

## CONSIGNMENT AGREEMENT

This Consignment Agreement, hereinafter referred to as “this Agreement”, states the terms of the parties’ agreement with respect to personal property, hereinafter referred to as “Consigned Goods”, consigned to e-Magine Color Diamonds Ltd. operating as Excalibur Royale, hereinafter referred to as “Consignee”, by the seller identified below, hereafter referred to as the “Consignor”. The Consigned Goods are listed on a consigned goods inventory form attached to this Agreement, executed separately or Consigned Goods identified as being subject to this Agreement. The Consignee agrees to offer the Consigned Goods for sale subject to the terms set forth in this Agreement. While the Consignee cannot guarantee any sale or price, it agrees to use professional skill, knowledge and experience to the best advantage of both parties in preparing for and conducting the sale of Consigned Goods. the Consignor will act solely as an agent in any transaction between the Consignor and the eventual buyer.

### 1. EXCLUSIVE RIGHTS OF SALE.

By consigning these Consigned Goods, Consignor agrees to grant Consignee the non-exclusive right to market and sell the Consigned Goods at a public Showcase Event on Friday, July 26, 2019 at PANTERA ROYALE ARGYLES EVENT, at 49 Ontario Street 7<sup>th</sup> Floor, Toronto, Ontario subject to this Agreement being signed. The Showcase Event is a one-time event. Accordingly, the Consigned Goods can be withdrawn from the sale by the Consignor for any reason without the consent of Consignee. However, Consignee may withdraw the Consigned Goods from consignment if in its sole discretion the Consigned Goods are inappropriate for sale, damaged, or for any other reason Consignee deems appropriate at its sole discretion. Consignee acknowledges that the public viewing and Showcase Event hereinbefore set forth shall be held in conjunction with a consortium of international diamond dealers collectively referred to as Pantera Royale and the public viewing and Showcase Event shall hereinafter be referred to as the Pantera Royale public viewing and Showcase Event.

### 2. COMMISSION AND FEES.

(a) **Listing Fee.** For Consignee’ services, which includes, without limitation, preparing the Consigned Goods for sale, storage of the Consigned Goods, insurance of the Consigned Goods, describing the Consigned Goods, photographing the Consigned Goods, listing the Consigned Goods, advertising the Consigned Goods, where appropriate, communicating with prospective buyers about the Consigned Goods, closing the sale, accepting payments for the Consigned Goods, and shipping the Consigned Goods to and from the buyer at its expense. The Listing Fee equals a sum of CAD \$ \_\_\_\_\_ ( + applicable taxes).

(b) **Commission.** The final selling price is based on the final qualifying bid. If, as and when the Property of the Consignor sells at Showcase Event, Consignee shall charge a Buyers Premium of not less than ten (10%) percent calculated and

in addition to the selling price which Buyers Premium shall be retained by Consignee to defray its costs of the Showcase Event.

**3. ADDITIONAL FEES.**

The Consignor shall not be responsible for any additional fees whatsoever with respect to the placement of their Property at the Showcase Event.

**4. INSURANCE, STORAGE AND LIMITATION OF LIABILITY.**

(a) In the event the Consignor requests that the Consigned Goods, following the Showcase Event, be returned to the Consignor, the Consignor shall be solely responsible for maintaining insurance on the Consigned Goods until the sale is concluded and the property is shipped to the buyer. Consignee shall not be liable in any way for damages, whether general, special, incidental or consequential, however caused, whether by loss, theft or damage, including negligence, arising out of consignment and/or sale of the Consigned Goods, and including the packing and shipping of the Consigned Goods. Any insurance claims arising from the damage of the Consigned Goods during shipment or transportation shall be the responsibility of the Consignor.

(b) In the event the Consignor requests that the Consigned Goods be stored and insured by Consignee, Consignee hereby acknowledges and agrees that (i) the Consigned Goods will be stored at the secure facility of First Canadian Depository in Toronto, Ontario Canada; and (ii) the Consigned Goods will be insured under the First Canadian Depository blanket insurance policy naming Consignee as insured while in storage or in transit to the buyer or the Consignor, as the case may be.

**5. RESPONSIBILITIES AND LIMITATIONS OF THE CONSIGNOR.**

Along with the submission of the Consigned Goods, Consignor shall provide Consignee with any and all information pertaining to the Consigned Goods which shall consist of all information about the Consigned Goods which may include, but not be limited to written descriptions, history, source of origin, quality, rarity, condition/damage reports, estimates of value and reserves, and such other information as Consignee may from time to time require of Consignor if not otherwise available to Consignee.

**6. METHOD OF SALE.**

(a) **Timing of Showcase Event.** Consignee shall retain full control over the timing, method, location and sale process to be used in selling the Consigned Goods, excepting that the Consignor shall determine the Reserve Bid(s) for his/her/its Property in their sole and unfettered discretion it being understood that in establishing any Reserve Bid, the Consignor shall act reasonably, it being the intention of the Consignor to effect a completed sale at the Showcase Event.

Consignee may, at its discretion, display photos or descriptions of the Consigned Goods on other internet sites owned or operated by Consignee, both during and after the sale of the Consigned Goods.

(b) **Place of Sale.** Consignee may use any third party Showcase Event website (subject to Section 3 above) or any website owned by Consignee to market and sell the Consigned Goods. Consignee may also sell the Consigned Goods to buyers it contacts directly if it thinks the best price is achieved in this manner, either before or after listing the property on any online Showcase Event website provided that Consignee shall not sell the Consignor's Property at a price which is less than the Reserve Bid(s) unless Consignee receives written confirmation from the Consignor that Consignee has the authority to sell the Consignor's Property at a price determined by the Consignor which is less than the Reserve Bid(s). The reference to Reserve Bid and Reserve Bid(s) represents the singular or the plural in the event the Consignor is offering one or more items of Property at the Showcase Event.

(c) **Use of Consignor's Name.** Consignor's name, or designated business name as noted in the Agreement, will not be disclosed by Consignee to the successful buyer of the Consigned Goods. Consignor's name will not be used to publicize a sale or a sale's results.

(d) **Reserves.** The "Reserve" is a minimum price agreed to in writing between the Consignor and Consignee. Consignee has the right at its sole and absolute discretion to sell the Consigned Goods at the Reserve price. If the property fails to reach its Reserve, Consignee may offer the Consigned Goods at a lesser price with the prior written consent of the Consignor.

(e) **Shill Bidding.** Neither Consignor, its principal, if any, nor any other representative or agent shall bid on the Consigned Goods. Such bidding is considered "Shill Bidding" and is strictly prohibited by Consignee. Consignor shall defend, indemnify and hold Consignee harmless from any claims, actions, damages, losses or any liability, including fees and costs (including legal fees and expenses) arising from a breach of this paragraph, and be the basis for Consignee to immediately terminate this Agreement.

(f) **Completion of Sale.** No sale shall be considered complete until the buyer has made final and full payment to Consignee by wire transfer, credit card, cashier's or certified cheque or bank draft. In the event payment is made by approved personal cheque, the sale shall be considered complete after such cheque has cleared, the Consigned Goods have been shipped to the buyer and the buyer has confirmed receipt of the Consigned Goods in the condition described and photographed.

(g) **Non-paying Buyer.** In the event that Consignee is unable to collect payment from a buyer, no payment shall be made to Consignor for the Consigned

Goods. Consignee shall not be responsible for collecting or attempting to collect any payments owed to it or the Consignor. The Consignor shall hold Consignee harmless in the event of a non-paying buyer for any amount which would have been collected or any loss resulting from the resale of the Consigned Goods.

## **7. SETTLEMENT OF ACCOUNT.**

No later than 30 business days after completion of sale, Consignee shall pay Consignor the proceeds received and collected from the sale of the Consigned Goods after deducting any Buyer's Premium and electronic transfer fees, as appropriate and any other expenses, fees and charges due hereunder or required by law, including applicable taxes, provided that no claim has been made against any of the Consigned Goods or proceeds of sale, that there are no funds due to Consignee for whatever reason, and further provided that the buyer has not given notice of intent to rescind the sale.

## **8. SELLER'S WARRANTIES AND INDEMNITY.**

(a) **Warranties.** Consignor represents and warrants to Consignee that (1) Consignor has the right, power and authority to consign the Consigned Goods for sale and to enter into this Agreement and to perform all obligations hereunder; (2) the Consigned Goods are, and, until sold, shall remain free and clear of all liens, encumbrances or claims of third parties of any kind whatsoever; (3) good title will pass to the successful buyer upon sale; (4) there are no restrictions on Consignee to reproduce photographs of the Consigned Goods; and (5) the information Consignor has provided to Consignee in the Agreement is true and correct. Consignor acknowledges and agrees that Consignee will rely upon the accuracy and completeness of the foregoing warranties.

(b) **Indemnity.** Consignor shall defend, indemnify, and hold harmless, Consignee, its employees and agents, against any and all claims, actions, damages, losses, liabilities and expenses (including reasonable attorney's fees for counsel of our choice) arising out of or resulting from any and all claims raised by the buyer of the Consigned Goods, including but not limited to, ownership or right to possession of any of the Consigned Goods, any alleged breach by Consignor of any obligation, representation or warranty pursuant to this Agreement, or from Consignee's offering for sale or selling the property, whether or not it has been returned to Consignor. Consignee shall retain full copy, reproduction and photographic rights to any pictures taken during any and all processes and transactions, even if the transaction is withdrawn, cancelled, substituted, or changed in any way. Consignor's warranties and indemnification shall survive the completion of the transactions contemplated by this Agreement, and shall apply to the Consigned Goods sold or consigned for sale pursuant to this Agreement.

## **9. WITHDRAWAL BY CONSIGNOR.**

Consignor may withdraw the Consigned Goods from the sale, for any reason, after this Agreement has been signed and before the Showcase Event. Consignor may sell or dispose of the Consigned Goods by any other means during the period of this Agreement. Provided, however, that a cancellation fee of \$250.00 will be charged for each cancelled item of Property to be offered at the Showcase Event. All fees incurred for said listings must be paid before the Consignor may retrieve their item(s) from Consignee and the fee contemplated in paragraph 2.(a) shall not be refundable for any reason whatsoever.

#### **10. CONSIGNEE' RIGHT TO WITHDRAW PROPERTY FROM SALE.**

Consignee shall have the right to withdraw the Consigned Goods at any time prior to the sale if, in its judgment, (1) there is doubt as to the information provided by the Consignor, (2) the information provided by Consignor concerning the Consigned Goods is inaccurate, (3) Consignor has breached or it is anticipated it will breach any provision of this Agreement, or (4) Consignee has doubt about title to the property or the authority to pass clear title to the Consigned Goods. Withdrawal of Consigned Goods pursuant to this paragraph shall be the basis for immediate termination of this Agreement.

#### **11. MISCELLANEOUS.**

(a) This Agreement and any and all signed schedules or attachments hereto, including all information submitted by Consignor, and other document(s) executed by the parties concurrently herewith, constitute the entire agreement between the parties with respect to the Consigned Goods and supersedes any and all prior negotiations or agreements regarding the Consigned Goods. The terms of the special instructions, if any, are incorporated into this Agreement.

(b) Except as otherwise specified herein, no modifications or amendment of this Agreement shall be binding unless contained in a writing signed by the party to be bound thereby and no waiver, promise or representation by Consignee or any of its agents or representatives shall bind Consignee unless contained in a writing signed by Consignee.

(c) Any notice given hereunder must be by email, fax or in writing, which shall be deemed effective upon deposit in the mail, postage prepaid, if addressed to either of the parties at their respective addresses indicated below.

(d) If any part of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

(e) Except as provided by law, nothing contained in this Agreement shall be construed as any agency, partnership or other joint enterprise between the parties.

(f) For purposes of this Agreement, Electronic signatures or agreed upon alternative electronic confirmation of agreement to any issue, change or addition shall be binding as an original signature as provided by law.

(g) The parties acknowledge that they have carefully read this Agreement, understand the contents thereof, and sign this Agreement as their own free act and deed.

(h) This Agreement shall be interpreted and enforced pursuant to the laws of the Province of Ontario and the laws of Canada applicable therein. Should the Consignor bring any legal action against Consignee related to this transaction, the matter shall be decided in a court of law in the Province of Ontario. In the event that said court of law decides in favour of Consignee, the Consignor agrees to pay all legal costs incurred by Consignee to defend against such action.

## **12. ESTIMATED PRICE RANGE.**

When your Property is on display to the general public before or during the Showcase Event, Consignee places a written description of your Property adjacent to it with an estimated price range (lower to higher) without disclosing the Reserve bid. For the purposes of clarity only, we refer to the following hypothetical:

A Consignor wishes to place a reserve bid of \$25,000 on his/her/its Property. On that basis, we would recommend an estimated price range of \$22,000 to \$28,000.

The purpose of this disclosure is to circumvent low, frivolous and unreasonable bidding.

We recommend that when a Consignor agrees to a Reserve bid price, that the estimated price range reflects same.

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**DATED** as of this \_\_\_ day of \_\_\_\_\_, 2019

Per: **e-Magine Color Diamonds Ltd.**

*Michael Shomacker*

\_\_\_\_\_  
Authorized Signing Officer

Consignor has read and understands all of the terms and conditions of this Agreement.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Consignor: \_\_\_\_\_  
(Please print)

Consignor Address:  
\_\_\_\_\_  
\_\_\_\_\_

Consignor Tel. #: \_\_\_\_\_

Consignor E-mail: \_\_\_\_\_

Consignor Signature: \_\_\_\_\_

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Consignee is a consortium of international diamond dealers, comprised of:

- 1) Genesis Rare Diamonds (Ontario) Ltd.
- 2) Forever Rare Color Diamonds Ltd. (operating as Ouroboro Diamonds of Rare Color)
- 3) Pantera Privé BC (operating as Pantera Privé)

Either of the three (3) incorporated entities noted above shall have the authority to execute this agreement.

**CONSIGNMENT AGREEMENT  
CONSIGNED GOODS INVENTORY LIST**

Qty	Description of Property	Estimated Price Range	Reserve Price**

\*\*Please Specify Your Perceived Value Of The Item For Sale (Once item is received and evaluated this value may change but shall be agreed upon by both parties to ensure successful sale) The Consignor agrees that the pre-sale estimates are intended only as a guide for prospective buyers. The Consignor further agrees any pre-sale estimate is not a representation of an anticipated selling price of any Consigned Goods, and the estimate should not be relied upon by the Consignor as a forecast of the actual selling price.

**STORAGE AND SAFEKEEPING**

(Please check one of the following options)

- Following the listing of the Consigned Goods, Please return to Consignor.
- Following the listing of the Consigned Goods, Please store in Safekeeping.

\_\_\_\_\_  
Consignor Signature