

AGREEMENT FOR THE SUPPLY OF SERVICES

between

[*Insert Name of Supplier*]

(Registration Number: **[*Insert Registration Number of Supplier*]**)

(the "Supplier")

and

[*Insert Name of AGA Contracting Entity*]

(Registration Number: **[*Insert Registration Number of AGA Contracting Entity*]**)

(the "Company")

Contract Number: [*Insert Contract Number*]

TABLE OF CONTENTS

	Page No.
1. Definitions and interpretation	1
2. Agreement and conflict of documents	6
3. Terms of appointment	6
4. Commencement and duration.....	7
5. Representatives	7
6. Performance of Services	8
7. Documentation	9
8. Tests and inspection	9
9. Service Fees and adjustments.....	10
10. Invoicing and payment.....	10
11. Information and investigations.....	11
12. Access to Site	12
13. Liens	13
14. Supplier's documents, accounts and records	13
15. Health, safety and environment	14
16. Compliance with Laws	15
17. Business ethics	15
18. Subcontracting.....	17
19. Supplier warranties	17
20. Fossicking and collection of minerals prohibited	18
21. Suspension of Services.....	19
22. Intellectual Property	19
23. Indemnity	20
24. Insurance.....	20
25. Termination by giving a period of notice.....	22
26. Termination on Cessation and Curtailment of Operations.....	22
27. Termination for default.....	22
28. Consequences of termination.....	24
29. Security	25
30. Force Majeure.....	26
31. Confidentiality.....	27
32. Responsible Sourcing and Local Content	27

33. Dispute resolution.....	28
34. Addresses.....	30
35. Surviving provisions	30
36. Miscellaneous matters.....	30

1. Definitions and interpretation

- 1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 1.1.1 **"Affiliates"** an **"Affiliate"** of a Party shall mean any corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with the Party, but such corporation, company or other entity shall be deemed to be an Affiliate for only so long as such ownership or control exists. For purposes of this definition **"control"** of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise;
- 1.1.2 **"AGA Policies"** any policies, standards, procedures, industry codes and guidelines adopted by the Company from time to time;
- 1.1.3 **"Agreement"** this Agreement including the Schedule and Annexes hereto and referred to in this Agreement;
- 1.1.4 **"Agreement Term"** the term of this Agreement as specified in the Schedule;
- 1.1.5 **"Annexes"** the annexes to the Schedule that form part of this Agreement;
- 1.1.6 **"Authority"** any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions, including, without limitation, any competition authorities;
- 1.1.7 **"Commencement Date"** as defined in the Schedule;

1.1.8	"Company Representative"	the Person(s) identified in the Schedule as such or a replacement for such Person(s) appointed in, and pursuant to the, terms of this Agreement;
1.1.9	"Confidential Information"	any information embodied in data, technical knowledge, specifications, chemical make-up, materials and/or other communications, in tangible or non-tangible form, written or oral, relating to or useful in connection with the design, construction or operation of the Company's facilities or Site, the identity and requirements of the Company's suppliers and customers, the types, specifications, quantities and prices of goods or services; the Company's feedstock, products and/or its business, including but not limited to trade information, employee remuneration and conditions of employment, business development and/or operational plans, the existence and content of contracts, costs, pricing, payment terms, procedures, forecasts, order quantities, sales volumes and raw material usage, patent application, any product or process specifications, any product developments, any product applications, formulae, processes, marketing and manufacturing methods, drawings and plans and other information technology specifications either (a) disclosed or provided by the Company, or (b) that may be learned, acquired or derived by the Supplier during any examination of the said information or during any negotiations or discussions and the Intellectual Property of the Company and all information and data disclosed in any documentation describing and/or referring to any such Intellectual Property;
1.1.10	"Defective Services"	Services which, in the Company's sole determination, do not comply with the terms or requirements of this Agreement, or which are otherwise incorrectly or negligently performed by or on behalf of the Supplier;
1.1.11	"Equipment"	apparatus, equipment, machinery, tools, materials, vehicles and other things of whatsoever nature required by the Supplier for

		the performance of the Services;
1.1.12	"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor to comply with its obligations in terms of this Agreement and complying with all Laws and applicable AGA Policies;
1.1.13	"Intellectual Property"	all intellectual property rights, whether protectable by statute or at common law, including all patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection at the Signature Date or in the future anywhere in the world, whether or not any of these is registered and including applications for any such right or registration, renewal or extension thereof;
1.1.14	"Invoice"	an original invoice in respect of the Services (or part thereof, if applicable) submitted by the Supplier to the Company in accordance with this Agreement;
1.1.15	"Invoice Requirements"	the Invoice Requirements as set out in the Schedule;
1.1.16	"Laws"	means any statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, standards, guidelines, conditions and/or requirements of any licence and/or permit, treaties, policies, notices, practices, administrative interpretations, directions, decrees, judgments, awards or requirements which have been duly enacted, issued or promulgated by any Authority having jurisdiction;
1.1.17	"Liabilities"	means any losses, liabilities, costs, awards, damages, fines, penalties, sanctions, amounts

		paid in settlement and expenses, including legal fees for both internal and external counsel, and reasonable costs of investigation, litigation and settlement and/or costs and expenses of any kind;
1.1.18	"Parties"	the parties to this Agreement, being the Company and the Supplier and "Party" shall mean either one of them;
1.1.19	"Person"	includes a natural Person, company, close corporation or other juristic Person or corporate entity, charity, partnership, trust, joint venture, syndicate or other unincorporated association of persons or entities;
1.1.20	"Personnel"	the directors, officers, employees, agents, approved subcontractors of a Party involved either directly or indirectly in the performance of the obligations in terms of this Agreement;
1.1.21	"Representatives"	the Company Representative and the Supplier Representative, and "Representative" shall mean either one of them;
1.1.22	"Schedule"	the Schedule that forms part of this Agreement;
1.1.23	Schedule of Information	the Schedule of Information as described in the Schedule;
1.1.24	"Scope of Services"	the Services described in the Schedule;
1.1.25	"Security"	means the security to be provided by the Supplier for the performance of its obligations in terms of this Agreement as specified in the Schedule;
1.1.26	"Service Fees"	the fees in respect of the Services as set out in the Schedule;
1.1.27	"Service Order"	an official written order signed by a duly authorised Company official issued to the Supplier by the Company stipulating as applicable, the nature and/or the quantity of the Services to be provided in terms of this Agreement;
1.1.28	"Services"	collectively or individually, as the context may require, any of the services described in the Scope of Services;

- 1.1.29 **"Signature Date"** the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
- 1.1.30 **"Site"** the Company site where the Services are to be performed as set out in the Schedule;
- 1.1.31 **"Supplier Representative"** the Person identified in the Schedule as such, or a replacement for such Person appointed in terms of this Agreement;
- 1.1.32 **"Taxes"** means any tax imposed, levied or charged by any Authority and includes, without limitation, any excise duties, stamp or similar duties, customs duties, withholding taxes, value added or similar transaction taxes and any penalties or interest relating thereto; and
- 1.1.33 **"Termination Date"** means the date specified in the Schedule.
- 1.2 In this Agreement unless expressly provided otherwise:
- 1.2.1 references to a Law include any subordinate legislation made from time to time under that provision and include that Law as amended, supplemented, modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.3 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.4 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.5 a reference to a clause is a reference to a clause of this Agreement, unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.2.7 any reference to days, months, or years, shall be a reference to calendar days, months or years, as applicable, unless otherwise stated;
- 1.2.8 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating

the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

- 1.2.9 any reference in this Agreement to "this Agreement" or any other agreement, document or instrument shall be construed as a reference to this Agreement or that agreement, document or instrument as amended, varied, restated, novated or substituted from time to time;
- 1.2.10 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 1.2.11 the currency of this Agreement shall be as specified in the Schedule;
- 1.2.12 the use of any expression in this Agreement covering a process such as winding-up, liquidation or dissolution (without limitation *eiusdem generis*) shall be construed as including any equivalent or analogous proceedings under any jurisdiction; and
- 1.2.13 the use of the word "including" followed by specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s).
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Agreement (ie the *contra proferentem* rule), shall not apply.

2. Agreement and conflict of documents

- 2.1 The following documents constitute this Agreement:
- 2.1.1 these general conditions of supplying the Services;
- 2.1.2 the Schedule; and
- 2.1.3 the Annexes.
- 2.2 If there is any conflict between the documents constituting this Agreement, the documents shall for the purposes of interpretation rank in order of precedence in accordance with the order in which they are listed in clause 2.1 above.

3. Terms of appointment

- 3.1 The Supplier agrees to supply the Services to the Company for the Agreement Term in accordance with the terms, and subject to the conditions, as set out in this Agreement.
- 3.2 The Company gives no undertaking regarding the extent to which it will order the Supplier to perform Services in terms of this Agreement, and nothing contained in this Agreement shall prevent the Company from ordering other third party suppliers from carrying out the Services.
- 3.3 The Company shall order Services from the Supplier pursuant to a written Service Order.
- 3.4 The Supplier agrees to carry out its obligations in terms of this Agreement as an independent contractor of the Company and nothing in this Agreement, whether expressed or implied shall:
- 3.4.1 be construed as creating an employment or labour-broking relationship between the Supplier and its Personnel, on the one hand, and the Company and the Supplier, on the other;
 - 3.4.2 be construed as creating a partnership or joint venture between the Parties;
 - 3.4.3 constitute either Party as an agent or Representative of the other Party;
 - 3.4.4 entitle the Supplier or any of its Personnel for any purpose whatsoever hold themselves out to be an employee(s) of the Company;
 - 3.4.5 afford the Supplier or any of its Personnel any employment-related claim against the Company hereunder or otherwise; and/or
 - 3.4.6 entitle either Party to bind or attempt to bind the other Party, or to represent to any third party that it has the authority to bind the other Party or to confer any obligation on the other Party, unless specifically mandated to do so in writing by the other Party.
- 3.5 The Supplier shall use its own Personnel for all the purposes of carrying out its obligations in terms of this Agreement.
- 3.6 Notwithstanding the use of Personnel by the Supplier for the provision of the Services, the Supplier shall remain fully responsible for the proper performance of the Services in accordance with the terms and conditions of this Agreement, and the Supplier shall ensure that all persons engaged in the provision of the Services render such services in accordance with the terms and conditions of this Agreement, all applicable Laws, applicable AGA Policies and Good Industry Practice.

4. **Commencement and duration**

This Agreement continues for the Agreement Term unless otherwise terminated earlier under the terms of this Agreement.

5. **Representatives**

- 5.1 The Supplier shall ensure that the Supplier Representative is available to the

Company at all times for the Agreement Term in respect of matters concerning the Supplier's performance of this Agreement.

- 5.2 The Company Representative has the authority to give directions for and on behalf of the Company as set out in this Agreement, but shall only have the authority to agree to an amendment of this Agreement for and on behalf of the Company to the extent expressly permitted in this Agreement.
- 5.3 The Supplier Representative has full authority to represent and bind the Supplier in all matters pertaining to this Agreement, including the authority to agree to any amendment to the terms and conditions of this Agreement for and on behalf of the Supplier. Matters within the knowledge of the Supplier Representative are taken to be within the knowledge of the Supplier.
- 5.4 A Party shall be entitled to revoke the appointment of its Representative, with the approval of the other Party which approval shall not be unreasonably withheld, subject to a simultaneous appointment of a replacement by written notice to the other Party.

6. Performance of Services

- 6.1 The Supplier shall perform the Services in strict compliance with the Scope of Services, applicable AGA Policies, Good Industry Practice, all applicable Laws, the terms of any Service Order and all other provisions of this Agreement and shall, at all times, ensure that inferior or defective Equipment is not used in the performance of the Services.
- 6.2 The Supplier is responsible for the supply and transport of the material and Equipment required for purposes of the performance of the Services.
- 6.3 Without limiting the generality of any other provision of this Agreement, the Company may, in its absolute and sole discretion, from time to time issue instructions to the Supplier in connection with the following, which instructions must be promptly complied with by the Supplier:
- 6.3.1 the method or manner of the execution, doing or performance of the Services generally, and each part of the Services; and
- 6.3.2 the time or times within which the Services, or any part thereof, are to be commenced and/or completed.
- 6.4 In the event that the Company reasonably considers that the Supplier has performed Defective Services, then without prejudice to any other rights of the Company in terms of this Agreement, the Company shall be entitled, but not obliged, to require the Supplier to re-perform and/or to make good any such Defective Services.
- 6.5 The Supplier undertakes that, if required to do so by the Company in terms of clause 6.4, it shall promptly re-perform and make good Defective Services at its own cost and to the Company's satisfaction.

6.6 Standards of conduct

- 6.6.1 The Supplier represents and warrants that, in performing the Services, the Supplier and its Personnel shall:
- 6.6.1.1 exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Services; and
 - 6.6.1.2 ensure the Services are fit for any purpose notified by the Company and in the absence of notification, for the purpose for which works of that or a similar type are commonly acquired.
- 6.6.2 In performing the Services, the Supplier and its Personnel shall:
- 6.6.2.1 act in accordance with all directions of the Company (including in relation to health and safety, industrial relations (whilst on the Site) and environmental matters;
 - 6.6.2.2 act in a workmanlike, careful, safe and proper manner;
 - 6.6.2.3 perform the Services in a timely manner; and
 - 6.6.2.4 comply with all the requirements of this Agreement.

7. Documentation

- 7.1 Documentation which may require approval of the Company Representative pursuant to the performance of the Services shall be submitted to the Company Representative as and when required. The Parties shall address in the Scope of Services, or elsewhere as appropriate in this Agreement, the timeframes for submission of any such requests for approval and for review and approval by the Company Representative.
- 7.2 Ownership of, and Intellectual Property in, all documentation arising out of the performance of the Services shall vest in the Company. The Company shall have full right of disposal of such documentation without payment of any further consideration to the Supplier.

8. Tests and inspection

- 8.1 The Company shall be entitled to inspect the Services being performed at any time to determine whether the Services are being performed in accordance with this Agreement. Further, the Company shall, upon reasonable notice to the Supplier, be entitled to conduct such tests of the Services as it deems reasonably necessary. The costs of tests carried out by the Company will be borne by the Company.
- 8.2 In the event that the Supplier is obliged to carry out tests in respect of the Services, the tests must be commenced on the dates and times as agreed between the Company Representative and the Supplier Representative. The Company Representative is entitled to be present at the testing; however, the testing will proceed regardless of whether the Company Representative is present. The

Supplier Representative shall provide the Company with a copy of the results of the test immediately upon completion of a particular test.

- 8.3 If the results of an inspection and/or test reveal that the Services are not being performed in accordance with this Agreement, the Company Representative shall notify the Supplier Representative of such defect and/or failure and, without limiting any other right or remedy the Company may have under this Agreement, the provisions of clauses 6.4 and 6.5 shall apply.

9. Service Fees and adjustments

- 9.1 The Parties acknowledge that the Service Fees and adjustment thereof payable in respect of the Services performed by the Supplier shall be as referred to in the Schedule.
- 9.2 Adjustments to the Service Fees, if any, shall be determined in accordance with the Service Fees adjustment provisions referred to in the Schedule.
- 9.3 For the avoidance of doubt, the Service Fees include (unless otherwise noted herein):
- 9.3.1 all expenses incurred by the Supplier in relation to the supply of the Services;
 - 9.3.2 all taxes (including customs and excise duties and value-added tax, or equivalent value-added tax payable in the relevant jurisdiction in which the Services are supplied) to the extent permitted by Law; and
 - 9.3.3 all labour, overheads, administration, installation, supervision, material, testing and any other costs and expenses of whatsoever nature, incurred by the Supplier pursuant to the performance of the Services, including costs incurred by the Supplier, whether directly or indirectly, under any Laws and costs associated with any reporting obligations under any Laws.
- 9.4 Notwithstanding the provisions of any Laws to the contrary, the Supplier shall not be entitled to recover in addition to the Service Fees any sum in consequence of or arising from any duty or increase thereon imposed in terms of any Laws, relating to customs and excise, royalties, any taxes, including withholding taxes and the like.

10. Invoicing and payment

- 10.1 **The Services in respect of which the Supplier wishes to make an application for payment shall be measured in sufficient time to enable submission of invoices by no later than 28th day of any month. The Company Representative shall issue a**

certificate showing (i) the quantity and value of work completed to date and (ii) the quantity and value of work previously certified.

- 10.2 **The Supplier shall by not later than the 28th day of the month submit invoices to the Company in respect of Services completed, as certified by the Company's Representative.**
- 10.3 **Provided that certified invoices are received by the Company prior to the 28th day of the month, payment will be made, in terms of clause 10.8.**
- 10.4 Each Invoice shall be in a format approved by the Company Representative from time to time and reflect all items as per the Invoice Requirements set out in the Schedule.
- 10.5 The Supplier shall promptly provide any information reasonably required by the Company to substantiate an Invoice. In the event that an Invoice and any supporting documentation are incomplete or incorrect, payment of such Invoices will only be effected not later than the number of days for payment as specified in the Schedule following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.
- 10.6 The Company shall be entitled to dispute, and not pay, any Invoice reflecting any Services, Service Fees, rebate, discount or condition at variance with the Service Order and/or this Agreement.
- 10.7 Subject to clauses 10.5 and 10.6, all Invoices shall be paid by the Company to the Supplier no later than the number of days for payment as specified in the Schedule after receipt of the Invoice by the Company. The Company shall at all times be entitled to the Supplier's standard discount for prompt payment.
- 10.8 Unless otherwise agreed to in writing by the Parties, the Company shall make all payments to the Supplier directly into such bank account by electronic funds transfer as stipulated by the Supplier in the Schedule or in writing from time to time.
- 10.9 Without prejudice to any of its other rights and remedies, the Company may from time to time set-off against any amounts owed to the Supplier, whether under this Agreement or otherwise, all or any of the amounts owed by the Supplier to the Company whether under this Agreement (including pursuant to any indemnity contained in this Agreement) or any other agreement or account and all Liabilities which the Company has paid or incurred and which the Supplier or a subcontractor is liable to bear, pay or reimburse to the Company.

11. Information and investigations

- 11.1 The Supplier acknowledges and agrees that as at the Signature Date:
- 11.1.1 the Company provided it with an opportunity to inspect and test the Site, as applicable;
- 11.1.2 it has satisfied itself as to the suitability and correctness of any information

provided by or on behalf of the Company in relation to the performance of this Agreement;

- 11.1.3 it has carefully examined all documents provided by or on behalf of the Company in relation to the performance of this Agreement and has satisfied itself that such documents are correct and accurate in all respects;
 - 11.1.4 the Company is not responsible for any inferences and conclusions drawn by the Supplier from information provided by or on behalf of the Company in relation to the performance of this Agreement;
 - 11.1.5 it has performed all investigations and inspections necessary for the performance of this Agreement;
 - 11.1.6 the Company does not warrant the correctness, accuracy or otherwise of information provided by or on behalf of the Company in relation to the performance of this Agreement;
 - 11.1.7 the Company does not accept any responsibility for the use of information provided by or on behalf of the Company in relation to the performance of this Agreement by the Supplier nor for any losses arising therefrom, including any inferences and conclusions drawn by the Supplier from such information; and
 - 11.1.8 has taken all steps necessary to fully inform itself of all matters and conditions that may affect its performance of this Agreement, and any failure on the part of the Supplier to do so does not relieve the Supplier from its obligations under this Agreement nor does it entitle the Supplier to any adjustment of the Service Fees.
- 11.2 The Supplier acknowledges that following the Signature Date it may be provided with further information by or on behalf of the Company in relation to the performance of this Agreement, in which case it agrees that the provisions of this clause 11 shall apply to such further information provided by the Company.

12. Access to Site

12.1 Conditions of access

- 12.1.1 The provisions of this clause 12 apply if and to the extent only that the Supplier or its Personnel are on the Site, including for the purposes of carrying out the Services. The Supplier, and its Personnel, may not access the Site until the Supplier receives the approval of the Company.
- 12.1.2 The Supplier:
 - 12.1.2.1 enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
 - 12.1.2.2 is not entitled to possession of the Site;
 - 12.1.2.3 may only access the areas allocated by the Company as necessary, in

- the opinion of the Company for the performance of the Services;
- 12.1.2.4 must ensure that it and its Personnel comply with all applicable Site rules and procedures including any relating to induction or Site orientation;
- 12.1.2.5 must co-operate with the Company, its Personnel, and the Company's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
- 12.1.2.6 must obtain prior approval from the Company, in a timeframe consistent with this Agreement, for any action likely to interfere with the Company's operations or the work of any other contractor; and
- 12.1.2.7 if required by the Company Representative to do so, must (and procures that any Person for whom the Supplier is responsible, including all Personnel), wear or carry badges or passes issued by the Company for the purpose of identification at all times whilst on or entering the Site or the Company's mining or exploration tenements.

12.2 **Removal from Site**

The Company may, in its absolute discretion, require the removal from the Site of any Person for whom the Supplier is responsible (including all Personnel) who, in the opinion of the Company, is incompetent or conducts themselves in a reprehensible or irresponsible fashion or is otherwise unsuitable to continue to be employed on or in connection with this Agreement and the Supplier must immediately comply with such requirement. The Company may require the replacement, within such time as the Company directs, of any such Person removed from Site, and such replacement Person must have the requisite skills and technical expertise for purposes of carrying out the Supplier's obligations in terms of this Agreement.

13. **Liens**

- 13.1 The Supplier waives any lien or right of retention it may have and warrants that no subcontractor or other third party shall have any claim, lien, special notarial bond, pledge, charge or any other encumbrance whatsoever against any of the material and Equipment used in the performance of the Services, and/or any other property supplied by the Company to the Supplier for the purposes of this Agreement.
- 13.2 The Company may refuse to make payment of any Invoice until the Supplier confirms in writing that all claims and demands against the Supplier (including claims by subcontractors) that may constitute or become a claim or lien against any of the material and Equipment used in the performance of the Services have been paid or satisfied.

14. **Supplier's documents, accounts and records**

Upon written notice, the Supplier shall provide the Company with any certificates, books

and records and such documentation and other information as may be requested by the Company from time to time in order to verify that the performance of the Services complies with the provisions of this Agreement.

15. Health, safety and environment

- 15.1 The Supplier shall at all times take all reasonable steps to protect the environment and maintain the health and safety of the Supplier's Personnel and all persons on Site.
- 15.2 Without in any way limiting the generality of the foregoing, to the extent the Supplier or any of its Personnel are required to be on Site or to be near the vicinity of a Site for the purposes of providing the Services under this Agreement the Supplier shall, and shall ensure that its Personnel, comply with and implement as the case may be:
- 15.2.1 the Company's health, safety and environmental policies and standards applicable to the Site from time to time, including the health, safety and environmental policies and standards contained in the AGA Policies;
 - 15.2.2 any health, safety and environmental precautions and regulations which the Company Representative may consider necessary for the proper protection of the Supplier's Personnel and all persons on the Site;
 - 15.2.3 any health and safety management plans or environmental management plans submitted by the Supplier to the Company in terms of this Agreement or otherwise;
 - 15.2.4 all relevant health, safety and environmental Laws in force from time to time; and
 - 15.2.5 the health, safety and environmental conditions contained in this clause 15.
- 15.3 The Supplier shall:
- 15.3.1 at its cost provide the Supplier's Personnel and all persons allowed by the Supplier to be present on the Site with all required training as well as all necessary protective equipment in full compliance with the safety policies and standards of the Site in force from time to time; and
 - 15.3.2 at its cost provide and install all safety equipment reasonably required in relation to the performance of the Services and/or specified by the Company from time to time, and shall keep and maintain all such safety equipment in good and working order.
- 15.4 The Supplier shall ensure there are processes in place that implement and reinforce line accountability for safety and health outcomes.
- 15.5 The Supplier shall maintain appropriate records in accordance with the safety and environmental system in force on the Site from time to time in respect of all matters concerning safety, environmental, health and welfare of the Supplier's Personnel, and damage to or loss of any property on the Site.

- 15.6 Without limiting the generality of this clause 15, the Company shall be entitled in its sole discretion to take such steps, related to this Agreement and more specifically the work of the Supplier, at the cost of the Supplier as shall be necessary for the maintenance of the health and safety of any Person on the Site.
- 15.7 Notwithstanding any other term of this Agreement, in the event of any breach of this clause 15, the Company may:
- 15.7.1 require the Supplier, the Supplier's Personnel and/or any other Person to leave the Site immediately; and
- 15.7.2 require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,
- and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, Personnel and the environment.

16. Compliance with Laws

- 16.1 The Supplier shall, and shall ensure that its Personnel shall, at all times and in all respects comply with all applicable Laws and shall not do anything or allow anything to be done which does or is likely to cause a contravention of any provision of any applicable Laws.
- 16.2 The Supplier shall be responsible for obtaining and maintaining all applicable quality accreditation, certification, notices, licences, authorisations and permits required by any Authority in connection with the performance of the Services and shall also have the financial responsibility for, and shall pay, all fees and taxes associated with such accreditation, certification, notices, licences, authorisations and permits.
- 16.3 The Supplier agrees, without limiting any other applicable provision of this Agreement, to comply and to ensure that its Personnel comply with Good Industry Practice and all lawful requirements and directions of the Company.
- 16.4 The terms of every sub-contract must require compliance by the subcontractor with the requirements of this clause 16.

17. Business ethics

- 17.1 The Supplier undertakes that it will perform in a manner consistent with and ensure that its Personnel perform in a manner consistent with the AngloGold Ashanti Limited Code of Business Principles and Ethics (the "**Code of Ethics**"), AngloGold Ashanti Limited Supplier Code of Conduct (the "**Supplier Code**"), and any other policies that the Company may specify from time to time.
- 17.2 The Supplier undertakes to familiarise itself with the contents of the AGA Policies described in clause 17.1. Copies of the Code of Ethics and Supplier Code may also be viewed at www.anglogoldashanti.com.

- 17.3 The Supplier acknowledges and hereby confirms that it does not have any interest which actually constitutes or may potentially constitute a conflict of interest relating to its obligations under this Agreement, including the performance of the Services, except as has been disclosed to and acknowledged by the Company prior to the Signature Date.
- 17.4 The Supplier agrees to undertake conflicts of interest checks for the Agreement Term, and undertakes to inform the Company immediately of any actual or potential conflicts of interest with regards to its obligations under this Agreement.
- 17.5 The Supplier agrees to work with the Company and do whatever is necessary and reasonable to effectively manage such conflicts of interest to the satisfaction of the Company. In any such cases, if the Company is not satisfied in its sole discretion with the management of any such conflicts of interest, it shall have the right to take such action as it deems necessary to address the conflict of interest or protect its interest, including the immediate termination of this Agreement by written notice.
- 17.6 The Supplier undertakes that it and its Personnel are familiar with, understand and will abide by all applicable anti-bribery and anti-corruption Laws, including the US Foreign Corrupt Practices Act, and shall not and will ensure that its Personnel will not pay any fees, commission, or grant favours, rebates, benefits, advantages; including gifts, entertainments, hospitality of more than nominal value to any third party (including government officials), Personnel or agents of the Company contrary to the Laws mentioned above, as well as the Company's policy on gifts, hospitality and sponsorship, anti-corruption policies, the Code of Ethics and the Supplier Code.
- 17.7 The Supplier agrees to notify the Company of any fraudulent or corrupt activity that may come to its notice or the notice of its Personnel in relation to this Agreement herein. The Supplier agrees to cooperate with the Company in the investigation of every fraudulent activity in relation to this Agreement and to implement corrective measures as the Company may direct to address any fraudulent or corrupt activity in terms of applicable Laws and AGA Policies.
- 17.8 The Company shall have the right to audit and review records and documents, including visits to the Supplier's site, upon giving the Supplier at least seven (7) days' prior notice; and to interview such persons as it may deem necessary to confirm compliance by the Supplier with the provisions of this clause 17.
- 17.9 The Supplier agrees that, if required by the Company, that it will at its own cost ensure that its Personnel undertake training (including online and refresher courses) provided by the Company related to any Laws or AGA Policies.
- 17.10 The Supplier acknowledges that it, and any of its Personnel, may be required by the Company to sign an affirmation confirming, *inter alia*, its compliance with the provisions of this clause 17.
- 17.11 The terms of every sub-contract must require compliance by the subcontractor with the requirements of this clause 17.

18. Subcontracting

- 18.1 The Supplier shall not sub-contract any part of this Agreement to a third-party other than to subcontractors approved by the Company in writing.
- 18.2 No agreement entered into with a subcontractor shall release the Supplier from any of its obligations in terms of this Agreement.
- 18.3 The terms of every sub-contract must be no less stringent than the terms of this Agreement, provided that the Supplier may include in any sub-contract all terms that the Supplier considers necessary to maintain control over the work to be performed by the subcontractor and to allow the Supplier to comply with all obligations under this Agreement.
- 18.4 The Supplier shall be responsible for the acts or omissions, of its subcontractors and the agents, employees and workmen of such subcontractors as fully as if they were the acts or omissions, of the Supplier. Each subcontractor will be considered as the agent and representative of the Supplier, as between the Supplier and the Company.
- 18.5 The Supplier must ensure that the work performed by a subcontractor meets the requirements of this Agreement.

19. Supplier warranties

- 19.1 In addition, and without limitation, to the warranties contained elsewhere in this Agreement, the Supplier warrants to the Company that:
- 19.1.1 it is duly constituted, organised and validly existing under the Laws;
- 19.1.2 it has the full right, power and authority to enter into and perform its obligations under this Agreement;
- 19.1.3 the performance of the Services does not and will not infringe the rights of any third party or cause a third party to suffer losses;
- 19.1.4 the Services performed by it under this Agreement shall:
- 19.1.4.1 be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient Personnel;
- 19.1.4.2 conform to the Scope of Services; and
- 19.1.4.3 be in accordance and compliance with Good Industry Practice, AGA Policies and all applicable Laws;
- 19.1.5 the material and Equipment necessary for the performance of the Services shall:
- 19.1.5.1 be free of defects (latent and patent) in design, workmanship and material; and
- 19.1.5.2 be fit for their intended purpose;

- 19.1.6 all authorisations required to have been obtained by or under any Law in order to enable the Supplier lawfully to enter into and perform the obligations assumed by it in this Agreement have been obtained and will be maintained by the Supplier for the Agreement Term;
- 19.1.7 it shall use the Intellectual Property supplied to it by the Company, if any, strictly in accordance with the Scope of Services, directions and know-how supplied in terms of this Agreement or as provided or stipulated by the Company in writing from time to time.
- 19.1.8 it complies and will continue to comply with:
- 19.1.8.1 the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry issued under section 100(2)(b) Minerals and Petroleum Resources Development Act, 28 of 2002 ("Mining Charter");
- 19.1.8.2 the Broad-Based Black Economic Empowerment Act, 2003 ("BBBEE Act"); and
- 19.1.8.3 the Broad-Based Black Economic Empowerment Codes of Good Practice, issued by the Department of Trade Industry ("DTI Code").
- 19.2 Each of the warranties set out above:
- 19.2.1 is without prejudice to any other warranty;
- 19.2.2 shall not be limited by any other clause of this Agreement;
- 19.2.3 shall be deemed to be material and to be a material representation inducing the Company to enter into this Agreement; and
- 19.2.4 shall be given as at the Signature Date and constitutes a continuing representation and warranty for the Agreement Term and shall survive the termination of this Agreement for any reason whatsoever.
- 19.3 The fact that the Supplier has given the express warranties listed above shall not in any way be construed as relieving the Supplier from any liability which it may have at common law arising out of a failure to disclose any fact to the Company affecting this Agreement or the Services performed thereunder.

20. Fossicking and collection of minerals prohibited

- 20.1 Collection of mineral specimens, whether or not of economic significance, at the Site is strictly forbidden, and all such specimens remain the property of the Company.
- 20.2 Any action by any Person, including Personnel and persons associated with the Supplier, on the Site which can be construed as fossicking, prospecting, sampling for minerals and samples containing gold or any other metal or mineral within the Site will entitle the Company to require the removal of that Person from the Site in accordance with clause 12.2.

21. Suspension of Services

- 21.1 The Company Representative may by notice require the Supplier to suspend the whole or any portion of the Services, for any reason. If it is possible to estimate the length of the suspension, the notice of suspension must provide an estimate.
- 21.2 Upon receipt of a notice of suspension, the Supplier must:
- 21.2.1 suspend the Services as directed by the Company Representative;
 - 21.2.2 at its cost, immediately remove all its Personnel, Equipment and other substances brought onto the Site by it or its Personnel, unless directed otherwise by the Company Representative;
 - 21.2.3 take all reasonable steps to reduce any expense or cost consequent upon the suspension;
 - 21.2.4 if requested by the Company Representative to do so, re-direct the labour force to work on a portion of the Services unaffected by the reason for the suspension; and
 - 21.2.5 promptly comply with any direction from the Company Representative to recommence work.
- 21.3 The Company:
- 21.3.1 must pay to the Supplier all reasonable and direct expenses and costs arising from a suspension of the Services under clause 21.1 of a minimum continuous duration in excess of 12 hours unless the suspension is due directly or indirectly to:
 - 21.3.1.1 any instruction given by an Authority;
 - 21.3.1.2 a failure by the Supplier or its Personnel to comply with any Laws or AGA Policies in relation to health, safety or protection of the environment; or
 - 21.3.1.3 some other fault on the part of the Supplier or its Personnel including breach of this Agreement; and
 - 21.3.2 may, when the reason for any suspension no longer exists, direct the Supplier in writing to recommence work on the Services or on the relevant part of the Services; and
 - 21.3.3 to avoid doubt has no obligation to pay any compensation to the Supplier for a suspension of the Services under clause 21.1 of a continuous duration of less than 12 hours.
- 21.4 Suspension of the Services in accordance with this clause 21 does not frustrate or terminate this Agreement.

22. Intellectual Property

- 22.1 The Supplier:

- 22.1.1 warrants that no third party will have a valid claim against the Company for infringement and/or unauthorised use of any patent, copyright, registered design, trade secret, trade mark, software or of any other Intellectual Property arising from the carrying out of the Services; and
- 22.1.2 shall indemnify the Company against any such claim and against all costs and/or damages whatsoever which the Company may incur, sustain or be liable for arising from any such claim.
- 22.2 Should any such claim succeed, then the Supplier shall at its cost either acquire the right for the Company to continue using the Intellectual Property concerned or modify or substitute the item concerned in a manner approved by the Company so that it no longer infringes such right, or refund the Company all payments and costs incurred by the Company in respect of the infringing item.

23. Indemnity

- 23.1 The Supplier hereby indemnifies and holds the Company, its Affiliates and the Personnel of the Company and its Affiliates ("**Indemnified Parties**" or "**Indemnified Party**" as applicable) harmless against any and all Liabilities of whatsoever nature (including indirect or consequential loss, as permitted under applicable Laws) and howsoever arising out of:
- 23.1.1 The performance, non-performance or breach of any representation, warranty, undertaking or obligation under or provision of this Agreement by the Supplier;
- 23.1.2 the negligence or wilful misconduct of the Supplier or its Personnel;
- 23.1.3 any act or omission by the Supplier or its Personnel arising out of the performance or non-performance of this Agreement;
- 23.1.4 the operation of the Supplier's facilities; and/or
- 23.1.5 any infringement or alleged infringement of any Intellectual Property of any third party as a result of the performance of the Services by the Supplier.
- 23.2 For the purpose of this clause 23, indirect or consequential loss shall include (but not be limited to), loss or delayed receipt of revenue or profit, loss of contract, loss of production, loss of business opportunity, punitive, special, exemplary, indirect or consequential damages, however caused.
- 23.3 It is not necessary for an Indemnified Party to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.
- 23.4 The provisions of this clause 23 constitute a stipulation in favour of each of the Indemnified Parties capable of acceptance by any of them at any time, either expressly, tacitly or by conduct.

24. Insurance

- 24.1 For the Agreement Term, the Supplier shall maintain in force (and ensure that its

subcontractors maintain in force) any insurance required by Law and the following insurance set out below ("**Required Insurance**"):

- 24.1.1 general liability and third party insurance in respect of any injury to, or death of, any Person (except persons otherwise insured as Personnel) or any losses, damage or destruction to property not belonging to nor in the care, custody or control of the Supplier, caused by the Supplier or its Personnel that arises out of or in connection with the performance of the Services under this Agreement, such insurance shall have a limit of indemnity not less than the amount specified in the Schedule in respect of each and every claim arising from one original cause;
- 24.1.2 professional indemnity insurance in respect of any negligent act or omission by the Supplier or its Personnel in the performance of the Services under this Agreement;
- 24.1.3 comprehensive automobile and truck liability insurance covering all automotive equipment used by Supplier in connection with the performance of Services, with a combined single limit of not less than the amount specified in the Schedule for each occurrence involving personal injury and/or property damage; and
- 24.1.4 any additional insurance as may be provided for in the Schedule.
- 24.2 The Supplier shall maintain in force the Required Insurance, for a period of one year after the Termination Date.
- 24.3 Whenever requested in writing by the Company, the Supplier shall furnish the Company with certificates and/or adequate proof of the Required Insurance. The Supplier's obligation to maintain such insurance cover must not be interpreted as limiting any claim which the Company may have against the Supplier in any way.
- 24.4 The Supplier shall give notice to the Company should any of the Required Insurance or risk covered by the Required Insurance cease to be maintained or insured by it. The Supplier shall also give the Company thirty (30) days' written notice of any cancellation, non-renewal or material modification of any such insurance.
- 24.5 If the Supplier fails upon request to produce in accordance with clause 24.2 to the Company's satisfaction evidence that there is in force any of the Required Insurance, the Company may effect and keep in force any such insurance and the Supplier shall pay to the Company all reasonable sums expended by the Company for such purpose. If the Company is not able to effect and keep in force any such insurance, then the Supplier's failure to produce in accordance with clause 24.2 to the Company's satisfaction evidence that there is in force any of the Required Insurance shall constitute a material breach of this Agreement.
- 24.6 Notwithstanding that the Company may effect such insurance if the Supplier fails to do so, the Supplier will be deemed to have indemnified the Company for all liabilities which may arise from the Company's failure to do so.

25. Termination by giving a period of notice

- 25.1 The Company may elect to terminate this Agreement for its convenience, by providing the Supplier with 30 (thirty) days prior written notice stating the Company's election to terminate for its convenience and the effective date of such termination.
- 25.2 In the event that this Agreement is terminated pursuant to clause 25.1, then subject to the Company's rights under this Agreement to deduct and withhold amounts due to the Supplier, the Company shall pay to the Supplier, as the Supplier's sole remedy in relation to such termination all Service Fees due and unpaid for Services which have been performed as at the date of termination in terms of this clause 25.
- 25.3 For the avoidance of doubt, no early termination fee of any kind shall be payable by the Company to the Supplier for the early termination of this Agreement for any reason whatsoever.

26. Termination on Cessation and Curtailment of Operations

If during the currency of the Agreement, operations at the Company's Site are ceased or are curtailed the Company shall have the right to terminate the Agreement or any portion thereof with thirty 30 (thirty) days written notice to the Supplier without payment of any compensation to the Supplier for any damages whatsoever including any loss of business and/or overhead recovery costs and/or loss of profit resulting from such termination.

27. Termination for default

27.1 Supplier default

- 27.1.1 If the Supplier:
- 27.1.1.1 breaches any material provision of this Agreement and fails to remedy the breach within fourteen (14) days of written notice to do so, or such longer time period as agreed to by the Company;
 - 27.1.1.2 takes steps to place itself, or is placed, in liquidation, whether voluntary or compulsory, or in judicial management, in either case whether provisionally or finally;
 - 27.1.1.3 takes steps to deregister itself or is deregistered;
 - 27.1.1.4 commits an act of insolvency as defined in the applicable Laws pertaining to insolvency as at the date of this Agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural Person;
 - 27.1.1.5 undergoes a change of control without the prior written consent of the Company;
 - 27.1.1.6 fails to provide suitable Personnel;

- 27.1.1.7 fails to maintain the Equipment in an operational state;
- 27.1.1.8 is unable to meet its day-to-day liabilities and/or its liabilities exceed its assets;
- 27.1.1.9 falsifies any documents or records or commits any act of fraud or dishonesty in respect of its dealings with the Company or matters arising from the terms of this Agreement;
- 27.1.1.10 cedes, delegates, assigns or transfers (or purports to do so) its rights, benefits or obligations under this Agreement without the prior written consent of the Company;
- 27.1.1.11 sells the whole or any material part of its business, assets and/or its facilities to any third party without the prior written consent of the Company; and/or
- 27.1.1.12 commits, in the opinion of the Company Representative, a breach of any of the provisions of this Agreement,
the Supplier shall be in default.
- 27.1.2 If the Supplier is in default, the Company will be entitled, in addition to all other remedies in terms of this Agreement or at law or equity:
 - 27.1.2.1 to demand specific performance of this Agreement and to take such action as may be necessary in order to implement and fulfil its rights in terms hereof and to recover any damage which it may suffer as a result of the Supplier's default; or
 - 27.1.2.2 to terminate forthwith this Agreement and claim such damages as the Company may have suffered as a result of the Supplier's default.
- 27.1.3 Further, the Company is entitled (but not obliged) to request copies of all subcontracts and other agreements between the Supplier and third parties which relate to the Services. The Company is also entitled to direct the Supplier to:
 - 27.1.3.1 procure the assignment to the Company, or to another Person or entity designated by the Company, of the Supplier's rights and obligations under such of those subcontracts and agreements as the Company may delegate; and/or
 - 27.1.3.2 take such other action relating to such subcontracts and agreements as the Company may reasonably specify.
- 27.2 For the purpose of clause 27.1.1. the Supplier shall be deemed to be controlled by any Person or entity whether directly or indirectly and whether in law or effect, if such Person or entity:
 - 27.2.1 beneficially owns the majority in number of the shares in the Supplier's issued share capital; or

27.2.2 has the right or obligation to direct the manner in which the majority of the votes attaching to any class of shares in the issued share capital of the Supplier are exercised at meetings of shareholders of the Supplier; or

27.2.3 has the right or obligation to appoint or remove directors holding a majority of the voting rights at meetings of the Supplier's board.

27.3 **Company default**

27.3.1 If the Company fails to make a payment of any amount due to the Supplier under this Agreement in accordance with clause 10 that is not the subject of a dispute between the Parties or the exercise of the Company's rights under clause 10 ("**Company Default**"), the Supplier may serve a written notice on the Company requiring the Company to remedy the Company Default within a specified period of not less than thirty (30) days ("**Company Default Notice**").

27.3.2 If the Company fails to remedy the Company Default within the time specified therefor in the Company Default Notice, the Supplier may either:

27.3.2.1 cease performance of all or any part of any Services performed under this Agreement until such time as the Company Default is remedied; or

27.3.2.2 terminate this Agreement by fourteen (14) days' written notice to the Company.

27.3.3 Following termination of this Agreement by the Supplier pursuant to clause 27.3.2.2, the Supplier is only entitled to recover from the Company all Services Fees due and unpaid in relation to Services supplied up to the date of termination.

27.3.4 In respect of any breach by the Company other than a breach referred to in clause 27.3.1, the Supplier may only terminate this Agreement by written notice to the Company if the breach is material and the Company fails to remedy such breach within fourteen (14) days of written notice calling on the Company to do so, or such longer time period as agreed to by the Supplier.

28. **Consequences of termination**

28.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:

28.1.1 unless otherwise specified by the Company in writing, the Supplier shall fulfil any valid Service Order in accordance with the provisions of this Agreement;

28.1.2 the Supplier shall immediately take all possible action to mitigate any losses that may arise from termination of this Agreement;

28.1.3 subject to clauses 10.5 and 10.6 the Company shall settle any outstanding Invoices rendered by the Supplier;

28.1.4 the Supplier shall provide to the Company all information and co-operation to

enable the Company, or any third party nominated by the Company, to fully and effectively take over the Services;

- 28.1.5 the Supplier shall vacate the Site as soon as possible following termination of this Agreement, or as otherwise agreed to in writing between the Parties;
- 28.1.6 each Party shall immediately cease any and all use of any Confidential Information supplied to it by the other Party for any purpose whatsoever, and shall return to the other Party all Confidential Information of that Party in its possession or under its control, except that the Company may retain any Confidential Information it deems necessary in order to effect or make use of the Services provided;
- 28.1.7 the Supplier shall immediately discontinue all use of the Company's Intellectual Property and return to the Company all materials and documentation in its possession and/or under its control relating to the Company's Intellectual Property.
- 28.2 Following termination, the Supplier agrees that it shall not at any time in the future use the Company's Intellectual Property or assist any third party to use the Company's Intellectual Property.

29. Security

29.1 Security

- 29.1.1 The Supplier will within five (5) days of the Signature Date provide the Company with the Security.

29.2 Conversion of the Security

- 29.2.1 The Company may:
 - 29.2.1.1 call on a Security where the Supplier has breached this Agreement and the breach has not been remedied within 14 days after notice of it has been given to the Supplier by the Company, or such longer time period as agreed to by the Company;
 - 29.2.1.2 call on a Security where the Company has become entitled to exercise a right under this Agreement in relation to the Security; or
 - 29.2.1.3 at any time, convert a Security (other than cash) into cash provided that the Company may only have access to the cash funds when it is entitled to exercise a right under this Agreement in relation to the Security.

29.3 Company's security obligations on completion

- 29.3.1 Within 28 (twenty eight) days of the date of the expiry of the Supplier's warranty obligations under this Agreement and/or Service Order, the Company must return:
 - 29.3.1.1 the Security provided under clause 29.1 of this Agreement, unless it has been called on; and

29.3.1.2 any funds obtained by the Company by calling on any Security to the extent that the Company has not had, nor is it entitled to have, recourse to those funds.

29.4 **Interest**

The Company owns any interest earned on funds obtained by the Company by calling on any Security.

30. **Force Majeure**

30.1 For the purposes of this Agreement, the expression "**Force Majeure Event**" means in respect of a Party, any event or circumstance or combination of events or circumstances occurring after the Commencement Date, the occurrence of which is beyond the reasonable control (direct or indirect) of, and could have not been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent Party, provided that an economic downturn or hardship suffered by a Party will not be deemed hereunder to be a Force Majeure Event.

30.2 A Force Majeure Event will include but not necessarily be limited to any of the following matters:

30.2.1 war, invasion, acts of government, acts of a foreign enemy, acts of terrorism, hostilities or warlike operations (whether that be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power, blockade, confiscation or destruction or requisition by order of any Authority, including prevention or denial of trade, sanctions or closure of borders;

30.2.2 earthquake, flood, fire, drought or other physical disaster; or

30.2.3 strike or lockout or other industrial action by employees.

30.3 If either Party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, then it will notify the other Party in writing of the nature and expected duration of such Force Majeure Event and of the obligation, the performance of which is delayed or prevented and both Parties will thereupon be excused from the performance or punctual performance, as the case may be, of their respective obligations from the date of such notification, for so long as the circumstances or prevention or delay may continue, except as otherwise provided herein.

30.4 A Party claiming Force Majeure must use its best endeavours to remove or overcome the effects of that Force Majeure as quickly as possible

30.5 If by virtue of the foregoing, the Parties are excused from the performance or punctual performance of any obligation for a continuous period of ninety (90) days and provided that such performance is still excused, then either Party may at any time thereafter, by written notice to the other Party, terminate this Agreement forthwith. Notwithstanding any other terms of this Agreement, in the event of a termination pursuant to this clause, the Parties will each absorb its own costs and

losses occasioned by termination and neither of them shall have the right to claim damages or any other amount from the other of them, provided, however, to the extent either Party has an obligation arising from any activity prior to the Force Majeure Event which can be performed despite a declaration of such Force Majeure Event, such Party shall be required to perform said obligations.

31. Confidentiality

- 31.1 The Supplier will keep confidential and will not disclose to any third party any Confidential Information, without the prior written consent of the Company. The Supplier agrees to keep all Confidential Information confidential and to disclose it only to its officers, directors, employees, consultants and professional advisors who:
- 31.1.1 have a need to know (and then only to the extent that each such Person has a need to know);
 - 31.1.2 are aware that the Confidential Information should be kept confidential;
 - 31.1.3 are aware of the Supplier's undertaking in relation to the Confidential Information in terms of this Agreement; and
 - 31.1.4 have been directed by the Supplier to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 31.2 The obligations of the Supplier in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to Confidential Information that:
- 31.2.1 is disclosed to the Supplier in terms of this Agreement but at the time of such disclosure such Confidential Information is known to be in the lawful possession or control of the Supplier and not subject to an obligation of confidentiality;
 - 31.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Supplier; or
 - 31.2.3 is required by the provisions of any Laws or during any court or other legal proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure.
- 31.3 The Supplier undertakes to co-operate with the Company in relation to any announcements concerning this Agreement, and in particular undertake not to make any announcements, statements or disclosures or issue any documentation relating to this Agreement without the prior written approval of the Company.

32. Responsible Sourcing and Local Content

32.1 **Local Content Development**

32.1.1 **Overview**

A core value of the Company includes that the communities and societies in which it operates benefits from the Company's presence in the applicable jurisdiction/s. The Company strives to promote the fundamental human rights in all in the areas where it operates. And therefore the Supplier shall:-

32.1.1.1 Endeavour to procure goods and services with a South African content to the maximum extent possible;

32.1.1.2 As far as practicable commit to social development, and localisation of skills.

32.1.1.3 Procure and Purchase commodities locally (in South Africa) from local suppliers and identify as far as practicable goods and services within the country.

32.1.1.4 Ensure all Sub-Contractors (if any) used by the Supplier in the supply of the Services in terms of this Agreement complies with the provisions of this clause.

32.1.2 **Training and Skill Development**

Establish a training based approach towards the management of this Agreement to ensure progressive and planned skills development and worker capability and skills (professional, trades and non-professional roles).

32.1.3 **Constructive relationships with external stakeholders**

The Supplier shall as far as practicable for in terms of the Services supplied in terms of this Agreement, establish its own Sustainability Plan that delivers develops or improves facilities and resources in support of initiatives that benefit different sectors of the local economy, the interest of the community and the local community environment

33. **Dispute resolution**

33.1 **Separate, divisible agreement**

This clause 33 is a separate, divisible agreement from the rest of this Agreement and shall:

33.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of this Agreement and not to this clause 33. The Parties intend that any such issue shall at all

times be and remain subject to arbitration in terms of this clause 33; and

33.1.2 remain in effect even if this Agreement terminates or is terminated.

33.2 **Dispute**

In the event of any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

33.2.1 the existence of this Agreement apart from this clause 32;

33.2.2 the interpretation and effect of this Agreement;

33.2.3 the Parties' respective rights or obligations under this Agreement;

33.2.4 the rectification of this Agreement;

33.2.5 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation; and

33.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause 33 is valid and enforceable,

a Party will give the other Party written notice of the dispute, setting out the nature and full particulars of the dispute and requiring its resolution under this clause 33 ("**Dispute Notice**"). Such Dispute Notice will be given to the other Party within thirty (30) days of the notifying Party becoming aware of the alleged dispute.

33.3 **Meeting of Representatives**

33.3.1 On service of the Dispute Notice the Representatives shall meet at least once and attempt in good faith to resolve the Dispute.

33.3.2 If the Representatives are for any reason unable to resolve the dispute within ten (10) days of service of the Dispute Notice, the Dispute shall be referred to the nominated senior management of the Parties (or their respective nominees) who shall attempt in good faith to resolve the Dispute.

33.4 **Nominated senior management**

If the nominated senior management of the Parties (or their respective nominees) are for any reason unable to resolve the Dispute within twenty (20) days of it being referred to them, then the dispute shall be submitted to and decided by arbitration as set out in this clause 33.

33.5 **Arbitration**

33.5.1 Subject to the provisions of this clause 33, all disputes settled arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the Arbitration Foundation of South Africa ("**AFSA**") by one or more arbitrators appointed in accordance with the said Rules.

- 33.5.2 The seat or legal place of arbitration of arbitration shall be as provided for in the Schedule, and shall be administered by the Parties.
- 33.5.3 The language to be used in the arbitral proceedings shall be English.
- 33.5.4 The governing law of this Agreement and the arbitration shall be as provided for in the Schedule.

33.6 Application to court for urgent interim relief

Nothing contained in this clause 33 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

34. Addresses

- 34.1 The Parties choose the addresses as specified in the Schedule, at which notices may be given, and at which documents in legal proceedings may be served (ie their *domicilia citandi et executandi*), in connection with this Agreement.
- 34.2 Notices delivered to the above addresses shall be deemed to have been duly given:
- 34.2.1 on delivery, if delivered to the Party's physical address; and
- 34.2.2 on despatch, if sent to the Party's fax number or email address.
- 34.3 A Party may change its address for this purpose, on seven (7) days' prior written notice to the other Party, provided that the new address includes a physical address in the jurisdiction in which the Party is domiciled.

35. Surviving provisions

- 35.1 On termination of this Agreement the following clauses shall survive and continue in full force and effect:
- 35.1.1 1 (*Definitions and interpretation*);
- 35.1.2 22 (*Intellectual Property*);
- 35.1.3 23 (*Indemnity*);
- 35.1.4 24 (*Insurance*);
- 35.1.5 28 (*Consequences of termination*);
- 35.1.6 31 (*Confidentiality*); and
- 35.1.7 33 (*Dispute resolution*).

36. Miscellaneous matters

- 36.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of this Agreement and supersedes and novates in its

entirety any previous understandings or agreements, oral or written, between the Parties in respect thereof, including any tender documentation (unless otherwise advised by the Company), and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

- 36.2 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third Person (ie a *stipulatio alteri*) which, if accepted by the Person, would bind any Party in favour of that Person.
- 36.3 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 36.4 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 36.5 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 36.6 The Supplier may not cede any or all of its rights or delegate any or all of its obligations under this Agreement without the prior written consent of the Company, which consent may be withheld for any reason whatsoever, however the Company shall be entitled to cede and assign its rights and delegate its obligations under this Agreement without the prior consent of the Supplier provided that any cessionary or assignee shall be obliged to be bound by this Agreement and shall be capable of fulfilling and shall fulfil all the obligations of the Company in terms of this Agreement.
- 36.7 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 36.8 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

Signed at _____ on _____ 201_

Witness _____ **for the Supplier**

1.

 duly authorised and warranting such
 authority

2.

Signed at

on

201_

Witness

for the Company

1.

.....
duly authorised and warranting such
authority

2.

THE SCHEDULE

Annexes to the Schedule	<p>1) Annexe "A" – Scope of Services</p> <p>2) Annexe "B" – Services Fees</p> <p>3) Annexe "C" – Schedule of Information</p>
Company Representative	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>E-mail:</p>
Supplier Representative	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>E-mail:</p>
Scope of Services	The Services and the specifications thereof as set out in Annexe "A".
Service Fees	The fees for the Services and adjustment thereof as set out in Annexe "B"
Schedule of Information	The Schedule of information as set out in Annexe "C"
Payment terms	The Company shall pay the Supplier the Service Fees no later than [*Insert date*] days following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.
Site	[*Insert site/s where the Services are to be performed*]
Agreement Term	Notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on [*Insert date*] (the " Commencement Date ") and shall continue until [*Insert date*] 20_____, unless terminated earlier in accordance with

	the provisions of this Agreement (" Termination Date ").
Additional Insurance <i>(if any)</i>	[*Insert additional insurance if applicable*]
Amount for general liability and third-party insurance	[*Insert additional insurance if applicable*]
Amount for automobile and truck liability insurance	[*Insert additional insurance if applicable*]
Security	[*Required Security to be inserted*]
Currency	A reference to <Insert currency symbol> is to <insert currency description>
Rate of Exchange (ROE) application	<p>ROE shall mean the rate of exchange between [insert currency] and [insert currency].</p> <p>In the event of a fluctuation in the prevailing ROE of 5% (Five Percent) or more from the ROE as applied in the last price adjustment, either Party may apply for a price adjustment to accommodate this fluctuation.</p> <p>Such price adjustment will be calculated by applying the adjustment formula as set out in Annexe "B". For the purposes of an ROE adjustment under these conditions, all other input values apart from ROE will remain unchanged.</p> <p>The Party applying for a price adjustment due to ROE changes shall do so in writing not less than 30 days prior to the requested effective date of such change.</p>
Invoice Requirements	<p>All invoices shall be an original Tax invoice, issues to the Company and shall: -</p> <ul style="list-style-type: none"> • Make reference to the to the appropriate item number as per the Service Fees Schedule • Indicating the Value Added Tax as a separate item on the invoice, • reflect the Company's VAT Registration number (4010182451); and • state the Agreement Number; and • must be addressed to:- <p style="text-align: center;">Accounts Payable Department AngloGold Ashanti Limited Mponeng Mine P O Box 8044 WESTERN LEVELS 2501</p>

Supplier's Banking details	Account holder: Bank: Account No: Branch Code:
Addresses for Notices and Legal Proceedings	The Supplier's address shall be: <u>Physical Address:</u> [*Insert*] Company's address shall be: <u>Physical address:</u> 76 Rahima Moosa Street Newtown Johannesburg 2001
Place of arbitration	[*To only be completed by Legal*]
Governing law	[*To only be completed by Legal*]

Annexe "A"

Scope of Services

Services to be inserted upon conclusion of Tender

Annexe "B"

Service Fees

Service Fees to be inserted upon conclusion of tender]

Annexe "C"

Schedule of information

**1.0 SCHEDULE OF ON-SITE PERSONNEL
(EXCLUDING MANAGEMENT AND SUPERVISORY PERSONNEL)**

LABOUR CATEGORY / DESIGNATION	QUANTITY		DETAILS OF PAY PACKAGES TO EMPLOYEES
	FULL TIME	PART TIME	

2.0 SCHEDULE OF ON-SITE EQUIPMENT

DESIGNATION	AGE OF EQUIPMENT (YEARS)	QUANTITY	
		FULL TIME	PART TIME

3.0 SUPPLIER'S SAFETY AND HEALTH HISTORY

The information required shall be in respect of the last two (2) years of operation or alternatively for as long as the Supplier has been in business.

	Number	COMMENTS
- Accident Investigation Reports.		
- Planned General Inspections.		
- Inspection Reports to outside agencies, i.e. Department of Mineral and Energy Affairs, Governmental personnel and/or any other instances.		
- Loss data, i.e. injury, illness and lost property damage rate.		
- High potential incidents.		
- Records of Safety Committee meetings.		
- Section reports to correct sub-standard conditions/practices.		
- Records of follow-up meetings held in respect of all accidents.		
- Near miss announcements.		
- Major loss announcements.		
- Shifts worked.		
- Shifts lost.		
- Task observations as per mine standard.		
- Any other information relating to safety.		

4.0 SUPPLIER MANAGEMENT – HR GUIDELINES

	Company's Minimum requirement	Supplier's benefit to Personnel (SPECIFY)
LEGISLATION		
Annual Leave	30 calendar days per year	
Paid Leave	Full pay while on leave	
Sick Leave	6 weeks over 36 months	
COLLECTIVE		
Retirement / Provident Fund	Mandatory requirement	
Primary Health Care (medical aid)	Mandatory requirement	
COIDA/ ODMWA	Registration Mandatory	
Death & Disability Benefits	Twice Annual Salary	
U I F	Mandatory requirement	
COMPANY HR REQUIREMENTS		

Salary	(Minimum wage R5 034 per month) (Category 4 to 8)	
Accommodation	Optional although company Accommodation or Allowance is encouraged	
BEE Status (as required by the Mining Charter)	51% Black Ownership or 30% Black Woman Ownership	
HIV/AIDS Policy	Required	
Disciplinary Code	Required	
Transport	Optional although Company Transport or Allowance is encouraged	

5.0 DECLARATION OF INSURANCES BY SUPPLIER

The Supplier warrants that the insurance Policies enumerated below have been effected on or before the Commencement Date and that same shall be maintained up to and including the Termination Date.				
Cover Effected	Clause No.	Insurer	Policy No.	Expiry Date
C.O.I.D.A				
Unemployment Insurance				
Company's Liability				
Supplier's Plant				
Motor Vehicle Liability				
Supplier's Equipment				
Professional Indemnity Insurance				
Manufacturing/Fabrication Premises				
Copies of the above-mentioned policies and / or Insurer's certificates are to be attached.				

6.0 SCHEDULE OF APPROVED SUB- CONTRACTORS

The below table reflects the approved Sub-Contractors to be used by the Supplier under the terms of this Agreement for the supply of the Services.

NAME	PHYSICAL ADDRESS	WORK TO BE SUB-CONTRACTED

7.0 SITE INSPECTION

The Supplier inspected the Site on [insert date]

Having prior to this site visit carefully examined all, technical information and drawings supplied and confirms that the Supplier had all reasonable access to inspect those sections of the Site necessary for the execution of the Services.

The Supplier confirms that it is completely satisfied with the scope of work as explained by the Company's Representatives and is fully aware of all Site conditions and regulations of whatsoever nature that could influence the supply of the Services.

The Supplier warrants that it will not institute any claim against the Company after the Commencement Date based on lack of knowledge of site conditions or regulations appertaining to the execution of the Agreement.