personally identifiable information regarding the employees or agents of Newmont or any of its affiliates or contractors (other than Supplier). All Confidential Information shall be delivered to Newmont upon the termination or expiration of this Agreement, or at any other time upon Newmont's request. Supplier shall not retain copies of Confidential Information without Newmont's express written authorization. Notwithstanding the foregoing, Supplier may retain one archival hard copy of the Confidential Information for such period of time that Supplier normally retains archival hard copies, and such hard copy shall remain subject to this Section 16 until it is destroyed. In addition, if Supplier's computer system automatically retains back-up copies of Confidential Information, Supplier may retain such copies in Supplier's archival computer storage for the period of time that Supplier normally archives backed-up computer records, and such computer copies shall remain subject to this Section 16 until they are destroyed or erased. Supplier acknowledges that Newmont's Confidential Information is an important asset of Newmont and/or its affiliates and that there is not an adequate remedy at law for a breach of this Section 16 and Newmont and/or its affiliates will suffer irreparable harm as a result of such a breach. Therefore, Supplier agrees that Newmont and/or its affiliates, as applicable, shall be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting bond (cash or otherwise), in the event of actual or threatened disclosure or use of Confidential Information in breach of this Section 16.

17. **DATA SECURITY.** For purposes of this Agreement, "**Personal Data**" means information regarding any individual (whether an employee or agent of Newmont, its affiliates, or contractors of it or its affiliates, or other individuals) recorded in any format, which is obtained by Contractor in connection with this Agreement and that identifies or could identify an individual personally, either by itself or together with other information, including demographic information such as name, sex, age and contact information, financial information such as taxpayer identification numbers and bank account information, and health information such as medical records and insurance claims. Contractor shall, for as long as it has possession of any Personal Data, maintain reasonable security procedures and practices that are both (1) appropriate to the nature of the Personal Data, and (2) reasonably designed to help protect the Personal Data from unauthorized access, use, modification, disclosure, or destruction. For purposes of this Agreement, Contractor is the processor and Newmont is the controller of any Personal Data.

Without limiting the generality of the requirements in this Section, if If Supplier has any Confidential Information or other data owned by Newmont or any Newmont affiliate (collectively, "**Sensitive Information**") on Supplier's information technology systems, Supplier shall, for as long as any Sensitive Information resides on Supplier's information technology system: (i) employ industry-standard firewall and encryption protection for its information technology systems, and (ii) use commercially reasonable efforts to scan its information technology system for viruses and malware and promptly mitigate the effects of any viruses or malware detected. Supplier immediately shall notify Newmont if it becomes aware, or has reason to believe, that any breach of this Section has occurred, that any unauthorized access to or use of, or any security breach relating to or otherwise affecting, any Sensitive Information has occurred, or that any person who has had access to Sensitive Information has violated or intends to violate the terms of this Agreement. Supplier shall, at its own expense, cooperate with Newmont in investigating and responding to the foregoing.

18. **ASSIGNMENT; SUBCONTRACTORS.** The rights and obligations under this Agreement may not be assigned by Supplier without the prior written consent of Newmont, which consent may be denied in its sole discretion. Any attempted assignment without such consent shall be void. If such consent is granted, such assignment shall not increase or alter Newmont's obligations nor diminish or alter Newmont's rights. With respect to any Services to be performed by Supplier, such Services are unique and, therefore, Supplier may not subcontract any portion of its performance thereof to any third party without the prior written consent of Newmont. If Newmont consents to Supplier's use of a subcontractor for the performance of all or any portion of the Services, Supplier nevertheless is and shall remain fully responsible for compliance with all provisions of this Agreement by, and the acts and omissions of, such subcontractor and all of its personnel. In addition, Supplier shall ensure that each such subcontractor's agreement requires the subcontractor specifically to comply with the provisions set forth in Sections 3.6, 4, 8, 9, 16, 23, and 24. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

19. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, other than such laws, rules, regulations, and case law that would result in the application of laws of a jurisdiction other than the State of Colorado. The parties hereby submit to the jurisdiction of the state and federal courts in the State of Colorado and agree that the state and federal courts in the State of Colorado shall be the exclusive forum for the resolution of any disputes related to, arising out of, or arising under this Agreement, whether based in tort, contract, or other legal theory.

20. **NOTICES.** All notices and other required communications under this Agreement ("**Notices**") shall be in writing, and shall be sent to the addresses set forth below, if to Newmont, and to the Supplier's address as set forth in the Purchase Order, if to Supplier. A party may change its Notice address by sending Notice to the other party of the new address. Notices shall be given: (A) by personal delivery to the other party; (B) by facsimile, with electronic delivery confirmation received; (C) by registered or certified mail, return receipt requested; or (D) by express courier (e.g., DHL, Federal Express, etc.). Notices shall be effective and shall be deemed delivered: (I) if by personal delivery, on the date of the personal delivery; (II) if by facsimile on the date stated in the electronic confirmation, delivered during normal business hours (8:00 a.m. to 5:00 p.m. at recipient's location), and, if not delivered during normal business hours, on the next business day following delivery; (III) if solely by mail, on the date of receipt as stated on the return receipt; or (IV) if by express courier, on the date signed for or rejected as reflected in the courier's delivery log.

Notice address for Newmont:

Cripple Creek & Victor Gold Mining Company, LLC  
100 N. 3rd Street  
Victor, CO 80860  
Attention: Contracts Department  
Fax Number: (719) 689-2776

With a copy of any Notice of breach of this Agreement by Newmont or other legal Notice to:

Newmont USA Limited  
6900 E. Layton Ave, Suite 700  
Denver, CO 80237  
Attn: Legal Department  
Fax Number: (303) 837-5810  
Email: [LegalNotices@newmont.com](mailto:LegalNotices@newmont.com)

21. **ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; WAIVER; CONSTRUCTION.** This Agreement constitutes the complete and entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes, merges, and voids all negotiations, prior discussions, and prior agreements and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may not be altered or amended except by a document executed, or otherwise legally accepted, by each party. Should any clause or provision of this Agreement be held or deemed unenforceable or illegal by any court, the remaining provisions of this Agreement shall survive and be fully enforceable as if the illegal or offending provision was never included herein. Any waiver hereunder by a party of a right or entitlement shall be effective against such party only if in a writing signed by such party, and any such waiver shall be effective only with respect to the particular matter to which it relates and shall not be a continuing waiver. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

22. **SURVIVAL.** All provisions of this Agreement which, by their general terms, reasonably may be interpreted as being intended to survive the expiration or termination of this Agreement, shall so survive.

23. **EXPORT LAWS.**

- (1) Supplier shall notify Newmont in advance if any item or information to be provided to Newmont by Supplier under or otherwise in connection with this Agreement is subject to United States or any other country's export control laws and, upon Newmont's request, shall provide Newmont with all information it has which relates to the export controls applicable to such item or information (e.g., information relating to applicable jurisdiction and classification determinations).
- (2) Notwithstanding any contrary "ship to" address listed in the applicable Work Order or use by Newmont of a freight forwarder, Contractor acknowledges that the ultimate delivery destination of any items or information provided by it hereunder is the United States.

24. **PUBLICITY.** Supplier shall not make news or media releases or issue other advertising pertaining to this Agreement or otherwise referencing the name or logo of Newmont or any of its affiliates without first obtaining the written approval of Newmont.

25. **AUDIT AND RECORD RETENTION.**

- (1) Supplier shall maintain a copy of records and documentation related to all Goods and Services, including correspondence, directions, subcontracts, and associated Change Orders, document submittals, test records and orders, meeting minutes, transmittals, plans, drawings, specifications, books, accounts, accounting records, receipts, vouchers and other memoranda of any description related to this Agreement (collectively "**Purchase Order Documentation**"). With

respect to accounting records, Supplier shall maintain a true, correct, and complete set of records, including books and accounts, prepared in accordance with generally accepted accounting principles consistently applied, relating to the costs and, if reimbursable, expenses for which Supplier seeks compensation or reimbursement under this Agreement, including time expended by Supplier and payments to any subcontractors and suppliers or as may otherwise be necessary for proper financial management under this Agreement, as well as all other records relating to the Goods or Services which may be required by applicable legal requirement (e.g., hazardous material handling records). Such records shall be made available to audit, inspect, and copy by Newmont or its designated representative during the Term and for a period of five years following termination or expiration of this Agreement, upon 24 hours' prior Notice, and during business hours (8:00 a.m. to 5:00 p.m. where the records are kept); provided, however, that Newmont shall not have audit rights into any fixed rates, agreed-upon percentage multipliers or lump sum amounts. Upon termination or expiration this Agreement, and at Newmont's request, Supplier shall deliver, as a condition precedent to final payment, all Purchase Order Documentation requested by Newmont within 30 days after receiving Newmont's request.

- (2) Upon Newmont's request, Contractor promptly shall provide Newmont with information relating to Contractor's processes and activities that may pose a reputational risk to Newmont in order to allow Newmont to conduct an audit of the same, and shall allow Newmont reasonable access to its personnel and facilities in connection with such audit. All information obtained by Newmont pursuant to such audit shall be subject to reasonable confidentiality requirements, if so requested by Contractor.

26. **ATTORNEYS' FEES.** Except as otherwise provided herein, if a party shall commence any action or proceeding against another party in order to enforce the provisions of this Agreement or to recover damages as a result of the alleged breach of any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover all reasonable costs in connection therewith, including reasonable attorneys' fees.

27. **PRECEDENCE.** These Purchase Terms and Conditions, the Purchase Order, and any Change Orders are intended to be complementary and shall be interpreted and construed as complementary, whenever possible. In the event, however, of any contradiction, discrepancy, ambiguity, or inconsistency between such documents, the following order of precedent shall apply:

1. Sections 1 to 27 of these Purchase Terms and Conditions;
2. Change Orders, if any; then
3. The Purchase Order.

\\END OF DOCUMENT\\