

GENERAL CONDITIONS

1. Application of Terms

1.1. **Application of Terms.** Provisions in these General Conditions relating to:

- (a) services, will only apply to the extent that Services are described in the Scope and performed by the Contractor or Subcontractors;
- (b) goods, will only apply to the extent that Goods are described in the Scope and supplied by the Contractor or Subcontractors.

1.2. **Supplemental and Special Conditions.** These General Conditions may only be varied by Supplemental and Special Conditions expressly agreed to in writing by the Parties and attached to the Agreement.

2. Definitions

2.1. **Defined Terms.** Unless the context requires otherwise, the following capitalized terms mean:

"Aboriginal" means Indian (as defined by the Indian Act), Métis, or Inuit.

"Aboriginal Business" means a business that:

- (a) is a sole proprietorship, wholly owned by an Aboriginal person;
- (b) is a corporation, joint venture or partnership which has substantial ownership rights, including any voting rights, directly held by or on behalf of an Aboriginal community;
- (c) has demonstrated that a significant portion of its employees are members of Aboriginal communities and has a formal Aboriginal training and employment policy and strategy in place; or
- (d) has substantial Aboriginal ownership interests or training and employment commitments, as determined by EVR.

"Affiliate" shall have the same meaning given to that term in the Canada Business Corporations Act which meaning shall also apply to partnerships, limited liability partnerships and limited partnerships.

"After-Sales Services" means after-loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, cause of action, proceeding, application, equitable relief, lien (whether builders', mechanic's, construction or other type of lien), legal hypothec, encumbrance, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation, defence, settlement and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.

"Code of Conduct" means Glencore's Supplier Code of Conduct available at <https://www.glencore.com/suppliers>, as may be amended by Glencore from time to time and provided by EVR.

"Background Intellectual Property" means any inventions, patents, trade secrets, registered designs, copyright, or other intellectual property in existence prior to the execution of the Agreement.

"Claim" or **"Claims"** means any loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, cause of action, proceeding, application, equitable relief, lien (whether builders', mechanic's, construction or other type of lien), legal hypothec, encumbrance, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation, defence, settlement and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.

"Code of Conduct" means Glencore's Supplier Code of Conduct available at <https://www.glencore.com/suppliers>, as may be amended by Glencore from time to time and provided by EVR.

"Completion" means:

- (a) in relation to Services, that the Services have been fully performed and completed; and
 - (b) in relation to Goods, the Goods have been fully completed, supplied and delivered, each in accordance with the Agreement and as determined by EVR.
- "Confidential Information"** means all information of a confidential or proprietary nature which a Party, directly or indirectly, acquires from the other party in connection with the Agreement, including any information concerning or relating to the Party's business, affairs, financial position, assets, operations, activities, prospects or trade secrets, together with all analyses, evaluations, compilations, notes, studies, plans, specifications or other documents prepared by a Party, or their respective Personnel, containing or based upon the information.

"Contractor" means the Party named in the Agreement responsible for the performance of the Services and the supply of the Goods to EVR, and includes its authorized representatives, agents, successors and permitted assigns.

"Documents" means diagrams, illustrations, specifications or drawings and other documents pertaining to the Goods and Services including certificates, operating manuals, proof of ownership, shipping and transportation, customs and import records, quality inspection test results, and reports supplied directly or indirectly by EVR to the Contractor, or produced by the Contractor or Subcontractors in connection with the performance of the Services and supply of the Goods.

"Effective Date" means the effective date as defined in the Agreement.

"Event of Force Majeure" means an event or circumstance not reasonably within the control of a Party, which restrains or delays the performance by a Party of its obligations under the Agreement and, which by the exercise of due diligence and planning, the Party was, or is, unable to prevent or overcome. Notwithstanding the foregoing, this definition shall not include:

- (a) economic hardship or lack of money or credit;
- (b) strikes, lockouts or other industrial concerted action by Personnel of the Contractor which may adversely impact the performance of the Services or the supply of the Goods;
- (c) shortage of labour, materials, equipment, transportation or utilities; or
- (d) climatic weather and subsurface conditions which the Contractor could reasonably have expected to occur within the geographic area where the Services are performed and the Goods are supplied.

"EVR" means EVR Operations Limited, the entity identified in the Agreement including any agents or other representatives duly authorized to act on its behalf.

"EVR's HSEC Management Standards" means EVR's health, safety, environment, and community requirements applicable to the Services and Goods, as may be required by the Agreement and as updated or provided by Glencore or EVR from time to time.

"EVR's Policies" means the current version of all of EVR's standards, protocols, requirements, procedures, policies and guidelines, including EVR's HSEC Management Standards, the Code of Conduct, questionnaires, training, certifications and other documents, materials and initiatives relating to the Services and the Goods, available on Glencore's website at <https://www.glencore.com/who-we-are/policies> and at other physical or electronic locations as may be updated or provided by EVR from time to time.

"General Conditions" means this document entitled "General Conditions" and forming part of the Agreement.

"Glencore" means Glencore plc, EVR's parent company.

"Goods" means all supplies, goods, materials, equipment, components and spares required to be supplied by the Contractor in accordance with the Agreement and as may be further detailed in the Scope.

"Hazardous Substance" means any substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material which is or becomes listed, regulated or addressed under any Law, including in respect of its use, manufacture, importation, handling, transportation, storage, disposal and treatment.

"Incoterm" means the delivery term applicable to the delivery of Goods by the Contractor to EVR based on the 2020 edition of the International Chamber of Commerce official rules for the interpretation of trade terms.

"Indemnitees" means EVR, its Affiliates and agents and their respective Personnel.

"Law" or **"Laws"** means all valid applicable common law, federal, provincial, state, municipal and other local laws, orders, rules, codes, bylaws, regulations and decisions of regulatory bodies, including, occupational health and safety, fire, employment insurance, workers' compensation, Hazardous Substance, transportation of dangerous goods and handling, customs and international trade, environmental protection legislation, Supply Chain Diligence Laws, anti-corruption and anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials and any other governmental requirements, work practices and procedures prescribed by law and related to the Contractor, Project, Services or Goods.

"Other Contractors" means contractors or suppliers, other than the Contractor or Subcontractors, engaged by EVR to provide labour, materials, products, or services to EVR.

"Parties" means collectively EVR and the Contractor and "Party" means one of them as the context requires.

"Person" means an individual, partnership, a limited liability partnership, limited partnership (including a limited liability limited partnership), limited liability company, joint venture, trust, business trust, cooperative, association or a corporation, as the case may be.

"Personnel" means a Party's directors, officers, employees, contract personnel, representatives, advisors and agents, other individuals under the Party's direction or supervision, and, in respect of the Contractor, includes direct field labour (as applicable), which meaning shall also apply to a Party's Affiliates and Subcontractors.

"Project" means the EVR project(s) identified in the Contract.

"Records" means the records of the Contractor and Subcontractors relating to the Contract including paper and electronic copies of:

- (a) records of account for all Services performed and Goods supplied including costs related to termination or suspension and any other items of cost for which EVR may be obliged to reimburse or compensate the Contractor or any other Person; and
- (b) information relating to Contractor's compliance with the Law, EVR's Policies and the Contractor's use of Confidential Information.

"Regional Business" means a local business or Aboriginal Business established within the same region or municipality as the Services are performed or the Goods supplied and, for the purposes of this Contract, "established" means:

- (a) retains a manned office, other than a post office box address;
- (b) retains an employment base;
- (c) retains a valid business license; and
- (d) is carrying on a commercial business.

"Scope" means the document entitled "Scope" that forms part of this Agreement.

"Services" means all labour, supervision, administration, After-Sales Services, supplies, tools, equipment and other work and materials to be supplied, installed, performed or otherwise used by the Contractor as required by the Agreement and as may be further detailed in the Scope.

"Site" means the site(s) where the Project is located and includes any site owned, operated or controlled by EVR or at which EVR has directed the Contractor to attend, or deliver to, as necessary to perform the Services or supply the Goods.

"Subcontractor" or **"Subcontractors"** means one or more of the Contractor's subcontractors, suppliers, manufacturers, brokers, vendors or agents, whether or not an Affiliate of the Contractor to whom performance of any part of the Services and supply of the Goods is subcontracted directly or indirectly by the Contractor.

"Supplemental and Special Conditions" means the supplemental and special conditions agreed to by EVR and the Contractor as set out in the Appendix entitled "Supplemental and Special Conditions".

"Supply Chain Diligence Laws" means all laws governing the derisking of human rights violations and abuses including forced and/or child labour in the supply chains. **"Tax"** and **"Taxes"** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental authority together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection thereof.

"Warranty Period" means the period of time starting on the Effective Date and continuing until 18 months after Completion.

3. Interpretation

3.1. **Interpretation.** The interpretation of the Agreement shall be governed by the following rules:

- (a) headings are for convenience and reference only and are not to be considered in the interpretation of, or affect the meaning of any of its provisions;
- (b) all dollar figures shall mean Canadian Dollars, unless otherwise specifically referenced;
- (c) the word "include" or "including", when following a general term or statement, is not to be construed as limiting the term or statement to the specific or similar items or matters stated, but rather as referring to all items or matters that could reasonably fall within the broadest possible scope thereof;
- (d) provisions in the imperative mood are directed to the Contractor and, in case of conflict, are deemed to include the expression "the Contractor must", and
- (e) any reference to a statute shall include the statute and the corresponding regulations, together with all amendments made and in force from time to time, and any statute or regulation that may be passed which has the effect of supplementing or superseding them.

3.2. **Precedence.** In the event of a conflict or inconsistency among or between the documents comprising the Agreement, the following priority, in descending order, shall govern:

- (a) the Agreement, exclusive of the General Conditions and attachments;
- (b) Supplemental and Special Conditions, if any, expressly agreed to in writing by the Parties and attached to the Agreement;
- (c) General Conditions;
- (d) for documents revised and approved by the Parties in writing, the latest revisions govern;
- (e) technical specifications; and
- (f) drawings.

Any reference to the Contractor's quotation, bid, proposal or other document in the Agreement does not imply acceptance by EVR of any of those terms, conditions, or requirements. Any of Contractor's general conditions stated in any communication to EVR shall not apply to or affect the Agreement unless expressly required by the Agreement and agreed to by the Parties in writing. These General Conditions will not apply where there is an existing agreement between the Parties pertaining to the Services and Goods described in the Agreement unless the existing agreement expressly incorporates these General Conditions.

3.3. **Severability.** If any provision in the General Conditions is invalid or unenforceable to any extent, the remainder of the General Conditions shall not be affected and shall be separately valid and enforceable to the fullest extent permitted by Law.

3.4. **Adverse Rule of Construction Not Applicable.** The words in the General Conditions shall bear their natural or defined meaning. The Parties have each had full opportunity to obtain legal advice and accordingly any rule of construction to the effect that any ambiguity in the Agreement is to be resolved against the drafting party shall not be applicable in the interpretation of the Agreement, including the General Conditions.

GENERAL CONDITIONS - SERVICES

4. Scope of Services

4.1. **Services.** The Contractor shall perform the Services in accordance with the requirements of the Agreement.

4.2. **Time.** The Contractor acknowledges that timely performance of the Services is a matter of paramount importance to EVR. The Contractor shall immediately notify EVR if all or any portion of the Services will not be or are not likely to be completed by the date of Completion and other progress dates and milestones required by the Agreement.

4.3. **Acceptance of the Site.** Any failure by the Contractor to discover matters which affect or could affect the Services shall not relieve the Contractor from its obligations under the Agreement. The Contractor accepts the Site and acknowledges that it has investigated and satisfied itself, or will investigate and satisfy itself, prior to commencing performance of the Services as to:

- (a) the nature of the Services;
- (b) the location of, and all conditions relating to or affecting, the Site, including accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;
- (c) general character, quality, quantity and availability of equipment and materials required to execute and complete the Services;
- (d) all environmental risks, conditions, Law and restrictions applicable to the Contractor that might affect the Services; and
- (e) all conditions affecting labour, including labour relations, availability, productivity and administrative practices, including those relating to safety, applicable to the Services. If the Contractor discovers any conditions at the Site, including subsurface or otherwise concealed physical conditions, that could have an impact on safety, cost or the time necessary to complete the Services, the Contractor shall notify EVR in writing promptly and before the conditions are disturbed.

4.4. **Errors, Omissions or Inconsistencies.** If the Contractor discovers any errors, omissions, ambiguities, inconsistencies or other actual or potential conflicts or deficiencies in the Documents, it shall resolve them with EVR before proceeding with the performance of the affected portion of the Services.

4.5. **No Deviations.** The Contractor shall not deviate from the specifications or requirements stated in the Agreement without EVR's prior written approval.

4.6. **Minimum of Interference and Full Cooperation.** The Contractor shall perform the Services in a manner as to cause a minimum of interference with EVR's operations. The Contractor shall cooperate fully with all other parties with whom the Contractor may be involved, including Other Contractors, during the performance of the Services.

4.7. **Property Damage.** The Contractor shall protect the Services and EVR's property and property adjacent to the Site from damage which may arise as a result of the Services and the operations of the Contractor and Subcontractors. If the Agreement permits or requires any EVR property to be in the care, custody or control of the Contractor, the property will be deemed to be in the care, custody or control of the Contractor upon delivery to the Contractor until it is returned and accepted by EVR.

4.8. **EVR Inspection and Rejection of Services.** Contractor must provide to EVR, at EVR's request, progress reports on the performance of the Services. A progress report must be detailed enough to allow EVR to ascertain whether the Services are in conformity with the Agreement. EVR reserves the right to inspect the Services or witness tests on the Services of their results at any time during the performance of the Services.

5. Material, Equipment and Supplies

5.1. Materials and Equipment. Contractor will supply all labour, supervision, equipment, supplies, materials, goods, testing and warehousing required for the proper execution and completion of the Services, other than any equipment or materials specifically identified in the Scope as being supplied by EVR.

5.2. Contractor to Check Material, Equipment and Supplies. The Contractor shall check, assess and record upon delivery to the Contractor the quantity and condition of all materials, equipment and supplies supplied by EVR or otherwise obtained by the Contractor which are to be installed or used by the Contractor during the performance of the Services. If any of the materials, equipment or supplies are lost, damaged or destroyed after having been delivered to the Contractor, or while in the care, custody or control of the Contractor, the Contractor shall repair and replace the same at its own expense unless:

- (a) the loss, damage or destruction is caused by the negligence of EVR; and
- (b) EVR was not acting under the direction of the Contractor at the time of the loss, damage or destruction.

6. Other Contractors

6.1. Other Contractors. If any part of the Services depends upon the Services of Other Contractors and the Contractor becomes aware of any defects, deficiencies, conflicts, scheduling or other matters involving the services of Other Contractors that may interfere with the execution of the Services in accordance with the requirements of the Agreement, the Contractor shall as soon as practicable provide written notice to EVR of all relevant details. Should the Contractor fail to provide notice to EVR as required, the Contractor shall:

- (a) have no Claim against EVR by reason of delayed, defective, deficient or incomplete services of any Other Contractors; and
- (b) reimburse EVR for all costs, expenses and losses suffered, sustained, paid or incurred by EVR relating to any Services that require re-performance as a result of any defects, deficiencies, conflicts, scheduling or other matters involving the services of Other Contractors.

7. Clean Up

7.1. Waste. In addition to the requirements of Section 12 (Hazardous Substances), no waste materials shall be allowed to accumulate in or around the Site, and the Contractor shall remove or cause its Subcontractors to remove, debris or waste materials regularly to ensure that the Site is kept clean. Before Completion of the Services, the Contractor shall remove or cause to be removed all temporary structures, superfluous materials and equipment and waste materials of every kind resulting from the Services.

8. Ownership of Documents

8.1. Ownership. Ownership of all Documents shall at all times rest with EVR and EVR shall have the unlimited right to their use. All Documents shall be considered Confidential Information and shall be returned or delivered to EVR prior to final payment. The Contractor may retain a copy of the Documents if required by Law.

9. Representations – Services

9.1. Contractor's Performance Representations and Warranties. The Contractor represents and warrants that:

- (a) the Services shall be performed in a professional, efficient, good and workmanlike manner in accordance with Law, EVR's Policies, the Agreement and with currently accepted practices and principles normally employed in the industry similar to the Services and, in the event of a conflict, the higher practice or principle shall take precedence;
 - (b) the Contractor has the necessary qualified Personnel with the skills and expertise to supply the Services and is experienced, ready and willing to supply the Services in accordance with the requirements of the Agreement;
 - (c) the Contractor has obtained or will obtain, and will maintain and keep in good standing, all permits, licences and authorizations necessary to the performance of the Services; and
 - (d) the Services shall not infringe or contribute to the infringement of any intellectual property rights; and
- The foregoing representations and warranties shall survive performance, inspection, acceptance and payment for the Services.

10. Health and Safety

10.1. Contractor HSEC Plan. The Contractor shall at all times while performing the Services maintain a health, safety, environment and community plan that meets or exceeds EVR's HSEC Management Standards, EVR's Policies and the Law. The Contractor will provide a copy of its plan to EVR and EVR's third party contractor management service provider upon request.

10.2. Observance of Safety. The Contractor shall observe and comply with and shall ensure that its Personnel, as well as the Personnel of Subcontractors, observe and comply with the Contractor's environment, health and safety plan and EVR's HSEC Management Standards. In the case of any ambiguities, inconsistencies or other actual or potential conflicts or deficiencies between the requirements of the Contractor's environment, health and safety plan, EVR's HSEC Management Standards, EVR's Policies and the Law, the stricter or higher standard shall apply.

11. Security

11.1. Risk Avoidance. The Contractor shall, and shall ensure that Subcontractors shall, at all times conduct all operations on EVR's Sites in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or any other means to any goods or other property, including real property.

11.2. Security Requirements. The Contractor shall cooperate with EVR and comply with EVR's security requirements and arrangements for the Site and Project established by EVR. Compliance with the security requirements shall not relieve the Contractor of its responsibility for maintaining proper security and physical protection for any goods or other property, nor shall it be construed as limiting the Contractor's obligations by Law and to undertake reasonable action to establish and maintain secure conditions at the Site including any material laydown locations.

11.3. Site Access and Replacement of Personnel. EVR may, in its sole discretion, by notice to the Contractor, deny access to the Site to any Personnel, or require the Contractor or Subcontractors to reassign, replace or remove any Personnel from the Site or Project. In the event that any Personnel of the Contractor or a Subcontractor is reassigned or removed, the Contractor or Subcontractor, as the case may be, shall promptly replace that Personnel with qualified substitutes.

12. Hazardous Substances

12.1. Hazardous Substances. The Contractor shall not, and the Contractor shall ensure that Subcontractors shall not, use, store, transport, remove, dispose of or destroy any Hazardous Substances on Site, except with EVR's prior written approval. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed shall be dealt with in accordance with the Law and EVR's HSEC Management Standards.

12.2. EVR's Loss Prevention Department. If EVR's Loss Prevention Department responds to, or is asked to respond to, a Hazardous Substances situation caused by the Contractor or Subcontractors, the costs thereof will be for the account of the Contractor.

GENERAL CONDITIONS - GOODS

13. Scope of Supply and Shipping/Packing

13.1. Goods. The Contractor shall supply the Goods in accordance with the requirements of the Agreement.

13.2. Time. The Contractor acknowledges that timely supply of the Goods is a matter of paramount importance to EVR.

(a) The Contractor shall immediately notify EVR if all or any portion of the Goods will not be or are not likely to be delivered to the "ship to" point by the dates required in the Agreement, including the Completion date.

(b) If all or any portion of the Goods are delivered prior to the dates required in the Agreement including the Completion date, then EVR may, at its sole option, charge the Contractor for reasonable storage costs or refuse to accept the delivery of the Goods until the date set out in the Agreement.

13.3. Shipping and Import. If the Agreement specifies a method of shipping, carrier, or route, then no deviation from those terms may be made without EVR's prior written approval. The Contractor shall be responsible for any additional costs, losses or damages resulting from an unauthorized deviation in method, carrier or route. If there is no specification of method, carrier or route in the Agreement, shipping shall be made by the least expensive low-risk route and method to allow delivery of the Goods on or before the dates required in the Agreement, including the Completion date.

Unless another term pertaining to shipping and import is expressly specified in the Agreement, Goods shall be shipped on the basis of Incoterm Delivered Duty Paid (DDP) – EVR's site, and Contractor shall:

- (a) be solely responsible for compliance with all import and export Laws, attendant administration and any expenses arising from duties, custom clearance charges, errors, omissions, or imposed levies, should any Goods be manufactured or otherwise sourced from outside of Canada;
- (b) be the importer of record, use Contractor's or a Subcontractors' own business number, and be responsible for accurate import and export documents and applicable reporting and accounting requirements, records of which must be provided to EVR upon EVR's request to Contractor; and
- (c) be responsible for designating its own customs broker and shall not use EVR's customs broker or business number.

13.4. Shipping Documents. Unless otherwise stated in the Agreement, all invoices, documentation, correspondence, cases, packages, bundles, containers and packing slips, shall be marked with an Agreement number. The Contractor shall attach to each shipment, packing slips showing contents, together with the Contractor's name, the Agreement number and EVR's stock numbers indicated on the Agreement.

13.5. Packing. The Contractor shall ensure that the Goods are packaged in a manner that will prevent damage in shipping. No charge will be allowed for taping, delivery, special handling charges, boxing, packing, and crating or for cases, packages, drums, cable reels, pallets and boxes unless stated in the Agreement.

14. Representations – Goods

14.1. Contractor's Performance Representations. The Contractor represents and warrants that the Goods shall:

- (a) be free from all latent and other defects or deficiencies;
- (b) be of merchantable quality
- (c) be reasonably fit for the purpose for which the Goods are supplied, as described in the requirements of the Agreement;
- (d) be new and unused unless otherwise specified in the Agreement;
- (e) conform to the specifications, drawings, samples and other descriptions furnished by the Contractor or EVR, if applicable;
- (f) remain free and clear of all liens, encumbrances, any adverse Claims, demands or other interests; and
- (g) not infringe or contribute to the infringement of any intellectual property rights.

15. Delivery of Goods

15.1. Return of Goods. All Goods supplied by the Contractor shall comply with all Laws and are subject to EVR's inspection after delivery to the Site. Goods other than those required by EVR shall not be supplied without EVR's prior written approval. If any Goods are delivered in error, over-shipment or under-shipment, rejected by EVR as not being in accordance with the Agreement (including make, model, serial number and type, as applicable), or overages in excess of trade practice, then EVR may at its sole option:

- (a) return all or any portion of the Goods at the Contractor's expense and risk; or
- (b) accept all or any portion of the Goods.

Each delivery of Goods shall be considered separately and EVR's right to reject a delivery that does not comply with the Agreement shall not be affected by EVR's acceptance or non-acceptance of any other deliveries.

15.2. Title Transfer. Title to the Goods, in whole or in part, shall be vested in EVR when the first of the following occurs:

- (a) the Goods are appropriated to the Agreement;
- (b) EVR pays for the Goods; or
- (c) the Goods are delivered to the Site.

15.3. Refusal of the Goods. Any transfer of title to the Goods shall be without prejudice to EVR's right to refuse the Goods in case of non-conformity with the requirements of the Agreement.

15.4. Risk of Loss. Unless an Incoterm or other term pertaining to risk of loss having a contrary effect is expressly set out in the Agreement and notwithstanding subsection 15.2 (Title Transfer), care, custody, control and risk of loss of Goods remains with Contractor until EVR takes physical possession and accepts delivery.

15.5. Security Interest. The Contractor will not register or amend a financing statement naming EVR as the debtor or any other form of notice in the applicable personal property registry without either a signed security agreement or other prior written approval from EVR.

15.6. Title to EVR Equipment. Despite any other provision of this agreement, if the Services pertain to any equipment (the "Existing EVR Equipment") owned by us, including the overhaul of such equipment, prior to the commencement of such Services:

- (a) title to the Existing EVR Equipment remains with EVR at all times, regardless of its location;
- (b) at all times that the Existing EVR Equipment is located at Contractor's premises, Contractor must make it clear (whether by affixing a notice to the Existing EVR Equipment or otherwise) that the Existing EVR Equipment is EVR's property; and
- (c) Contractor is responsible for all risks associated with each part of the Existing EVR Equipment from the time that the Existing EVR Equipment is delivered to Contractor's premises (or from the time it is collected by Contractor from EVR's site, if Contractor is responsible for transportation) until it is collected by EVR from Contractor's premises (or until the time that the Existing EVR Equipment has been delivered to EVR's site, if Contractor is responsible for transportation).

GENERAL CONDITIONS - GENERAL

16. Changes

16.1. EVR Change. EVR may, at any time, make changes to all or any part of the Services and Goods including additions, deletions, rescheduling and acceleration or deceleration and the Contractor agrees to perform its obligations under the Agreement as changed.

16.2. Compensation for Change. In the event a change in the Services and Goods directly or indirectly causes an increase or decrease in the time or cost required to perform its obligations under the Agreement, the Contractor shall, within 10 business days of receiving a notice of change, submit to EVR detailed information substantiating its impact for review and consideration by EVR. EVR and the Contractor shall negotiate in good faith to determine whether an equitable adjustment should be made to the Contractor's schedule or compensation, or both, and if applicable the Agreement shall be modified in writing accordingly. If EVR and the Contractor are unable to resolve the dispute over a change, the dispute shall be finally determined in accordance with Section 34 (Dispute Resolution).

16.3. Performance. The Contractor shall proceed diligently with the performance of the Services and supply of Goods, pending final resolution of any request for relief, dispute, claim, appeal or action being determined under Section 34 (Dispute Resolution).

17. Independent Contractor

17.1. Independent Contractor. The Contractor is an independent contractor. Nothing in the Agreement creates a relationship of agency, partnership or joint venture between the Parties. The Contractor has no authority, and shall not represent itself to have any authority, to make any contract, commitment, representation or statement, for or on behalf of EVR to any other party without EVR's prior written consent.

18. Regional and Aboriginal Businesses

18.1. Regional Businesses. If the Contractor's performance of Services or delivery of Goods creates any subcontracting or supply opportunities, the Contractor shall make commercially reasonable efforts to inform:

- (a) any Regional Businesses of any contracting opportunities that those businesses could be reasonably expected to perform; and
- (b) residents of the region and local community, including Aboriginal communities, of employment opportunities.

The Contractor will consider residence or association with regional and local communities, including Aboriginal communities, favourably in awarding any contracts or employment opportunities associated with the Services or Goods, provided there is no time or cost increase, or other penalty, to EVR or the Contractor.

18.2. Regional Employment and Contracting Plan. When specified in the Agreement, the Contractor shall prepare and submit, for EVR's approval, an Aboriginal Business and Regional Business plan. The Contractor shall provide to EVR on request, or as otherwise required by the approved plan, reports on the Contractor's performance against this plan.

19. Liens

19.1. Filing of Liens. If a lien or other encumbrance in respect of the Services or Goods is filed against the Project, the Site or any of EVR's property, including leases (excluding any valid liens of the Contractor), EVR may immediately withhold payment of any compensation owing to the Contractor until the Contractor discharges or releases the lien or other encumbrance. The Contractor shall provide prior written notice to EVR of its intention to file a lien or other encumbrance in respect of the Services or Goods against any of the Project, the Site or any property of EVR or, if applicable, any lien holdback funds.

19.2. Contractor to Discharge or Release Liens. The Contractor shall, at its sole cost and within 10 business days after receipt of notice from EVR, discharge or release or cause to be discharged or released all builders', holdback funds, construction, mechanic's, material, warehousemen's or similar liens or encumbrances which are registered, filed, recorded or brought by any party and which are in any way related to the Services or Goods, the Project, the Site, any property of EVR or any lien holdback funds.

19.3. EVR's Right to Remove Liens or Encumbrances and Indemnification by Contractor. If the Contractor fails to comply with the requirements set out in subsection 19.2 (Contractor to Discharge or Release Liens), EVR may remove the liens or other encumbrances, and the Contractor shall indemnify and hold the Indemnitees harmless from all inter-party and third party Claims brought against or suffered, sustained, paid or incurred by the Indemnitees in connection with the removal or handling of the liens or other encumbrances. EVR shall have the right to set-off or withhold from the Contractor any sums required to remove the liens or other encumbrances.

19.4. Additional Lien Requirements. In addition to the Contractor's obligations under Section 31 (Compliance with Laws and EVR's Policies) the Contractor shall also review and comply with any requirements which may be provided by EVR in connection with applicable builders' lien Law. Without limitation, such requirements may relate to EVR's rights to remove liens or encumbrances, administer holdback funds, payment of holdback funds upon Completion, progressive release of holdback funds and dispute resolution relating to builders' lien Claims.

20. Warranty

20.1. Remediation of Defective or Deficient Services or Goods.

- If a defect or deficiency in the Services or Goods:
- (a) is discovered by the Contractor or EVR during the Warranty Period, then notification including relevant details thereof shall be promptly given to the other Party; and
 - (b) if EVR has notified the Contractor in writing of the defect or deficiency within 30 business days after the expiry of the Warranty Period, then the Contractor shall, at its own risk and expense:
 - (i) remedy and correct without delay, and in a manner satisfactory to EVR, the defect or deficiency; and
 - (ii) repair, replace or re-perform all equipment, materials, work or property of EVR or others damaged or required to be remedied as a result of defective or deficient Services or Goods.

The expiration of the Warranty Period shall not affect EVR's other rights and remedies to pursue recovery of its losses, costs, damages and other expenses from the Contractor resulting from a defect or deficiency in the Services or Goods which is not discovered by EVR until after the expiration of the Warranty Period.

20.2. Indemnification by Contractor to EVR for Remediation.

If the Contractor fails to promptly remedy the defects or deficiencies in the Services or Goods in accordance with subsection 20.1 (Remediation of Defective or Deficient Services), EVR may proceed to remedy the defects or deficiencies at the Contractor's expense.

20.3. Remediation of Defects or Deficiencies affecting Safety, Environment or Operations.

If, in EVR's sole discretion, a defect or deficiency in the Services or Goods affects safety, the environment or EVR's operations, and the Contractor is not immediately available or agreeable to remedy the defect or deficiency, EVR may remedy the defect or deficiency as well as any resultant impact, and the Contractor shall reimburse EVR for all reasonable costs incurred by EVR as a result of the remediation.

20.4. Warranty for Warranty Repairs.

The Contractor warrants any and all corrective actions and additional Services it performs and Goods that it supplies in respect of defects or deficiencies in the Services and Goods appearing during the Warranty Period for a period of 12 months after completion.

21. Insurance

21.1. Insurance – Services.

The following insurance terms apply to the performance of Services by the Contractor under the Agreement:

- (a) Subject to subsection (b)(vii), EVR shall provide and maintain at its expense effective immediately until completion of the Services the following insurance policy with suitably licensed insurers:

(i) **Wrap-Up Liability Insurance** including as Additional Insureds the Contractor, its Subcontractors, and their respective directors, officers, employees and agents whilst engaged in the Services. The policy insures against Claims by third parties for bodily injury (including death) and property damage arising during performance of the Services. The limit of liability of the policy is not less than \$5 million per occurrence and is subject to a deductible of \$50,000 payable by the Contractor or its Subcontractors but only to the extent of their respective liability, if any. The Contractor is not required to provide its own Commercial General Liability Insurance and shall not charge EVR any premiums for same.

The Wrap-Up Liability policy applies only while Services are being performed at EVR's Site and does not cover any products liability of the manufacturer or the Contractor, any work performed on or from water borne vessels and platforms, or work performed at any other location. Such insurance contains aggregate limits and exclusions including, but not limited to, damage to property in the care, custody or control of the Contractor and liability arising out of the rendering of or the failure to render professional services, or any error or omission, malpractice or mistake of a professional nature committed by or on behalf of the Contractor.

(b) The Contractor shall provide, maintain and pay for the insurance coverage described below:

- (i) **Automobile Liability Insurance** insuring against Claims for bodily injury (including death) and property damage arising out of the Contractor's use or operation of any licensed vehicles, including non-owned and hired vehicles, for the performance of the Services and having a limit of:

- (A) Not less than \$10 million inclusive for any one occurrence if the Services include transportation of hazardous substances or dangerous goods as defined by applicable regulations; or
- (B) Not less than \$5 million inclusive for any one occurrence if the vehicles are brought within the perimeter of EVR's active operations; or
- (C) Not less than \$2 million inclusive for any one occurrence if the vehicles are only driven to/from EVR's Site and remain in the parking lot outside the perimeter of EVR's active operations.

- (ii) **Aircraft:** If the Contractor uses owned or leased aircraft (fixed-wing or rotary-wing) in the performance of the Services:

(A) Aircraft Liability Insurance having a limit of not less than USD \$3 million per seat inclusive for any one accident or occurrence for aircraft used within the United States of America, and insuring against claims for bodily injury (including death) and property damage. For aircraft used elsewhere, the limit must reflect not less than USD \$1 million per seat inclusive for any one accident or occurrence; and

(B) Aircraft Hull Insurance insuring the aircraft for its full market value unless the Contractor agrees in writing, in terms satisfactory to EVR, to relieve EVR of all responsibility for loss of or damage to any aircraft, including loss of use, sustained during the term of the Agreement.

If chartered non-owned aircraft is used, the Contractor shall arrange for the charter operator to carry the above coverages and shall ensure that EVR is provided with additional Insurance / Waiver of Subrogation status as outlined below in subsection 21.3(e) (i) and (ii).

- (iii) **Remotely Piloted Aircraft (drones) ("RPA"):** If the Contractor uses RPA in the performance of the Services, Remotely Piloted Aircraft Liability of not less than \$1 million per occurrence including cross liability and severability of interest provisions. If the Contractor uses "RPAs" in the performance of the Services they shall also comply with EVR's Aviation Standard – Supplemental 2.4.3 provided by EVR.

- (iv) **Professional Liability Insurance,** if applicable to the Services, having a limit of not less than \$5 million inclusive for any one Claim and in the aggregate covering liability arising from any error, omission or negligent act in the performance of professional services and having a term of at least 12 months following completion of the Services.

- (v) **Cranes:** If the Contractor uses cranes in the performance of the Services, **Hook (or Rigger's) Liability Insurance** having a limit of not less than \$2 million inclusive for any one occurrence.

- (vi) **Workers' Compensation Insurance** in compliance with the Laws and other statutory and regulatory obligations imposed by the jurisdictions in which the Services are being performed.

- (vii) If Wrap-Up Liability Insurance coverage described in subsection 21.1(a)(i) is not available to EVR for its Sites or offices, the Contractor shall maintain at its own expense **Commercial General Liability Insurance** in connection with the Services in strict accordance with the requirements set out in subsection 21.2(b)(i) and other requirements detailed by EVR.

21.2. Insurance – Goods.

The following insurance terms apply to the supply of Goods by the Contractor under the Agreement. Where the Agreement

contemplates a combination of Goods and Services, then subsections 21.1(b)(i) through 21.1(b)(vii) shall also apply.

- (a) EVR shall provide and maintain at its expense the insurance coverage described below:

- (i) **Inland and Marine Cargo Insurance** as primary insurance covering the Goods while in transit by any means, anywhere in the world, including temporary in-transit storage from the point that the property has been loaded on the first conveyance for transit until final destination to EVR's Site. EVR bears no responsibility for damage during packing, stowing and loading on the first conveyance.

Such insurance does not and will not include property of the Contractor, its Subcontractors, or their Personnel while in transit.

- (b) The Contractor shall provide, maintain and pay for the insurance coverage described below:

- (i) **Commercial General Liability Insurance** on an occurrence basis having a limit of at least \$5 million inclusive for any one occurrence, and in the aggregate for products and completed operations, and insuring against Claims for bodily injury (including death) and property damage arising out of the operations of the Contractor under this Agreement, and including if applicable to the Goods and/or Services:

- (A) liability for premises and operations;
- (B) liability arising out of products (either manufactured or supplied) and completed operations;
- (C) broad form property damage and completed operations;
- (D) blanket written contractual liability;
- (E) non-owned automobile liability;
- (F) liability for physical damage to hired automobiles;
- (G) unlicensed mobile equipment;
- (H) operation and use of machinery attached to licensed vehicles;
- (I) contingent employers' liability;

- (J) cross liability; and

- (K) sudden and accidental pollution liability.

21.3. Insurance – General

- (a) EVR's Insurance Representative is: Director, Risk & Insurance, Suite 1500, 550 Burrard Street, Vancouver, B.C. Canada V6C 0B3.

- (b) The Contractor shall ensure that Subcontractors obtain and maintain insurance on substantially the same terms and conditions as this Section 21.

- (c) With respect to the Contractor's insurance policies required under the Agreement:

- (i) The Contractor shall give prompt written notice to EVR's Insurance Representative of any event or circumstance that may result in a Claim or cancellation of or material change to a relevant insurance policy.

- (ii) The Contractor shall, before commencement of the Services or supply of the Goods, deliver to EVR's Insurance Representative (or submit to Avetta, if applicable) proof of coverage in the form of a certificate of insurance.

- (iii) The Contractor shall be responsible for the full deductible amount in connection with Claims against any policy.

- (iv) Each policy shall provide primary coverage.

- (v) The Contractor shall place the insurance with insurers that are rated A- or better with A.M. Best or equivalent and that are licensed to provide insurance coverage in the jurisdictions in which the Services will be performed and Goods supplied.

- (d) Failure of the Contractor to comply with the requirements for insurance coverage of the kinds and with the limits stated in this Agreement shall not relieve the Contractor from its obligations under the Agreement.

- (e) Where permitted, the Contractor's insurance policies as described above shall include the following which will be referenced on the Contractor's insurance certificates:

- (i) **Additional Insured** shall be defined as "Glencore International AG, Glencore plc, Elk Valley Resources Limited and its subsidiaries, divisions, partnerships, affiliated, associated or allied companies, corporations, firms or organizations including joint ventures and their respective directors, officers, employees, and agents," but only with respect to the performance of Services and supply of Goods by the Contractor under this Agreement. This requirement is not applicable to Worker's Compensation or Professional Liability Insurance.

- (ii) **Waiver of Subrogation** shall be provided in favour of "Glencore International AG, Glencore plc, Elk Valley Resources Limited and its subsidiaries, divisions, partnerships, affiliated, associated or allied companies, corporations, firms or organizations including joint ventures and their respective directors, officers, employees, and agents".

- (iii) Each policy shall be primary coverage and non-contributory to any other insurance available to the Additional Insured/EVR.

- (iv) Policies will contain language to the effect that the policy will not be invalidated, and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured.

- (v) The Contractor may obtain insurance having greater limits, or additional coverages, as the Contractor deems prudent to protect itself, including against loss of, or damage to: automobiles, equipment, tools or other property owned, rented or borrowed by the Contractor or its Subcontractors. EVR has no responsibility with respect to such property. All such policies shall be endorsed to include a waiver of subrogation against EVR. If the Contractor fails to obtain the waiver of subrogation from the Insurer(s), the Contractor will hold harmless, defend and indemnify EVR against all Claims. EVR is not responsible for any uncovered losses (excluded or sub-limited) by any insurance, listed or not listed, in the Agreement.

21.4. Highly Protected Risk Provisions

The Contractor acknowledges that EVR's active operational Sites are considered "Highly Protected Risk" (HPR) facilities. The Contractor shall abide by, and inform its Subcontractors in writing of, the following HPR provisions.

- (a) If the Services include design work:

- (i) EVR's HPR criteria requires pre-approval of equipment and construction designs, changes or additions. Where possible and appropriate, equipment, supplies and building components shall be FM Approved as indicated by the "FM Diamond" designation.

- (ii) The Contractor and its Subcontractors are required to forward all drawings, plans and specifications to EVR's Risk Group and FM to enable a thorough review prior to implementation or construction, as applicable:

Director, Risk & Insurance, Elk Valley Resources Ltd. Suite 1500, 550 Burrard Street, Vancouver, BC V6C 0B3 Phone: 236.484.2200 E-mail : evr.legal@evr.com	With a copy to:	Mr. Kenneth Lee, Operations Vice President FM Global Insurance Company Phone : 604.694.0211 E-mail : kenneth.lee@fmglobal.com Account Reference 1-48392
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- (iii) Review of any drawings, plans and specifications will not relieve the Contractor of its responsibility to perform the Services in compliance with the Agreement or for design accuracy, completeness and compliance with industry codes and standards.

- (b) If the Services include Site visits:

- (i) The Contractor and its Subcontractors shall take all measures necessary to prevent fires, explosions and other incidents of property damage and comply with the requirements of EVR's Loss Prevention Program.

- (ii) Should the Contractor or Subcontractors need to take out of service or impair any existing fire protection system, the Contractor shall provide advance notice of at least 24 hours to, and receive permission from, EVR's Loss Prevention Department.

- (iii) If any hot work activities are performed by the Contractor or Subcontractors in the course of performing the Services, the Contractor or Subcontractors must comply with EVR's Hot Work (SP&P) requirements including, but not limited to, the Hot Work Permit System, Fire Watch, and Red Tag Impairment Notification System.

- (iv) If an incident or Claim involving damage to EVR's property in the care, custody or control of the Contractor arises due to the Contractor's or Subcontractors' fault, the Contractor or Subcontractors shall be responsible for contributing up to \$50,000 towards EVR's property deductible. This provision shall not limit the liability of the Contractor and Subcontractors to EVR or any other party under the Agreement or otherwise for any purpose other than in relation to EVR's insurance policy deductibles.

- (v) The Contractor shall notify EVR's Insurance Representative immediately after the occurrence of any of the following incidents involving the Contractor or Subcontractors:

- (A) Any individual is injured, or
- (B) Any of EVR's property suffers damage greater than \$50,000, or
- (C) Any incident of fire, explosion or other accident-type losses occurs, and, within 24 hours thereafter, the Contractor shall provide EVR's Insurance Representative with a detailed written report describing the incident. Neither the Contractor nor Subcontractors, shall clean up or alter the Site until EVR's Loss Prevention Department has investigated the incident. If EVR suffers any further damages as a result of the Contractor's failure to comply with these conditions, any such damages shall be for the account of the Contractor.
- (D) In the event of an emergency incident at EVR's Site, the Contractor and Subcontractors shall follow all instructions and procedures of EVR's emergency response personnel in command at the scene.

22. Liability and Indemnification

- 22.1. Liability of Contractor.** The Contractor shall be liable to and shall indemnify and hold the Indemnitees harmless from all Claims brought against or suffered, sustained, paid or incurred by the Indemnitees in connection with the performance or non-performance of the Services or the supply or non-supply of the Goods, including as a result of and to the extent of the acts, faults, errors, omissions, negligence, or breach of contract of the Contractor or Subcontractors.

23. Consequential Damages

- 23.1. Consequential and Punitive Damages Exclusion** Subject to subsection 23.2 (Exception to Consequential and Punitive Damages Exclusion) and except for coverage that may be available under insurance policies required to be maintained under the Agreement by the Contractor, the Contractor shall not be liable to the Indemnitees and the Indemnitees shall not be liable to the Contractor, its Affiliates or its Subcontractors, or their respective Personnel, for:

- (a) consequential damages;
- (b) punitive damages; or
- (c) damages for loss of profits, revenue, business, reputation or financing and lost opportunity.

- 23.2. Exception to Consequential and Punitive Damages Exclusion.** Subsection 23.1 (Consequential and Punitive Damages Exclusion) shall not apply to the Contractor's obligation to indemnify the Indemnitees pursuant to subsection 22.1 from Claims made by third parties.

24. Force Majeure

24.1. Event of Force Majeure. If, due to an Event of Force Majeure, a Party cannot fulfill its obligations under the Agreement, then the Party shall, as soon as reasonably possible, give the other Party written notice of the Event of Force Majeure, including full particulars of the nature of the Event of Force Majeure, its likely duration and the obligations which are prevented or delayed and that Party's affected obligations shall be suspended during the period of time and to the extent that the Event of Force Majeure continues. A Party shall not be entitled to the benefit of this Section 24 if the failure to observe or perform the obligation was caused by that Party's failure to act in a reasonable and prudent manner in the circumstances, that Party's failure to notify the other Party in accordance with this Section 24 or that Party's failure to remedy the condition and resume the performance of the obligation within a reasonable time.

24.2. No Compensation. In no circumstances shall a Party be entitled to any compensation as a result of an Event of Force Majeure. This Section 24 shall only be available to extend the period of time for a party claiming an Event of Force Majeure to perform its affected obligations.

25. Payment

25.1. Payment. Subject to the General Conditions, payment shall be made in accordance with the Agreement and as may be further detailed in the Appendix titled "Compensation". The compensation referred to in such Appendix is inclusive of all costs incurred by Contractor or Subcontractors in supply of the Goods and/or performance of the Services including all charges for packaging, packing, insurance and delivery of the Goods in accordance with the Agreement and the cost of any items used or supplied in conjunction with the Services.

25.2. Withholding. Notwithstanding any other requirement in the Agreement, an amount otherwise due to the Contractor may be withheld, without payment of interest, if, in the reasonable opinion of EVR, it is necessary to protect EVR from loss on account of the Contractor or Subcontractors:

- (a) failing to complete the Services or provide the Goods in accordance with the Agreement;
- (b) being in material default of any requirement of the Agreement;
- (c) not promptly remedying defective or deficient Services or Goods; or
- (d) failing to promptly and satisfactorily pay any Claim for labour performed or materials or equipment furnished.

If the cause of the withholding of any amount from the Contractor is removed and satisfactory written evidence of the removal is furnished to EVR, EVR shall promptly pay the amount withheld to the Contractor pertaining to that cause.

25.3. Invoices. Unless otherwise stated in the Agreement, the Contractor shall send invoices to EVR to the address noted on the face of the Agreement. The Contractor warrants that all invoices submitted to EVR shall be accurate and reflect amounts commensurate with actual Services and Goods rendered. Any Taxes and freight costs shall be listed on the invoice as separate items and freight costs shall be substantiated with receipted copies of actual freight bills. The Contractor's invoices must set out the Contractor's goods and services tax or harmonized sales tax registration numbers (if registered).

25.4. Disputed Invoices. If EVR disputes in good faith any amount in an invoice, then EVR will notify the Contractor of the disputed item and amounts and specify the reasons therefore. Payment of the disputed items may be withheld by EVR until settlement of such dispute, provided that payment of any undisputed portion shall be paid in accordance with this Section 25.

26. Set-Off

26.1. Set-Off. EVR may, without prejudice to any other right or remedy it may have at Law, under the Agreement or under any other contract EVR or its Affiliates has with the Contractor, deduct and set-off any amounts owing by the Contractor to EVR under the Agreement, howsoever arising, from any amount due or owing by EVR or its Affiliates to the Contractor under the Agreement.

27. Suspension or Termination

27.1. Suspension or Termination by EVR. EVR may, at any time, without cause, and for its convenience, immediately suspend or terminate the Agreement for any reason written notice to the Contractor. If EVR terminates or suspends the Agreement, the Contractor and Subcontractors shall, subject only to reasonable mitigation efforts to minimize costs and EVR's express directions in writing, immediately cease performing all Services and the supply of Goods to EVR.

27.2. Resumption of Suspended Supply of Services or Goods. If EVR directs the Contractor to resume the performance of the Services or the supply of Goods, the Contractor shall resume performance and supply as directed by EVR and in accordance with the terms of the Agreement.

27.3. Compensation. In the event of suspension or termination under subsection 27.1 (Suspension or Termination by EVR), EVR shall pay the Contractor the following in full satisfaction of all Claims the Contractor may have in relation to the suspension or termination:

- (a) all compensation owed in accordance with the Agreement for all Services completed and Goods supplied up to the date of the suspension or termination, less any Claims that EVR may have against the Contractor; and
- (b) Subcontractor or third party cancellation charges incurred by Contractor due to the suspension or termination, provided that the charges were approved in writing by EVR prior to the Contractor entering into the contract giving rise to the charges and to the extent the Claims are substantiated by documentation satisfactory to and verified by EVR.

27.4. Overpayment. If, as of the date of suspension or termination, any amount paid by EVR to the Contractor under the Agreement exceeds the amount payable under subsection 27.3 (Compensation), then the amount of the overpayment shall be promptly returned to EVR by the Contractor.

27.5. Termination for Cause. If the Contractor is in default of any requirement of the Agreement, and if EVR has provided written notice to the Contractor of the default, and if the Contractor fails to commence to rectify or cause to be rectified the matter giving rise to the notice within 5 business days of receipt then EVR may immediately terminate the Agreement.

27.6. Subcontractors. EVR, in its sole discretion, may require that agreements between the Contractor and any Subcontractors be assigned to EVR, and the Contractor hereby authorizes and consents to the assignment. The Contractor shall ensure that its agreements with Subcontractors contain a provision allowing for EVR to take an assignment.

27.7. Suspension and EVR's Policies and Law. Notwithstanding any other provision in these General Conditions, EVR, acting reasonably, shall have the right to suspend performance of the Services and supply of the Goods for as long as it is necessary to prevent or stop any actual or imminently unsafe work practice or any violation of any of EVR's Policies or Law. EVR shall have no liability to the Contractor or any third party for any Claims in relation to suspension of the Services or Goods pursuant to this subsection. Any suspension of the Services or Goods pursuant to this subsection shall not relieve the Contractor of any of its responsibilities pursuant to the Agreement.

28. Confidentiality

28.1. Confidential Information. All Confidential Information received by a Party shall be received and held in the strictest confidence and shall not be:

- (a) disclosed to any third party, or
- (b) used in any manner directly or indirectly for any purpose other than the performance of the Services and supply of the Goods, except in accordance with this Section 28 and with the prior written consent of the Party who provided the Confidential Information, which consent may be arbitrarily withheld.

Notwithstanding the foregoing or anything else to the contrary herein, Confidential Information shall not include information which (i) is in the public domain, (ii) after disclosure to a party, becomes part of the public domain otherwise than as a result of the wrongful act of that party; or (iii) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to the Agreement.

28.2. Exempt Disclosure. A Party is entitled to disclose Confidential Information to the extent necessary:

- (a) to its Personnel who have a need to know the Confidential Information in connection with the performance of the Services and supply of the Goods and who have been informed of its confidential nature;
- (b) with respect to EVR, to its advisors or Other Contractors, including third parties acting as a project manager, construction manager, consultant or individuals working under a personal services contract for and on behalf of EVR;
- (c) to any third party associated with the Project who has a need to know the Confidential Information in connection with the performance of the Services and supply of the Goods if, prior to disclosure:
 - (i) prior approval of disclosure is obtained from EVR, which approval may be arbitrarily withheld, and
 - (ii) the third party executes an agreement in form and substance acceptable to EVR, in its sole discretion, respecting the confidential nature of the Confidential Information; or
- (d) to comply with the Law.

If a Party is required by Law to disclose any Confidential Information, the disclosing Party shall provide the Party who provided the Confidential Information with prompt written notice so that the providing Party may seek either a protective order or other appropriate remedy. If a protective order or other appropriate remedy is not obtained, the disclosing Party shall furnish only that portion of the Confidential Information which in the reasonable opinion of its legal counsel is legally required. Each Party agrees to be responsible for any breach of this Section 28 by any Person to whom it has provided the Confidential Information.

28.3. Further Relief. A breach by one of the Parties of any of the obligations contained in this Section 28 may cause the other Party to suffer a loss for which it cannot be adequately compensated by monetary damages. The Parties agree that the affected Party will suffer irreparable harm as a result of a breach of the obligations contained in this Section 28, and the other party consents to any preliminary or ex parte applications for relief to any court of competent jurisdiction, including equitable relief such as injunctive relief and specific performance. The foregoing rights shall be cumulative and shall be in addition to any other rights and remedies which may be available to the affected Party.

28.4. Term. The obligations under this Section 28 (Confidentiality) shall continue for a period of 5 years following the date of Completion of the Agreement.

29. Publicity

29.1. Advertising. EVR shall not provide any endorsement of the Contractor, Subcontractors or the Services or Goods. The Contractor shall not erect any sign or advertising, use any EVR trademark, logo or device in any sign or advertisement or issue any statement, photograph, testimonial, or other document of any kind to any third party regarding the existence of the Agreement, the Project, the Services or Goods without EVR's prior written consent, which consent may be arbitrarily withheld.

29.2. Site Incidents. The Contractor agrees that it will not, and that it will ensure Subcontractors do not, engage or participate in any news information gathering, news releases or media interviews with any news agency or media, including online and social media, during or following a Site incident, unless EVR provides its prior written consent to the Contractor.

30. Intellectual Property

30.1. Background Intellectual Property. Subject to any rights, title or interests expressly granted by the Agreement, neither Party shall acquire any right, title, or interest in the other Party's Background Intellectual Property.

30.2. Arising Intellectual Property. The Contractor agrees to make full and prompt disclosure to EVR, and to no other party, of all Arising Intellectual Property and hereby assigns to EVR all of the Contractor's right, title and interest in Arising Intellectual Property, including all trade secrets, patent rights and copyrights therein. The Contractor further agrees to waive its moral rights in any Arising Intellectual Property.

30.3. Intellectual Property Indemnification. The Contractor shall be liable to and shall indemnify and hold the Indemnitees harmless from all Claims arising out of or resulting from the actual or alleged infringement or misappropriation of any rights under patents, trade secrets, copyright or other intellectual property rights or any litigation based thereon in respect of Services performed or Goods supplied by the Contractor. EVR shall notify the Contractor upon becoming aware of any Claims and the Contractor, if requested to do so by EVR, shall, at its sole expense, promptly defend against the Claims. The Contractor shall have the right at its own expense to modify the Services or Goods so they become non-infringing, or to obtain the necessary licenses to use the infringing Services or Goods only if the substituted and modified Services or Goods shall meet all the requirements and be subject to the Agreement.

31. Compliance with Laws and EVR's Policies

31.1. Compliance with Law. The Contractor shall comply with all Law applicable to the performance of its obligations under the Agreement.

31.2. Compliance with EVR's Policies. The Contractor shall comply and ensure that its employees, agents, Subcontractors and their respective Personnel comply with EVR's Policies during the term of the Agreement at the cost of the Contractor. In case of any difference between the requirements of EVR's Policies and the Law, the stricter or higher standard shall apply.

31.3. Supply Chain Diligence Laws. At the request of EVR, Contractor shall provide to EVR any documents relevant to compliance with Supply Chain Diligence Laws, to confirm Contractor's compliance with same and/or to support EVR's reporting obligations and general compliance with same.

32. Taxes

32.1. Tax Responsibility. With the exception of goods and services tax or harmonized sales tax (as defined in the Excise Tax Act (Canada)) or provincial sales tax payable on amounts due to the Contractor, if applicable, payment of which shall remain the responsibility of EVR, the Contractor shall:

- (a) be responsible for and pay all Taxes in relation to the Services and Goods in compliance with all Law;
- (b) be responsible for and pay the costs, in respect of the Personnel of the Contractor and Personnel of Subcontractors, if applicable, of all contributions, assessments and deductions, including, those required for labour unions or associations, workers' compensation insurance contributions, employment insurance contributions, employees' income tax deductions, Canada Pension Plan, disability benefits, any other benefits not specified, together with all related Taxes as may be required by Law;
- (c) be responsible for assessing its liability, impact on its operations and the impact of tax withholding, exemptions, waivers, tax credits and the like which may be available under reciprocal agreements with non-Canadian countries; and
- (d) be responsible for maintaining and furnishing the necessary records and documentation required by government authorities and EVR to apply for and obtain tax and duty refunds.

32.2. Tax Withholding. If the Contractor is a non-resident of Canada within the meaning of the Income Tax Act (Canada), EVR is obligated by Law to withhold at the then current rate a percentage of the value of the Services performed in Canada by the Contractor unless the Contractor obtains a valid waiver issued by the Canada Revenue Agency from tax withholding and provides it to EVR at least 1 month in advance of the first performance of Services or supply of Goods. EVR shall be entitled to deduct any required withholdings from any amounts paid or payable to the Contractor under the Agreement. Any amounts deducted by EVR pursuant to this subsection shall be remitted by EVR directly to any revenue authorities, with a prescribed tax receipt respecting any remittance provided to the Contractor by EVR by the deadline required by Law. It is expressly understood and agreed by the Contractor that no grossing up or additional payment shall be made to compensate the Contractor as a result of costs associated with Canadian withholding tax. The Contractor shall provide accurate and timely information relating to the value of all Services performed by it in Canada to permit EVR to withhold amounts required by Law.

33. Audit

33.1. Records. The Contractor shall maintain a complete set of Records during the term of the Agreement and for at least 6 years after Completion.

33.2. Audit. At any time during normal business hours for 6 years after Completion, EVR or its nominees shall have the right to inspect and audit the Contractor's Records. The Contractor shall provide EVR with proper access and facilities to enable EVR or its nominees to undertake an inspection and audit. The Contractor shall allow EVR to make copies of the Records as reasonably required.

33.3. Limitation Period. The Parties agree that the limitation period to commence any Claims that have been identified as a result of an audit by EVR will commence on the date that EVR issues the final audit report to the Contractor. The limitation period for discovery of a cause of action arising or identified as a result of an audit pursuant to this Section 33 shall be 15 years and the Parties agree not to plead the defence of limitation in connection therewith.

34. Dispute Resolution

34.1. Dispute Resolution. All disputes arising under or in relation to the Agreement will first be referred to the Parties' respective project management team for resolution. If, after thirty (30) days, resolution is not reached by mutual agreement, such dispute may be referred by either party to the parties' respective senior management for resolution. If, after a further thirty (30) days or a shorter period as the Parties, acting reasonably, determine is necessary in the circumstances, resolution is not reached by mutual agreement:

- (a) a Party may submit the dispute to arbitration pursuant to subsection 34.2 (Arbitration), or
- (b) if both Parties agree in writing, then a Party may commence litigation in a court of competent jurisdiction with respect to the dispute within the limitation periods prescribed by Law.

34.2. Arbitration. If a Party pursues arbitration to resolve a dispute, then the dispute shall be submitted to and finally resolved by a single arbitrator, with the costs of the arbitrator and other costs of the arbitration to be determined in the discretion of the arbitrator. The arbitrator shall be chosen by agreement of the Parties or, failing an agreement, by reference to a court of competent jurisdiction in the location where the arbitration will be held.

34.3. Forum. The Parties consent to any arbitration or litigation being conducted in the Canadian province or territory where the Project is located, as identified in the Agreement. Unless otherwise agreed to in writing by the Parties:

- (a) arbitration in respect of a Project located in British Columbia shall take place in Vancouver, British Columbia and be administered by the British Columbia International Commercial Arbitration Centre ("BCIAC") pursuant to its rules. If at the time a dispute arises the BCIAC does not exist, the arbitrator will, failing agreement of the Parties, be appointed under the Commercial Arbitration Act (British Columbia) or under the International Commercial Arbitration Act (British Columbia), as applicable, and the arbitrator will conduct the arbitration in accordance with rules as the Parties may agree, or failing agreement, the rules determined by the arbitrator; and
- (b) arbitration in respect of a Project located in Alberta shall take place in Calgary, Alberta under the Arbitration Act (Alberta). The Parties waive any objection based on venue or forum non conveniens with respect to any Claim arising under the Agreement.

35. Notices

35.1. Notices. Notices pursuant to the Agreement shall be given in writing and shall be addressed to the Party in question at the address set forth in the Agreement.

35.2. Service of Formal Litigation Proceedings. The address and procedure for service of notices under subsection 35.1 (Notices) shall not apply to the service of any document that may be required pursuant to formal litigation proceedings.

36. Survival

36.1. Survival. In addition to those provisions of the Agreement which by their nature survive the termination or expiry of the Agreement, the following Sections shall survive termination or expiration of the Agreement: 6 (Other Contractors), 9 (Representations - Services), 12 (Hazardous Substances), 14 (Representations – Goods), 17 (Independent Contractor), 19 (Liens), 20 (Warranty), 21 (Insurance), 22 (Liability and Indemnification), 28 (Confidentiality), 30 (Intellectual Property), 33 (Audit), 34 (Dispute Resolution), 36 (Survival), and 37 (Governing Law).

37. Governing Law

37.1. Governing Law and Jurisdiction. The Agreement shall be governed by and construed in accordance with the Laws of the Canadian province or territory where the Project is located, as identified in the Agreement. The Agreement specifically excludes the application of the United Nations Convention on Contracts for the International Sale of Goods and any rules or laws pertaining to the conflict of laws which would result in the application of any other Law.

38. General Matters

38.1. Assignment. Neither Party may assign the Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, EVR may assign the Agreement to any of its Affiliates or to any third party that amalgamates or merges with EVR or which acquires all or substantially all of the assets of EVR, conditional

upon the successor agreeing to be bound to the Contractor by the Agreement. The Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

38.2. Subcontracting. The Contractor shall not subcontract any portion of the Agreement without the prior written consent of EVR, which consent shall not unreasonably be withheld. The Contractor is solely liable and responsible for the performance of any Services and supply of any Goods by Subcontractors.

38.3. Amendments. No amendment to the Agreement shall be binding on the Parties unless made in writing and signed by the authorized representatives of both Parties.

38.4. No Waiver. EVR's failure to insist on performance of any term, condition or requirement of the Agreement or failure to exercise any legal right or obligation in connection with a breach or default by the Contractor shall not operate as a waiver.

38.5. Binding Agreement. The Agreement shall become a binding agreement upon the earlier of the Contractor signing and returning an executed copy to EVR or upon the Contractor otherwise acknowledging acceptance of the Agreement or commencing performance of the Agreement.

38.6. After-Sales Services. The Contractor may provide EVR with After-Sales Services at any time during the use by EVR of any Goods purchased under these Terms and Conditions. If such After-Sales Services are required for Goods supplied outside Canada, then EVR and the Contractor shall work together in good faith and use best efforts to ensure that all Canadian immigration requirements are met for the Contractor and any of its Subcontractor to enter Canada.