

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED**

**ABN 42 008 737 424**

**AND**

**[\*\*NAME AND ABN OF CONTRACTOR\*\*]**

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**HIRE AGREEMENT  
TROPICANA GOLD MINE  
AGREEMENT NO. [xxxx]**

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**THIS DOCUMENT IS UNCONTROLLED IN HARD COPY FORMAT**

Document Name	Version	Document Owner	Issue Date
<b>TGM Hire Agreement</b>	<b>4</b>	<b>Legal</b>	<b>September 2019</b>

**KEY TERMS SCHEDULE FOR AGREEMENT [\*insert contract number\*]**

**Item 1: Parties and Delivery Point**

Company: *AngloGold Ashanti Australia Limited, as agent for the Joint Venturers*  
ABN *42 008 737 424*  
Company Representative: *[\*insert name, title and contact details, including email address\*]*  
Lessor: *[\*Insert Lessor's name and address\*]*  
ABN: *[\*Insert Lessor's ABN\*]*  
Lessor's Representative: *[\* Insert Lessor's Representative (Name, title and contact details, including email address)\*]*  
Site: *Tropicana Gold Mine, or such other Delivery Point as may be specified in the applicable Purchase Order*  
Delivery Point: *Site or such other Delivery Point as may be specified in the applicable Purchase Order*  
Return Point: *[\* Insert Return Point details\*] or such other Return Point as may be specified in the applicable Purchase Order*

**Item 2: Goods**

*[\*Insert general description of Goods to be supplied by the Lessor to the Company\*], as may be further described in the Schedule of Goods and elsewhere in the Agreement. If a general contract insert "As per the applicable Purchase Order"*

**Item 3: Hire Fee**

*[Insert rates for hire] or if a general contract insert "As per the applicable Purchase Order"*

**Item 4: Hire Period**

*[\*Insert the hire period required\*] or if a general contract insert "As per the applicable Purchase Order"*

**Item 5: Delivery Date**

*[\*Insert the required delivery date for the Goods\*] or if a general contract insert "As per the applicable Purchase Order"*

**Item 6: Incidental Services**

Incidental Services means any incidental services to be performed by the Lessor pursuant to the hire of Goods and the following services (if any):

*[\*insert description and details of any specific services (such as for example, fitting, testing and commissioning) to be provided in connection with the supply of the Goods];*

**Item 7: Date of Agreement**

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**Item 8: Delivery Terms**

<u>RESPONSIBILITY</u>	<u>PERFORMED BY</u>		<u>AT COST TO</u>	
	<i>Lessor</i>	<i>Company</i>	<i>Lessor</i>	<i>Company</i>
<i>Items</i>				
<i>Party responsible for delivery of Goods to the Delivery Point</i>				
<i>Party responsible for the return of the Goods to the Return Point</i>				
<i>Commissioning and de-commissioning Goods at Site</i>				

**Item 9: Term of Agreement**

[\*insert the term of this contract\*]

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# ANGLOGOLD ASHANTI AUSTRALIA LIMITED

## HIRE AGREEMENT

**THIS AGREEMENT** is made on the Date of Agreement

### BETWEEN

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED** ABN 42 008 737 424 of Level 10, 140 St Georges Terrace Perth WA 6000, as agent for the Joint Venturers (the "**Company**"); and

**THE ENTITY NAMED AS THE LESSOR IN ITEM 1 OF THE KEY TERMS SCHEDULE OR WHERE A PURCHASE ORDER IS ISSUED, THE ENTITY NAMED AS VENDOR ON THE PURCHASE ORDER FORM** (the "**Lessor**").

### RECITAL

The Company and the Lessor have agreed to enter into this Agreement to set out the terms and conditions for the lease of the Goods by the Company.

### THE PARTIES AGREE AS FOLLOWS:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

"**Applicable Policies**" means any policies, standards, procedures, industry codes and guidelines adopted by the Company, in relation to the Site, the Company and/or its contractors and suppliers, from time to time.

"**Agreement**" means this agreement, including the Key Terms Schedule, the Schedule of Goods, any applicable Purchase Order, and each other Schedule to this agreement.

"**Business Day**" means a day other than a Saturday or Sunday on which banks are open for general banking business in Perth, Western Australia.

"**Carbon Scheme**" means any Law or any requirement or condition of a licence, permit, Government Agency consent or approval:

- (a) with respect to the production or emission of, or to reduce, limit, cease, prevent, offset, remove or sequester, greenhouse gases; or
- (b) that imposes a tax, levy, duty, impost or other charge that is calculated by reference to actual, potential or deemed greenhouse gas emissions or that is intended to reflect a carbon price,
- (c) including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations.

"**Claim**" means any action, suit, proceeding or demand of any kind.

"**Company Representative**" means the representative of the Company noted in Item 1 of the Key Terms Schedule and as may be replaced under Clause 5 or if not noted in the Key Terms Schedule, the representative nominated by the Company.

**“Conditions Report”** means a report on the condition of the Goods prepared in accordance with a format reasonably specified or agreed by the Parties.

**“Confidential Information”** means all information and materials disclosed, provided or otherwise made accessible to the Lessor preparatory to or in the course of providing the Goods, whether before or after formation of this Agreement, including policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate and all information of the kind mentioned in section 275(1) of the PPSA, but excludes information that the Lessor can prove:

- (a) was in the public domain at the date the Company made it available to the Lessor;
- (b) subsequent to the date the Company made it available to the Lessor, became part of the public domain otherwise than as a result of disclosure by the Lessor or the Lessor's Personnel or other person directly or indirectly in breach of this Agreement or other obligation of confidentiality; or
- (c) was in its possession at the time of disclosure by the Company to the Lessor and was not otherwise acquired from the Company directly or indirectly.

**“Damage”** means loss, theft, damage, destruction or defacement but does not include fair wear and tear.

**“Damaged Goods”** means Goods which suffer Damage;

**“Date of Agreement”** means the date specified in Item 7 of the Key Terms Schedule or, if no such date is specified, the date so deemed by the Company.

**“Delivery Date”** means the date that the Good(s) are to arrive at Site, as specified in Item 5 of the Key Terms Schedule and/or the applicable Purchase Order.

**“Delivery Point”** means Site.

**“Force Majeure”** means an event or cause which is beyond the control of the party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the event or cause by that party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing) any:

- (a) act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot; or
- (b) natural disaster.

**“Goods”** means merchandise, chattels, plant or equipment to be hired under this Agreement as described in Item 1 of the Key Terms Schedule and/or specified in the applicable Purchase Order.

**“Hire Fee”** means the fee payable by the Company for the hire of the Good(s) as specified in Item 3 of the Key Terms Schedule and/or the applicable Purchase Order, and calculated in accordance with the rates specified in Item 3 of Key Terms Schedule.

**“Hire Period”** means the period of time that the Company requires the Good(s) to be on Site, as specified Item 2 of the Key Terms Schedule or in the applicable Purchase Order.

**“Hire Term”** is the term which is the shorter in duration of the following:

- (a) the Hire Period;

- (b) the period from the date the Goods are delivered to the Delivery Point to the date the Lessor or Company (as applicable) collects the Goods for the purposes of demobilising the Goods from Site; or
- (c) from the date the Goods are delivered to the Delivery Point to the date the Agreement is terminated pursuant to Clause 13.

**"Incidental Services"** means any incidental services to be performed by the Lessor pursuant to the Hire of the Goods and any services described in the Schedule of Goods.

**"Intellectual Property Rights"** means any registered intellectual property rights including without limitation, all copyright, trade secrets, patents, patent applications, trade marks, domain names, business names, designs and circuit layout rights.

**"Joint Venturers"** means, in respect of the Tropicana Joint Venture, the participants in the Tropicana Joint Venture from time to time (being, as at the date of this Agreement, AngloGold Ashanti Australia Limited and AFB Resources Pty Ltd).

**"Key Terms Schedule"** means the schedule at the beginning of this Agreement or the equivalent item in the Purchase Order;

**"Law"** means:

- (a) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity; and
- (b) the lawful requirements, directions or instructions of any Government Agency;

**"Liabilities"** means any damages, Claim, losses, liabilities, costs and expenses of any kind.

**"Modern Slavery"** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth), sch 1 divisions 270 and 271 and the *Modern Slavery Act 2018* (Cth). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

**"Notice"** means a notice, consent, approval or other communication under this Agreement.

**"Parties"** means the Lessor and the Company, and Party means either one of them.

**"Person"** includes a corporation, trust or incorporated body or entity.

**"Personnel"** means:

- (a) in relation to the Lessor – any of the Lessor's employees, representatives, agents, consultants and invitees, any of its Sub- contractors, and any of its Sub-contractors' Personnel under paragraph (b), involved either directly or indirectly in the hire of the Goods;
- (b) in relation to a Sub-contractor – any of its employees, representatives, agents, consultants and invitees involved whether directly or indirectly in the hire of the Goods; and
- (c) in relation to the Company – any of the Company's employees, representatives, agents, consultants and invitees involved either directly or indirectly in connection with this Agreement.

“**PPSA**” means the Personal Property Securities Act 2009 (C’th).

“**Purchase Order**” means a formal order document issued by the Company to the Lessor for the Good(s) that the Company requires.

“**Return Condition Report**” has the meaning specified in Clause 9.

“**Return Point**” means the return point specified in Item 1 of the Key Terms Schedule.

“**Site**” means the place designated in Item 1 of the Key Terms Schedule or if no such item is specified in Item 1, the equivalent item in a Purchase Order (if any).

“**Sub-contractor**” means any person engaged by the Lessor to perform all or any portion of the services under this Agreement on behalf of the Lessor who is not an employee of the Lessor.

“**Term of Agreement**” means the term of this Agreement as set out in Item 9 of the Key Terms Schedule or, if none is specified, the term expiring when the Company considers the Lessor’s obligations under this Agreement have been completed.

“**Tropicana Joint Venture**” means the Tropicana unincorporated joint venture between the Joint Venturers, on behalf of which the Company is a party to this Contract as agent for the Joint Venturers.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) All Hire Fees are payable in Australian dollars and are exclusive of GST, unless specified otherwise.
- (b) If there is any inconsistency between the Purchase Order and the clauses of this Agreement then the clauses of this Agreement will prevail, to the extent of the inconsistency.
- (c) A reference to any Party to this Agreement or any other document or arrangement includes that person’s executors, administrators, substitutes, successors and permitted assigns.

## 2. HIRE OF GOODS

- (a) The Lessor agrees to provide the Goods for hire to the Company in accordance with:
  - (i) the terms and conditions of this Agreement;
  - (ii) all applicable Laws and all Applicable Policies;
  - (iii) the terms of any Purchase Order;
  - (iv) the quantities set out in Purchase Orders issued by the Company from time to time in accordance with this Agreement; and
  - (v) the description and prices set out in the Key Terms Schedule and/or Purchase Order(if any).
- (b) The Lessor warrants that the Goods:
  - (i) are free of encumbrances and that the Lessor has good title to them;
  - (ii) are appropriate for and suitable for, the Site;
  - (iii) are fit for the purpose for which the Company shall be using them;
  - (iv) shall conform to all applicable Laws, their description (or representative sample if applicable), any specification and all other requirements of this Agreement; and
  - (v) shall be of good quality and in good condition



- (c) No inspection conducted by the Company, whether prior to installation, in accordance with this Agreement or otherwise, affects the Lessor's warranties or other obligations under this Agreement and the Lessor must promptly make good any defects, which arise from the Goods not complying with the requirements of this Agreement.

### **3. TERM OF AGREEMENT**

This Agreement continues for the Term as set out in Item 9 of the Key Terms Schedule unless terminated earlier in accordance with the terms of this Agreement.

### **4. CHARGES AND PAYMENT**

- (a) The Company agrees to pay the Hire Fee for the Hire Term.
- (b) Payment shall be made within 30 days of receiving a tax invoice.
- (c) Each amount invoiced in accordance with paragraph (b) is deemed to include all expenses incurred by the Lessor in relation to the supply of Goods and any Incidental Services covered by the invoice, including:
  - (i) costs incurred by the Lessor under any Carbon Scheme; and
  - (ii) costs associated with NGERS reporting.

### **5. REPRESENTATIVES**

- (a) The Company's Representative is specified in Item 1 of the Key Terms Schedule or any alternate notified by the Company to the Lessor in writing.
- (b) The Lessor's Representative is specified in Item 1 of the Key Terms Schedule or any alternate notified by the Lessor to the Company in writing.
- (c) The Lessor and the Company acknowledge and agree that each party's representative is authorised to act on behalf of that party in relation to this Agreement.

### **6. GENERAL TERMS**

- (a) The Company may affix or cause to be affixed to the Goods signs where prior written consent (which must not be unreasonably withheld) has been received from the Lessor.
- (b) The Company will not modify or deface the Goods, or carry out any work on the Goods without the prior written consent of the Lessor.
- (c) The Company acknowledges that the Lessor retains title to the Goods and that the Company and Lessor's legal relationship is that of lessee and lessor only.
- (d) The Lessor may not assign the whole or any part of its rights under this Agreement without the prior written consent of the Company.
- (e) The Lessor must not engage a Sub-contractor to supply the Goods or perform any of its obligations under this Agreement without the prior written consent of the Company. If the Lessor engages a Sub-contractor with the prior written consent of the Company, the Lessor is liable to the Company for the acts and omissions of that Sub-contractor and that of the Sub-contractor's Personnel as if they were the acts and omissions of the Lessor;
- (f) The Company must not sell, lend, let or hire the Goods or any part of it at any time during the Hire Period.

## 7. DELIVERY AND COLLECTION

- (a) Delivery of the Goods to the Delivery Point shall occur on the Delivery Date or such earlier date as may be agreed with the Company.
- (b) Unless otherwise provided in Item 8 of the Key Terms Schedule:
  - (i) the Lessor will deliver the Goods to the Delivery Point;
  - (ii) delivery of the Goods to the Delivery Point shall be at the cost of the Lessor; and
  - (iii) the Company will return the Goods to the Return Point.
- (c) Subject to Paragraph (d), delivery to the Return Point shall be at the cost of the Company unless specified otherwise in Item 8 of the Key Terms Schedule.
- (d) Notwithstanding any other clause in this Agreement, the costs for the return of the Goods shall be borne by the Lessor if the Agreement is terminated by the Company under clause 1313(b).
- (e) Unless the Company is returning the Goods to the Return Point, the Company will not relocate the Goods from the Site without the prior consent from the Lessor.
- (f) Unless the Company is returning the Goods to the Return Point, the Goods shall be made available for collection by the Lessor as soon as practicable following the expiry of the Hire Period.

## 8. CONDITIONS REPORT

- (a) Where requested by the Company, representatives of the Lessor and the Company must arrange to jointly meet to inspect the Goods and following the inspection, complete a Condition Report with respect to each item of the Goods.
- (b) The Conditions Report(s) will be conclusive and binding evidence as to the condition of each item of the Goods as of the time of the report.

## 9. RETURN CONDITION REPORT

- (a) At the conclusion of the Hire Term, and where requested by the Company, representatives of the Lessor and the Company must arrange to jointly inspect each item of the Goods, and following the inspection, complete a Condition Report in respect of each item of the Goods detailing the condition of each item of the Goods (the "**Return Condition Report**").
- (b) The contents of the Return Condition Report(s) will be conclusive and binding evidence of the condition of each item of the Goods at the time of the report.

## 10. COMMISSIONING AND DECOMMISSIONING

Unless otherwise provided in Item 8 of the Key Terms Schedule, the Lessor will be responsible at its own cost for the commissioning and decommissioning of the Goods at Site.

## 11. MAINTENANCE OF GOODS AND DAMAGE

- (a) The Lessor must regularly maintain the Goods in accordance with Law and/or Applicable Policies so as to ensure they remain in good working order.
- (b) The Company must, subject to Clause 15, allow the Lessor access to the Goods for the purposes of conducting an inspection, maintenance or repair where 20 days prior written notice from the Lessor has been received.

- (c) If upon inspection, any of the Goods are delivered defective or Damaged, then without limiting any other provision in the Agreement, the Lessor shall either repair the relevant Good(s) as soon as practicable, or immediately replace the Goods with another of equal quality and specification. If the defective or Damaged Goods are not repaired or replaced within a time period specified by the Company (acting reasonably) the Company shall be able to terminate this Agreement in accordance with Clause 13(b) below.
- (d) The Company will not be liable for any fair wear and tear to the Goods whatsoever.
- (e) In the event that any Goods (or part thereof) incur Damage, the Company must:
  - (i) in all cases, notify the Lessor as soon as practicable;
  - (ii) in the case of theft, report the theft to the relevant authority immediately; and
  - (iii) in the case of theft, provide the Lessor with all information reasonably required by the Lessor in relation to the theft.
- (f) In the event that in the opinion of the Company, the Goods breakdown, are not in good working order or become unsafe to use, the Company shall, as soon as reasonably practicable, notify the Lessor.
- (g) The Lessor, upon receiving a notice from the Company under Clause 11(f) shall:
  - (i) promptly take all steps necessary to repair the Goods or provide suitable substitute Goods as soon as reasonably possible after receiving the notice; and
  - (ii) not impose a hire charge for that portion of the Hire Term for which the Goods were broken down or unsafe to use.
- (h) The costs associated with any repair or replacement of the Goods pursuant to this Clause 11 shall be borne solely by the Lessor.

## **12. PERFORMANCE OF INCIDENTAL SERVICES AND STANDARD OF CONDUCT**

### **12.1 Qualifications**

The Lessor represents and warrants that it, and each of its Personnel, are qualified and have the capacity, experience, resources, skill and expertise to perform the Incidental Services (if any) in accordance with the requirements of this Agreement.

### **12.2 Standards of conduct**

- (a) The Lessor represents and warrants that, in performing the Incidental Services (if any), the Lessor and its Personnel shall:
  - (i) exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Incidental Services; and
  - (ii) ensure the Incidental 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.
- (b) In performing the Incidental Services, the Lessor and its Personnel shall:
  - (i) act in accordance with all reasonable directions of the Company (including in relation to health and safety, industrial relations (whilst on the Site) and Environmental matters;
  - (ii) act in a workmanlike, careful, safe and proper manner;
  - (iii) perform the Incidental Services in a timely manner;

- (iv) comply with all the requirements of this Agreement; and
- (v) ensure that the Incidental Services (including their delivery) comply with all Laws and Applicable Policies.

### **12.3 Protection from Incidental Services**

Where Incidental Services are to be performed, the Lessor must take all reasonable precautions to protect persons, property or work in progress by the Company or others at or in the vicinity of the place where Incidental Services are being performed including the erection of any necessary temporary guards and fences and warning signs. Any damage must be reported to the Company immediately.

## **13. DEFAULT AND TERMINATION**

- (a) The Company may terminate this Agreement in its absolute discretion by providing 30 days' prior written Notice to the Lessor.
- (b) In addition to the right in sub-clause (a) above, in the event that the Lessor:
  - (i) fails to make any payment which pursuant to the Agreement it is required to make and fails to remedy that breach within 14 days after receiving a reminder notice;
  - (ii) commits a breach of any of its obligations under this Agreement;
  - (iii) resolves to become subject to any form of insolvent administration;
  - (iv) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Lessor to be wound up; or
  - (v) does not repair or replace defective or Damaged Good(s) in accordance with Clause 11(c),then the Company may, by written Notice, immediately terminate the Agreement.
- (c) Termination or expiry of this Agreement does not prejudice:
  - (i) any right, action or remedy accrued in favour of a Party prior to such termination or expiry; or
  - (ii) any rights, action or remedy of a Party which expressly or impliedly survive the termination or expiry of this Agreement.
- (d) In the event of termination of this Agreement, then subject to Clause 14, the Company hereby authorises the Lessor, provided the Lessor provides no less than 10 Business Days prior written notice to the Company, to enter the premises in which the Goods are located for the purpose of recovering the Goods.

## **14. SET-OFF**

- (a) The Company may deduct from any money due or becoming due to the Lessor the following amounts (plus any GST in respect of the deductions):
  - (i) all debts and moneys due from the Lessor to the Company under or in relation to this Agreement or otherwise;
  - (ii) all Liabilities which the Company has paid or incurred and which the Lessor or a Sub-contractor is liable to bear, pay or reimburse to the Company;
  - (iii) the amount of any damage claimed by any other contractor to the Company as a result of the hire; and
  - (iv) any amount that it is required or authorised by Law to deduct.

## 15. CONDITIONS OF ACCESS

- (a) The provisions of this Clause apply if and to the extent only that the Lessor or its Personnel are on the Site including for the purposes of delivering or collecting the Goods.
- (b) The Lessor:
  - (i) enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
  - (ii) is not entitled to exclusive possession of the Site;
  - (iii) may only access the areas allocated by the Company as necessary, in the opinion of the Company;
  - (iv) must ensure that it and its Personnel comply with all applicable Site rules and procedures including any relating to induction;
  - (v) must co-operate with the Company's 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;
  - (vi) must obtain 14 days prior approval from the Company for any action likely to interfere with the Company's operations or the work of any other contractor; and
  - (vii) if required by the Company to do so, must and persons for whom it is responsible must, wear or carry badges or passes issued by the Company for the purpose of identification at all times whilst on or entering the Site.
- (c) The Company may, in its absolute discretion and without the need to provide any explanation to the Lessor, require the removal from the Site of any person for whom the Lessor 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 the Incidental Services or in connection with this Agreement and the Lessor 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.

## 16. INDEMNITY

The Lessor shall indemnify and hold harmless the Company from and against any Liabilities suffered or incurred by the Company by reason of:

- (a) the breach by the Lessor or its Personnel of any of the Lessor's obligations (including any warranty) under this Agreement; or
- (b) any act or omission of Lessor or its Personnel arising out of the performance or non-performance of this Agreement; or
- (c) any fraudulent, reckless or negligent act or omission by the Lessor or its Personnel in the course of providing the Goods; or
- (d) any Claim or lien over the Goods,

except to the extent such Liabilities are directly due to actions or omission on the part of the Company or its Personnel.

## 17. INSURANCE

The Company is required to effect and maintain throughout the term of the Hire Period insurance covering the Goods for their replacement value.

## **18. FORCE MAJURE**

- (a) If either Party to this Agreement is affected, or likely to be affected, by an event of Force Majeure:
  - (i) that party must immediately give the other prompt Notice giving full particulars of the event of Force Majeure claimed and the steps taken to rectify it; and
  - (ii) the obligation under this Agreement of the party giving the Notice are suspended to the extent to which they are affected by the relevant event of Force Majeure during but no longer than the continuance of the Force Majeure.
- (b) Neither Party shall be liable to the other for any costs associated with the delay due to Force Majeure.
- (c) A party claiming Force Majeure must use its best endeavours to remove or overcome the effects of the Force Majeure as quickly as possible.
- (d) Either party may terminate this Agreement if an event of Force Majeure claimed by the other Party continues for longer than 90 days.

## **19. APPORTIONMENT OF LIABILITY**

- (a) To the extent permitted by Law, the operation of Part 1F of the Civil Liability Act 2002 (WA) is excluded in relation to all and any rights, obligations and Liabilities under this Agreement whether such rights, obligations or Liabilities are sought to be enforced as a Claim in contract, tort (including negligence), equity, under statute or otherwise at Law.
- (b) Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise whether such rights, obligations and Liabilities are sought to be enforced by a Claim in contract, tort (including negligence), in equity, under statute or otherwise at Law.
- (c) If any provision of this Agreement is illegal, void, invalid, unenforceable for any reason, all other provisions which are self sustaining and capable of separate enforcement must, to the maximum extent permitted by Law, be and continue to be valid and enforceable.

## **20. THE COMPANY ACTING AS MANAGER OF THE TROPICANA JOINT VENTURE**

- (a) The Company is a party to this Agreement as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture from time to time. As at the date of Agreement, the Joint Venturers respective percentage interests in the Joint Venture are as follows:
  - (i) AngloGold Ashanti Australia Limited – 70%; and
  - (ii) AFB Resources Pty Ltd – 30%.
- (b) The obligations and liabilities of the Joint Venturers to the Lessor under or in connection with this Agreement are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture.
- (c) The percentage interests of the Joint Venturers, and the identity and number of Joint Venturers (and therefore their respective interests in and under this Agreement), may change from time to time without the consent of the Lessor and for this purpose the rights and obligations of the relevant Joint Venturers under this Agreement may be freely assignable without the consent of the Lessor (provided that the Company provides written notice to the

Lessor of any change in the percentage interests or the identity of the Joint Venturers) and the Company may at any time without the consent of the Lessor assign its rights and obligations under this Agreement to an incoming agent or manager on behalf of the Joint Venturers.

- (d) The rights and remedies in and under this Agreement may be exercised by the Company for the Joint Venturers.
- (e) The benefit of the respective duties and obligations of the Company under this Agreement are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf.
- (f) All notices may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them and, in dealing with the Joint Venturers, for all purposes under or in connection with this Agreement, the Lessor must deal only with the Company.
- (g) The Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under this Agreement.

## **21. MISCELLANEOUS**

- (a) **Waiver:** No waiver by either party of any breach of a provision of the Agreement is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing.
- (b) **No Agency:** The Agreement does not create a relationship of employment, partnership or agency between the Lessor and the Company.
- (c) **Confidential Information:** Unless required by Law, other than section 275 of the PPSA (except when required by section 275(7)), the Lessor will not disclose the Confidential Information or make it available to any other person, corporation or entity without the prior written consent of the Company.
- (d) **Governing Law:** The Agreement is governed by, and is to be interpreted in accordance with the laws in force in the State of Western Australia and the parties submit exclusively to the jurisdiction of the courts in that State, and any courts of appeal there from.
- (e) **Severance:** If any provision of the Agreement is determined to be void by any court then that determination does not affect any other provision of the Agreement which otherwise remains in full force and effect.
- (f) **Notices:** Any notice under this Agreement may be given by personal delivery, prepaid mail, facsimile or email addressed to the address set out in Item 1 of the Key Terms Schedule and to the Company Representative or the Lessor's Representative (as the case may be) or another address in Australia notified in writing to the other party.
- (g) **Notices will be deemed given and received:**
  - (i) in the case of hand delivery, on the date of delivery as evidenced by a written acknowledgement of receipt by an authorized employee, agent or representative of the addressee;
  - (ii) in the case of posting, 2 Business Days after posting if posted within Australia or 5 Business Days after posting if posted from or to a place outside Australia;
  - (iii) in the case of facsimile, at the time of transmission (as evidenced by a successful transmission report from the sender's machine in the case of a facsimile) if the transmission was made before 5.00pm (addressee's local time) on a Business Day or otherwise at the commencement of the first Business Day following transmission; and
  - (iv) if sent by email to a person's address, on the first to occur of:

- (A) receipt by the sender of an email acknowledgment from the recipient's information system showing that the Notice has been delivered to the email address of the recipient set out in Item 1 of the Key Terms Schedule;
- (B) the time that the Notice enters an information system which is under the control of the recipient; and
- (C) the time that the Notice is first opened or read by an employee of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day, it will be taken to have been duly given or made on the next Business Day.

- (h) Time: Time is of the essence in the Agreement in respect of any obligation of the Lessor.

## **22. GST**

- (a) In this Clause 22, the expressions "adjustment note", "consideration", "GST", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- (b) Unless otherwise stated, the Hire Fee and any other amount payable for any supply of goods and services under the Agreement are specified exclusive of GST.
- (c) If GST is imposed on any supply made under the Agreement, the Company must pay to the Lessor an amount equal to the GST payable on the taxable supply. Such amount must be paid in addition to and at the same time as payment for the taxable supply is required to be made under the Agreement.

## **23. PROHIBITION ON MODERN SLAVERY**

### **23.1 Representations, warranties and undertakings**

- (a) The Lessor represents, warrants and undertakes, throughout the term of this Agreement:
  - (i) that neither the Lessor nor any of its Personnel, contractors or subcontractors will engage in Modern Slavery;
  - (ii) to comply with all Modern Slavery reporting requirements applicable to it;
  - (iii) to have and maintain its own policies and procedures that are intended to ensure compliance with this clause;
  - (iv) to take reasonable steps to require each of its contractors and/or suppliers directly involved in the provision of goods or services to the Company have, and maintain throughout the term of the Lessor's contract with the relevant contractor and/or supplier, policies and procedures that are designed to ensure that no form of Modern Slavery is used in the relevant contractor's and/or supplier's business, or by its Personnel, contractors or subcontractors; and
  - (v) to notify the Company promptly in writing upon becoming aware of:
    - (vi) any incident, complaint or allegation that the Lessor, or any entity in its supply chain, has engaged, directly or indirectly, in Modern Slavery; or
    - (vii) any actual, reasonably suspected or anticipated Modern Slavery in the operations of the Lessor or engaged in by any entity in its supply chain in connection with this Agreement,
  - (viii) and such notice will include reasonable details of the steps it is taking or proposes to take to investigate the matter.



- (b) At the reasonable request of Company, within a reasonable period of time, and at its own expense, the Lessor must confirm in writing that it has complied with its undertakings in clause 23.1(a) and provide any information reasonably requested by the Company in support of such compliance.
- (c) The Lessor acknowledges that the Company has corporate reporting obligations with respect to Modern Slavery and must comply, within a reasonable time and at its own expense, with any reasonable requests made by the Company to provide any information that is required to enable the Company to comply with those reporting obligations.

### **23.2 Appointment of Auditor**

If the Company has reasonable grounds to suspect a breach of Clause 23.1(a), the Company may audit the Lessor's compliance with that clause. The Lessor must promptly comply with the requests of the Company or any auditor appointed by the Company in relation to an audit pursuant to this clause.

### **23.3 Notification**

- (a) The Lessor must:
  - (i) immediately notify the Company in writing if:
    - (A) it becomes aware or suspects that any of the representations, warranties and undertakings in Clause 23.1(a) are false; and/or
    - (B) it or any of its Personnel breaches or may have breached any of the representations, warranties and undertakings in Clause 23.1(a); and
  - (ii) at the Company's request, provide details of the steps it is taking to investigate any breach or potential breach notified under Clause 23.3(a)(i).
- (b) Notification under Clause 23.3(a)(i) will be sufficient if and only if the notification sets out adequate particulars of the breach or suspected breach.

### **23.4 Termination**

If the Lessor is in breach of any part of Clause 23.1(a) or the Company has reasonable grounds to suspect such a breach, without prejudice to any other remedy which the Company may have, the Company may immediately terminate the Agreement for breach by providing written notice of termination to the Lessor. Any right of termination under this clause is in addition to any other right of termination the Company may have under the Agreement or at Law.

**EXECUTED** as an agreement.

**SIGNED** by **ANGLOGOLD ASHANTI** )  
**AUSTRALIA LIMITED, as agent for the** )  
**Joint Venturers** by: )

.....  
Name:  
Position:

**SIGNED** on behalf of **[INSERT LESSOR** )  
**NAME]** by: )  
)

.....  
Name:  
Position:

