

## ANGLOGOLD ASHANTI AUSTRALIA LIMITED PURCHASE ORDER TERMS AND CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Contract, 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 or its contractors and suppliers, from time to time;

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

**"Civil Liability Act"** means the *Civil Liability Act 2002 (WA)*;

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

**"Clause"** means a clause of this Contract;

**"Commencement Date"** means the date on which the Services are to commence as specified in a Purchase Order;

**"Company"** means AngloGold Ashanti Australia Limited (ABN 42 008 737 424);

**"Company Data"** means all data and information (whether in soft or hard copy, and including software or hardware) relating to the Company that is:

- (a) maintained or received by the Contractor from or on behalf of the Company;
- (b) otherwise made available to the Contractor by or on behalf of the Company; or
- (c) generated by the Contractor on behalf of the Company,

under or in connection with this Contract, including any Confidential Information of the Company and Personal Data;

**"Company Representative"** means the company representative specified in a Purchase Order;

**"Completion Date"** means the date certified in writing by the Company Representative as the date on which the Services are completed;

**"Confidential Information"** means all information and materials disclosed, provided or otherwise made accessible to the Contractor preparatory to or in the course of supplying the Goods or performing the Services, whether before or after formation of this Contract, including the contents of the Purchase Order, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate, but excludes information that the Contractor can prove:

- (a) was in the public domain at the date the Company made it available to the Contractor;
- (b) subsequent to the date the Company made it available to the Contractor, became part of the public domain otherwise than as a result of disclosure by the Contractor or the Contractor's Personnel or other person directly or indirectly in breach of this

Contract or other obligation of confidentiality; or

- (c) was in its possession at the time of disclosure by the Company to the Contractor and was not otherwise acquired from the Company directly or indirectly;

**"Conflict of Interest"** means a situation where an employee of the Company (whether temporary, part-time or permanent) and /or that employee's related parties (including family or close friends) have an interest, either directly or indirectly, in an entity (such as the Contractor) that may do, or does, business with the Company. The conflict may be actual, potential or perceived. Good faith or intention by any party involved will not affect the duty to report the conflict. The conflict may relate to an interest in the Contractor itself, or if the Contractor is aware of, or suspects an interest that the employee may have with others. The conflict may include hospitality, gifts, or expensive entertaining;

**"Contract"** means these Purchase Order Terms and Conditions, any Special Conditions, any Specifications and the Purchase Order;

**"Contract IP"** means all Intellectual Property developed by or on behalf of the Contractor in connection with providing the Goods or performing the Services;

**"Contract Price"** means the fixed price of the Goods or Services specified in the Purchase Order or, if no fixed price is specified, then the price for the Goods or Services calculated using the rates specified in a Purchase Order;

**"Contractor"** means the entity or individual named as the vendor on a Purchase Order;

**"Contractor IP"** means all Intellectual Property which the Contractor can demonstrate:

- (a) was owned by the Contractor as at the Date of Contract; or
- (b) came into existence after the Date of Contract independently of the performance of this Contract and was not paid for by the Company;

**"Contractor Representative"** means the contractor's representative as specified in the Purchase Order;

**"Data Breach"** has the meaning given to that term in Clause 35(a);

**"Date for Completion"** means the date for the completion of the Services as specified in the Purchase Order;

**"Date for Delivery"** means the date by which the Goods are to be delivered to the Delivery Point as specified in the Purchase Order;

**"day"** means twenty-four (24) consecutive hours from midnight;

**"Defects Liability Period"** means:

- (a) in respect of Services, 12 months from the Completion Date, or if no Completion Date is certified, 12 months from the Date for Completion; and
- (b) in respect of Goods, 12 months from the Company putting the Goods into service or 18 months from delivery of the Goods to the Delivery Point, whichever is later;

**"Delivery Point"** means the place where the Goods are to be delivered as specified in the Purchase Order;

**"Dispute"** means any dispute or difference between the Contractor and



the Company arising out of or in connection with the Goods or Services;

**"Environment"** means components of the earth including land, air and water, any layer of the atmosphere, any organic or inorganic matter and any living organism, any human-made or modified structures and areas, the aesthetic or amenity values of an area and humans;

**"Environmental Event"** means any event or series of events arising out of the performance of this Contract which has resulted, or results, in any actual or potential harm to the Environment including any event or series of events not authorised by or in breach of any Law;

**"Equipment"** means all equipment, plant, tools, materials, required for the supply of the Goods and the performance of the Services;

**"Force Majeure"** means an event that:

- (a) is beyond the reasonable control of the party claiming force majeure; and
- (b) prevents that party from performing its obligations under this Contract,

and includes:

- (c) natural disaster, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
- (d) cyber attacks or other malicious cyber activities that disrupt normal business operations;
- (e) strikes or other industrial action, other than strikes or other industrial action of some or all of a party's employees; or
- (f) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic (excluding in connection with Covid-19),

but excludes:

- (g) any act or omission of a subcontractor of the Contractor or of a party's Personnel; or
- (h) an event the adverse effects of which could have been overcome or mitigated against by that party by the exercise of reasonable care and the taking of proper precautionary measures;

**"Goods"** means the goods to be supplied by the Contractor as specified in a Purchase Order;

**"Government Agency"** means government, government department or court, port, transport or local authority or person (whether autonomous or not) responsible for the administration of an applicable Law;

**"GST"** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Insolvency Event"** means any of the following events:

- (a) a party becoming subject to bankruptcy, liquidation or winding up procedures or otherwise becoming insolvent (other than for the purpose of a solvent restructuring or amalgamation);
- (b) a receiver, receiver/manager, administrator or voluntary administrator is appointed to a party, or a mortgagee takes possession of all or a substantial part of its assets or the party

is placed under official management; or

- (c) in respect of the Contractor only, a judgment is entered against it for a sum in excess of \$20,000 and that sum remains unsatisfied or is not appealed by the Contractor for a period of 21 days;

**"Intellectual Property"** means all industrial and intellectual property rights (including rights to patents, designs, copyright, trademarks, trade names and circuit layouts) conferred under statute, common law, equity or otherwise in any country;

**"Joint Venturers"** means the participants in the Tropicana Joint Venture from time to time (being, as at the date of issue of the Purchase Order, AngloGold Ashanti Australia Limited and AFB Resources Pty Ltd);

**"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, order, rule or subordinate legislation, common law or equity; and
- (b) the lawful requirements, directions or instructions of any Government Agency;

**"Liabilities"** means any damages, Claims, 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;

**"month"** means a calendar month;

**"Notice"** means a notice in writing, consent, approval or other communication under this Contract and must be given in accordance with Clause 25;

**"Payment Schedule"** means a schedule issued by the Company or the Company Representative in response to a Progress Claim in accordance with Clause 6.1(g);

**"Personal Data"** means:

- (a) personal information within the meaning of the *Privacy Act 1988* (Cth); or
- (b) any information or opinion that is related to, and identifies, an individual, either on its own or together with other information or opinions;

**"Personnel"** means:

- (a) in relation to the Contractor – any of the Contractor'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 supplying of Goods or performing any part of the Services;



(b) in relation to a Sub-contractor – any of its employees, representatives, agents, consultants and invitees involved whether directly or indirectly in supplying of the Goods or the performance of the Services; and

(c) in relation to the Company – any of the Company's employees, representatives, agents, consultants and invitees;

**"Progress Claim"** means a claim submitted by the Contractor in accordance with Clause 6.1(d) and is a payment claim for the purposes of the Security of Payment Act (if applicable);

**"Privacy Laws"** has the meaning given in Clause 33(a);

**"Purchase Order"** means the formal order document issued by the Company for Goods or Services which the Company requires;

**"Purchase Order Terms and Conditions"** means these AngloGold Ashanti Australia Limited Purchase Order Terms and Conditions;

**"Related Body Corporate"** has the meaning given in the *Corporations 2001 (Act Cth)*;

**"Resolution Institute"** means the Australian dispute resolution membership organisation that will appoint a person to adjudicate in accordance with Clause 31;

**"Scheduled Amount"** means the amount stated in a Payment Schedule that the Company or the Contractor (as the case may be) is to pay based on the value of the Goods and Services determined as required under Clause 6.1(g);

**"Security of Payment Act"** means the *Building and Construction Industry (Security of Payment) Act 2021 (WA)* and any subsidiary legislation;

**"Services"** means the services to be performed by the Contractor as specified in the Purchase Order, and includes the provision of all Equipment;

**"Services Approvals"** means all approvals, licenses, permits, decrees, waivers, privileges, filings, visas, consents and permissions related to or in connection with the Services described in the Specification;

**"Site"** means Sunrise Dam Gold Mine, Tropicana Gold Mine, a Company exploration site, or the Company's Perth Office as specified in a Purchase Order;

**"Site Approvals"** means all approvals, licences, permits, decrees, waivers, privileges, filings, visas, consents, permissions, authorisations, agreements, declarations, authorities or exemptions from, by or with any Government Agency related to or in connection with the Site which are notified to the Contractor;

**"Site Senior Executive"** means the person from time to time appointed as such by the Company as required under the *Work Health and Safety Act 2020 (WA)* and subsidiary legislation (if applicable), or notified in writing to the Contractor by the Company;

**"Special Conditions"** means any terms and conditions which are specified in Schedule 2 (if applicable) or in a Purchase Order, which are incorporated into the Contract;

**"Specifications"** means any relevant specifications for the Goods and Services in, or referred to in, the applicable Purchase Order;

**"Sub-contractor"** means any person engaged by the Contractor to

supply or perform all or any portion of the Goods or Services on behalf of the Contractor who is not an employee of the Contractor;

**"Taxable Supply"** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**"Tax Invoice"** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**"Taxes"** means any tax imposed, levied or charged by a Government Agency 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

**"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 Contract, unless the context requires otherwise:

- (d) a reference to:
- (i) a person for whom the Contractor is responsible includes all its Personnel;
  - (ii) any gender includes every gender;
  - (iii) to a person includes a natural person, corporation, partnership, joint venture, association, authority or state (and vice versa); and
  - (iv) the singular includes the plural and vice versa.
- (e) Clause headings and indexes are for convenience of reference only and do not affect interpretation;
- (f) a recital, schedule, annexure, attachment or exhibit or a description of the parties forms part of this Contract;
- (g) a reference to any agreement, document or legislation is to that agreement, document or legislation (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this Contract or any other document or arrangement, includes that person's executors, administrators, substitutes, successors and permitted assigns;
- (i) in the interpretation of a provision of this Contract, a construction adverse to a party must not be preferred solely on the ground that:
- (i) that party was responsible for the preparation of this Contract or that provision; or
  - (ii) this Contract or that provision favours the person relying upon that provision.

## 1.3 Time is of the essence

Time is of the essence in relation to the obligations of the Contractor to supply the Goods and perform the Services under this Contract.

## 2 NATURE OF RELATIONSHIP

The Contractor is engaged as an independent contractor and nothing in this Contract will be construed to create a relationship of employment,



agency, partnership or joint venture.

### **3 CONTRACT**

#### **3.1 Precedence of Contract components**

If there is any inconsistency between the various components of this Contract, unless otherwise provided, those components will rank in the order of precedence in which they are listed below:

- (a) any Special Conditions (if stated in Schedule 2 or in a Purchase Order);
- (b) the Purchase Order;
- (c) Purchase Order Terms and Conditions;
- (d) Schedule 1 – Site Specific Terms and Conditions (if applicable); and
- (e) other parts of this Contract (if any).

#### **3.2 Entire agreement**

- (a) If any Goods or Services are provided to the Company before a Purchase Order is issued to the Contractor for those Goods or Services, then this Contract will apply to the Goods and Services supplied or performed prior to the issue of the Purchase Order.
- (b) This Contract contains the entire agreement between the Company and the Contractor with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Contractor in this regard, unless those communications expressly form part of this Contract.
- (c) Without limiting Clause 3.2(a), if the Contractor's terms and conditions are supplied in connection with the performance of the Services or delivery of any Goods (including when accepting or acknowledging a Purchase Order), such terms and conditions will be of no legal effect and will not form part of this Contract (notwithstanding the endorsement, acceptance or signing of any such document by a representative of the Company).

### **4 SUPPLY OF GOODS AND PERFORMANCE OF SERVICES**

- (a) The Contractor agrees to:
  - (i) deliver the Goods to the Delivery Point by the Date for Delivery;
  - (ii) commence performance of the Services on the Commencement Date; and
  - (iii) complete the Services by the Date for Completion.
- (b) At its own cost, the Contractor must supply and maintain all things necessary to supply the Goods and perform the Services in accordance with this Contract including overheads, materials, tools, consumables, mobilisation and demobilisation, attendance of the Contractor's Personnel at Company inductions, training or medical examinations (including the cost of such medical examinations), transportation, wages, superannuation, and insurances required to be effected and maintained in accordance with Clause 17.
- (c) The Contractor must supply all Equipment and labour necessary for the proper completion of the Services and the performance

of this Contract. The Contractor must keep all Equipment in good and proper repair and condition. The Company may reject any Equipment which it considers to be unsuitable for the purpose for which the Contractor proposes to use it, and any Equipment rejected must not be used by the Contractor, and if requested by the Company, must be removed from Site.

- (d) The Contractor acknowledges and agrees that the Company is not obliged to:
  - (i) obtain any or all of its requirements for the Goods or the Services from the Contractor; or
  - (ii) issue any, or a minimum number of, Purchase Orders, notwithstanding any estimate of requirements provided to the Contractor.
- (e) Any approval of, commentary on, review of, or consultation with, the Company in relation to any matter, plan, program document or thing relating to this Contract, does not, in any way, relieve the Contractor's obligations under this Contract.

### **5 SERVICES PROVIDED AT, AND DELIVERIES TO, A MINE OR EXPLORATION SITE**

The terms and conditions set out in Schedule 1 apply to all Services to be provided at Sunrise Dam Gold Mine, Tropicana Gold Mine, or any of the Company's exploration sites and to any attendance at those sites for the purposes of delivering Goods.

### **6 INVOICE, PRICE AND PAYMENT**

#### **6.1 Invoice**

- (a) The Contract Price set out in the Purchase Order is firm and not subject to adjustment except in accordance with Clause 14.
- (b) Subject to Clause 6.1(d), the Contractor must deliver an invoice to the Company:
  - (i) in respect of Goods, with every delivery of Goods; and
  - (ii) in respect of Services, monthly in arrears.
- (c) Subject to Clauses 6.2(a) and 6.3, provided that the Goods or Services and the invoices submitted by the Contractor comply with this Contract, the Company must pay each invoice within 30 days of the date of receipt of such invoice by the Company.
- (d) If the Security of Payment Act applies, the Contractor must deliver one Progress Claim to the Company Representative on the last day of each month (or where not a Business Day, the following Business Day) in accordance with Clause 6.1(e).
- (e) Each Progress Claim and invoice rendered by the Contractor must:
  - (i) identify the number of the applicable Purchase Order;
  - (ii) identify the period in which the supply of the Goods or the Services occurred;
  - (iii) contain details of the delivery quantity, a description of the Goods or the Services provided and the amount claimed as due and payable by the Company to the Contractor;



- (iv) contain an itemisation of any applicable sale or other Taxes;
  - (v) if GST is payable on a Taxable Supply made by the Contractor to the Company under this Contract, constitute a Tax Invoice; and
  - (vi) if it is a Progress Claim and the Security of Payment Act applies, state that the Progress Claim is made under the Security of Payment Act.
- (f) In relation to the delivery of Goods by the Contractor:
- (i) the Contractor must provide an invoice that is in accordance with Clause 6.1(e) to the Company Representative with every delivery of Goods;
  - (ii) the Company may reject any delivery of the Goods not accompanied by an invoice setting out the details required by Clause 6.1(e); and
  - (iii) the Company and the Contractor agree that an invoice issued by the Contractor under this Clause 6.1(f) is not a payment claim for the purposes of the Security of Payment Act.
- (g) If the Security of Payment Act applies, within 10 Business Days of the Contractor issuing a Progress Claim under Clause 6.1(d), the Company Representative may issue a Payment Schedule to the Contractor which:
- (i) identifies the Progress Claim to which it relates;
  - (ii) states the Scheduled Amount; and
  - (iii) if the Scheduled Amount is less than the claimed amount, state why the Scheduled Amount is less, and if it is less because the Company is withholding payment, the Company Representative's reasons for withholding payment.

If the Contractor does not make a Progress Claim at the time required under Clause 6.1(d), the Company Representative may nevertheless issue a Payment Schedule.

- (h) If the Security of Payment Act applies, and the Company has issued a Payment Schedule under Clause 6.1(g). within five Business Days of receipt of the Payment Schedule, the Contractor must submit to the Company Representative a final invoice which must:
- (i) be for the Scheduled Amount; and
  - (ii) be in accordance with Clause 6.1(e).

If the final invoice issued by the Contractor under Clause 6.1(h) is for an amount greater than the Scheduled Amount, the Company is not required to pay the Contractor an amount more than the Scheduled Amount.

- (i) If the Contractor fails to issue a final invoice in the time required under Clause 6.1(h), then the Company will pay the Scheduled Amount in accordance with Clause 6.2(a).
- (j) Failure by the Company or the Company Representative to set out in a Payment Schedule an amount which the Company may keep, deduct, withhold or set off from an amount which would

otherwise be payable to the Contractor by the Company will not prejudice the Company's right to later exercise its right to keep, deduct or set off any amount.

- (k) At any time and from time to time, the Company may, by a further certificate, correct any error which has been discovered in a previous Payment Schedule.

## **6.2 Payment of Scheduled Amount**

- (a) If the Security of Payment Act applies, subject to Clause 6.3, the Company must pay:
- (i) if the Company issued a Payment Schedule under Clause 6.1(g), the Scheduled Amount; or
  - (ii) if the Company has not issued a Payment Schedule under Clause 6.1(g), the amount stated in the valid Progress Claim submitted by the Contractor under Clause 6.1(d),
- to the Contractor within 20 Business Days from the date a valid Progress Claim is provided by the Contractor to the Company Representative in accordance with Clause 6.1(e).
- (b) Neither issuing a Payment Schedule nor the payment of moneys by the Company is an admission of liability or evidence that the relevant part of the Contractor's Goods or Services have been supplied or performed in accordance with the Contract. Payment by the Company will be payment on account only.
- (c) The Contractor must pay all Taxes, charges, fees and other amount due in respect of this Contract or any payment made by the Company to the Contractor under this Contract, and the Company shall not in any way be liable for such amounts.
- (d) Each amount claimed in accordance with Clauses 6.1(b) or 6.1(d) is deemed to include all expenses incurred by the Contractor in relation to the supply of Goods and any Services covered by the invoice/Progress Claim.
- (e) All payments shall be made to the Contractor using electronic funds transfer.
- (f) If the Security of Payment Act applies:
- (i) a Progress Claim submitted to the Company under Clause 6.1(d) which also purports to be (or is by Law) a payment claim under the Security of Payment Act is received by the Company Representative; and
  - (ii) unless notified to the contrary, the Company Representative is authorised to give Payment Schedules and perform all other functions of the Company under the Security of Payment Act as agent of the Company.

## **6.3 Set Off and Withholding**

- (a) The Company may set off against any amount owing to the Contractor any amount owing, or claimed by the Company to be owing, to the Company from the Contractor, whether under this Contract or otherwise.
- (b) Subject to the Security of Payment Act, the Company may withhold payment of the Contract Price until the Goods are delivered or the Services are performed in accordance with the requirements of the Contract.





- (c) This Clause 6.3 does not limit the Company's rights under any provision of the Contract, which are not extinguished or diminished by the issue of a Payment Schedule.

## **7 PACKAGING, DELIVERY AND INSPECTION OF GOODS**

- (a) The Contractor must ensure that:
  - (i) the Goods are:
    - (A) packed in accordance with the requirements set out in the Specifications (if any) and in a manner that allows the Goods to be stored at the Delivery Point prior to being put into use; and
    - (B) marked with the name of the Company, the address for delivery, the Purchase Order number and to the attention of the 'Supply Officer' at the Site; and
  - (ii) the Goods are packed and transported in accordance with all applicable Laws, and relevant Applicable Policies and any applicable regulations or industry codes and any safety or environmental requirements including as may be notified to it by the Company.
- (b) The Company may reject any delivery of the Goods that are not packed in accordance with this Clause 7.
- (c) The Company will not be deemed to have accepted any Goods until it has had a reasonable time to inspect the Goods after delivery.
- (d) If upon inspection the Company determines that any Goods and/or Services are defective, the Company may:
  - (i) reject the defective Goods and/or Services by returning them to the Contractor; or
  - (ii) make good the defective Goods and/or Services at the Contractor's cost or require the Contractor to do so.
- (e) For the avoidance of doubt, acceptance of the Goods at the Delivery Point by any third party on behalf of the Company, such as a transport provider, shall not affect or limit:
  - (i) any right the Company may have to reject the Goods upon the Company inspecting the Goods when they are delivered to the Site (if the Delivery Point is not at the Site); or
  - (ii) the Contractor's warranties or other obligations under this Contract.
- (f) If the Contractor supplies Goods or Services in excess of the requirements or quantities specified in a Purchase Order, the Company may, at its discretion:
  - (i) return excess quantities of the Goods to the Contractor at the Contractor's expense; or
  - (ii) refuse to pay for the excess Services.

## **8 FREIGHT OF GOODS**

The Contractor must arrange and pay for the transport of the Goods, by the method of transport specified in the Purchase Order, to the Delivery

Point.

## **9 RISK AND TITLE**

- (a) Subject to Clause 9(d), title in the Goods passes to the Company on the earlier of payment for those Goods or delivery of those Goods to the Delivery Point.
- (b) If the Services include the construction, installation, testing or commissioning of the Goods at the Site:
  - (i) the Goods remain at the Contractor's risk until the completion of the construction, installation or commissioning of the Goods (whichever occurs later) at the Site to the satisfaction of the Company; and
  - (ii) the Contractor must insure the Goods for the full replacement value up until the date of completion of the construction, installation, or commissioning of the Goods (whichever occurs later) at the Site to the satisfaction of the Company.
- (c) If the Services do not include the construction, installation, testing or commissioning of the Goods at the Site, risk in the Goods passes to the Company on delivery of the Goods to the Delivery Point.
- (d) If the Company makes part payment for the Goods prior to their delivery, title in the partly completed Goods and any materials and parts to be used in their manufacture or assembly passes to the Company upon payment, and the Contractor must clearly mark them with the Purchase Order number and Company's name.

## **10 FAILURE TO SUPPLY**

If the Contractor does not deliver any Goods to the Delivery Point by the Date for Delivery, the Company may, in addition to any other remedy or right under this Contract, at the risk and expense of the Contractor:

- (a) obtain those goods from another source; and
- (b) refuse to accept the late delivery of the Goods when eventually delivered.

## **11 WARRANTIES**

- (a) The Contractor represents and warrants that:
  - (i) the Contractor and each of its Personnel has all expertise, qualifications and resources to perform its obligations under the Contract;
  - (ii) the Goods to be provided by the Contractor:
    - (A) are free of encumbrances and that the Contractor has good title to them;
    - (B) are free from any defect or failure;
    - (C) conform to all applicable Laws and Applicable Policies, their description or representative sample (if applicable), any Specification and all other requirements of this Contract;



(D) unless specified otherwise in the Purchase Order, are new and of good and merchantable quality;

(E) are fit for the purpose and use specified in the Contract;

(iii) the Services provided by the Contractor:

(A) will be performed to the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Services;

(B) are fit for the purposes specified in the Contract; and

(C) will comply with all applicable Laws and Applicable Policies; and

(iv) the supply of the Goods and the performance of the Services will not interfere with the activities of the Company or any other person on the Site.

(b) The Contractor must pass on and transfer (if required) the benefit of any manufacturer's warranty applicable to the Goods. The Contractor must sign any documents as the Company reasonably requires in order to secure the benefit of that warranty or warranties for the Company.

(c) This Clause 11 survives termination or expiry of the Contract.

## 12 DEFECTS LIABILITY PERIOD

(a) Notwithstanding any other remedy or right under this Contract, during the Defects Liability Period, if any of the Goods or Services are defective or do not otherwise comply with this Contract, regardless of whether or not the Company has already accepted the Goods or Services, the Contractor must:

(i) repair the Goods, or re-perform or make good the defective Services;

(ii) remove the Goods from the Site and deliver replacement Goods to the Site;

(iii) uninstall the Goods, remove them from the Site, make good any damage to the Site, and deliver replacement Goods to the Site; or

(iv) refund the Contract Price paid by the Company for Goods or Services which are defective,

as directed by the Company in writing.

(b) If the Contractor fails to comply with Clause 12(a) within 14 days of receiving Notice from the Company, or where the Company gives Notice to the Contractor that it has elected to undertake urgent remedial works to make good any defects in the Goods or the Services, the Company may, in addition to any other remedy or right under this Contract, make good any defects in the Goods or in the Services at the Contractor's cost and the Contractor must indemnify the Company against any Liabilities incurred by the Company in doing so.

(c) This Clause 12 survives termination or expiry of the Contract.

## 13 CONTRACTOR'S GENERAL OBLIGATIONS

(a) The Contractor must, and must ensure its Personnel, supply the Goods and perform the Services in compliance with:

(i) all Applicable Policies and Laws;

(ii) the conditions of any exploration or mining tenements, or other titles of any kind, including any Site Approvals; and

(iii) the requirements of this Contract, including but not limited to the Specifications.

(b) The Contractor must:

(i) obtain all Services Approvals; and

(ii) give all notices, required in order to comply with Clause 13(a) and where a Services Approval must be in the name of the Company, the Contractor will assist the Company in obtaining such Services Approval.

(c) The Contractor must, upon request to do so by the Company, produce to the Company copies of any documents issued by, or evidencing the approval of, any Government Agency in connection with the Services.

## 14 VARIATIONS

(a) The Contractor must not amend the Goods or the Services to be provided (including the timing of delivery of the Goods or provision of the Services) in any way except as directed or permitted in writing by the Company Representative.

(b) Subject to Clause 14(f), the Contractor must comply with a Notice given by the Company pursuant to Clause 14(a) and is bound as if any variation made by it were included in this Contract.

(c) Within 7 days of any variation to the Goods or Services directed or permitted by the Company in accordance with Clause 14(a), the Contractor must confirm any change to the Contract Price as a result of the variation to the Goods or Services.

(d) If the parties cannot agree on a varied Contract Price, it will be varied by an amount reasonably determined by the Company having regard to any fixed prices or rates included in the Purchase Order.

(e) Unless otherwise directed by the Company, the Contractor must not undertake any variation to the Goods or the Services before any change to the Contract Price is agreed with the Company.

(f) In giving Notice under Clause 14(a), the Company must not direct the Contractor, and the Contractor is not obliged to, carry out the Notice in respect of the Goods or Services beyond the capacity of the Contractor's Equipment or Personnel unless agreed by the Contractor in writing.

## 15 DELAY

(a) If the Contractor encounters events or circumstances which have resulted or might reasonably be expected to result in the Contractor not being able to complete the Services by the Date



for Completion or not being able to deliver the Goods to the Delivery Point by the Date for Delivery, the Contractor must:

- (i) give a Notice to the Company stating the relevant details of the nature of the cause of the delay immediately upon it becoming reasonably possible to assess the effect of the relevant cause on the Contractor's ability to perform the Services or supply the Goods;
  - (ii) use reasonable endeavours to mitigate the consequences of any such delay or any delay which actually occurs; and
  - (iii) as soon as reasonably practicable, to the extent reasonably practicable, remedy the cause of such delay or any delay which actually occurs and minimise its effects.
- (b) Subject to the Contractor complying with Clause 15(a), the Company will extend the Date for Completion or the Date for Delivery (whichever relevant) commensurately with the period of any actual delay to the performance of the Services or the supply of the Goods caused by the following:
- (i) any breach of this Contract by, or any act, default or omission of, the Company;
  - (ii) any act of another contractor or supplier of the Company;
  - (iii) any event of Force Majeure;
  - (iv) the performance of any variation required by Clause 14(a); or
  - (v) any suspension of the whole or a portion of the Services under Clause 16(a) in respect of which the Company must pay to the Contractor associated expenses under Clause 16(c) (but, for the avoidance of doubt, excluding any other suspension).

## 16 SUSPENSION

- (a) The Company Representative may, acting reasonably, by Notice require the Contractor to suspend the whole or any portion of the Services or the supply of any Goods for any reason.
- (b) Upon receipt of a Notice of suspension, the Contractor must:
- (i) suspend the Services or the supply of the Goods as directed by the Company Representative;
  - (ii) 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; and
  - (iii) take all reasonable steps to reduce any expense or cost consequent upon the suspension.
- (c) The Company will pay the Contractor all reasonable and direct expenses that it incurs as a result of a suspension of the Services or the supply of the Goods by the Company under Clause 16(a) provided that the suspension was not required as a result of:

- (i) any instruction given by a Government Agency;
  - (ii) a failure by the Contractor or its Personnel to comply with Law or Applicable Policies in relation to health, safety or protection of the Environment; or
  - (iii) some other fault on the part of the Contractor or its Personnel including breach of this Contract.
- (d) When the reason for any suspension no longer exists, the Company may direct the Contractor in writing to recommence performance of the Services or the supply of the Goods and the Contractor must promptly recommence performance of the Services or supply of the Goods.
- (e) If the Contractor at any time suspends the whole or any part of their supply of Goods or provision of Services pursuant to the Security of Payment Act, then:
- (i) except to the extent (if any) expressly provided under the Security of Payment Act, the Company will not be liable for any Liability whatsoever suffered or incurred by the Contractor as a result of the suspension; and
  - (ii) the Contractor must resume the supply of Goods or provision of Services (as the case may be) no later than three Business Days after the date on which the Contractor receives payment under the Security of Payment Act of the amount which formed the basis of the Contractor's suspension.
- (f) The Contractor indemnifies the Company for any Liability incurred by the Company due to the Contractor's:
- (i) suspension of the whole or any part of the supply of Goods or provision of Services where the Contractor had, or is determined to have had, no right to suspend under the Security of Payment Act; and
  - (ii) failure to comply with Clause 16(e)(ii).
- (g) Suspension of the Services or the supply of Goods in accordance with this Clause 16 does not frustrate or terminate this Contract.

## 17 INSURANCE

This Clause 17 survives the termination or expiry of this Contract.

### 17.1 Contractor Insurance

The Contractor must take out and maintain:

- (a) insurance to cover all loss or destruction of, or damage to, the Contractor's tools, plant and Equipment used in connection with this Contract, for their market value;
- (b) insurance to cover:
  - (i) all loss or destruction of, or damage to, all registered motor vehicles, mobile plant and other mechanically propelled vehicles that are operated by the Contractor in connection with this Contract, for their market value;
  - (ii) liability for loss and destruction of, or damage to, any third party property that results from the operation by the Contractor of the motor vehicles, mobile plant and





mechanically propelled vehicles referred to in Clause 17.1(b)(i), for an indemnity of no less than \$30,000,000;

- (c) insurance to cover liability for death, or bodily injury of any third party and loss and destruction of, and damage to, any third party property in connection with this Contract (including liability arising from goods sold or supplied, property, unregistered vehicles and registered vehicles whilst being used as a tool of trade), for an indemnity of no less than \$20,000,000 for any one occurrence or, for products liability insurance, in the aggregate for any one 12 month period of insurance;
- (d) insurance to cover liability arising, whether at common law or under any statute relating to workers' compensation or employers' liability and occupational/industrial disease, to Personnel (including any person deemed by statute to be an employee of the Contractor) engaged to do anything in connection with this Contract, for not less than the amount/s required by the Law of the relevant State or Territory and, to the extent permitted by law, endorsed to provide a principal's indemnity extension for workers' compensation for acts, benefits and common law and a waiver of subrogation in favour of the Company;
- (e) if the Services include, directly or indirectly, the provision of professional services by the Contractor, insurance to cover liability for loss and damage arising from the performance of the Services, for an indemnity of no less than \$5,000,000; and
- (f) any other insurance which is required by Law (including automobile compulsory third party insurance) and such other insurances as the Company may reasonably require,

and keep those policies current during the term of this Contract including the Defects Liability Period.

### **17.2 Insurance policy requirements**

- (a) Each policy of insurance required under Clause 17 must be with a reputable insurer and on terms consistent with prudent risk management practice.
- (b) The insurance policies required by Clauses 17.1(a), 17.1(b), 17.1(c) and 17.1(f) must, where permitted by Law:
  - (i) insure the Contractor and the Company (as an additional insured) for their respective rights and interests in connection with this Contract;
  - (ii) be primary with respect to all insureds, including additional insureds, to the extent of liabilities for personal injury and property damaged assumed under this Contract; and
  - (iii) include:
    - (A) a clause by which the insurer agrees to waive all rights of subrogation or action against the Company; and
    - (B) a cross liability/severability of interest clause.
- (c) The Contractor must produce to the Company a certificate of currency for each policy of insurance required by Clause 17 within 14 days of any request by the Company.

- (d) The Contractor must immediately notify the Company of the cancellation or expiry of any insurance policy required by Clause 17.

### **17.3 Sub-contractor insurances**

The Contractor must ensure that any Sub-contractors effect and maintain similar insurance (to the extent applicable) to that required by Clause 17 and, where requested by the Company must provide proof of that insurance.

### **17.4 Company release**

The Contractor must ensure that any settlement reached with Personnel in relation to a workers' compensation claim for injuries sustained while working at the Site includes a release of the Company in relation to any present or future common law claim.

## **18 AUDIT**

The Contractor must:

- (a) maintain, and ensure that all Sub-contractors maintain, true and accurate records in relation to the Goods and Services provided under this Contract (including but not limited to statements of payments and contributions made by the Contractor or Sub contractor to any superannuation scheme) and any expenditure incurred on the Company's behalf; and
- (b) upon a request by the Company, give the Company access to the records referred to in Clause 18(a).

## **19 TERMINATION**

- (a) The Company may, acting reasonably, terminate this Contract by 30 days' Notice to the Contractor. If the Company terminates the Contract pursuant to this Clause 19(a), the Company must pay to the Contractor:
  - (i) amounts due and owing for Services performed in accordance with this Contract as at the date of termination; and
  - (ii) amounts due and owing to the Contractor for Goods delivered to the Delivery Point as at the date of termination.
- (b) Without limiting Clause 19(a), the Company may terminate this Contract immediately, by Notice, if:
  - (i) the Contractor commits a material breach of any of its obligations under this Contract, including, but not limited to, any breaches related to safety or the Environment or a breach of any part of Clause 30, which is not capable of remedy or continues for more than 10 days; or
  - (ii) if a Force Majeure affecting the Contractor continues for more than 30 days.
- (c) If the Company does not make a payment which is due to the Contractor under this Contract, and in respect of which:
  - (i) the Company is not entitled, whether under this Contract or otherwise, to suspend or withhold payment or to set off any moneys owing or payable to it;
  - (ii) there is no bona fide dispute as to the Company's liability



to make the payment; and

- (iii) the failure to pay continues for 30 days after receipt by the Company of a Notice from the Contractor specifying the failure, requiring it to be remedied and stating the intention of the Contractor to exercise its rights under this Clause,

then the Contractor may, by further Notice to the Company, immediately:

- (iv) stop all work under this Contract; or
- (v) terminate this Contract by Notice to the Company.

- (d) Either party may terminate this Contract immediately by Notice to the other party upon the occurrence of an Insolvency Event in respect of the other party.

- (e) Notwithstanding any other provision of this Contract, where the Company has a right to terminate this Contract, it may do so without terminating any one or more outstanding Purchase Orders (in its absolute discretion) and, to avoid doubt, the Contractor must still comply with such Purchase Orders that are not terminated even though the Contract and other Purchase Orders are terminated.

- (f) Termination or expiry of this Contract or any Purchase Order does not prejudice:

- (i) any right, action or remedy accrued in favour of the Company prior to such termination or expiry; or
- (ii) any rights, action or remedy of the Company which expressly or impliedly survive the termination or expiry of this Contract including under Clauses 11 (Warranties), 12 (Defects Liability Period), 17 (Insurance), 18 (Audit), 20 (Confidentiality), 21 (Intellectual Property) and 22 (Indemnities).

- (g) The Company and the Contractor acknowledge and agree that:

- (i) the rights of the Company and the Contractor are subject to the operations of sections 415D to 415G, 434J to 434M and 451E to 451H of the *Corporations Act 2001* (Cth) ("**Ipsso Facto Laws**"); and
- (ii) to the extent of any inconsistency between any provision of the Contract and the Ipsso Facto Laws, the relevant provision of the Contract will be read down or severed from the Contract, so as to maintain as far as possible, the original effect and intent of the Contract.

## 20 CONFIDENTIALITY

- (a) The Contractor must not, and must ensure that its Personnel do not, unless the Company has first agreed in writing:

- (i) disclose to anyone else, or
- (ii) use for a purpose other than the performance of the Services,

any of the Confidential Information other than where disclosure is required by Law.

- (b) On expiry or termination of this Contract or whether otherwise requested, the Contractor must return to the Company all Confidential Information (including any copies made by it) and permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval.

- (c) The Contractor must restrict disclosure of the Confidential Information to Personnel who need to know it in order to supply the Goods or perform the Services and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements similar in effect to this Clause.

- (d) Except as required by Law, no media release or public announcement may be made by the Contractor in relation to the existence or subject matter of this Contract unless:

- (i) the Contractor first receives the express prior written consent of the Company; and
- (ii) the Company approves, in writing, the wording of such media release or public announcement and the manner of publication.

## 21 INTELLECTUAL PROPERTY

- (a) The Contractor warrants that the sale or use of any Goods by the Company, or the performance of the Services, will not infringe or contribute to the infringement of any intellectual property rights (including rights to patents, designs, copyright, trademarks, trade names and circuit layouts) conferred under statute, common law or equity in any country.

- (b) The Contractor grants to the Company a perpetual, irrevocable, non-exclusive, worldwide, transferrable, royalty-free licence to use the Contractor IP as necessary for the Company to use the Goods or enjoy the benefits of the Services.

- (c) All Contract IP created by the Contractor arising out of the supply of the Goods or the performance of the Services under this Contract vests in the Company as soon as the preparation, production or creation of such Contract IP commences.

- (d) This Clause 21 survives termination or expiry of the Contract.

## 22 INDEMNITY

- (a) The Contractor must indemnify the Company and its Related Bodies Corporate, each of their officers, agents, employees and the Joint Venturers (where a Purchase Order is issued for supply of Goods for or performance of Services at Tropicana Gold Mine), (in this Clause, the "**Indemnified Parties**") and keep them indemnified against any Liabilities (including Liabilities of any of them to third parties) arising out of:

- (i) the breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under this Contract;
- (ii) any Environmental Event which occurs after the Date of Contract which is caused by the Contractor or its Personnel at the Site;
- (iii) any fraudulent or negligent act or omission by the Contractor or any of its Personnel in the course of



- supplying the Goods or performing the Services;
  - (iv) injury to, or death of any person, or loss or damage of or to any property caused by the Contractor or any of its Personnel;
  - (v) any claim by any third party that it has Intellectual Property rights which have been infringed as a result of the Services or the supply or use of the Goods;
  - (vi) any breach of Privacy Laws by the Contractor or of its Personnel in connection with this Contract; or
  - (vii) any claims made against an Indemnified Party by any of the Contractor's Personnel in respect of a common law claim, legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal or authority.
- (b) 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 Contract.
  - (c) The Contractor will not be liable under Clause 22(a) to the extent that the Liability was solely caused by the Company's or an Indemnified Party's negligence or wilful default.
  - (d) Every exemption, limitation, defence, immunity, indemnity or other benefit contained in this Contract or otherwise to which the Company or an Indemnified Party is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Indemnified Parties.

## 23 APPORTIONMENT OF LIABILITY

To the extent permitted by Law, the operation of Part 1F of the Civil Liability Act is excluded in relation to all and any rights, obligations and Liabilities under this Contract.

## 24 FORCE MAJEURE

- (a) If either party to this Contract 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 obligations under this Contract 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) A party claiming Force Majeure must use its best endeavours to remove or overcome the effects of that Force Majeure as quickly as possible.

## 25 ASSIGNMENT AND SUB-CONTRACTING

- (a) The Contractor must not assign all or any part of its rights or obligations under this Contract without the prior written consent of the Company, which consent shall not be unreasonably withheld.

- (b) The Contractor must not engage a Sub-contractor to perform all or any part of the Services without the prior written approval of the Company Representative.
- (c) The Contractor is liable to the Company for the acts and omissions of that Sub-contractor and that Sub-contractor's Personnel as if they were the acts and omissions of the Contractor.
- (d) If any Sub-contractor takes any action under the Security of Payment Act, then the Contractor:
  - (i) is not relieved of any of its obligations under this Contract; and
  - (ii) is not entitled to any Claim, including without limitation for extension to the Date for Completion or Date for Delivery (as the case may be).

## 26 GOODS AND SERVICES FOR TROPICANA GOLD MINE

This Clause 26 applies to all Goods supplied for, and Services provided at Tropicana Gold Mine.

- (a) The Company is a party to this Contract 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 issue of the Purchase Order, 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 Contractor under or in connection with this Contract 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 Contract), may change from time to time without the consent of the Contractor and for this purpose the rights and obligations of the relevant Joint Venturers under this Contract may be freely assignable without the consent of the Contractor (provided that the Company provides Notice to the Contractor 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 Contractor assign its rights and obligations under this Contract to an incoming agent or manager on behalf of the Joint Venturers.
- (d) The rights and remedies in and under this Contract may be exercised by the Company for the Joint Venturers.
- (e) The benefit of the respective duties and obligations of the Contractor under this Contract 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 Contract, the Contractor 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 Contract.

## 27 NOTICES

- (a) A Notice must be either typed or legibly written in English, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given.

- (b) A Notice may be given by personal delivery, pre-paid mail or email and is treated as having been given and received:

(i) if delivered personally to a person's representative, upon delivery;

(ii) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;

(iii) if sent by pre-paid mail:

(A) to an address in the city of dispatch, on the third Business Day after posting;

(B) from elsewhere within Australia, on the fifth Business Day after posting; or

(C) if mailed from overseas, on the tenth Business Day after posting;

(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.

- (c) For the purpose of this Clause, the address of a person is the address nominated in this Contract or, if none is nominated, its registered office.

- (d) A party may from time to time substitute a new address or email address by Notice to the other party.

## 28 GST

- (a) Capitalised terms used in this Clause 28 have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

- (b) If an amount payable under this Contract by the Company is calculated by reference to or otherwise relates to a cost, expense or other liability incurred by the Contractor, then the liability will be reduced by the amount of any Input Tax Credit in respect of that liability. The Contractor will be assumed to be entitled to claim a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.

- (c) Unless otherwise specified in the Purchase Order, the Contract Price excludes GST.

- (d) If an amount to be paid by either party under this Contract constitutes a payment for a Taxable Supply, then the party making that payment must, upon receipt of a Tax Invoice, pay that amount plus the GST payable on that Taxable Supply.

- (e) The Contractor must ensure that it has provided its Australian business number (ABN) to the Company and that it is registered for GST purposes.

## 29 CONFLICTS OF INTEREST AND ANTI-BRIBERY AND CORRUPTION

- (a) The Contractor must not cause, or in any way contribute to a Conflict of Interest. If the Contractor is aware of, or suspects, a Conflict of Interest, the Contractor must immediately report such Conflict of Interest to an appropriate senior manager of the Company, or must use the confidential reporting mechanism, details of which can be obtained from the Company's website ([www.anglogoldashanti.com](http://www.anglogoldashanti.com)). The obligation on the Contractor is continuous and a Conflict of Interest must be reported when it arises, not merely at the inception of this Contract.

- (b) The Contractor must:

(i) not pay bribes or breach any Laws with respect to foreign corrupt practices or undertake any act that could potentially damage the reputation of the Company;

(ii) at all times comply with the United States Foreign Corrupt Practices Act of 1977, and any other similar Laws with respect to corruption in applicable areas;

(iii) at all times comply with the Voluntary Principles on Security and Human Rights and other similar Laws, codes or principles in other applicable areas;

(iv) not act in any matter that would create, or is likely to create, any risk for the Company with respect to a breach of the United States Foreign Corrupt Practices Act of 1977 or the Voluntary Principles on Security and Human Rights and other similar Laws in other applicable areas;

(v) notify the Company immediately if it becomes aware of any facts or circumstances that might lead to a breach of this Clause (the "Event"); and

(vi) immediately furnish to the Company a detailed report of the Event and an estimate of likely resultant costs or penalties.

- (c) The Contractor indemnifies the Company against any Liabilities that may be incurred or sustained by the Company arising out



of any breach of the warranties or covenants given by it under this Clause 29.

(d) The Contractor acknowledges that it has received the Company's Code of Business Principles and Ethics.

(e) The Contractor must ensure that none of the persons for whom it is responsible:

(i) give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the Services; or

(ii) enter into any business agreement with any director, employee or agent of the Company acting otherwise than as a representative of the Company except in the ordinary and proper course of private business,

without prior Notice to, and the consent of, the Company.

### 30 PROHIBITION ON MODERN SLAVERY

The Contractor represents, warrants and undertakes, throughout the duration of this Contract:

(a) that neither the Contractor nor any of its Personnel, contractors or subcontractors will engage in Modern Slavery;

(b) to comply with all Modern Slavery reporting requirements applicable to it;

(c) to have and maintain its own policies and procedures that are intended to ensure compliance with this clause;

(d) to notify the Company promptly in writing upon becoming aware of:

(i) any incident, complaint or allegation that the Contractor, or any entity in its supply chain, has engaged, directly or indirectly, in Modern Slavery; or

(ii) any actual, reasonably suspected or anticipated Modern Slavery in the operations of the Contractor or engaged in by any entity in its supply chain in connection with this Contract,

and such notice will include reasonable details of the steps it is taking or proposes to take to investigate the matter; and

(e) at the request of the Company, and within a reasonable period of time, to provide the Company with all information required to enable the Company to comply with its reporting obligations with respect to Modern Slavery.

### 31 DISPUTES

(a) In the event of any dispute, question or difference of opinion between the Company and the Contractor arising out of, under or in any way in connection with the Contract ("**Dispute**"), a party may give to the other party a notice ("**Dispute Notice**") specifying the Dispute and requiring its resolution under this Clause.

(b) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each party must nominate one representative from its senior management to resolve the Dispute (each, a "**Dispute Representative**").

(c) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representative, then either party may commence legal proceedings in an appropriate court to resolve the Dispute.

(d) Nothing in this Clause 31 prevents a party from seeking any interlocutory relief which may be required in relation to the Contract.

(e) Despite the existence of any Dispute as contemplated by Clause 31, the Company and the Contractor must:

(i) continue to carry out their respective obligations; and

(ii) perform their other obligations under this Contract.

(f) In addition to any obligations the Contractor may have under the Security of Payment Act, the Contractor must give the Company five Business Days' Notice of its intention to make an application for adjudication under the Security of Payment Act.

(g) The Company and the Contractor agree that, for the purposes of the Security of Payment Act, the parties appoint the Resolution Institute as the authorised nominating authority for the Contract.

(h) Where an adjudication occurs under the Security of Payment Act and the Company has paid the determination amount to the Contractor, the determination is the Contractor's sole remedy under this Contract.

### 32 SANCTIONS

(a) The Contractor must:

(i) comply with any and all Laws and regulations applicable to Company or the Contractor prohibiting or otherwise restricting trade with any individual, entity or jurisdiction, or imposing licensing requirements on the same, including without limitation financial sanctions, trade embargoes and export controls such as those imposed by the US Treasury Department's Office of Foreign Assets Control ("**OFAC**"), the US Department of State, the US Commerce Department, the European Commission or any member state of the European Union (together, "**Sanctions and Export Control Laws**");

(ii) not take any action, or make any omission, that could cause either party to be in breach of, or otherwise be exposed to any restriction or penalty pursuant to, or suffer any adverse consequences of any kind arising directly or indirectly from, any Sanctions and Export Control Laws, including without limitation performing the Services or any item incorporating the Services available for the direct or indirect benefit of a person subject to financial sanctions, such as those named on the OFAC list of Specially Designated Nationals and Blocked Persons, the EU Consolidated List of Financial Sanctions Targets, Australia's Consolidated List of Designated Person and Entities maintained by the Department of Foreign Affairs and Trade or any similar list maintained by any EU member state, or any party owned or controlled by such a person (together, the





“Sanctions Targets”); and

- (iii) have implemented and will continue to maintain in effect policies and procedures to ensure compliance by Contractor and its Related Bodies Corporate and their respective Personnel, with Sanctions and Export Control Laws.
- (b) The Contractor warrants that as at the Date of Contract neither it nor any entity or person that has direct or indirect control of fifty percent or more of its shares or, to its knowledge, any of its Personnel, are subject to any economic, trade or financial sanctions, and performance of this Contract will not violate applicable embargo regulations.
- (c) The Company shall have the right to suspend performance of its obligations under this Contract, and the right to terminate this Contract, with immediate effect and without liability, if:
  - (i) in its reasonable judgment, circumstances exist that could result in the non-fulfilment of, or a breach of, this Clause 32;
  - (ii) the Contractor becomes a Sanctions Target;
  - (iii) any bank refuses to receive or otherwise process any payment under the Contract due to the application of any Sanctions and Export Control Laws; or
  - (iv) in its reasonable judgment, performance of the Contractor's obligations becomes commercially non-viable because of the Sanctions and Export Control Laws.

### 33 PRIVACY AND INFORMATION SECURITY

The Contractor must, in relation to Personal Data collected, held, used or processed by, or disclosed to, the Contractor in the performance of the Services:

- (a) comply with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles, or data protection Laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information (“**Privacy Laws**”) (as if the Contractor were bound by them to the same extent as the Company) in respect of any Personal Data;
- (b) only use or collect the Personal Data for the sole purpose of providing the Services;
- (c) protect the Personal Data from misuse and loss and from unauthorised access, modification or disclosure;
- (d) subject to the Privacy Laws and consents obtained from the relevant individuals:
  - (i) treat the Personal Data as Confidential Information; and
  - (ii) destroy or permanently de identify the Personal Data if that information is no longer needed to provide the Services, including on termination of the Contract;
- (e) to the extent consistent with the Privacy Laws, comply with any:
  - (i) privacy statements regarding the Personal Data and any privacy policy or codes issued by the Company from time to time; and

- (ii) direction or request of the Company regarding how to comply with any such privacy statement or policy;
- (f) not transfer or disclose Personal Data outside Australia, or allow anyone outside Australia to have access to it, without the prior written consent of the Company;
- (g) notify the Company immediately of any complaint from any person alleging a breach of the Privacy Laws with respect to the Personal Data;
- (h) promptly inform the Company if it receives a request from an individual for access to or correction of Personal Data about the individual, prior to providing such access to the individual or correcting the Personal Data;
- (i) cooperate with the Company in:
  - (i) resolving any complaint alleging a breach of the Privacy Laws with respect to the Personal Data; and
  - (ii) providing access to any record of Personal Data following a request from an individual;
- (j) promptly correct or update any Personal Data in accordance with any request by the Company to do so; and
- (k) take reasonable steps, when requested by the Company from time to time, to assist the Company to comply with its obligations under the Privacy Laws and any privacy statements or policies issued by it.

### 34 Procedures to protect data

- (a) The Contractor must establish and maintain appropriate physical, technical, personnel and organisational measures safeguards against the destruction, loss or alteration of Company Data in the possession or control of Contractor that:
  - (i) provide a level of security appropriate to the risk represented by the nature of the Company Data to be protected; and
  - (ii) comply with all applicable Laws (including Privacy Laws) and any procedures notified from time to time to the Contractor by the Company concerning Company Data security.
- (b) The Contractor must:
  - (i) prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Company Data;
  - (ii) notify the Company immediately and comply with all lawful directions of the Company if the Contractor becomes aware of the contravention of any Company Data security requirement; and
- (c) With respect to Company Data, the Contractor must:
  - (i) ensure and procure that all Personnel who have access to and/or process Company Data are obliged to keep it confidential;
  - (ii) not use, nor reproduce, the Company Data or information in whole or in part and/or in any form except



- as may be required in the performance of the Services;
- (iii) not disclose the Company Data or information to any third party not authorised by the Company to receive it; and
- (iv) not alter, delete, add to or otherwise interfere with the Company Data or information unless permitted to so under the Contract.

### 35 Data Breach Notifications

The Contractor must:

- (a) immediately report to the Company any suspected, likely or actual:
  - (i) unauthorised access to, or unauthorised disclosure of, Company Data;
  - (ii) loss of Company Data in circumstances where unauthorised access to, or unauthorised disclosure of, Company Data is likely to occur; or
  - (iii) breach of security which may impact Company Data,(each, a **"Data Breach"**) after becoming aware of the Data Breach and, in any event, within 12 hours of becoming aware of the Data Breach;
- (b) comply with all instructions of the Company in relation to that suspected Data Breach, such instructions to be in writing;
- (c) provide the Company with a preliminary report as soon as practicable, and in all cases within twenty-four (24) hours from notifying the Company pursuant to Clause 35(a) setting out:
  - (i) the details of the information affected by the Data Breach;
  - (ii) the identity and contact details of any entities that are also involved in the Data Breach;
  - (iii) the kinds of Personal Data involved in the Data Breach;
  - (iv) if known at the time of notification, whether the Contractor considers that serious harm is likely to result to any of the individuals to whom the information relates and any remedial action the Contractor has taken or proposes to take; and
  - (v) the nature and extent of the Data Breach, including details of the identity of the unauthorised persons or entities who may have accessed or acquired the Personal Data or other data, if available; and
- (d) provide the Company daily reports containing updates about the Data Breach, including any progress made at resolving the Data Breach, until such time as the Company reasonably determines that the Data Breach has been resolved.

### 36 Contractor's Response to Data Breach

After notifying the Company in accordance with Clause 35 and unless instructed otherwise in writing by the Company, the Contractor must:

- (a) immediately investigate and remedy the Data Breach, including by taking all necessary steps to mitigate any harm to individuals which may result from the Data Breach;
- (b) provide the Company with all information, documents and assistance required by the Company in respect of the Data Breach;
- (c) cooperate with all reasonable directions of the Company in relation to the Data Breach;
- (d) not notify the Office of the Australian Information Commissioner ("**OAIC**") or affected individuals of the Data Breach unless directed in writing by the Company in accordance with Clause 36(e); and
- (e) at the Company's option, either:
  - (i) provide all necessary information, documents and assistance required by the Company in order for the Company to prepare such statements and notify such individuals and the OAIC in respect of the Data Breach in accordance with Division 3B of Part IIIC of the *Privacy Act 1988* (Cth); or
  - (ii) prepare a proposed statement in accordance with section 26WK(3) of Part IIIC of the *Privacy Act 1988* (Cth), obtain the Company's written approval to that statement and the method of notification for issuing such statement to affected individuals and OAIC, and, if so instructed, issue the statement to affected individuals and OAIC on behalf of itself and the Company.

### 37 Cyber Security material to the Contract

A breach of the Contractor's obligations in Clauses 33, 34, 35 or 36 shall constitute a breach of this Contract and if such breach is not capable of cure, the Company may, without limitation to any other remedy it may have, terminate this Contract in accordance with Clause 19(b)(i).

### 38 Privacy obligations continue

The obligations under Clauses 33, 34, 35 and 36 are continuing obligations and remain in force during the Term of this Contract and afterwards until the earlier of seven years from the date of termination or expiry of this Contract or the date that no Personal Data the subject of this Contract remains in existence.

### 39 MISCELLANEOUS

- (a) In addition to the rights under Clause 26(c) (if applicable), the Company may, without the consent of the Contractor, assign the whole or part of its rights and obligations under this Contract to any person (including to any Related Body Corporate of it).
- (b) If a Contractor comprises two or more parties:
  - (i) a Liability of those parties under this Contract is a joint Liability of all of them and a several Liability of each of them;
  - (ii) a right given to those parties under this Contract is a right given severally to each of them; and
  - (iii) a representation, warranty or undertaking made by those



parties is made by each of them.

- (c) Any Claim made by the Contractor must:
  - (i) be in writing within 30 days of the occurrence of the event or circumstances on which the Claim is based; and
  - (ii) must specify the legal basis for the Claim made, a substantiation of any amount claimed, and the measures taken by the Contractor to mitigate any costs, damages or delay as a result of the event or circumstances.
- (d) Except to the extent the contrary intention expressly appears, the rights, obligations and Liabilities of the Company provided in this Contract are cumulative and do not exclude any rights or remedies provided under Law.
- (e) The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right. Any single exercise of a power or right does not preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- (f) The invalidity or unenforceability of any part or provision of this Contract does not affect the enforceability of any other part or provision of this Contract and the invalid or unenforceable part is severable.
- (g) Modifications and amendments to this Contract must be in writing signed by each of the parties.
- (h) Except where expressly otherwise provided, each party bears its own costs in relation to the negotiation and performance of this Contract.
- (i) This Contract is governed by the Law in force in Western Australia. The parties submit to the exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.
- (j) Nothing in the Contract will affect, restrict or limit the Contractor's rights under the Security of Payment Act which cannot be contracted out of.

## SCHEDULE 1 – SITE SPECIFIC TERMS AND CONDITIONS

The terms and conditions in this Schedule 1 apply:

- (a) to Services to be provided at Sunrise Dam Gold Mine, Tropicana Gold Mine, or any of the Company's exploration sites and to any attendance at those sites for the purposes of delivering Goods; and
- (b) in addition to the Purchase Order Terms and Conditions.

### 1 DEFINITIONS

Capitalised terms in this Schedule 1 have the meaning given in Clause 1 of the Purchase Order Terms and Conditions.

### 2 CONTRACTOR'S GENERAL OBLIGATIONS

#### 2.1 Compliance with Company rules and procedures

- (a) The Contractor must ensure that all its Personnel comply with the applicable rules and procedures of the Company on the Site including security rules, safety regulations, Environmental rules, other Site regulations and the directions and requests of the Company Representative pursuant to any such rules and regulations. The Company must make available to the Contractor on request copies of all such rules and procedures.
- (b) The Contractor must, and must ensure its Personnel, comply with all special conditions that apply in relation to security in respect to the Site from time to time.
- (c) No Personnel of the Contractor is permitted to bring, or to keep, plants, pets, livestock or firearms, at or within the vicinity of the Site.

#### 2.2 Fossicking and collection of minerals prohibited

- (a) 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.
- (b) Any action by any person, including Personnel and persons associated with the Contractor, 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 6.5 of this Schedule 1.

#### 2.3 Safety, Environment and Aboriginal Heritage

- (a) The Contractor must, and must ensure its Personnel, comply with:
  - (i) all Laws relating to safety, to the Environment and heritage; and
  - (ii) any policy or procedure of the Company from time to time with respect to matters of Aboriginal heritage or culture and attend Company cross cultural and general community awareness training.
- (b) The Contractor must at all times carry out its obligations under this Contract with the highest possible regard to the safety of all

Personnel at the Site, the protection of heritage values and sites and to the Environment. If the Contractor fails to comply with its obligations in relation to safety, heritage or the Environment under this Contract, the Company may terminate this Contract in accordance with Clause 19 of the Purchase Order Terms and Conditions.

- (c) The Company Representative may deny access to the Site to any person (including the Contractor or any of its Personnel) who fails to comply with safety, Environmental or heritage Laws or requirements under this Contract or otherwise applicable to the Site.
- (d) The Contractor must provide safe means of access to all places at which its Personnel at any time may have occasion to work.
- (e) The Contractor must, and must ensure its Personnel, provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and provide and maintain all bunting and traffic flagging necessary for the protection of Personnel and other persons or of property or for the protection of the Environment or heritage sites or for the safety and convenience of the public and others and must remove the same when it is no longer required.
- (f) The Contractor must, and must ensure its Personnel, avoid obstruction or damage to roadways and footpaths, drains and watercourses and public utility and other services or property on or adjacent to the Site and, at its own cost, must have any obstruction removed immediately and must make good all damage caused by it and its Personnel.
- (g) The Contractor must, and must ensure its Personnel, be responsible for the provision, operation and maintenance of adequate first aid facilities necessary for Personnel at the Site in accordance with relevant Laws.
- (h) The Contractor must confine its Personnel to that part of the Site where the Services are at the time being performed, to roads and routes designated by the Company for ingress to and egress from the Site and to any other areas specified in this Contract or permitted by the Company from time to time.
- (i) The Company Representative may veto the use by the Contractor or its Personnel, of any Equipment and method of work, which in the opinion of the Company Representative, is unsafe or include unsound practices or inferior workmanship.
- (j) The Contractor will be required by the Company to attend regular meetings at the Site for the purpose of discussing, promoting and developing safety and health, heritage and the Environment.

#### 2.4 Repair of damage

If any damage occurs to the operations, property, equipment or facilities of the Company, or of any other contractor, due to the Contractor's conduct the Contractor must, at its own cost, make all necessary repairs.

#### 2.5 Interference and nuisance

- (a) The Contractor must prevent nuisance to the Company, tenants, or occupiers of properties adjacent to the Site and to the public generally.



- (b) The Contractor must not impede or interfere with the work of any other persons (whether employed or engaged by the Company or not) on the Site. The Contractor is not entitled to any increase in the Contract Price, damages, costs or any other financial or other compensation as a result of any interference on Site from other suppliers, contractors or personnel.

## **2.6 Environmental, equal opportunity and community awareness training**

- (a) Where required by the Company, the Contractor's Personnel must attend Company environmental training and comply with any policy or procedure of the Company with respect to matters of Aboriginal heritage or culture and attend Company cross cultural and general community awareness training and provide assistance to the Company in its audit and inspection of the Contractor.
- (b) If required by the Company, the Contractor must ensure its Personnel attend equal opportunity training.

## **2.7 Integrated management system**

The Contractor must comply with the Company's integrated management system at the Site, or the Contractor's own integrated management system if the same has been approved by the Company Representative.

## **2.8 No discriminating**

The Contractor must prevent all acts of discrimination and harassment on Site, on the grounds of sex, race, age, appearance, religion or any other ground that may be deemed to be offensive to other individuals or which is proscribed by Law.

## **3 STANDARD OF SERVICES AND QUALITY ASSURANCE**

### **3.1 Performance of Services and standard of conduct**

- (a) In performing the Services, the Contractor 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 Services in a timely manner; and
  - (iv) comply with all the requirements of this Contract.

## **4 SITE SENIOR EXECUTIVE AND REPRESENTATIVES' DIRECTIONS**

- (a) The Contractor must perform the Services in accordance with all directions given by:
- (i) the Site Senior Executive;
  - (ii) the Company Representative; and
  - (iii) any person to whom the Company Representative has delegated the relevant discretion or authority by Notice to the Contractor.

- (b) Any direction given by or on behalf of the Company will not, except to the extent expressly contained in the direction, relieve the Contractor of any obligations under this Contract.
- (c) The Company is not bound by orders, directions and instructions given to the Contractor by any other person not referred to in paragraph (a) above unless and until those orders, directions or instructions are ratified by the Company or unless and until the Company has notified the Contractor in writing that the person is authorised to give them.
- (d) The Contractor Representative must be able to comprehend and communicate fluently in the English language and must be authorised to represent and bind the Contractor for the purposes of this Contract.
- (e) The Company must approve any change to the Contractor's Representative.
- (f) Matters within the knowledge of the Contractor Representative are taken to be within the knowledge of the Contractor.
- (g) Up until the Date for Completion:
- (i) the Contractor Representative must attend any regular meetings arranged by the Company Representative or the Company to review matters related to the Services; and
  - (ii) the Contractor or the Contractor Representative must be present on the Site at all times while Services are being performed under this Contract.
- (h) Without limiting the generality of any other provision of this Contract, the Company may in its sole and absolute discretion and from time to time issue instructions to the Contractor in connection with the following which instructions must be promptly complied with by the Contractor:
- (i) the method or manner of the execution, doing or performance of the Services generally and each part of the Services; and
  - (ii) the time or times within which the Services or any part thereof are to be commenced and/or completed.
- (i) Notwithstanding anything contained in this Contract, the Company or the Company's Personnel may at any time and from time to time employ, engage or use its own workmen, plant, machinery, equipment, materials and effects in and about the Site upon which the Services are being performed by the Contractor and must for all purposes and at all times have access thereto. Subject to Clause 15 of the Purchase Order Terms and Conditions, the Contractor must not make any Claim against the Company pursuant to the exercise of the Company or the Company's Personnel's rights under this paragraph.





## **5 EMPLOYEE AND INDUSTRIAL RELATIONS**

### **5.1 Contractor's Obligations**

- (a) The Contractor is responsible for:
- (i) managing the behaviour of Personnel on Site to ensure compliance with Applicable Policies;
  - (ii) managing its own and its Sub-contractor's employee and industrial relations to ensure there is harmony among workers and no delay in completing the Services;
  - (iii) the resolution of all industrial action, industrial disputes and industrial matters pertaining to the Contractor's Personnel;
  - (iv) consulting and co-operating with other contractors to the Company with respect to employee and industrial relations issues relating to the Services;
  - (v) all time and cost implications of the management of employee and industrial relations related to the Services; and
  - (vi) all cost implications relating to the removal and replacement of Personnel.

### **5.2 Compliance with Laws and Policies**

The Contractor must comply, and ensure that its Personnel comply, with:

- (a) the Company's Applicable Policies and standards relating to industrial relations and employee relations (which the Contractor agrees it has reviewed and understood); and
- (b) all relevant Laws relating to industrial relations, employee relations and the engagement of Personnel as those Laws apply to the performance of the Services.

### **5.3 Induction**

- (a) If required by the Company, the Contractor must prepare and implement an employee induction program which must not be inconsistent with the Applicable Policies and which must be approved by the Company. This program must provide an overview of, amongst other things:
- (i) the operation of any relevant provision in the terms and conditions of the employment of the Contractor's employees requiring continuous operations;
  - (ii) the Applicable Policies;
  - (iii) the operation of the Company's Fitness for Work Policy; and
  - (iv) village accommodation rules and standards including expected behaviour.
- (b) The Contractor must ensure that all of its Personnel working on Site have police clearances.
- (c) The Contractor must not allow any of its Personnel on Site until such time as any information concerning those Personnel required by the Company has been provided to it. In providing this information to the Company, the Contractor must ensure that it has met any relevant requirements of all applicable Laws.

## **6 ACCESS TO THE SITE**

### **6.1 Contractor obligations**

The Contractor must:

- (a) provide to the Company Representative:
  - (i) proof of compliance with Clause 17 of the Purchase Order Terms and Conditions; and
  - (ii) not less than seven days' Notice, before commencing work on the Site; and
- (b) not mobilise Personnel or Equipment on, or attempt to access, the Site until the Contractor receives the approval of the Company Representative.

### **6.2 Failure to provide access**

If the Company Representative does not give the Contractor access to the Site within seven days after the later of:

- (a) the Commencement Date for the Services, or the Date for Delivery for the Goods;
- (b) the date on which the Contractor gave Notice under Clause (ii) of this Schedule 1; and
- (c) any later time agreed by the Contractor,

then the delay:

- (d) if due to the Contractor's non-compliance with Clause (i) of this Schedule 1, does not entitle the Contractor to any extension of the Date for Completion; or
- (e) if for any other cause, does not constitute a breach of contract but entitles the Contractor to claim an extension of the Date for Completion.

### **6.3 Conditions of access**

The Contractor:

- (a) enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
- (b) is not entitled to exclusive possession of the Site;
- (c) may only access the areas allocated by the Company Representative as necessary, in the opinion of the Company Representative, for performance of the Services or the supply of the Goods;
- (d) must co-operate with the Company's Personnel and the Company's other contractors and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
- (e) must obtain 14 days prior approval from the Company Representative for any action likely to interfere with the Company's operations or the work of any other contractor;
- (f) must ensure all shutdown time or isolated plant outages occur at times convenient to and nominated by the Company Representative; and
- (g) if required by the Company Representative to do so, must, and persons for whom it is responsible must, wear or carry badges



or passes issued by the Company Representative for the purpose of identification at all times whilst on or entering the Site or the Company's mining or exploration tenements.

#### **6.4 Company response**

The Company Representative must reply to any request under Clause (e) of this Schedule 1 within seven days of receipt of the request.

#### **6.5 Removal from Site**

- (a) The Company may, in its absolute discretion and without the need to provide any explanation to the Contractor, direct the Contractor to remove from the Site, or from any activity connected with the Goods or the Services, any Personnel of the Contractor who in the opinion of the Company:
- (i) has acted carelessly or recklessly in the course of their employment;
  - (ii) poses a threat to health and safety;
  - (iii) is or has been guilty of misconduct;
  - (iv) is incompetent or negligent;
  - (v) has previously been removed from the Site or any of the Company's sites; or
  - (vi) whose continued involvement in the Services or the supply of the Goods under the Contract is not in the best interests of work on the Site generally,

and the Contractor must immediately comply with any direction.

- (b) The Company may require the replacement, within such time as the Company directs, of any such person removed from Site.

#### **6.6 Contractor to ensure no blockage or inconvenience**

The Contractor must perform the Services and supply the Goods in such a manner as to ensure that no blockage or closure is caused upon any road or path either by its vehicles or equipment or by any excavations of material and must organise all transport required by the Goods or the Services in such a manner as to ensure that no inconvenience is caused to the Company, its Personnel, its other contractors, their employees or the public.

### **7 WORKING HOURS**

#### **7.1 Working hours**

- (a) The Contractor must not work on days or at hours other than those:
- (i) specified by the Company Representative as being the days and hours generally applicable for the performance of work on the Site;
  - (ii) approved by the Company Representative, at the request of the Contractor; and
  - (iii) directed by the Company Representative under Clause 7.2 of this Schedule 1.
- (b) Subject to the other provisions of this Clause 7, the Contractor must, and must ensure that its Personnel, comply with the *Working Hours Code of Practice 2006 (WA)*.

#### **7.2 Overtime**

If the Company Representative considers that the Contractor will not be able to complete the Services or any part of them by the relevant Date for Completion, the Company Representative may, in addition to any other rights of the Company, direct the Contractor to:

- (a) work overtime including night shifts, Saturdays, Sundays and public holidays; and
- (b) provide additional labour and supervision until the Company Representative is satisfied with the progress of the Services.

#### **7.3 Reimbursement by Contractor**

If the Company Representative approves a variation in work hours from those referred to in Clause 7.1 of this Schedule 1:

- (a) at the request of the Contractor; or
- (b) in order to ensure the Services (or any part of them) are completed by the relevant Date for Completion,

the Contractor must reimburse the Company for all additional expenses incurred by the Company (including due to supervision, altered catering, transport or other arrangements, work site lighting and equipment hire) as a result of the variation.

### **8 PROTECTION**

#### **8.1 Contractor obligations**

The Contractor must:

- (a) protect any existing work or work in progress by the Company or others which may be damaged as a result of the delivery of the Goods or the Services and make good any damage;
- (b) use best endeavours to locate overhead utility lines, underground pipes, conduits or cables on or in the vicinity of the Site and protect them from damage; and
- (c) obtain approval from the Company Representative at least 24 hours before commencing any digging.

#### **8.2 Damage to overhead lines, and ground pipes etc.**

If damage to overhead utility lines, underground pipes, conduits or cables occurs as a result of the delivery of the Goods or the Services, the Contractor must:

- (a) report it immediately to the Company Representative; and
- (b) pay for any necessary repairs or replacements.

#### **8.3 Company Representative may act to prevent damage**

In the absence of the Contractor or the Contractor's Representative from the Site, the Company Representative may act to prevent:

- (a) loss of or damage to any property;
- (b) damage to heritage sites or environmentally sensitive areas; or
- (c) personal injury to any person.

If the Company Representative determines that the action is of a kind that the Contractor would have been liable to take if it was not absent, the Contractor must reimburse the Company on demand the reasonable costs incurred in taking that action.



#### **8.4 Contractor to prevent removal of objects from Site**

- (a) The Contractor must:
- (i) take all reasonable precautions to prevent all persons for whom it is responsible from removing and damaging any minerals of commercial value, fossils, coins, objects of antiquity and structures and other remains and things of heritage, geological, archaeological or anthropological interest discovered on the Site;
  - (ii) inform the Company Representative of a discovery of anything referred to in paragraph (i) above immediately after it is made and before removal or any further disturbance of the area concerned;
  - (iii) carry out the Company Representative's directions with respect as to the matter in accordance with any applicable Laws at the expense of the Company; and
  - (iv) not resume work in the area until permitted by the Company Representative.
- (b) As between the Company and the Contractor, the Company is entitled to any discovery referred to in Clause (a) of this Schedule 1.
- (c) Time lost in complying with this Clause 8.4 is treated as a suspension of work required by the Company Representative under Clause 16(a) of the Purchase Order Terms and Conditions.

#### **9 SERVICES**

The Company does not guarantee continuity of supply of any services or utilities (such as electricity, telephone, radio communications or water) supplied by it.

#### **10 ACCOMMODATION**

The Contractor must not establish any worker or staff accommodation or buildings on or adjacent to the Site without the written permission of the Company.

#### **11 VEHICLES**

The Contractor must ensure that:

- (a) all vehicles used by it or by its Personnel:
- (i) conform to the requirements of all relevant Laws and Applicable Policies; and
  - (ii) are, upon entering the Site, free from soil, vegetation, vermin and feral animals.
- (b) all persons for whom it is responsible comply with any Company transport regulations which apply to the Site.

#### **12 EXPLOSIVES AND DANGEROUS GOODS**

The Contractor must not bring or use any explosives or dangerous goods on the Site without the specific prior written permission of the Company Representative. Permission does not relieve the Contractor from any obligations or duties relating to the handling, storage or use of explosives or dangerous goods.

#### **13 COMPANY FUEL**

If the Company provides fuel to the Contractor for use by the Contractor in the performance of its obligations under this Contract:

- (a) the fuel shall not be, or taken to be, sold by the Company to the Contractor;
- (b) the fuel will remain the property of the Company subject to the use of the fuel by the Contractor with the permission of the Company;
- (c) the Contractor will maintain detailed records of the quantity of fuel used and the manner in which it is used, and must provide those records to the Company within 7 days of being requested to do so by the Company; and
- (d) the Contractor must not in any way claim any entitlement to a fuel tax credit pursuant to *the Fuel Tax Act 2006* (Cth) in relation to the fuel, acknowledging that any such entitlement vests solely in the Company.

#### **14 COMPANY PROVIDED FACILITIES**

The Company will provide the following for the Contractor's Personnel, as required, for the purpose of performing the Services:

- (a) all necessary flights for the Contractor's Personnel between Perth and Site, subject to the following:
  - (i) the Contractor must not make any claim against the Company for the unavailability of air charter services; and
  - (ii) the Contractor will be back-charged all costs incurred by the Company due to flights that are missed or cancelled by the Contractor's Personnel. Missed or cancelled is defined as less than 24 hours' notice of non-attendance prior to a scheduled flight.
- (b) accommodation and messing facilities at Site for Contractor Personnel. Without limiting the Company's rights under the Contract, any costs incurred by the Company in rectifying damage to accommodation or messing facilities caused by an act or omission of the Contractor or its Personnel shall be back-charged by the Company to the Contractor.
- (c) without limiting Clause 13 (Company Fuel) of this Schedule 1, fuel for the duration of the Services on Site including any fuel required for the Contractor's return journey. Where the Contractor elects to refill their vehicle prior to leaving Site then no further travel or vehicle charges are to be applied.