

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED**

**ABN 42 008 737 424**

**AND**

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

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**MAJOR SERVICES CONTRACT**

**CONTRACT NO. [xxxx]**

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Document Name	Version	Document Owner	Issue Date
<b>AGA Major Services Contract</b>	<b>26</b>	<b>Nerilee Rockman</b>	<b>June 2016</b>

## KEY TERMS SCHEDULE FOR CONTRACT

**Insert Contract Number**

### Item 1: Parties

Company: *AngloGold Ashanti Australia Limited*  
ABN: *42 008 737 424*  
Company Representative: *[\*insert name, title and contact details, including email address\*]*

Contractor: *[\*Insert Contractor's name and address\*]*  
ABN: *[\*Insert Contractor's ABN\*]*  
Contractor's Representative: *[\* Insert Contractor's Representative (Name, title and contact details, including email address)\*]*

Services to be performed at  
Site:

### Item 2: Amount of Security (Clause 8)

*[\*required/not required\*] - Amount: [\*Insert amount of Guarantee\*]*

### Item 3: Quality Systems (Clause 10.2)

*[\*required/not required\*] [Note: if required, refer to and attach any applicable requirements.]*

### Item 4: Date for Completion

*[\*if any\*]*

### Item 5: Key Personnel (Clause 7)

*[\*if any\*]*

### Item 6: Date of Contract

*[\*insert the date of this contract, being the date on which the last of the parties has executed it\*]*

### Item 7: Commencement Date

*[Insert the date that the Services are to commence]*

**Item 8: Term**

[insert the term of the Contract]

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**ANGLOGOLD ASHANTI AUSTRALIA LIMITED**  
**MAJOR SERVICES CONTRACT**

**THIS CONTRACT** is made on the Date of Contract

**BETWEEN**

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED** ABN 42 008 737 424 of Level 13, 44 St Georges Terrace, Perth, 6000 (the "**Company**"); and

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

**RECITAL**

The Company wishes to engage the Contractor, and the Contractor has agreed, to perform the Services, in accordance with the terms and conditions of this Contract.

**THE PARTIES AGREE AS FOLLOWS:**

**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 and/or its contractors and suppliers, from time to time;

"**Approved Services Program**" means a detailed work program for the Services prepared by the Contractor and approved by the Company Representative under Clause 13;

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

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

- (a) with respect to the production or emission of, or to reduce, limit, cease, prevent, offset, remove or sequester, greenhouse gases; or
- (b) that imposes a tax, levy, duty, impost or other charge that is calculated by reference to actual, potential or deemed greenhouse gas emissions or that is intended to reflect a carbon price,

including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations.

"**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, as applicable, the date on which the Services are to

commence, as specified in Item 7 of the Key Terms Schedule or in a Purchase Order (if any) or any other date agreed by the parties;

**"Company Representative"** means the person so nominated by the Company or the Registered Manager either in Item 1 of the Key Terms Schedule, under Clause 11 or the representative nominated as 'Buyer' in the Purchase Order (if any);

**"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 performing the Services, whether before or after formation of this Contract, including the contents of the Scope of Work, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate, and all information of the kind mentioned in section 275(1) of the PPSA but excludes information that the 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 the Notice of Award (if any), this contract, including the Key Terms Schedule, Clauses 1 to 45, the Schedules, any applicable Purchase Order and all other documents annexed or attached which are intended to form part of the contract between the parties;

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

**"Contract Price"** means the fixed price (if any) so specified in this Contract or, if none is specified, the amounts calculated in accordance with the Schedule of Rates and in either case excludes GST;

**"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 person so nominated by the Contractor either in Item 1 of the Key Terms Schedule or under Clause 11 or the person nominated as Site Contact in Purchase Order (if any);



**"Date for Completion"** means the date for the completion of the Services or any part of the Services specified in Item 4 of the Key Terms Schedule or if no such item is specified in the Key Terms Schedule, the equivalent item in the Purchase Order, or elsewhere in this Contract (including an Approved Services Program), or if none is specified, the date upon which the parties intend the Services or that part of the Services to be completed;

**"Date of Award"** means the date on which written notice of acceptance of the Contractor's Tender was issued by the Company or (as the case requires) the date of issue of the written acceptance by either party of an offer (including a counter offer) for the performance of the Services;

**"Date of Contract"** means:

- (a) if a Notice of Award is issued by the Company, the date that the Contractor acknowledges and signs the Notice of Award; or
- (b) otherwise, the date of this Contract, being the date on which the last of the parties executed this Contract and set out in Item 7 of the Key Terms Schedule, or if no such date is specified in the Key Terms Schedule, the date so deemed by the Company;

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

**"Dayworks"** means minor services which do not form part of the Services but which are carried out by the Contractor specifically at day work rates at the request of, and in accordance with the directions of, the Company Representative;

**"Discoveries"** means all work, ideas, concepts, reports, designs, discoveries, inventions (whether patentable or not) and Intellectual Property made by the Contractor or its Personnel, alone or with others, in the course of performing the Services or otherwise arising out of the use of any of the Company's time, materials, resources or facilities including all computer programs, source codes, compilations, flowcharts, drawings and software developed or adapted for specific application to or by the Company;

**"Dispute"** means any dispute or difference between the Contractor and the Company arising out of or in connection with the Services or this Contract;

**"Dispute Notice"** means a Notice of a Dispute received by a party pursuant to Clause 44(a);

**"Environment"** means components of the earth including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) any human-made or modified structures and areas;
- (e) the aesthetic or amenity values of an area; and
- (f) 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, supplies, materials, apparatus, machinery, components, instruments, appliances, appurtenances, vehicles and other things whatsoever that the Contractor is or has to supply or provide, or may be required to supply or provide, for the proper performance of the Services and this Contract;

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

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

**"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 the *New Tax System (Goods and Services Tax) Act 1999* (C'th);

**"Incidental Goods"** means the goods to be supplied by the Contractor to the Company under this Contract, described or referred to in the Scope of Work or a Purchase Order (if any);

**"Input Tax Credit"** has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999* (C'th);

**"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, trade marks, trade names and circuit layouts) conferred under statute, common law, equity or otherwise in any country;

**"IR Advisor"** means any person, association, company or firm nominated by the Company from time to time to provide advice or guidance to the Contractor regarding industrial relations matters pursuant to Clause 12.3(a);

**"IR Management Plan"** means the Contractor's plan for the use and management of the Contractors' Personnel, as varied and approved by the Company from time to time;

**"IR Representative"** means the person so nominated by the Company from time to time pursuant to Clause 12.6;

**"Key Personnel"** means the Personnel of the Contractor identified as the Key Personnel (if any) in Item 5 of the Key Terms Schedule and as may be replaced pursuant to Clause 7;

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

**"Law"** means:

- (a) the present or future requirements of any statute, regulation, order, rule,

subordinate legislation, common law, equity or other document enforceable under any statute, regulation, 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;

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

**"Notice"** means a notice, consent, approval or other communication under this Contract and must be given in accordance with Clause 39;

**"Notice of Award"** means the notice of formal acceptance of the Tender signed by the Company, including any annexed memoranda comprising agreements between and signed by both Parties;

**"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 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 the performance of the Services; and
- (c) in relation to the Company – any of the Company's employees, representatives, agents, consultants and invitees, involved either directly or indirectly in connection with the Contract;

**"PPSA"** means the Personal Property Securities Act 2009 (C'th);

**"Purchase Order"** means the formal order document issued by the Company for Services (and any associated Incidental Goods, if any) which the Company requires;

**"Registered Manager"** means the person from time to time appointed as such by the Company as required under section 33 of the *Mines Safety and Inspection Act 1994 (WA)*; (if applicable) and notified in writing to the Contractor by the Company;

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

**"Schedule"** means the applicable Schedule forming part of this Contract;

**"Schedule of Rates"** means the schedule of rates (if any) set out in Schedule 3;

**"Scope of Work"** means the work specification for, and description of, the Services set out in Schedule 1 or a Purchase Order (if any);

**"Services"** means the things which the Contractor is obliged to do or cause to be done or achieved to comply with its obligations under this Contract, including performance of all works and services identified in the Scope of Work and/or specified in a Purchase Order (if any), and includes (if applicable) the supply of any Incidental Goods and 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 or this Contract;

**"Site"** means the place(s) designated in Item 1 of the Key Terms Schedule or if no such item

is specified in the Key Terms Schedule, the equivalent item in a Purchase Order (if any) for the performance of the Services and/or the place(s) to which the Contractor is to have access for any purpose under or in connection with this Contract;

**"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;

**"Sub-contractor"** means any person engaged by the Contractor to perform all or any portion of the Services under this Contract on behalf of the Contractor who is not an employee of the Contractor;

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

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

**"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;

**"Tender"** means the Contractor's offer or counter-offer in writing to perform the Services (if any);

**"Term"** means the term of this Contract as set out in Item 8 of the Key Terms Schedule;

**"week"** means seven consecutive days commencing and ending midnight on Sunday; and

**"in writing"** and **"written"** include communication in the form of telex, email, facsimile transmission and similar forms.

## 1.2 Interpretation

In this Contract, unless the context requires otherwise:

- (a) a reference to a person for whom the Contractor is responsible includes all its Personnel;
- (b) a reference to any gender includes every gender;
- (c) the absence of a capital letter does not alone indicate that a term that has a defined meaning is to have a meaning other than the defined meaning;
- (d) a reference to a person includes a natural person, corporation, partnership, joint venture, association, authority or state (and vice versa);
- (e) Clause headings and indexes are for convenience of reference only and do not affect interpretation;
- (f) the singular includes the plural and vice versa;
- (g) a recital, schedule, annexure, attachment or exhibit or a description of the parties forms part of this Contract;
- (h) the meaning of general words is not limited by specific examples introduced by "includes", "including" or "for example";
- (i) 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;

- (j) 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;
- (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (l) a reference to "dollars" or "\$" is to Australian currency;
- (m) in this Contract, performance of an obligation of any kind by the Contractor:
  - (i) includes performance by the Contractor and, where this Contract expressly permits, by Sub-contractors; and
  - (ii) must be carried out at the Contractor's cost unless this Contract expressly states otherwise;
- (n) where this Contract, expressly or impliedly:
  - (i) allows the Company a discretion as to whether or not to do or not to do any act, matter, or thing of any kind, or as to how it may be done; or
  - (ii) confers a power of determination, or a right or obligation to form an opinion or the like;

that discretion, power, right or obligation may be exercised or performed in the absolute discretion of the Company, unless expressly stated otherwise;
- (o) in the interpretation of a provision of this Contract, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is stated in the provision or not) is to be preferred to a construction that would not promote that purpose or object; and
- (p) 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 Contractor responsible**

The Contractor is taken to have control over all persons for whom it is responsible including all its Personnel. Any provision of this Contract which imposes an obligation on the Contractor is taken to include an obligation on the Contractor to ensure that all those persons (including all the Contractor's Personnel) do and refrain from doing all things necessary to ensure that the obligation is complied with.

### **1.4 Time is of the essence**

Time is of the essence in all respects in relation to the obligations of the Contractor under this Contract.

## **2 NATURE OF RELATIONSHIP**

- (a) The Contractor is engaged as an independent contractor and the relationship between the Company and the Contractor is a relationship of principal and independent contractor.

Nothing in this Contract will be construed to create a relationship of employment, agency, partnership or joint venture.

- (b) The Contractor has no authority to incur and must not incur any obligation on behalf of the Company except with the express written instruction of the Company.
- (c) The Contractor must supply all Incidental Goods, 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 so rejected must not be used for the purpose proposed and if the Company so orders, it must be removed from the Site.
- (d) The Contractor is responsible for the provision of all facilities, utilities and supplies for its Personnel.
- (e) The Contractor is responsible for:
  - (i) remuneration and benefits, including superannuation contributions, annual leave, sick leave, long service leave and overtime and penalty rates and provision of accommodation and sustenance;
  - (ii) work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
  - (iii) any payment upon termination of service,payable to or in respect of all of its Personnel.

### **3 CONTRACT**

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

If there is any conflict or 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) Key Terms Schedule;
- (b) the Notice of Award;
- (c) Clauses 1 to 45 (inclusive);
- (d) Schedule 1 – Scope of Work;
- (e) Schedule 3 – Contract Price/Lump Sum/Schedule of Rates;
- (f) each other Schedule (in numerical order);
- (g) the applicable Purchase Order (if any); and
- (h) other parts of this Contract (if any).

#### **3.2 Entire agreement**

- (a) If the Company issues a Notice of Award, the Parties must enter into this Contract within 28 days after the Contractor receives the Notice of Award, unless the Parties agree otherwise.
- (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 paragraph (a):
  - (i) the Tender (if any) does not, except to the extent that it is reproduced in this Contract itself, form part of this Contract; and
  - (ii) if the Contractor's terms and conditions are supplied in connection with the performance of the Services or delivery of any Incidental 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 AGREEMENT TO PERFORM SERVICES**

- (a) The Contractor agrees to perform the Services in accordance with the terms and conditions of this Contract (including the Scope of Work and any Approved Services Program) and the terms of any Purchase Order and in consideration of the payment of the Contract Price by the Company.
- (b) The Contractor must perform and complete the Services or any part of them by the Date for Completion.
- (c) The Contractor acknowledges that the Company is not obliged to obtain any or all of its requirements for the Services from the Contractor.

## **5 TERM**

This Contract continues for the Term as set out in Item 8 of the Key Terms Schedule unless terminated earlier in accordance with the terms of this Contract.

## **6 INFORMATION AND CONTRACTOR'S INVESTIGATIONS**

### **6.1 Warranties**

The Contractor represents and warrants to the Company that:

- (a) it is satisfied as to the completeness and accuracy of any information provided to it by the Company;
- (b) it is satisfied that the Contract Price covers the costs of performing the Services in all respects and include sufficient contingencies to cover the cost of complying with any direction and all risks, obligations and Liabilities of the Contractor under or arising from this Contract, at Law or otherwise;
- (c) it based any Tender that it made, and entered into this Contract, relying solely on its own investigations, determinations, skill and judgment and not in reliance on any information representation expressly or impliedly given by or on behalf of the Company or any Related Body Corporate of the Company, other than to the extent that a relevant representation is expressly recorded in the terms and conditions of this Contract; and
- (d) it inspected, surveyed and otherwise fully investigated the Site and their respective surroundings, form, nature and conditions (whether on, above or below ground and including hydrographical, hydrological, marine, climatic, geotechnical and physical

form, nature and conditions) and satisfied itself that the Contract Price covers all risks, obligations and Liabilities of the Contractor relating to the same.

## **6.2 Contractor's acknowledgements**

The Contractor acknowledges that:

- (a) before this Contract was formed:
  - (i) the Company provided the Contractor an opportunity to inspect and test the Site;
  - (ii) the Contractor made all necessary enquiries, and was fully informed, about local and other conditions capable of affecting the performance of the Services and this Contract including meteorological, geological, labour, accommodation, fuel, power, water and transport conditions;
  - (iii) the Contractor carefully examined and fully understood all the documents which form part of this Contract; and
  - (iv) the Contractor fully satisfied itself, obtained, verified and interpreted all information and documents as to the nature and extent of the Services and its other obligations arising from or under this Contract, at Law or otherwise, and all risks, difficulties, contingencies and other matters and circumstances which may affect or influence the Contract Price, and the costs of and time for the proper completion of the Services in accordance with this Contract.
- (b) The Company does not warrant the accuracy or sufficiency of any information it provides or provided to the Contractor and the Contractor did not rely on any express or implied statement, warranty or representation, whether oral, written or otherwise, made by or on behalf of the Company, that is not expressly contained in this Contract.
- (c) The Company disclaims all responsibility whatsoever for any information given to the Contractor which disclaimer is hereby acknowledged by the Contractor. The information is provided for the convenience of the Contractor and is not part of this Contract unless otherwise specifically agreed in writing. The information is not guaranteed as to accuracy, sufficiency or otherwise howsoever and the Tender submitted by the Contractor and its subsequent entry into this Contract will be deemed for all purposes to have been based on the Contractor's own investigation and determination.
- (d) The Contractor accepts full responsibility for any use of the information provided to it including responsibility for any conclusions drawn by it from such information.
- (e) Failure by the Contractor to do all or any of the things that it is deemed to have done under Clause 5 will not relieve the Contractor from its liability to perform this Contract in accordance with the terms and conditions in this Contract.

## **6.3 No Claim**

The Contractor agrees that it will not make or pursue any Claim against the Company or the Company's Personnel, and the Company will have no obligation or Liability for, any of the matters set out in Clause 6.1 and Clause 6.2, or on the ground of misapprehension or misunderstanding in respect of the matters under Clause 6.1 and Clause 6.2, or that the Contractor failed to obtain correct or sufficient information or documents or failed to satisfy itself as to any matter or circumstance that it could not foresee any matter or circumstance



which may or does in fact affect or influence the Contract Price or the proper performance of the Services or the Contractor's obligations under or arising from this Contract, at Law or otherwise.

## **7 KEY PERSONNEL**

- (a) The Contractor must ensure that the Key Personnel, if any, are directly involved in and available for performance of the Services at all times during the term of this Contract.
- (b) The Contractor may not remove or replace any Key Personnel without the Company's prior written consent. If it becomes necessary to replace any of the Key Personnel, the Contractor must immediately notify the Company and arrange for replacement by a person of comparable experience, suitability and competence to be approved by the Company.
- (c) If the Company is not satisfied with any of the Key Personnel for any reason, the Company must notify the Contractor and the Contractor must arrange for replacement by a person of comparable experience, suitability and competence and each such person must be approved by the Company.

## **8 SECURITY FOR PERFORMANCE**

- (a) The Company may require the Contractor to provide an unconditional bank guarantee from a bank approved by the Company:
  - (i) for an amount equal to 10% of the Contract Price or any other amount set out in the Key Terms Schedule; and
  - (ii) in the form of Schedule 2 to this Contract or any other form reasonably required by the Company,as a security to the Company for the performance of the obligations of the Contractor under this Contract.
- (b) If the Contract Price increases as a result of variations to the Services pursuant to Clause 25, the Company may notify the Contractor that it requires the amount of the bank guarantee to be increased.
- (c) If the Company gives the Contractor Notice in accordance with paragraph (b), the Contractor must immediately provide the Company with an amended or supplemental bank guarantee in such amount as will ensure compliance with paragraph (b).
- (d) The Company may draw on the bank guarantee at any time before or after the Completion Date if:
  - (i) the Contractor has breached this Contract; and
  - (ii) that breach has not been remedied within 30 days after written Notice of it has been given to the Contractor by the Company.
- (e) A bank guarantee provided under this Clause must not be subject to any expiry date.
- (f) If the Contractor is a subsidiary of another corporation, or where the Company otherwise requires, the Contractor must, if notified in writing by the Company, arrange for the ultimate parent company of the Contractor (or such other Related Body Corporate of the Contractor as the Company may in its discretion approve) to provide a guarantee and indemnity which guarantees all of the Contractor's obligations and Liabilities under this Contract, indemnifies the Company from any Liabilities caused by breach of Contract, and which is in a form that is approved by the Company. The Contractor must provide the Company with the

guarantee on the date indicated in the Notice. If the Contractor is comprised of more than one entity, each such entity must comply with this Clause 8.

## **9 CONTRACTOR'S GENERAL OBLIGATIONS**

### **9.1 Compliance with Laws and Applicable Policies**

- (a) The Contractor must, and must ensure its Personnel, perform the Services in compliance with:
  - (i) all applicable Laws relating to the Contractor's obligations under this Contract;
  - (ii) the conditions of any exploration or mining tenements, or other titles of any kind, including any Site Approvals; and
  - (iii) all Applicable Policies.
- (b) The Contractor must, and must ensure its Personnel:
  - (i) obtain all Services Approvals; and
  - (ii) give all notices,required in order to comply with paragraph (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.

### **9.2 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 to keep plants, pets, livestock or firearms at or within the vicinity of the Site.

### **9.3 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 16.5.

### **9.4 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 33.5.
- (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.

## **9.5 Approval or review by Company**

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.

## **9.6 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 (including negligence or breach) then the Contractor must, at its own cost, make all necessary repairs.

## **9.7 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.

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

- (a) The Contractor must attend Company environmental training and comply with 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 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.

## **9.9 Integrated management system**

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

## **9.10 Conflicts of Interest**

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.

## **9.11 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.

## **9.12 National energy and greenhouse reporting scheme**

- (a) No less than one month after the end of each financial year, the Contractor must (at its own expense) provide to the Company all such information relating to the greenhouse gas emissions, energy consumption and energy production associated with the provision of the Services as is reasonably required by Company to enable the Reporting Entities to comply with such obligations (if any) as are imposed on them

under the NGERS in respect of the activities undertaken at or in connection with the Site.

- (b) The Contractor must estimate, measure, collect, compile and provide to the Company the information referred to in paragraph (a) in a manner that complies with the requirements of the NGERS as such requirements apply to the Reporting Entities.
- (c) For the purpose of this Clause:
  - (iii) **"financial year"** means a period commencing on 1 July and ending on the next 30 June;
  - (iv) **"NGERS"** means the National Greenhouse and Energy Reporting Act 2007 (C'th) and all regulations, measurement determinations and other instruments made under it; and
  - (v) **"Reporting Entity"** means any one or more of the Company and its Related Bodies Corporate.

### 9.13 Obligations

No obligation on the part of the Contractor under this Contract (including under Clause 9 or further to an Applicable Policy) limits any other obligation on the part of the Contractor under this Contract, and each obligation is to be construed separately and independently, except to the extent this Contract expressly provides otherwise.

## 10 STANDARD OF SERVICES AND QUALITY ASSURANCE

### 10.1 Performance of Services and standard of conduct

- (a) The Contractor represents and warrants that it, and each of its Personnel, are qualified and have the capacity, experience, resources, skill and expertise to perform the Services in accordance with the requirements of this Contract.
- (b) The Contractor represents and warrants that, in performing the Services, the Contractor and its Personnel shall:
  - (i) exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Services; and
  - (ii) ensure the Services are fit for any purpose notified by the Company and in the absence of notification, for the purpose for which works of that or a similar type are commonly acquired.
- (c) 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.

### 10.2 Quality Systems

- (a) The Contractor must:
  - (i) if this Contract states that particular requirements for a quality system

apply, plan, establish and maintain a quality system which conforms to those requirements; and

- (ii) provide the Company Representative with access to the quality system (if any) of the Contractor and each of its Sub-contractors (if any) to enable monitoring and quality auditing.
- (b) Any quality system established by the Contractor:
  - (i) is only an aid to compliance with this Contract and to documenting compliance; and
  - (ii) does not relieve the Contractor from the responsibility to comply with this Contract.

### **10.3 Incidental Goods**

The Contractor represents and warrants that:

- (a) the Incidental Goods:
  - (i) comply with all applicable Laws;
  - (ii) comply with all requirements, in respect of the Incidental Goods, under this Contract and are free from defects; and
  - (iii) are new and are fit for purpose including any purpose made known to the Contractor; and
- (b) the Company:
  - (i) will receive the Incidental Goods free and clear of all interests including any encumbrance or Claim; and
  - (ii) has the full benefit of any manufacturer's or trade warranties applicable to the Incidental Goods or any part of them.

## **11 REGISTERED MANAGER AND REPRESENTATIVES; DIRECTIONS**

- (a) The Company or the Registered Manager must appoint a Company Representative who is authorised to act on behalf of the Company in relation to this Contract.
- (b) The Contractor must perform the Services in accordance with all directions given by:
  - (i) the Registered Manager;
  - (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.
- (c) 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.
- (d) The Company is not bound by orders, directions and instructions given to the Contractor by any other person not referred to in paragraph (b) 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.
- (e) The Contractor must appoint at least one natural person:
  - (i) who comprehends and communicates fluently in the English language both verbally and in writing; and

- (ii) is approved by the Company Representative,  
as its representative authorised to represent and bind the Contractor for the purposes of this Contract.
- (f) The proposed appointment of a Contractor Representative under paragraph (e) must be made by Notice to the Company setting out the name, address and day and night telephone numbers of that representative. The Company Representative will then notify the Contractor as to whether or not the proposed appointment is approved.
- (g) Matters within the knowledge of the Contractor Representative are taken to be within the knowledge of the Contractor.
- (h) Up until the Completion Date:
  - (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.
- (i) 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;
  - (ii) the time or times within which the Services or any part thereof are to be commenced and/or completed.
- (j) Without limiting Clause 14, the Contractor must, at its own cost, immediately re-perform or remedy any part of the Services which, in the opinion of the Company, is defective or is not executed in accordance with the Company's instructions or this Contract. The Company is under no obligation to make any payment of any compensation to the Contractor, and the Contractor must not make any Claim against the Company, for any such re-performance or remedial work.
- (k) 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. 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.

## **12 EMPLOYEE AND INDUSTRIAL RELATIONS**

### **12.1 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.
- (b) The Contractor must consult regularly with the Company with respect to all employee and industrial relations matters, and keep the Company fully informed of all relevant issues and disputes as those issues or disputes arise.
- (c) The Contractor must act in accordance with all lawful directions given by the Company in relation to the Contractor's IR Management Plan, management of Personnel, an actual or potential industrial dispute or industrial action and general industrial relations matters and general employee relations matters relating to the Services.
- (d) The Contractor must, in relation to any negotiations for an industrial instrument to apply to the Services:
  - (i) consult with the Company, in respect of, and keep the Company regularly informed of, all negotiations (including the content of discussions) and issues;
  - (ii) not agree to or accept any proposed industrial instrument (or proposed change to an industrial instrument) without the prior consent of the Company, such consent to not be unreasonably withheld.

## **12.2 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.

## **12.3 Company Entitlements**

- (a) The Company may direct the Contractor to attend and seek advice from the IR Advisor in relation to:
  - (i) the Contractor's IR Management Plan;
  - (ii) management of the Contractor's Personnel;
  - (iii) any actual or potential industrial dispute or industrial action;
  - (iv) general employee relations issues pertaining to the Services; and
  - (v) general industrial relations issues pertaining to the Services.
- (b) The Company is entitled to:
  - (i) attend and participate in any conference or meeting with a union and in any hearings, conference or other proceedings before any court or tribunal in connection with any industrial dispute or actual or potential industrial action pertaining to the Services; and



- (ii) inspect all records of the Contractor in relation to its Personnel or the implementation of the IR Management Plan.

## **12.4 IR Management Plan**

- (a) The Contractor agrees that the:
  - (i) Contractor must have submitted an IR Management Plan for review by the Company within 30 days of the date of the Contract, if the Contractor has not submitted that IR Management Plan for review as part of the tender process;
  - (ii) Company will review the proposed IR Management Plan and may request the Contractor to amend it;
  - (iii) Contractor may not commence the Services until the IR Management Plan, and any requested amendments, have been approved by the Company;
  - (iv) Contractor must obtain the Company's approval to any proposed amendments to the IR Management Plan before being those proposed changes are implemented ;
  - (v) the Company may direct the Contractor to vary and/or amend the IR Management Plan at any time; and
  - (vi) the Contractor must keep a copy of the IR Management Plan at its work areas at all times during the performance of the Services.
- (b) The Contractor agrees to comply with and implement, and to ensure that its Personnel comply with and implement, the Contractors IR Management Plan, in the form approved by the Company from time to time.

## **12.5 Industrial Disputes and Union Site Access**

- (a) The Contractor must:
  - (i) take all reasonable measures to prevent the occurrence, and to minimise the continuance, of actual or potential industrial disputes or industrial action on or off the Site;
  - (ii) immediately notify the Company of any actual or potential industrial dispute or industrial action (including particulars) and submit a written report to the Company within 24 hours of becoming aware of that actual or potential industrial dispute or industrial action; and
  - (iii) comply with any written directions given by the Company or an IR Advisor in relation to any actual or potential industrial dispute or industrial action.
- (b) The Contractor must notify the Company immediately if the Contractor receives or becomes aware of any Sub-contractor receiving any notice of an actual or potential visit by a union official or industrial inspector, including any information the Contractor has regarding the purpose of the visit.
- (c) The Contractor is responsible for ensuring any union official or industrial inspector exercising a lawful right of entry relating to the Contractor or a Sub-contractor is required by the Contractor to comply with all Site requirements and Applicable Policies, as well as the specific requirements of the applicable Laws.

## **12.6 IR Representative**

The Company may appoint an IR Representative who is authorised to act on behalf of the Company for the purposes of this Clause in relation to employee industrial relations matters pertaining to this Contract.

## **12.7 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.

## **13 CONTRACTOR'S SERVICES PROGRAM AND REPORTING REQUIREMENTS**

- (a) The Contractor must prepare a detailed program for the Services which sets out:
  - (i) weekly hours scheduled to be worked for each activity and weekly total labour scheduled for each trade or labour category;
  - (ii) major material requirements;
  - (iii) periods of use of Company supplied equipment, facilities and services (if any);
  - (iv) sufficient detail to demonstrate the timely acquisition of Equipment, materials and supplies; and
  - (v) the efficient utilisation of labour and Equipment,and submit it to the Company Representative for approval no later than one month before the Commencement Date or any later time agreed by the Company Representative.
- (b) If the Company Representative notifies the Contractor that the program submitted does not enable the Company Representative to readily evaluate the Contractor's performance or assess the likelihood of the Services being concluded by the Date for Completion, the Contractor must prepare an amended program until the Company Representative approves the program.
- (c) The Contractor must provide reports which:
  - (i) refer to the Approved Services Program;
  - (ii) include sufficient detail to enable the Company Representative to monitor the progress of the Services;
  - (iii) include such data and other information relating to the Services which the Company is required to report to any relevant Government Agency; and

- (iv) are otherwise in a format approved by the Company Representative, within five Business Days after the end of each calendar month or at other intervals required by the Company Representative.

## **14 CORRECTION OF SERVICES**

- (a) Upon receipt of a notice from the Company Representative, before the Date for Completion or within 12 months of the later of the Date for Completion and the Completion Date, of any deficiency in the Services, the Contractor must correct such deficiency at no cost to the Company prior to the time specified in the notice.
- (b) If the Contractor fails to correct any deficiency in the Services identified by the Company pursuant to paragraph (a), the Company may correct any deficient Services at the Contractor's risk and cost and the Contractor must indemnify the Company against any Liabilities incurred by the Company.

## **15 INSURANCE**

### **15.1 Insurance**

The Contractor must take out and ensure that its Sub-contractors take out:

- (a) insurance to cover all tools, plant and Equipment for their market value;
- (b) insurance to cover all motor vehicles, mobile plant and other mechanically propelled vehicles for loss or damage for their market value, extended to include third party property damage for an indemnity of no less than \$10,000,000;
- (c) general and products liability insurance (including liability resulting 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 \$15,000,000;
- (d) insurance against any liability to Personnel arising as a result of the Services whether arising at common law or under any statute relating to workers' compensation or employers' liability and occupational / industrial disease where required by Law, with such insurance being endorsed to provide a principal's indemnity extension (including 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, professional indemnity insurance 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 keep those policies current during the term of this Contract including any period for the correction of deficient Services described in Clause 14.

### **15.2 Aircraft insurance**

If the Contractor at any time intends to use any form of aircraft with respect to the Services or this Contract the Contractor must:

- (a) advise the Company in writing of its intended use of aircraft; and
- (b) carry aircraft liability insurance (including passenger liability insurance) covering all aircraft owned, used, operated, leased or licensed by the Contractor which must have a bodily injury, death and property damage limit approved by the Company and which must be maintained current.

### **15.3 Insurance policy requirements**

- (a) Each policy of insurance required under Clauses 15.1 and 15.2 must be with an insurer and on terms approved by the Company.
- (b) The insurance policies required by Clauses 15.1(a) (equipment), 15.1(b) (mobile plant), 15.1(c) (general and products liability) and 15.2 (aircraft) must:
  - (i) name the Company as an additional insured, and must 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
  - (ii) 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, which must include a provision whereby the Contractor agrees to give the Company 30 days written notice prior to the alteration of cover or the cancellation or lapsing of cover, in relation to each policy of insurance required by Clauses 15.1 and 15.2.
- (d) If the Contractor fails to produce any document set out in paragraph (c) to the Company within 14 days of demand, the Company may either:
  - (i) itself arrange that insurance and deduct the premiums and any GST relating to the premiums from any amount due to the Contractor; or
  - (ii) refuse to make any payment otherwise due to the Contractor until that document is produced.
- (e) Notwithstanding that the Company may effect such insurance if the Contractor fails to do so, the Contractor will be deemed to have indemnified the Company for all Liabilities which may arise from the Contractor's failure to do so.
- (f) For the avoidance of doubt, the presence of this Clause and the obligations in this Clause, and whether or not the Clause is complied with, in no way limits or affects the operation of the other provisions of this Contract including Clause 36.

## **16 ACCESS TO THE SITE**

### **16.1 Contractor obligations**

The Contractor must:

- (a) provide to the Company Representative:
  - (i) proof of compliance with Clause 8 (if applicable) (Security for Performance) and Clause 15 (Insurances); 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.

### **16.2 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;
- (b) the date on which the Contractor gave Notice under Clause 16.1(a)(ii); and
- (c) any later time agreed by the Contractor,

then the delay:

- (d) if due to the Contractor's non-compliance with Clause 16.1(a)(i), 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.

### **16.3 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;
- (d) must co-operate with the Company's Personnel and the Company's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
- (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.

### **16.4 Company response**

The Company Representative must reply to any request under Clause 16.3(e) within seven days of receipt of the request.

### **16.5 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 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 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.

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

The Contractor must perform the Services 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 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.

## **17 WORKING HOURS; DELAYS**

### **17.1 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 17.2.
- (b) Subject to the other provisions of this Clause, the Contractor must, and must ensure that its Personnel, comply with the Working Hours Code of Practice 2006 (WA).

### **17.2 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.

### **17.3 Reimbursement by Contractor**

If the Company Representative approves a variation in work hours from those referred to in Clause 17.1:

- (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.

## **17.4 Notice of delay**

If the Contractor encounters events or circumstances which have resulted or might reasonably be expected to result in a delay to the completion of the Services, the Contractor must:

- (a) 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;
- (b) use reasonable endeavours to mitigate the consequences of any such delay or any delay which actually occurs; and
- (c) 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.

## **17.5 Extension of time**

Subject to the Contractor complying with Clause 17.4, the Company must extend the Date for Completion, or the relevant timing for delivery of the Services under this Contract (including under an Approved Services Program), commensurately with the period of any actual delay to the performance of the Services caused by the following:

- (a) any breach of this Contract by, or any act, default or omission of, the Company;
- (b) any act of another contractor or supplier of the Company;
- (c) any event of Force Majeure;
- (d) the performance of any variation required by Clause 25 (but subject also to Clause 25.3); or
- (e) any suspension of the whole or a portion of the Services under Clause 27 in respect of which the Company must pay to the Contractor associated expenses under Clause 27.3 (but, for the avoidance of doubt, excluding any other suspension),

only to the extent that the actual delay has been caused by that event. Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to above, then to the extent that the delays are concurrent, the Contractor will not be entitled to an extension of time for the Completion Date. Without limiting this Clause, the Company may, in its absolute discretion, extend the Date for Completion.

# **18 PROTECTION**

## **18.1 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 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.

## **18.2 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 Services, the Contractor must:

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

## **18.3 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.

## **18.4 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 paragraph (a).
- (c) Time lost in complying with this Clause is treated as a suspension of work required by the Company Representative under Clause 27.

# **19 PASSING OF PROPERTY IN INCIDENTAL GOODS**

## **19.1 Passing of title in Incidental Goods**

Title in the Incidental Goods or any self sustaining part or separately identifiable unit of the Incidental Goods to be supplied by the Contractor under this Contract passes to the Company upon the earlier of:

- (a) payment in respect of those Incidental Goods, or self sustaining part or separately identifiable unit of the Incidental Goods, by the Company (including by way of



payment to the Contractor pursuant to Clause 33.5(*Termination by the Company for Force Majeure*); and

- (b) the Company or Company's Representative taking delivery of those Incidental Goods, or self sustaining part or separately identifiable unit of the Incidental Goods.

## **19.2 Contract to mark and insure Incidental Goods**

After title in Incidental Goods has passed to the Company, the Contractor must in respect of the Incidental Goods that remain in the Contractor's possession:

- (a) clearly mark on all such Incidental Goods that they are the property of Company; and
- (b) insure them against loss or damage.

## **20 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.

## **21 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.

## **22 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.

## **23 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.

## **24 ASSIGNMENT AND SUB-CONTRACT**

### **24.1 Consent required**

- (a) This Contract is personal to the Contractor and the Contractor must not assign all or any part of its rights or obligations under it, without the prior written consent of the Company.
- (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.

## **24.2 Terms of sub-contract**

- (a) If the Contractor engages a Sub-contractor with prior written approval as contemplated under Clause 24.1, the Contractor:
  - (i) must ensure the work performed by the Sub-contractor meets the requirements of this Contract;
  - (ii) 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;
  - (iii) must ensure that the sub-contract is immediately terminable, and the Sub-contractor vacates the Company's property immediately, if this Contract is terminated;
  - (iv) must not agree to any reservation of ownership of Incidental Goods by the Sub-contractor that would conflict with Clause 19;
  - (v) must ensure that the benefit of the sub-contract is freely assignable to the Company;
  - (vi) without limiting paragraph (b), must ensure that the sub-contract contains the terms contemplated by Clause 35.4 (Intellectual Property) and Clause 37(c), Clause 37(c)(Apportionment of Liability) and other terms required to be incorporated pursuant to other provisions of this Contract; and
  - (vii) must ensure that each Sub-contractor covenants separately with the Contractor:
    - (A) to permit the Company Representative to have access at all times to the Services being performed by that Sub-contractor; and
    - (B) otherwise to observe this Contract as if that Sub-contractor were a party to it.
- (b) The terms of every sub-contract must be no less stringent than the terms of this Contract, provided that the Contractor may include in any sub-contract all terms that the Contractor considers necessary to maintain control over the work to be performed by the Sub-contractor and to allow it to comply with all obligations under this Contract.

## **24.3 Company approval**

Without limiting Clause 24.1(b), the Company's approval of any sub-contract may be conditional on the satisfaction of conditions specified by the Company, including:

- (a) the Contractor providing all information required by the Company in relation to the Sub-contractor;
- (b) the Contractor demonstrating to the Company's satisfaction that the proposed Sub-contractor is of sound financial standing and is capable of providing the Services to be sub contracted; and
- (c) the Contractor bearing any costs incurred by the Company in giving its approval.

## **24.4 Contractor obligations survive**

- (a) No permitted assignment or sub-contract will in any way relieve the Contractor from the performance of any of its obligations, or its Liabilities, under this Contract.

- (b) Each Sub-contractor will be considered as the agent and representative of the Contractor, as between the Contractor and the Company. The acts and omissions of each Sub-contractor and the Sub-contractor's Personnel will be deemed to be the acts and omissions of the Contractor, for which the Contractor is responsible under this Contract.
- (c) No Sub-contractor will have any rights under this Contract against the Company or be entitled to receive any payment from the Company under this Contract. If requested by the Company, the Contractor must procure that each Sub-contractor unconditionally acknowledges the terms of this paragraph (c) by written notice to the Company.

## **24.5 Replacement of Sub-contractor**

The Company may, by providing the Contractor with reasonable notice, require the Contractor to replace a Sub-contractor or cease using a Sub-contractor. The Company must have reasonable grounds for the requirement under this Clause, including that it considers that the Sub-contractor is failing to perform its obligations.

## **25 VARIATIONS**

### **25.1 Permitted variations by Contractor**

The Contractor must not alter the Services (including the Scope of Work or timing of delivery of the Services) in any way except:

- (a) as directed or permitted in writing by the Company Representative; or
- (b) as required by any order made under an applicable Law.

### **25.2 Directions by Company for variations**

During the performance of the Services, the Company Representative may by Notice direct or permit the Contractor to alter, amend, omit, add to or otherwise vary any of the Services without prejudice to this Contract. The Contractor must comply with the Notice, and is bound as if any variation made by it were included in this Contract.

### **25.3 Pricing of variation**

- (a) If the Contract Price is a lump sum, the Contractor must confirm a varied Contract Price in accordance with paragraph (c) to the Company before varying the Services. If the parties cannot agree on the varied Contract Price, it will be the amount determined by the Company.
- (b) If the Contract Price is to be determined by the Schedule of Rates, those rates must be used by the Contractor to calculate the cost of any variation and this cost must be confirmed by the Company. If the parties cannot agree on the varied Contract Price, it will be the amount determined by the Company.
- (c) Within 10 days of the date on which a variation is directed or permitted, the Contractor must submit to the Company a statement advising of its opinion (if any such opinion is formed) that a difference in the Contract Price will arise as a result of the variation and will advise the approximate value of the cost difference.
- (d) Within 30 days of the date on which a variation is directed or permitted, the Contractor must submit to the Company a detailed statement of either the cost of the variation or a detailed statement as to why the Contractor has been unable to

state the cost of the variation in which case the Contractor must provide the detailed statement of costs as soon as possible thereafter.

- (e) Where the variation results in an increase in the Contract Price or has an effect on the Approved Services Program, or other specified dates or milestones, the Company will be relieved from any obligation to consider or to pay such increase, or make any such adjustment, under Clause 17.5 if:
  - (i) the statement referred to in paragraph (c) is submitted later than the period of 10 days; or
  - (ii) the statement referred to in paragraph (c) is submitted within the period of 10 days but the statement referred to in paragraph (d) is submitted later than the period of 30 days,

unless in either case the Company is satisfied (in its absolute discretion) the Contractor was prevented from submitting the statement within the required periods for reasons beyond its control.

## **25.4 Contractor's records of time and cost**

If the Company Representative directs that any work be carried out as Dayworks, the Contractor must record for each day, in a manner approved by the Company Representative:

- (a) the time spent by each item of plant and Equipment used for the execution of such Dayworks; and
- (b) the names and time spent by all Personnel involved in such Dayworks,

which records may be noted as true and correct or otherwise by the Company Representative. The Contractor's records of time, Personnel and costs must be presented to the Company Representative for agreement within 24 hours of the work being undertaken. If not so presented, actual costs will be deemed to have been waived by the Contractor and the Company will be relieved of any obligations to pay such costs.

## **26 CLAIMS**

- (a) The Contractor acknowledges that all Claims by the Contractor in connection with this Contract including the Services (other than a claim for payment of any part of the Contract Price) are subject to this Clause.
- (b) Any Claim made by the Contractor must be in writing and must specify:
  - (i) the legal basis for the Claim, and if based on a term of this Contract, the specific term must be clearly identified;
  - (ii) the facts relied on in support of the Claim in sufficient detail to permit verification;
  - (iii) the amount or likely amount of the Claim and the manner in which the amount has been calculated; and
  - (iv) any measures taken by the Contractor to minimise the costs, loss, damage, delay or disruption incurred or sustained by the Contractor as a result of the circumstances the subject of the Claim.
- (c) Subject to any other provision of this Contract which provides a time limit in which to bring a Claim, the Contractor will have no right to submit any Claim against the Company whether in contract or tort (including negligence) or unjust enrichment or insofar as legally possible

pursuant to any other principle of law in respect of any matter, fact or thing whatsoever arising out of or in connection with or under this Contract, or the Services, unless:

- (i) the Contractor has given to the Company notice in writing not later than 30 days after the first occurrence of the events or circumstances on which the Claim is based; and
- (ii) the form of the Claim complies with paragraph (b).

## **27 SUSPENSION OF WORK**

### **27.1 Right to suspend**

The Company Representative may by Notice require the Contractor to suspend the whole or any portion of the Services, for any reason. If it is possible to estimate the length of the suspension, the Notice of suspension must provide an estimate.

### **27.2 Contractor obligations**

Upon receipt of a Notice of suspension, the Contractor must:

- (a) suspend the Services as directed by the Company Representative;
- (b) at its cost, immediately remove all its Personnel, Equipment and other substances brought onto the Site by it or its Personnel, unless directed otherwise by the Company Representative;
- (c) take all reasonable steps to reduce any expense or cost consequent upon the suspension;
- (d) if requested by the Company Representative to do so, re-direct the labour force to work on a portion of the Services unaffected by the reason for the suspension; and
- (e) promptly comply with any direction from the Company Representative to recommence work.

### **27.3 Company obligations**

The Company:

- (a) must pay to the Contractor all reasonable and direct expenses and costs arising from a suspension of the Services under Clause 27.1 of a minimum continuous duration in excess of 12 hours unless the suspension is due directly or indirectly to:
  - (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; and
- (b) may, when the reason for any suspension no longer exists, direct the Contractor in writing to recommence work on the Services or on the relevant part of the Services; and
- (c) to avoid doubt has no obligation to pay any compensation to the Contractor for a suspension of the Services under Clause 27.1 of a continuous duration of less than 12 hours.

## **27.4 Survival of Contract**

Suspension of the Services in accordance with this Clause does not frustrate or terminate this Contract.

## **28 AUDIT**

(a) The Contractor must:

- (i) maintain, and ensure that all Sub-contractors maintain, true and accurate records including computer print outs, personnel books (including statements of payments and contributions made by the Contractor or Sub-contractor to any superannuation scheme), correspondence, instructions, plans, drawings, receipts, time sheets for hours worked, invoices and memoranda in relation to the Services and any expenditure incurred on the Company's behalf, including any information that may be required by the Company for its own reporting purposes under any Carbon Scheme or NGERs regime (without limiting Clause 9.12); and
- (ii) preserve those records for at least five years after the earlier of the Completion Date or the termination of this Contract.

(b) The Contractor must give the Company access to:

- (i) the records referred to in paragraph (a); and
- (ii) information sufficient for the Company to satisfy itself that all Services are provided according to the rates specified in, and in accordance with the requirements of, this Contract,

as reasonably requested by the Company from time to time during the term of this Contract and for at least five years after the earlier of the Completion Date or the termination of this Contract to enable the Company to review and verify:

- (iii) the costs and quantities of cost reimbursable items;
  - (iv) the quantities of any items chargeable by specified rate;
  - (v) invoices; and
  - (vi) compliance by the Contractor and Sub-contractors with applicable Laws and Applicable Policies and the other requirements of this Contract.
- (c) If any costs are in dispute and the Contractor or Sub-contractor refuses to provide the access required by the Company, those costs are taken to be included in the Contract Price and are not allowable as reimbursable costs.

## **29 INVOICES AND PAYMENTS**

### **29.1 Invoices**

Each invoice rendered by the Contractor must:

- (a) be substantiated with such supporting information as the Company may reasonably require;
- (b) contain a description of the Services provided in the period covered by the invoice;
- (c) be in a format approved by the Company Representative; and
- (d) if GST is payable on a Taxable Supply made by the Contractor to the Company under this Contract, constitute a Tax Invoice.

## **29.2 If Contract Price is to be determined by Schedule of Rates**

If the Contract Price is to be determined by a Schedule of Rates or if the Contract Price is a lump sum but staged monthly payments of the lump sum are provided for in accordance with Schedule 3:

- (a) the Contractor must submit invoices monthly in arrears; and
- (b) subject to Clauses 15.3(d), 29.5(b), 30, 31 and 33.1, the Company must pay the amount of any invoice by the end of the month following the month in which it received the invoice.

## **29.3 If Contract Price is a lump sum**

If the Contract Price is a lump sum, subject to Clauses 15.3(d), 29.5(b), 30, 31 and 33.1, the Company must pay the Contract Price to the Contractor within 30 days after the later of:

- (a) the Completion Date; and
- (b) receipt of the Contractor's invoice.

## **29.4 Contract Price to be inclusive**

Except to the extent otherwise expressly stated in this Contract, the Contract Price is deemed to include all expenses incurred by the Contractor in relation to the provision of the Services (including overheads, materials and supplies, consumables, mobilisation and demobilisation, attendance of Personnel at Company inductions, training sessions or medical examinations (including the cost of such medical examinations), transportation, accommodation and sustenance of Personnel and transportation and storage of equipment, materials and supplies, wages, salaries, overtime, bonuses, premiums, employee benefits, allowances, holiday pay, superannuation, insurance, social security benefits, payroll taxes, premiums for insurance, payroll costs, costs incurred by the Contractor under any Carbon Scheme, costs associated with NGERS reporting including costs incurred under clause 9.12, any other contributions and benefits imposed by any applicable Law or agreement and all other costs and expenses).

## **29.5 Method of payment**

- (a) The Company must make all payments to the Contractor by cheque posted to the Contractor at its address in this Contract, or by electronic funds transfer to an account nominated by the Contractor in writing. The payment by the Company of any amount will not constitute acceptance of the Services or admission of any liability or of any obligation to make that payment.
- (b) If this Contract requires payment outside Australia or in a currency other than Australian dollars or in a manner subject to control by any authority, the Company is not obliged to make any payment until the Contractor provides it with evidence that the Contractor has obtained all necessary Services Approvals prior to the making of the payment.

## **30 CLAIMS AND LIENS**

Before making any payment or releasing any security, the Company may require the Contractor to provide a statutory declaration by its representative (as nominated by the Contractor), or other evidence satisfactory to the Company, that any Claims or demands against the Contractor which might remain or become a lien or charge against the Services have been paid or satisfied.

## 31 WITHHOLDING PAYMENTS AND SET-OFF

### 31.1 Set-off

The Company may deduct from any money due or becoming due to the Contractor the following amounts (plus any GST in respect of the deductions):

- (a) all debts and moneys due from the Contractor to the Company under or in relation to this Contract or otherwise;
- (b) all Liabilities which the Company has paid or incurred and which the Contractor or a Sub-contractor is liable to bear, pay or reimburse to the Company;
- (c) the amount of any damage claimed by any other contractor to the Company as a result of the Services; and
- (d) any amount that it is required or authorised by Law to deduct.

### 31.2 Withholdings and other deductions

- (a) If the Contractor fails to perform or observe its obligations under this Contract, the Company may, without prejudice to any other right or remedy that it has under this Contract and without giving prior notice to the Contractor, withhold the amount which the Company Representative determines is adequate to compensate the Company for the Contractor's failure and any costs, charges or expenses incurred by the Company in connection with that failure or the rectification of it until the failure has been remedied.
- (b) If the Company is required by Law to withhold or deduct an amount from any amount payable to the Contractor under or in relation to this Contract (**Withheld Amount**), the Company shall be entitled to do so, and if the Company is required to remit the Withheld Amount to a Government Agency, it shall be entitled to do so. The Withheld Amount, whether remitted to a Government Agency or otherwise, will be treated as having been paid to the Contractor when it is withheld, deducted or remitted (as the case may be). The Company will not be in any way liable to pay the Contractor any amount on account of the Withheld Amount whether such amount is remitted to a Government Agency or otherwise.

### 31.3 Notification by Company

The Company must notify the Contractor of the details of:

- (a) any deductions made by it under Clause 31.1 or 31.2(b); and
- (b) any amounts withheld by it pursuant to Clause 31.2(a),

in writing at or before the time that the payment would otherwise be due to the Contractor.

### 31.4 Treatment of deductions

The Contractor must treat any deduction made in accordance with Clause 31 as a payment to the Contractor.

## 32 DIRECT PAYMENT

- (a) Without prejudice to the Company's rights under any other provision of this Contract, the Company may pay out of any amount due or to become due to the Contractor, any money



owing by the Contractor to any of its Personnel or any supplier of goods, materials or labour relating to the Services.

- (b) Any payment made by the Company under paragraph (a) is deemed to have been paid to the Contractor under this Contract and the Company will have no liability to the Contractor in respect of such payment.

## **33 TERMINATION**

### **33.1 Termination by Company for cause**

If:

- (a) the Contractor commits a breach of any of its obligations under this Contract;
- (b) the Contractor breaches any term of this Contract relating to safety or the Environment;
- (c) there is a change in the person or persons in effective control of the Contractor or the business conducted by the Contractor with respect to the performance of the Services; or
- (d) there is a change in Key Personnel, not approved in writing by the Company as required under Clause 7, or the Key Personnel are not available to perform the Services,

then the Company may, by Notice or further Notice to the Contractor (as the case may be), immediately:

- (e) elect to wholly or partly suspend payment under this Contract until the default is remedied; or
- (f) without prejudice to its other rights under this Clause, whether by itself or through engaging others, remedy the default (including taking the Services or any part of it remaining to be completed out of the Contractor's control and arranging for itself or other contractors to complete the Services); or
- (g) terminate this Contract.

### **33.2 Services taken out of the control of the Contractor**

- (a) If the Company exercises its rights under Clause 33.1(f):
  - (i) any moneys due or becoming due to the Contractor may, at the Company's discretion, be deducted pursuant to Clause 31.1 for any Liabilities the Company incurs or suffers to remedy the default (including for moneys paid to other contractors to complete the Services, and any premium payable in respect of expedition of the Services). If the moneys due to the Contractor are insufficient to pay the Company for such Liabilities, the difference will be a debt due and owing and immediately payable by the Contractor to the Company; and
  - (ii) the Company is entitled to, without the Contractor being entitled to any compensation:
    - (A) take possession of and use any Equipment for the purpose of completing the Services; and
    - (B) contract with any Contractor's Personnel.

- (b) If the Company exercises its right to terminate this Contract under Clause 33.1(g), the Company's rights under this Contract would have been the same as they would have been at common law had the Contractor repudiated this Contract and the Company elected to treat this Contract as at an end and recover damages.

### **33.3 Termination by Contractor for cause**

- (a) 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.
- (b) If the Contractor stops work in accordance with paragraph (a)(iv), the Company must pay the Contractor any reasonable additional expense incurred by the Contractor as the result of that stoppage and the subsequent resumption of work.
- (c) If the Contractor terminates this Contract under paragraph (a)(v), then subject to Clauses 29.5(b), 30, 31 and 32 the Company must pay to the Contractor:
  - (i) the value of all parts of the Services performed in accordance with this Contract, as at the date of termination, determined in accordance with Clause 33.6(c)); and
  - (ii) the cost of Incidental Goods properly ordered for the Services but not yet incorporated in them for which the Contractor has paid or for which payment by the Contractor is due.
- (d) Except as expressly provided in this Clause, the Contractor must not make any Claim against the Company for any termination under this Clause.

### **33.4 Termination for insolvency**

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.

### **33.5 Termination by Company for convenience or Force Majeure**

- (a) The Company may:
  - (i) in its absolute discretion and without cause, terminate this Contract in whole or in part by giving the Contractor Notice; or
  - (ii) terminate this Contract if a Force Majeure continues for more than 90 consecutive days.

- (b) If the Company so terminates this Contract under paragraph (a), then subject to Clauses 29.5(b), 30, 31 and 32, the Company must pay to the Contractor:
  - (i) the value of all parts of the Services performed in accordance with this Contract, as at the date of termination, determined in accordance with Clause 33.6(c);
  - (ii) the cost of Incidental Goods properly ordered for the Services but not yet incorporated in them for which the Contractor has paid or for which payment by the Contractor is due; and
  - (iii) the reasonable direct costs to the Contractor of demobilising from the Site, less any amounts previously paid.
- (c) Except as expressly provided in this Clause, the Contractor must not make any Claim against the Company for any termination under this Clause.
- (d) For the avoidance of doubt, this Clause does not apply upon the expiry of this Contract.

### **33.6 Effect of termination**

- (a) Upon termination of this Contract, the Contractor must:
  - (i) stop the Services;
  - (ii) not place any further orders nor enter into any further sub-contracts in respect of the Services;
  - (iii) permit the Company or its nominee to take possession of all Incidental Goods and all things or goods incorporated in the Services or on the Site and purchased for incorporation in the Services;
  - (iv) to the extent desired by the Company, assign to the Company or its nominee, all rights and benefits of the Contractor under existing commitments with Sub-contractors and suppliers;
  - (v) take all reasonable steps to protect property in the possession of the Contractor in which the Company has or may acquire an interest;
  - (vi) do only work that is specified in the Notice of termination;
  - (vii) remove the Contractor's Equipment, machines, tools, sheds and materials from the Site unless otherwise directed by the Company Representative;
  - (viii) if the Company requests, allow the Company or its nominee to take possession of and use the Equipment for the purpose of completing the Services;
  - (ix) deliver and transfer to the Company by written instrument all Services the Contractor performed or provided up to the date of termination including delivering at any location on or around the Site all Incidental Goods (if applicable) or other goods which have not been incorporated into the Services;
  - (x) take any other action relating to the termination of this Contract which the Company reasonably requires; and
  - (xi) hand over to the Company Representative all data and documents relating to the Services prepared prior to the date of termination.

- (b) The Contractor must perform any part of the Services in respect of which this Contract is not terminated.
- (c) The value of any part of the Services in respect of which this Contract is terminated is:
  - (i) if this Contract includes a Schedule of Rates by reference to which the value of that part of the Services can be determined, the value calculated by the Company Representative having regard to that schedule; or
  - (ii) in any other case, the amount:
    - (A) agreed by the parties; or
    - (B) failing such agreement, determined by the Company, to be the fair value of that part of the Services.
- (d) Termination or expiry of this Contract 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 8(d) (security for performance), 15 (insurance), 24.2 (Terms of sub-contract), 28 (audit), 34 (confidentiality and security) and 36 (indemnity).
- (e) Except if this Contract is terminated in accordance with Clause 33.3 (termination by Contractor for cause) or Clause 33.5 (termination by Company for convenience or Force Majeure), the Company's use of the Equipment to complete the Services will:
  - (i) not entitle the Contractor to any compensation; and
  - (ii) be without responsibility for loss or damage.
- (f) Upon completion of the Services, the Company will notify the Contractor by Notice that the Equipment will be released to the Contractor at or near the Site. The Contractor must then remove the Equipment at its own cost.
- (g) Without prejudice to the Company's other rights, if in the Company's opinion the Contractor has failed to pay any moneys due to the Company under this Contract, the Company may sell and dispose of the Equipment. The proceeds of sale will be applied towards payment of such moneys. Any moneys which are not recovered from the proceeds of sale will continue to be a debt due and recoverable from the Contractor by the Company.
- (h) If this Contract is terminated pursuant to Clause 33.3 (termination by Contractor for cause) or Clause 33.5 (termination by Company for convenience or Force Majeure), the Contractor will be entitled to reasonable and direct costs that the Contractor incurs for the Company's use of the Equipment.

## **34 CONFIDENTIALITY AND SECURITY**

### **34.1 Maintain confidentiality**

The Contractor must not, and must ensure that the persons for whom it is responsible do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else, or

- (b) use for a purpose other than the performance of the Services, any of the Confidential Information.

### **34.2 Permitted copies**

The Contractor may make copies of written or computer stored materials incorporating Confidential Information only if those copies are necessary for the purpose of performing the Services and must:

- (a) return to the Company all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

within 7 days of:

- (c) receipt of a request from the Company to do so; or
- (d) termination or expiry of this Contract,

and must provide a certificate to the Company, if requested, that these obligations have been complied with.

### **34.3 Contractor obligations**

- (a) The Contractor must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Contract and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.
- (b) The Contractor must restrict disclosure of the Confidential Information to Personnel who need to know it in order to perform the Services and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements similar in effect to this Clause.
- (c) The Contractor must not take or permit any person for whom it is responsible to take photographs or sketches of the Services or of any part of the Company's premises or operations except for the purpose of the performance of this Contract or with the consent of the Company.

### **34.4 Permitted disclosure**

Clause 34.1 does not affect disclosures required by Law, other than section 275 of the PPSA (except where required by section 275(7)).

### **34.5 Public announcements**

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:

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

## **35 INTELLECTUAL PROPERTY**

### **35.1 Ownership of Intellectual Property in Discoveries**

The Contractor acknowledges and agrees that:

- (a) nothing in this Contract grants it any Intellectual Property or other rights in Discoveries;
- (b) Intellectual Property in all Contract IP vests exclusively in the Company;
- (c) Intellectual Property in all Discoveries arising as a result of the provision of the Services or otherwise will vest exclusively in the Company; and
- (d) the Contractor will execute and ensure that the Personnel execute all documents that are necessary or desirable to ensure all Discoveries and all Intellectual Property rights in them become and remain vested in the Company.

### **35.2 Licence to Contractor**

The Company grants to the Contractor a non-exclusive, non-transferable, revocable, royalty-free licence to use the Discoveries and the Intellectual Property in them during the term of this Contract solely as reasonably required to perform the Services.

### **35.3 Licence to Company**

The Contractor grants to the Company a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use the Contractor IP as necessary for the Company to enjoy the benefit of the Services for the purposes of the Company's business and the business of the Related Bodies Corporate of the Company. This licence includes the right to sublicense any Contractor IP to:

- (a) any Related Body Corporate of the Company or assignee of assets of the Company or any Related Body Corporate of the Company;
- (b) any third party engaged by the Company or any Related Body Corporate of the Company, for the purpose of providing services to the Company or any Related Body Corporate of the Company; or
- (c) any third party to whom the Company or any Related Body Corporate of the Company provides services from time to time.

### **35.4 Contractor obligations**

The Contractor must:

- (a) promptly disclose all Discoveries to the Company;
- (b) ensure that any sub-contract the Contractor enters into in relation to this Contract contains an assignment by the Sub-contractor to the Company (or to the Contractor, so as to permit the Contractor to assign to the Company) of all Contract IP created by the Sub-contractor;
- (c) provide, and ensure all its Personnel provide, all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP); and

- (d) upon request from the Company, obtain from each of its Personnel an irrevocable and unconditional consent, in favour of the Company, its customers, successors and assigns (which is legally enforceable by the Company) for the Company to perform any act or do any thing which, but for that consent, would infringe the moral rights of that Personnel.

### **35.5 Third Party Intellectual Property**

The Contractor warrants that:

- (a) where a third party owns any part of the Contractor IP, the Contractor has authority from that third party to grant the Company a licence to use the relevant Contractor IP on the terms of this Contract; and
- (b) as at the Date of Contract, the Contractor is not aware of any Claim for infringement of Intellectual Property arising out of the performance of the Services or the supply of any Contractor IP. The Contractor must notify the Company in writing promptly upon becoming aware of any such Claim.

## **36 INDEMNITY**

### **36.1 Indemnity**

Notwithstanding any other provision of this Contract, the Contractor must indemnify the Company and its Related Bodies Corporate and each of their officers, agents and employees (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:

- (a) the breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under this Contract;
- (b) any act or omission by the Contractor or its Personnel arising out of the performance or non-performance of this Contract;
- (c) any Environmental Event which occurs after the Date of Contract which is caused by the Contractor or its Personnel at the Site;
- (d) any fraudulent, reckless or negligent act or omission by the Contractor or any of its Personnel in the course of performing the Services;
- (e) injury to, or death of any person, or loss or damage of or to any property of the Indemnified Parties caused by the Contractor or any of its Personnel;
- (f) any Claim or lien over the Services, Incidental Goods, Equipment, labour, or services provided in connection with the performance of the Services;
- (g) any claim by any third party that it has Intellectual Property rights which have been infringed in the course of the Services; or
- (h) any claims made against an Indemnified Party by any of the Contractor's Personnel in respect of 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.

Nothing in paragraphs (a) to (h) (inclusive) limits the application of any other paragraph in this Clause.

### **36.2 Costs includes legal costs on solicitor – own client basis**

In this Clause, Liabilities includes all reasonable legal costs and expenses on a solicitor and own client basis.

### **36.3 No requirement for expense before enforcing indemnity**

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.

### **36.4 Exclusions**

The Contractor will not be liable under Clause 36.1 to the extent that the Liability was solely caused by (as the case requires) the Company's or an Indemnified Party's negligence or wilful default.

### **36.5 Company as trustee**

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.

## **37 APPORTIONMENT OF LIABILITY**

- (a) 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 whether such rights, obligations or Liabilities are sought to be enforced as a Claim in contract, tort (including negligence), equity, under statute or otherwise at Law.
- (b) Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations and Liabilities are sought to be enforced by a Claim in contract, tort (including negligence), in equity, under statute or otherwise at Law.
- (c) The Contractor further agrees that:
  - (i) in each sub-contract into which it enters for the carrying out of the Services under this Contract, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 1F of the Civil Liability Act in relation to all rights, obligations or Liabilities under each sub-contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or in tort or otherwise; and
  - (ii) it will require and ensure that each Sub-contractor will include in any further agreement that it enters into with others for the performance of the Services, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 1F of the Civil Liability Act in relation to all rights, obligations or Liabilities under such further contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract, in tort or otherwise.
- (d) If any provision of this Contract is illegal, void, invalid, unenforceable for any reason, all other provisions which are self sustaining and capable of separate enforcement must, to the maximum extent permitted by Law, be and continue to be valid and enforceable.



### **38 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.

### **39 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, facsimile 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 transmitted by a facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day; or
  - (v) 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, email address or facsimile number by Notice to the other party.

## **40 GST**

### **40.1 Input Tax Credit**

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 (in this Clause 40, a "**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.

### **40.2 Taxable Supply**

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.

### **40.3 Registration for GST**

The Contractor must do all things necessary to ensure that it is registered for GST purposes. The Contractor is required to give Notice to the Company if it is not GST registered. If for any reason the Contractor ceases to be GST registered, the Contractor must give the Company Notice within 7 days of it ceasing to be registered.

### **40.4 Requirement for ABN**

Unless the Company is absolutely satisfied that an exemption in Section 12-190 of Schedule 1 to the Taxation Administration Act 1953 (Cth) applies, the Company is not required to make any payment to the Contractor unless the Contractor has given Notice to the Company of its ABN. If, for any reason, the Contractor ceases to be ABN registered, the Contractor must give Notice to the Company within 7 days.

## **41 OTHER TAXES AND CHARGES**

Unless otherwise expressly stated in this Contract, the Contractor must pay all Taxes, charges, fees and other amounts due in respect of this Contract (including the Services) 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.

## **42 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* (C'th) (**Fuel tax credit**) in relation to the fuel, acknowledging that any such entitlement vests solely in the Company.

#### 43 ADDITIONAL OBLIGATIONS AND INDEMNITY

- (a) 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 jurisdictions;
  - (iii) at all times comply with the Voluntary Principles on Security and Human Rights and other similar Laws, codes or principles in other applicable jurisdictions;
  - (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 jurisdictions;
  - (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.
- (b) 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.
- (c) The Contractor acknowledges that it has received the Company's Code of Business Principles and Ethics.
- (d) 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.

#### 44 RESOLUTION OF 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 team to resolve the Dispute (each a "Dispute Representative").
- (c) If the Dispute is not resolved within 14 days of the Dispute being referred to the respective Dispute Representatives, then the Contractor must appoint its chief executive officer and the

Company must appoint its Executive Vice President of Australian operations to resolve the Dispute (each a "CEO Representative").

- (d) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective CEO Representatives, then, subject to paragraph (e), either Party may refer the Dispute to litigation.
- (e) If the Dispute is not resolved within 14 days of the Dispute being referred to the respective CEO Representatives, the parties may agree (but are not obliged to agree) in writing to refer the Dispute to expert determination before the Dispute is referred to litigation in accordance with paragraph (d), if required. If the parties so agree:
  - (i) the parties must, within 28 days of agreeing to refer the Dispute to expert determination agree on an expert and the terms of the appointment, failing which, the expert will be appointed and the terms of appointment determined by the President of the Institute of Arbitrators and Mediators Australia ("IAMA");
  - (ii) the expert must be professionally qualified in the discipline relevant to the nature of the Dispute with not less than 10 years relevant experience and who does not act as adviser to either party;
  - (iii) each party may make a submission to the expert within 7 days of the expert's appointment;
  - (iv) the expert may in his or her discretion require further information from one or more of the parties for the purpose of making the expert's determination and may determine the procedures to be followed in making such determination;
  - (v) the cost of the expert will be borne by the parties in such manner as the expert determines (having regard to the merits of the Dispute);
  - (vi) the expert must finish his or her determination no later than 30 Business Days after his or her appointment;
  - (vii) the expert's determination will be in the form of an indicative appraisal and non-binding on the parties, unless otherwise agreed;
  - (viii) the Dispute resolution process provided in paragraph (d) may be stayed during the period commencing on the date the parties agree to refer the Dispute to expert determination and the date of the expert's determination under this Clause; and
  - (ix) unless the parties agree that the expert's determination is binding, immediately upon receipt of the expert's determination, the Dispute must be referred back to the respective CEO Representatives in an attempt to resolve the Dispute in the remaining period provided in paragraph (d).
- (f) Nothing in this Clause prevents a Party from seeking any interlocutory relief which may be required in relation to the Contract.
- (g) Despite the existence of any Dispute as contemplated by Clause 44(a), the Contractor must:
  - (i) continue to carry out the Contractor's obligations; and
  - (ii) perform its other obligations under this Contract.

## **45 MISCELLANEOUS**

### **45.1 Assignment by Company**

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).

#### **45.2 Joint and several Liability**

If a Contractor comprises two or more parties:

- (a) a Liability of those parties under this Contract is a joint Liability of all of them and a several Liability of each of them;
- (b) a right given to those parties under this Contract is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

#### **45.3 Rights cumulative**

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.

#### **45.4 No waiver**

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.

#### **45.5 Severability**

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.

#### **45.6 Amendments in writing**

Modifications and amendments to this Contract must be in writing signed by each of the parties.

#### **45.7 Costs**

Except where expressly otherwise provided, each party bears its own costs in relation to the negotiation and performance of this Contract.

#### **45.8 Warranty**

The Contractor represents and warrants to the Company that at the time of entering into this Contract the Contractor employs greater than 20 persons.

#### **45.9 Governing Law and jurisdiction**

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.

**EXECUTED** as an agreement.

**SIGNED** by **ANGLOGOLD ASHANTI** )  
**AUSTRALIA LIMITED** by: )  
 ) .....  
Name:  
Position:

**SIGNED** on behalf of )  
[\*CONTRACTOR'S NAME\*] by: )  
 ) .....  
Name:  
Position:

## **SCHEDULE 1**

### **SCOPE OF WORK**

*[To include a description of the Services, and set out the technical and functional specifications of the Services, including to describe any deliverables and any Incidental Goods and Equipment.]*

**SCHEDULE 2**  
**BANK GUARANTEE**

**THIS DEED** is made [\*Insert Date\*]

**BY:** [\*Insert Name and ACN of Bank\*] of [\*Insert Address of Bank\*] (the “**Guarantor**”)

**IN FAVOUR OF:** ANGLOGOLD ASHANTI AUSTRALIA LIMITED ACN 008 737 424 (the “**Company**”)

**RECITALS:**

- A. The Company has contracted or is about to contract with [\*Insert Contractor's Name\*] or is about to contract with [\*Insert Contractor's Name\*] of [\*Insert Contractor's Address\*] (the “Contractor”) for the performance of the work referred to in this Contract no [\*Insert Contract Number\*]
- B. The Guarantor agreed to provide this guarantee.

**THIS DEED WITNESSES:**

- 1. The Guarantor must immediately upon receipt of notice from the Company requiring it to do so, unconditionally pay to the Company a sum which, when aggregated with all other payments demanded by the Company and made by the Guarantor under this deed, does not exceed [\*Insert \$ amount\*], notwithstanding any communication to the Guarantor from the Contractor.
- 2. The liability of the Guarantor under this deed will not be released or discharged (in whole or in part) by:
  - (a) any time, concession, waiver or other indulgence being given by the Company to the Contractor (or any surety) for or in relation to the observance of performance of the Contractor's obligations under this Contract;
  - (b) any arrangement made between the Company and the Contractor with or without the knowledge or consent of the Guarantor;
  - (c) any variation being made to the terms of this Contract or its subsequent termination;
  - (d) any other security or contractual obligations to secure the performance of the Contractor's obligations under this Contract being or not being taken, held, renewed, varied or enforced by the Company or that security being void, defective, informal or unenforceable;
  - (e) any of the Contractor's obligations under this Contract being discharged;
  - (f) the liquidation, bankruptcy or insolvency of the Contractor or Guarantor; or
  - (g) anything done or omitted to be done by the Company or anything else which, under the law relating to sureties might, but for this deed, operate to wholly or partially release or discharge the Guarantor from that liability.
- 3. The guarantee and indemnity given under this deed is a continuing guarantee and indemnity and remains in force until:
  - (a) the obligations of the Contractor under this Contract have been duly performed and satisfied in full; or
  - (b) the Company releases the Guarantor by an express release in writing; or



- (c) the Guarantor has paid the Company in aggregate [\*Insert \$ amount\*] plus GST if any.
4. The Company may enforce this deed without first making any demand or taking any action or proceedings to enforce its rights or remedies against the Contractor.
5. This Deed is governed by the laws in force in the State or Territory of Australia where this Contract is to be performed. The Guarantor submits to the non-exclusive jurisdiction of the courts of the State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with this guarantee.
6. The Guarantor must pay any stamp duty on this deed.

EXECUTED as a deed.

**THE COMMON SEAL** of [\*Insert Name and ACN of )  
Bank\*] the affixing of which is witnessed by: )  
)

---

Secretary

Name (printed):

---

Director

Name (printed):

**SCHEDULE 3**

**CONTRACT PRICE/LUMP SUM/SCHEDULE OF RATES**