

**GENERAL CONDITIONS OF CONTRACT FOR SITEWORKS**

**1. DEFINITIONS**

In these terms and conditions, unless the context clearly requires a different interpretation, the words and expressions set out below shall have the meanings assigned to them, and cognate expressions shall have corresponding meanings.

- 1.1. **BEE** means broad-based black economic empowerment, as set out in the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (the Mining Charter).
- 1.2. **Business Day** means any calendar day, other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.3. **Commencement Date** means the date on which the Contract shall commence, as set out in the Contract.
- 1.4. **Company** means Sibanye Gold Limited, its subsidiaries, and/or associated companies from time to time.
- 1.5. **Company Employee** means any person in the employ of the Company.
- 1.6. **Company Representative** means the person nominated by the Company to act on its behalf within the ambit of the Contract, or his authorised nominee.
- 1.7. **Company Representative (Commercial)** means the person appointed as the representative to act for and on behalf of the Company as the administering officer for the purpose of the Contract and includes his authorised representative.
- 1.8. **Company Standards** means
  - 1.8.1. the standard health, safety and environmental rules, procedures, codes of procedure and managerial instructions, including the General Health and Safety Requirements;
  - 1.8.2. the procedures and standards of the MHSA;
  - 1.8.3. the Company's ISO 14001 certification requirements, associated environmental management systems, plans, procedures and policies;
  - 1.8.4. the following policies, which are available on the Company's website:
    - 1.8.4.1. the Company's Ethics Policy. and Code of Ethics
    - 1.8.4.2. the Company's Environmental Policy
    - 1.8.4.3. the Company's Human Rights Policy Statement
    - 1.8.4.4. the Company's Labour policy
  - 1.8.5. the Mining Charter.
- 1.9. **Confidential Information** means all information, whether written, oral or in electronic form, concerning the business and affairs of either Party that the other Party obtains or receives as a result of the discussions leading up to or during the performance of the Contract. Confidential Information shall include, but not be limited to, the Contract, all the data of the Company and the Works, Plant and/or other Deliverables, and any written document, including e-mails, pertaining to the Works, Plant and/or other Deliverables.
- 1.10. **Contract** means collectively the Contract and/or purchase order document, together with all Annexures or schedules attached hereto from time to time, constituting one indivisible Contract. No other terms, conditions and/or prices, stated or implied, that may be contained in any tender or quotation or in any written or verbal acknowledgement of, or reference to the Contract, or in any packing slip, waybill, consignment note, invoice or statement relating to the Contract, shall apply, notwithstanding any signature thereto or other express or implied confirmation thereof by any person purporting to act on behalf of the Company.
- 1.11. **Contractor** means any corporate body, partnership or person to which or to whom the Contract has been awarded and shall include the Contractor's legal representatives, successors in title and permitted assigns.

- 1.12. **Contractor's Documents** means the calculations, computer programmes and models, and all other documents of a technical nature supplied by the Contractor under the Contract.
- 1.13. **Contractor's Employee** means any person in the employ of the Contractor, who is on Site and engaged in the execution of the Contract. By extension, it means any employee in the employ of a Subcontractor on Site and engaged in the execution of the Contract under the auspices of the Contractor.
- 1.14. **Contractor's Equipment** means all apparatus, machinery, vehicles, facilities, and other things of whatsoever nature required for the completion of the Works, but does not include Plant, as defined below. It does, however, include such equipment, commonly and in normal usage called 'plant', that is required for the execution of the Contract, but that is not incorporated into the Works and is not a Deliverable in terms of the Contract.
- 1.15. **Contractor's Representative** means the person delegated to act on behalf of the Contractor. The Contractor shall advise the Company, on or before the Commencement Date, of this person's name and contact details and the extent of this person's authority to act on behalf of the Contractor; the Contractor shall keep this information updated.
- 1.16. **Defects Liability Period** means the period, stated in the Contract, during which Contractor shall be liable for the rework, repair or replacement of any defective Works, Plant and/or other Deliverables, or any defective part of such Works, Plant and/or other Deliverables, calculated from:
  - 1.16.1. the date of completion of the Works and/or Plant and/or other Deliverables certified by the Company Representative's signature on the Taking Over Certificate in accordance with Clause 18 (Taking Over) or
  - 1.16.2. in the event of more than one certificate having been issued by the Company Representative under Clause 18 (Taking Over), the respective date so certified.
- 1.17. **Defect** means any part of the Works and/or Plant and/or other Deliverables not completed to the reasonable satisfaction of the Company and, without limiting the generality of the foregoing, including the lack of an essential element or performance for the purpose of which the Works and/or Plant and/or other Deliverables was intended.
- 1.18. **Deliverable** means collectively the Works and Plant and any other thing that the Contractor must provide to the Company in order to meet and satisfy its contractual obligations.
- 1.19. **EFT** means electronic funds transfer.
- 1.20. **Environmental Impact Assessment** means any impact assessment or report required in terms of the National Environmental Management Act 107 of 1998, Environment Conservation Act 73 of 1989, the National Heritage Resources Act 25 of 1999, the Mineral and Petroleum Resources Development Act 28 of 2002 or any other Law.
- 1.21. **Environmental Incident** means any accidental or uncontrolled release or spillage or discharge of any gas, liquid or solid substance onto or into an area that could have a negative impact on the environment, including - without being limited to - the following:
  - 1.21.1. the discharge of highly polluted effluent or any reagent, volatile liquid or other hazardous or harmful substance from the Site that has the potential to significantly impact on surface water and groundwater resources;
  - 1.21.2. any discharge that has resulted or may result in animal, bird or fish kills;
  - 1.21.3. the discharge of slimes directly into a natural watercourse;
  - 1.21.4. overflows of pollution control dams;
  - 1.21.5. spillage of any reagent, volatile liquid or other hazardous substance from any road or rail tanker on the Company's property, or from any of the Company's or Contractor's tankers onto public property or roads;
  - 1.21.6. any discharge of any noxious gas into the atmosphere, which discharge is above the limits set by law;
  - 1.21.7. any discovered pollution, contamination or any discovered hazardous or dangerous substance;
  - 1.21.8. noncompliance with any Environmental Law;
  - 1.21.9. an 'emergency incident' as defined by the National Water Act, Act 36 of 1998 or the National Environmental Management Act, Act 107 of 1998; or
  - 1.21.10. an environmentally related complaint received from any person.

- 1.22. **Environmental Law** means any law concerning the environment including, without limitation, the common law,

- legislation, ordinances or by-laws concerning land use, water use, conservation, biodiversity, heritage, human health, safety or well-being, pollution or environmental degradation, and shall include - without being limited to - the Constitution of the Republic of South Africa 108 of 1996, the National Environmental Management Act 107 of 1998, National Environmental Management: Air Quality Act 39 of 2004, National Environmental Management: Waste Act 59 of 2008, National Environmental Management: Protected Areas Act 57 of 2003, National Environmental Management, Biodiversity Act 10 of 2004, National Nuclear Regulator Act 47 of 1999, Atmospheric Pollution Prevention Act 45 of 1965, Hazardous Substances Act 15 of 1973, Mineral and Petroleum Resources Development Act 28 of 2002, Mine Health and Safety Act 29 of 1996, Environment Conservation Act 73 of 1989, National Water Act 36 of 1998, National Heritage Resources Act 25 of 1999, National Road Traffic Act 93 of 1996, and the Conservation of Agricultural Resources Act 43 of 1983;
- 1.23. **General Health and Safety Requirements** means the relevant Policy for Contractors Working on Site, attached hereto.
- 1.24. **Intellectual Property** shall include, but shall not be limited to, know-how, patents, trademarks and copyrights.
- 1.25. **Intellectual Property Rights** means the rights to any know-how, inventions, discoveries, innovations, technical information and data, prototypes, processes, improvements, design rights, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights.
- 1.26. **MHSA** means the Mine Health and Safety Act, Act 29 of 1996.
- 1.27. **Mini Environmental Impact Assessment** means a report describing the impacts that may result from the execution and completion of the Contract, and will include, as a minimum, a brief description of the Works and/or Plant and/or other Deliverables, a brief description of how the environment may be affected, and a description of how the execution and completion of the Contract will be managed to mitigate, minimise and/or prevent the identified impacts on the environment.
- 1.28. **MPRDA** means the Mineral and Petroleum Resources Development Act, Act 28 of 2002.
- 1.29. **Party** means the Company or the Contractor, as the context requires.
- 1.30. **Performance Guarantee** means the Surety Bond, Demand Bond, or Performance Bond that the Contractor is required to submit to the Company for the performance of the Contractor's obligations under the Contract.
- 1.31. **Personal Information** means personal information as defined in the Protection of Personal Information Act, Act 4 of 2013 (POPI) that the Contractor may acquire or come across in the provision of its Services.
- 1.32. **Plant** means all machinery, equipment, apparatus, materials, articles and any other things of whatsoever nature to be incorporated into the Works or other Deliverable by the Contractor in execution of the Contract.
- 1.33. **Price** means the Price payable by the Company to the Contractor in consideration for the supply of the Deliverables and the successful execution and completion of the Contract, as set out in the Contract.
- 1.34. **Programme** means a schedule of planned activities, directly linked to measurable time scales, dates and/or events for the duration of the Contract.
- 1.35. **Responsible Person** means any Employee of the Contractor who is trained and competent in all aspects of the Works and/or Plant and/or other Deliverables - the site agent.
- 1.36. **Signature date** means the date of signature of the Contract by the Party that is the last to sign.
- 1.37. **Site** means the place or places on the Company's property where the Works must be carried out and/or the Plant must be installed, or any part of the Company's property that must be accessed to execute the Contract. Site includes ways of access provided for the purposes of the Contract.
- 1.38. **Subcontract** means any Contract made between the Contractor and any corporate body, trading trust, partnership or person for the execution of any part of the Contract that has been approved by the Company.
- 1.39. **Subcontractor** means any corporate body, trading trust, partnership or person (other than the Contractor) to which or to whom any part of the Contract has been subcontracted, and that has been approved by the Company.

- 1.40. **Taking Over Certificate** means the certificate issued by the Company to the Contractor, signifying that the Works and/or Plant and/or other Deliverables - or a section thereof, as the case may be - have been taken over by the Company.
- 1.41. **Tax Invoice** means a document provided in accordance with Section 20 of the Value Added Tax Act, Act 89 of 1991, as amended.
- 1.42. **Technical Information** means all drawings, diagrams, calculations, designs, specifications, and other information provided in writing by the Company to the Contractor in relation to the Works.
- 1.43. **Temporary Works** means all works subsidiary to and necessary for carrying out the Works.
- 1.44. **Tender** means the written submission made by the Contractor in response to a request by the Company to provide the Deliverables set out in the Company's request, which submission addresses all the detail requested by the Company, including the Price.
- 1.45. **Termination date** means the date on which the Contract finally terminates.
- 1.46. **Tests on Completion** means the tests specified in the Contract or otherwise agreed to by both Parties in writing, to be performed before the Works and/or Plant and/or other Deliverables - or a section thereof, as the case may be - are taken over by the Company.
- 1.47. **Value Added Tax** means the tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991.
- 1.48. **Variation** means a variation to the Contract, agreed to by the Parties and signed by authorised representatives of the Parties.
- 1.49. **Works** means all that is to be permanently supplied and/or work to be performed in terms of the Contract.
- 1.50. **Writing** means any manuscript, document or printed statement signed by an authorised representative of either the Company or the Contractor and includes any e-mail or telefaxed message, from one Party to the other and **written** shall bear the corresponding meaning.

## 2. INTERPRETATION

- 2.1. In the Contract, unless the context clearly dictates otherwise
- 2.1.1. words importing any one gender shall be capable of being construed as a reference to all other genders;
- 2.1.2. the singular shall include the plural and *vice versa*;
- 2.1.3. a reference to natural persons shall include created entities (corporate or unincorporated) and *vice versa*.
- 2.2. In the Contract, the headings have been inserted for convenience only and shall not be used for nor assist in nor affect its interpretation.
- 2.3. The Contract, including all Documentation, Technical Information and correspondence shall be drawn up, construed and interpreted in English.
- 2.4. If anything in a definition is a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of the Contract.
- 2.5. References to legislation shall include all subsequent amendments to such legislation, as well as applicable Regulations.
- 2.6. Reference to 'days' shall be construed as calendar days unless qualified by the word 'business', in which instance a 'Business Day' shall be any day excluding a Saturday, Sunday or statutory public holiday in the Republic of South Africa.
- 2.7. When any number of days is prescribed, such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next Business Day.

- 2.8. The rules of construction and of interpretation, that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement, shall not apply.
- 2.9. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word 'including' and specific examples, such examples shall not be construed to limit the ambit of the provision concerned.
- 3. GENERAL OBLIGATIONS OF THE CONTRACTOR**
- 3.1. The Contractor shall, with due care and diligence, execute the Contract and complete the Works and/or Plant and/or other Deliverables and remedy any Defects therein in accordance with the entire Contract as defined, to the satisfaction of the Company. When complete, the Deliverables shall be to the satisfaction of the Company and fit for the purpose for which the Deliverables are intended as defined in the Contract.
- 3.2. The Contractor shall provide all superintendence, labour, materials, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required for the execution of the Contract and completion of the Works and/or Plant and/or other Deliverables and for the remedying of any defects in terms of the Contract, to the sole satisfaction of the Company.
- 3.3. The Contractor shall give prompt written notice to the Company Representative, of any error, omission, fault or other defects in the specification for the Deliverables that the Contractor discovers when reviewing the Contract Documents or executing the Contract. The Deliverables shall include any work that is necessary to satisfy the Company's requirements that is implied by the Contract, and any work that, although not mentioned in the Contract, is deemed necessary for the completion or safe and proper and environmentally sound operation of the Deliverables, or for stability. Such additional work will be subject to the specifications of these Conditions.
- 3.4. The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and methods of construction and of all the Works and/or Plant and/or other Deliverables. The Contractor shall, whenever required by the Company, submit details of the arrangements and methods that the Contractor proposes to adopt for the execution of the Contract. No alterations to these arrangements and methods shall be made without the Company having been previously notified in writing by the Contractor.
- 3.5. Contractor's Representative
- 3.5.1. The Contractor shall employ a competent representative to superintend the carrying out of the Works and/or Plant and/or other Deliverables on the Site and shall give him all the authority to act on the Contractor's behalf under the Contract.
- 3.5.2. Any instruction or notice that the Company Representative gives to the Contractor's Representative shall be deemed to have been given to the Contractor.
- 3.5.3. The Contractor's Representative shall be appointed as a 'Subordinate Manager' for the purposes of the MPRDA and MHPA and shall be present on the Site during working hours. If the Contractor's Representative has to be absent from the Site for a period in excess of 24 (twenty-four) hours, an alternative representative must be appointed by the Contractor for the duration of that period. The Contractor may not revoke the appointment of its Representative or appoint a replacement without the prior written consent of the Company.
- 3.6. Site Data
- 3.6.1. The Company shall make available to the Contractor all relevant information in its possession applicable to the Site, including all necessary environmental data and information. The Contractor shall be responsible for verifying the accuracy, sufficiency and completeness of such data.
- 3.6.2. The Company shall not be held responsible for any delays or costs incurred by the Contractor due to any incorrect alignment and/or measurement of the Works and/or Plant and/or other Deliverables.
- 3.7. The Contractor shall comply with and adhere strictly to the Company Representative's instructions on any matter, whether mentioned in the Contract or not, concerning the Deliverables. The Contractor shall take instructions only from the Company Representative or his nominated, duly appointed and delegated assistant.

- 3.8. Notwithstanding the provisions of Clause 3.7, the Contractor shall not perform any additional work or work not specified in the Contract without a written commitment, in the form of an amendment to the Contract, unless such work is authorised in terms of Sibanye's Emergency/Breakdown procedure. In the event that the Contractor performs such additional work not covered by the Emergency/Breakdown procedure, or specified in the Contract, the Company will not be liable for payment of the extra work and action may be taken against the Contractor. This may include, but is not limited to, a review of the Contractor's vendor status.
- 3.9. Except as otherwise provided for in the Contract:
- 3.9.1. The Contractor shall be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances that may influence or affect the Deliverables.
- 3.9.2. By signing the Contract, the Contractor accepts responsibility for having foreseen all reasonable difficulties and costs of successfully executing the Contract, including any rehabilitation or cleaning up of environmental pollution.
- 3.9.3. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price shall be deemed to include all items necessary to execute the Contract in accordance with the requirements of the Company Representative and the specifications, and the Contract Price shall be deemed to include all the Contractor's activities, costs and profits.
- 3.10. Physical Obstructions and Conditions
- 3.10.1. If during the execution of the Contract on Site the Contractor encounters physical obstructions or conditions that could not have been reasonably foreseen by the Contractor in its capacity as a reasonable expert, the Contractor shall be entitled - at the Company's approval, which shall not be unreasonably withheld - to reimbursement of the additional costs reasonably incurred in consequence, including the extension of Time for Completion, from the Company.
- 3.10.2. The Contractor's Representative and the Company Representative shall certify such additional costs and the additional costs so incurred shall be added to the Contract Price by means of a Variation to the Works and/or Plant and/or other Deliverables, as detailed in Clause 14 (Variations and Amendments).
- 3.11. Construction Programme
- 3.11.1. The Contractor shall submit a detailed Programme, as agreed to at the time of the award of the Tender, to the Company Representative in writing within 10 (ten) days after receiving the notice to commence with the execution of the Contract.
- 3.11.2. Revised Programme  
Should the Company Representative give notice to the Contractor that a Programme fails to comply with the Contract or is inconsistent with actual progress and/or the Contractor's stated intentions, the Contractor shall submit a revised Programme to the Company Representative for approval.
- 3.12. Safety Procedures
- The Contractor shall adhere to all applicable laws and regulations and appropriate safety rules, including the Company's Standards and the Company's Procedures, especially those regarding safety on the Site.
- 3.13. Sufficiency of Contract Price
- The Contractor shall be deemed to have satisfied itself of and taken account of in its Tender:
- 3.13.1. all the conditions and circumstances affecting the Contract, including the Contract Price;
- 3.13.2. the provision of the Deliverables as described in the Contract;
- 3.13.3. the general conditions and circumstances at the Site and the cost of conducting any environmental management in accordance with the environmental management plan, any environmental clean-up at any time, any remediation and rehabilitation of the Site and the surrounding areas resulting from the execution of the Contract and any Environmental Incident, and
- 3.13.4. the general labour position on Site.
- 3.14. Site Meetings
- Site meetings shall be held during the period of Contract at times and dates to be agreed to between the Parties. The Contractor shall ensure that one or more representatives of the Contractor are present at such meetings, having the necessary authority to make decisions on the Contractor's behalf. In addition, the Contractor must ensure that it represents all its Subcontractors. Minutes of any Site meeting will not be deemed

to serve as notice for or an instruction to commence any additional work and/or notice of claims.

3.15. Company's Standards

All Works and/or Plant and/or other Deliverables shall be strictly in accordance with the relevant Company's Standards, Codes of Practice and Procedures and the onus is on the Contractor to request access to and to familiarise itself fully with the relevant Company Standards. The Contractor shall be held liable for any and all errors and/or omissions due to its failure to adhere to the Company's Standards.

3.16. Electricity, Water and Compressed Air

- 3.16.1. The Contractor, by arrangement with the Company Representative and at its own cost shall be entitled to use, for the purposes of the execution of the Contract, such supplies of electricity, water and compressed air as may be ordinarily available on the Site. The Company shall be responsible for providing a point of supply to the Contractor. The Contractor shall, at its own risk and cost, provide any apparatus necessary for its use of these Works and/or Plant and/or other Deliverables, including any cost in connecting to the Company's point of supply, and for the measuring of the quantities consumed and shall not make any direct connection to the Company's reticulation.
- 3.16.2. The Company shall provide drinking water for Contractor Employees.
- 3.16.3. The Contractor shall ensure quantities used are reasonable and do not interfere with the running or maintenance of other installations belonging to the Company or others at the Site. No guarantee of uninterrupted supply shall be given by the Company and neither the Company nor the Company Representative shall be held liable for any consequences, damages (whether direct or indirect), costs or delays incurred by the Contractor as a result of any such interruption or fluctuations to the services detailed herein.
- 3.16.4. The Contractor shall, where the services are not ordinarily available on the Site, be responsible for the provision of all power, water and other services it requires.

3.17. Telephones & Electronic Devices

- 3.17.1. The Company will not supply telephones on Site to the Contractor. The Contractor shall make its own arrangements for this service at its own cost.
- 3.17.2. The Contractor shall not carry a cellular phone, or have a cellular phone in a car, in the vicinity of an explosive magazine or a bank area at a shaft.
- 3.17.3. The Contractor and its Employees shall not carry a cellular phone or any other electronic device or camera into a metallurgical plant, or any other area prohibiting such devices, without written consent by the relevant Mine Manager.

3.18. Cranes

Unless otherwise agreed to by the Parties in writing, the use of the Company's cranes by the Contractor will not be permitted.

3.19. Transport

- 3.19.1. Surface Transport  
The Contractor shall provide all necessary surface transport for its employees, materials and Contractor's Equipment. The Contractor shall comply with all the relevant laws, including Environmental Law, as well as the Company's Standards relating to the transportation of employees, materials and Contractor's Equipment.
- 3.19.2. Underground Transport  
The Company shall provide transport from a designated point in the shaft bank area to the appropriate underground station. Such transport shall be requested by the Contractor in writing a minimum of seven (7) days prior to it being required by the Contractor. The Company Representative shall confirm the arrangements not less than two (2) days prior to the transport being required. The Contractor shall be responsible for receiving, at the underground station, all items being transported, and will accompany the underground transport from the station to the place of work. The Contractor shall provide all labour necessary for the loading of materials and Contractor's Equipment into the transport device and subsequent unloading thereof.

3.20. Raw Materials, Utilities and Effluents

The Company shall provide or terminate, whichever may be the case, from dates and at points on the battery limits agreed between the Contractor and the Company Representative, supplies of the raw materials and utilities required for the commissioning, testing and operating of the Works and/or Plant and/or other Deliverables, and unless agreed to otherwise in writing, the Contractor shall be responsible for the disposal, from agreed points on the battery limits, of all products, by-products and effluents produced by the Works and/or Plant and/or other Deliverables, in accordance with the Environmental Management Plan and all relevant legislation. The Contractor shall be responsible for making the necessary connections or disconnections to the points of supply and disposal, to the approval of the Company Representative. Notwithstanding any such approval or otherwise by the Company Representative, the Contractor shall be responsible for ensuring that such connections are suitable for the purpose of the Works and/or Plant and/or other Deliverables.

3.21. Control of Contractor's Equipment

- 3.21.1. All Contractor's Equipment, including any Temporary Works and temporary buildings as referred to herein, brought onto the Site for the purposes of fulfilling its obligations as set out in the Contract, shall be under the control of the Company Representative.
- 3.21.1.1. The Contractor's Equipment shall remain on Site and be used by the Contractor or, should the Contract or any part of it be terminated for reasons other than default on the part of the Company, by the Company or such other contractors or persons as may be engaged by the Company to complete the work to execute the obligations of the Contract.
- 3.21.1.2. The Contractor's Equipment shall be used solely for such purpose and shall not, without the prior consent in writing of the Company Representative, be taken from the Site while it is required for the purpose of completing the work required to execute the Contract.
- 3.21.2. The following provisions shall apply to any Contractor's Equipment that is hired, leased or the subject of a hire purchase agreement:
- 3.21.2.1. Details of all Contractor's Equipment that is brought on to the Site by or on behalf of the Contractor for the purpose of execution of the Contract and that is hired, leased or the subject of hire purchase agreements, together with the names of the hirers, lessors or owners thereof, shall be supplied to the Company Representative by the Contractor.
- 3.21.2.2. The Company may, in order to avoid seizure by the hirer, owner or lessor, at the Company's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of the Company doing so, any amount so paid shall be a debt due from the Contractor to the Company and may be deducted by the Company from any monies due or that may become due to the Contractor in terms of the Contract or may be recovered by the Company from the Contractor at law.
- 3.21.2.3. The Contractor shall, when entering into any Subcontract for the execution of any part of the Contract, incorporate in such Subcontract the abovementioned provisions in relation to the Contractor's Equipment brought onto the Site by the Sub-contractor.

3.22. Existing Works and/or Co-ordination of Other Works

- 3.22.1. The Contractor shall at all times ensure minimal disruption of the normal operations of the Mine and its service providers. The Contractor shall, prior to commencement of work, obtain from the Company Representative either a layout of the existing Works or a certificate of clearance that the Contractor may proceed with work in a specific area. The Contractor shall be liable for any damages incurred by the Company due to the Contractor's interference with the normal operations of the Mine or its service providers. Where applicable, the Contractor shall familiarise itself with shaft times, rules and regulations.
- 3.22.2. All work entailing interruption of activities of operating installations shall only be carried out following agreement with the Company Representative on the sequence and timing of such work.
- 3.22.3. Joint Occupancy: Other work may be performed by others concurrently with the execution of this Contract. The Contractor recognises that the Works hereunder may be executed under joint occupancy conditions and agrees to co-operate with the Company and other contractors on the Site so that the project as a whole will progress smoothly with a minimum of delays due to obstructive activities between various Contractors on the Site.

- 3.23. Articles of Value or Antiquity
- 3.23.1. All fossils, coins, articles of value or antiquity and structures and other remains or items of geological or archaeological interest discovered on the Site shall, subject to the provisions of the National Heritage Resources Act, Act 25 of 1999, be the absolute property of the Company and must immediately be placed under the care and authority of the Company.
- 3.23.2. The Contractor shall take reasonable precautions to prevent its workmen or any other person from removing or damaging any such findings. Should the Contractor discover graves on the Site it will not destroy, damage, alter, exhume or remove the graves from their original position without the relevant legal authority.
- 3.23.3. The Contractor shall carry out the Company Representative's instructions as to the actions to be taken.
- 3.23.4. Any actions taken shall be in accordance with the requirements of the National Heritage Resources Act, Act 25 of 1999, and the regulations framed thereunder and any other relevant law or regulation. If the Contractor suffers delay and or incurs costs as a result of complying with the Company's instructions in terms of this Clause, the Contractor shall give a further notice to the Company and shall be entitled to any reasonable costs and extension of time so incurred, as approved by the Company Representative in writing.

3.24. Contractor's Equipment, Temporary Works and Materials

- 3.24.1. Unless otherwise provided in the Contract, the Contractor shall:
- 3.24.1.1. provide all Contractor's Equipment necessary to ensure execution of the Contract;
- 3.24.1.2. ensure that all the Contractor's Equipment shall, when brought on to the Site, be exclusively intended for the execution of the Contract. The Contractor shall not remove from the Site any such equipment except:
- 3.24.1.2.1. when it is no longer required for fulfilment of its obligations as agreed to in the Contract; or
- 3.24.1.2.2. when the Company Representative has given his written consent to remove the Equipment; or
- 3.24.1.2.3. when the Company Representative instructs in writing that it be removed.
- 3.24.1.2.4. This consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works or materials to or from the Site.
- 3.24.2. All Contractor's Equipment obtained or furnished by the Contractor that is to be used by the Contractor on Site shall be in first class operating condition, safe, fit for the use for which intended, and suitable for the safe and efficient execution of the Contract. Such Equipment shall be subject to inspection and approval from time to time by the Company. Any Contractor's Equipment that is rejected by the Company as not conforming to the foregoing, shall be promptly removed by the Contractor and replaced with equipment acceptable to the Company, without additional cost to the Company and without delaying the schedule for execution of the Contract by the Contractor.
- 3.24.3. All the Temporary Works and materials provided by the Contractor shall, when brought onto the Site, be deemed to be exclusively intended for the execution of the Contract and the Contractor shall not remove same or any parts thereof, except for the purpose of moving it from one part of the Site to another, without the prior written consent of the Company Representative, as stipulated.
- 3.24.4. Notwithstanding the above, the risk of loss of or damage to the Contractor's Equipment, Temporary Works or materials provided by the Contractor shall remain with the Contractor until the Deliverables are taken over by the Company and the Final Certificate is issued to the Contractor.

3.25. Security of the Site

- 3.25.1. The Contractor shall be responsible for keeping unauthorised persons off the Site; the authorised Employees shall be limited to the Contractor's Employees and the Company's Employees. The Company shall notify the Contractor of any other authorised employees entitled to be on the Site, including the Company's other contractors on Site.
- 3.25.2. The Company shall have the right to open and inspect any containers, tool boxes, vehicles and other items on Site at any time.

3.26. Contractor's Operations on Site

- 3.26.1. The Contractor shall confine its operations to the Site. The Contractor shall keep the Contractor's Equipment and the Contractor's Employees on the Site and any approved additional working areas,

and shall keep Contractor's Equipment and Employees off any adjacent land. Approved additional working areas will be considered part of the Site for purposes of this Contract.

- 3.26.2. During the execution of the Contract, the Contractor shall keep the Site free from all unnecessary obstruction, and shall lawfully store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works that are no longer required.

3.27. Contractor Supplied Equipment and Materials

- 3.27.1. The Contractor shall be responsible for arranging all shipments of materials and Equipment to the site and shall consign all such shipments to itself as consignee at the project shipping address, freight fully prepaid. The Contractor shall be responsible for making demurrage agreements and settlements with the carriers of its shipments.
- 3.27.2. The Contractor shall advise the Company in advance of all major shipments of the Contractor's Equipment and materials and shall co-ordinate with the Company the arrival, unloading and release of the carrier's equipment. The Contractor shall promptly unload its shipments and promptly release the carriers' equipment.

3.28. Protection and Control of Materials, Equipment and Works

The Contractor shall at all times, in accordance with the best practices and at no additional cost to the Company, provide storage facilities, and protection for all material and Equipment used by the Contractor in the execution of the Works and/or Plant and/or other Deliverables from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

3.29. Noise Level of Machinery and Equipment

- 3.29.1. No equipment, whether new, repaired or modified, shall have a noise level higher than the legislated 85dBA.
- 3.29.2. It will be regarded as a material breach of this Contract if the equipment does not comply with the above noise level requirements, and if the stipulations of the Policy and Procedure for Contractors Working on Site and the relevant legislation are not complied with.

**4. EMPLOYEES AND LABOUR**

- 4.1. The Contractor shall make its own arrangements for the employment of all its Employees, local or otherwise, and for their payment, housing, meals and transport.
- 4.2. The Contractor shall comply with all the relevant labour laws applicable to the Contractor's Employees, including laws relating to their employment, health and safety, welfare, immigration and emigration and shall allow them all their legal rights.
- 4.3. As regards Category 3 – 8 employees, the Contractor will be required to submit proof of registration and/or compliance with - including proof of payment of levies and/or other fees - the following Acts, within a period of 14 (fourteen) days of receipt of the Contract document, failing which the Contract may be cancelled:
- 4.3.1. Basic Conditions of Employment Act, Act 75 of 1997;
- 4.3.2. Unemployment Insurance Act, Act 63 of 2001;
- 4.3.3. Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993;
- 4.3.4. Occupational Diseases in Mines and Works Act, Act 78 of 1973;
- 4.3.5. Proof of Subordinate Manager's Appointment;
- 4.3.6. Proof of compliance with all statutory requirements that shall include, as relevant:
- 4.3.6.1. PAYE (SARS exemption forms)
- 4.3.6.2. Basic Conditions of Employment Act
- 4.3.6.3. Labour Relations Act
- 4.3.6.4. COIDA (Compensation of Injuries and Diseases Act)
- 4.3.6.5. ODMWA (Occupational Diseases in Mines and Works Act)
- 4.3.6.6. WCA (Workman's Compensation Act)
- 4.3.6.7. UIF (Unemployment Insurance Fund)
- 4.3.6.8. Skills Development Act
- 4.3.6.9. Mine Health and Safety Act
- 4.3.6.10. SIMRAC Levy

- 4.3.6.11. Medical Benefits
- 4.3.6.12. Death Benefits
- 4.3.6.13. Pension Fund
- 4.3.6.14. Provident Fund
- 4.3.6.15. Mining Quality Authority Registration
- 4.3.6.16. Industry Security Clearance
- 4.3.6.17. Pneumoconiosis Certificates of Fitness
- 4.3.6.18. First Aid Certificates
- 4.3.6.19. Blasting Certificates
- 4.3.6.20. Monthly Labour Returns.
- 4.3.7. The Contractor's Employees shall obey all applicable laws, including - but not limited to - those concerning safety at work. Should the Contractor and/or any of the Contractor's Employees not comply with any of the Company's policies or procedures or any applicable legislation regarding health, safety and labour requirements, then the Contractor shall pay the sum of R25 000.00 (Twenty-Five Thousand Rand) per incident of such non-compliance.
- 4.4. Persons in the Service of the Other Party  
  
Neither the Contractor nor the Company shall recruit, or attempt to recruit, staff and labour from each other for the duration of the Contract, without written agreement with the other Party.
- 4.5. Working Hours
  - 4.5.1. Hours of work on the Site shall at all times be within statutory requirements. On site, the Contractor shall observe the normal working hours stated in the Contract document and the Company shall allow the Contractor to carry out work on the Site continuously during such working hours. The Company Representative may, after consultation with the Company and the Contractor, direct that work be done at other times. The extra cost, together with profit, shall be added to the Contract Price, unless such work has become necessary for the execution of the Contract within the Time for Completion, and this is not due to default by the Company.
  - 4.5.2. No work shall be carried out on the Site outside normal working hours or on South African public holidays unless the Contract so provides, or the work is unavoidable or necessary for the saving of life or property or protection of the environment or for the safety of the Works and/or Plant and/or other Deliverables, in which case the Contractor shall immediately advise the Company Representative for the Company Representative to give consent.
- 4.6. Facilities for Staff and Labour
  - 4.6.1. Unless otherwise stated in the Contract, the Company shall not provide any accommodation or messing facilities for the Contractor's Employees. All accommodation and messing facilities shall be arranged and provided by the Contractor at its sole cost.
  - 4.6.2. The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Employees. The Contractor shall not permit a Contractor's Employee to maintain any temporary or permanent living quarters within the structures forming part of the Works and/or Plant and/or other Deliverables.
  - 4.6.3. The Contractor shall provide temporary latrines for Contractor's Employees on Site.
- 4.7. Health and Safety
  - 4.7.1. The Contractor shall at all times take all reasonable precautions and shall comply with all laws and regulations governing safety, for the duration of the Contract, to ensure the health and safety of the Contractor's Employees.
  - 4.7.2. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance services are available at all times at the Site and at any accommodation for the Contractor's Employees, and that suitable arrangements are made for all necessary welfare and hygiene requirements.
  - 4.7.3. The Contractor shall comply with the applicable Site health and safety regulations and depending on the scope of work and/or risk associated with the work being performed, may be required to appoint an accident-prevention/ safety officer at the Site who shall be responsible for maintaining health and safety requirements. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent harm to employees and/or damage to property. Throughout the execution of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

- 4.7.4. The Contractor shall send to the Company details of any accident at the end of the shift in which the accident has occurred. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Company may reasonably require.
- 4.8. Contractor's Superintendence  
  
Subject to Clause 4.9 below, for the duration of the Contract, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works and/or Plant and/or other Deliverables. Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language used for communications and of the operations to be carried out for the satisfactory and safe execution of the Contract.
- 4.9. Contractor's Employees  
  
The Contractor shall, prior to the commencement of work on Site, submit to the Company Representative documentary evidence of the qualifications and past experience of all representatives or persons the Contractor wishes to employ on the Contract. The Company Representative may give written notice objecting to any of these representatives or persons and the Contractor shall not permit such representatives or persons to enter the Site.
- 4.10. Conduct of Contractor's Employees
  - 4.10.1. The Contractor shall prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Employees, and shall preserve the peace and protection of persons and property on and near the Site. The Contractor shall be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any Regulations of the Company by or among the Contractor's Employees.
  - 4.10.2. The Contractor shall, on the Company Representative's written instruction, remove from the Site and the Works and/or Plant any person employed by him in the execution of the Contract, who misconducts himself.
  - 4.10.3. The Company may require the Contractor to remove (or cause to be removed) and replace any person employed on the Site or Works and/or Plant and/or other Deliverables, including the Contractor's Representative, if necessary, who:
    - 4.10.3.1. persists in any misconduct or lack of care;
    - 4.10.3.2. carries out duties incompetently or negligently;
    - 4.10.3.3. fails to comply with any provisions of the Contract; or
    - 4.10.3.4. persists in any conduct that is prejudicial to safety, health, or the protection of the environment.
- 4.11. Contractor's Employees - Qualifications
  - 4.11.1. The Contractor's Employees shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor shall supply at all times an adequate number of appropriately qualified and skilled Employees to perform the work required for the execution of the Contract. The Contractor shall have an experienced, qualified and responsible supervisor available at Site at all times during the course of the Contract. The Contractor shall not transfer or remove any of its supervisory or key Employees from the Site without the prior written approval of the Company.
  - 4.11.2. The Contractor shall, on the Company Representative's written instruction, remove from the Site and the Works and/or Plant and/or other Deliverables any person employed by him in the execution of the Contract, who is incompetent or negligent.

## 5. THE COMPANY REPRESENTATIVE

The Company shall appoint a Company Representative who shall carry out the duties assigned to him in the Contract. The Company Representative shall, from time to time, assign duties and delegate the necessary authority to assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in writing and shall not take effect until Contractor and the appointed assistant(s) have received copies of any such assignment or delegation by the Company Representative. The assistants shall be suitably qualified persons, who are competent to carry out the assigned duties and exercise the delegated authority.

## 6. DOCUMENTATION

### 6.1. Documentation for Approval by the Company Representative

- 6.1.1. Any documentation of the Contractor that requires the approval of the Company Representative shall be submitted to the Company Representative at the times stated in the Contract or, in the absence of any such stipulation, within fourteen (14) days of a written request from the Company Representative.
- 6.1.2. Within fourteen (14) days of the date of receipt of such documentation, the Company Representative shall signify his approval thereof, or the modifications required thereto. Such modifications shall be incorporated into the relevant documentation by the Contractor and re-submitted to the Company Representative without delay. Notwithstanding approval by the Company Representative, the Contractor shall be liable for the accuracy and adequacy of all documentation.
- 6.1.3. The Contractor shall maintain an up-to-date schedule of all documentation, showing the state of all such documentation. The Contractor shall supply the schedule to the Company Representative at intervals stipulated by the Company Representative in consultation with the Contractor.
- 6.1.4. The Company Representative shall have the right at all reasonable times to inspect the documentation at the premises of the Contractor or any Subcontractor.
- 6.1.5. All documentation shall become and remain the property of the Company.

### 6.2. Documentation to be Supplied to the Company Representative Prior to Completion of the Contract

Prior to the Completion Date of the Contract, the Contractor shall supply to the Company Representative all documentation required in terms of the Contract, these Conditions, Policies, Standards, Rules and Regulations and Laws, and any other documentation requested by the Company Representative. Such documentation shall include the operating and maintenance instructions, spares lists and drawings of the Works and/or Plant and/or other Deliverables as completed, in sufficient detail to enable the Company to maintain, dismantle, reassemble and adjust all parts of the Works and/or Plant and/or other Deliverables. Ownership of all Documentation will vest in the Company

### 6.3. Mistakes in Documentation

The Contractor shall be responsible for all discrepancies, errors or omissions, including faulty design and/or detailing in any of the documentation, whether or not such documentation has been approved by the Company Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.

## 7. TECHNICAL INFORMATION

- 7.1. The Company shall provide the Contractor at the appropriate times with the Technical Information necessary to enable the Contractor to complete the Contract. All Technical Information shall be and remain the property of the Company and shall be handed over to the Company Representative on demand. The provisions of Clause 39 (Intellectual Property Rights Creation) shall apply to the Technical Information.
- 7.2. In the event that any ambiguity or discrepancy is discovered in the Technical Information, the matter shall immediately be referred to the Company Representative for his decision.

## 8. DRAWINGS

- 8.1. The Contractor accepts responsibility for ensuring that he obtains and carries out the Works and/or Plant and/or other Deliverables in accordance with the latest revision of each drawing approved by the Company. All drawings issued from time to time must be properly stored.
- 8.2. The Works and/or Plant and/or other Deliverables shall be performed using only drawings and specifications marked or stamped 'Approved for Construction' or equivalent by the Company. Any such approval by the Company shall not relieve the Contractor of any obligations under the Contract, nor constitute the Company's assumption of responsibility for the accuracy or adequacy of any of the Contractor's information or Works and/or Plant and/or other Deliverables incorporated in such documents, drawings and/or specifications.
- 8.3. The Contractor shall perform all Works and/or Plant and/or other Deliverables except those in the areas marked 'Hold' on 'Approved For Construction' specifications and drawings to maintain the schedule of Works and/or Plant and/or other Deliverables, but shall not perform any Works and/or Plant and/or other Deliverables in the areas or sections marked 'Hold' on 'Approved For Construction' specifications and drawings until revised 'Approved For Construction' specifications and drawings are received with the 'Hold' markings deleted.
- 8.4. Should the Contractor's schedule of Works and/or Plant and/or other Deliverables be delayed by 'Hold' markings on specifications or drawings, the Contractor shall report such delay to the Company as soon as the delay becomes apparent.
- 8.5. If Company approval is required, the Company shall approve drawings within 7 (seven) days of receipt thereof.

## 9. INTENT OF SPECIFICATIONS AND DRAWINGS

- 9.1. The specifications and drawings may not be complete in every detail. The Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not avail itself of any errors or omissions therein to the detriment of the Works and/or Plant and/or other Deliverables. Should any conflict, error, omission or discrepancy appear in the drawings, specifications, instructions or in the Works and/or Plant and/or other Deliverables done by others, the Contractor shall notify the Company at once and the Company will issue written instructions to be followed. Should the Contractor proceed with any of the Works and/or Plant and/or other Deliverables in question prior to receiving such instructions, all necessary corrections shall be at the Contractor's expense.
- 9.2. Any deviation by the Contractor from the Company's specifications and drawings shall be considered to be a change in the Scope of Work and will require written approval from the Company, as set out in Clause 14.1.
- 9.3. All materials shall be new and supplied to agreed standards. Materials shall not be substituted for those specified, nor shall 'or equal' items be furnished without the Company's prior written approval.

## 10. COMMENCEMENT, DELAYS AND SUSPENSION

### 10.1. Commencement of Work

The Company Representative shall give the Contractor not less than 7 (seven) days' written notice of the date on which the Contractor shall commence with the work required for the execution of the Contract. This date is dependent on acceptance of the Issue-Based Risk Assessment submitted by the Contractor, as stipulated in the Policy and Procedure for Contractors Working On Site.

### 10.2. Time for Completion

The Contractor shall complete the whole of the Works and/or Plant and/or other Deliverables, and each Section (if any), within the Time for Completion for the Works, Plant or Section (as the case may be), including:

- 10.2.1. passing the Tests on Completion, and
- 10.2.2. completing all work that is stated in the Contract as being required for the Works, Plant or Deliverable, or Section thereof, to be considered complete for the purposes of Taking Over by the Company.

- 10.3. Extension of Time for Completion and Increase in Complement
- 10.3.1. The Contractor may submit written application for an extension of the Time for Completion to the Company Representative if completion for the purposes of Taking Over of the Works and/or Plant and/or other Deliverables by the Company is or will be delayed as a result of any of the following causes:
- 10.3.1.1. an agreed-to variation to the Time for Completion;
  - 10.3.1.2. exceptionally adverse climatic conditions;
  - 10.3.1.3. force majeure or
  - 10.3.1.4. any delay, impediment or event caused by or attributable to the Company, the Company's Employees, or the Company's other contractors on the Site.
- 10.3.2. The Company Representative may grant such extension of time as is necessary to complete the execution of the Contract. The terms and conditions of any extension of time granted shall be confirmed by means of an Amendment to the Contract, issued by the Company.
- 10.3.3. Should the Contractor require additional employees to complete the Deliverables specified in the Contract, it shall follow the procedure for scope variation and, if approved, with due consideration of the Standard Procedure for the Appointment of Outside Contractors.

10.4. Delay Penalties

- 10.4.1. If delays are incurred that are solely attributable to the Contractor's negligence and/or poor performance, then the Contractor shall pay the Company as penalty a sum calculated at one percent (1%) of the value of the Contract, which shall be paid for every day or part thereof between the specified Time for Completion and the date stated in the Taking Over Certificate. However, the total amount due under this sub-Clause shall be limited to a maximum amount of ten per cent (10%) of the total Contract Price.
- 10.4.2. These penalties shall not relieve the Contractor from its obligations to execute the Contract in its entirety, or from any other duties, obligations or responsibilities that the Contractor may have under the Contract, nor shall they constitute a waiver by the Company of any of its rights in terms of the Contract.

10.5. Suspension of the Works

The Company Representative may at any time instruct the Contractor to suspend progress of the Works and/or Plant and/or other Deliverables or any part thereof. During such suspension, the Contractor shall properly protect, store and secure the Works and/or Plant and/or other Deliverables or parts thereof against any deterioration, loss or damage. The Company Representative shall notify the Contractor of the cause of the suspension and whether or not it is the responsibility of the Contractor.

10.6. Consequences of Suspension

If the Contractor incurs additional costs from complying with the Company Representatives instruction under Clause 10.5 or from resuming the work, the Contractor shall give notice to the Company Representative, and the Contractor shall be entitled to:

- 10.6.1. an extension of time for any such delay, if completion is or will be delayed; and
- 10.6.2. payment of any such additional costs, which shall be included in the Contract Price.
- 10.6.3. Upon receipt of this notice, the Company Representative shall determine any additional payment to be made to the Contractor in respect of such claim. However, the Contractor shall not be entitled to payment of any additional costs if such suspension is necessary by reason of any default on the part of the Contractor.

10.7. Payment for Plant and Materials in the Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of any plant and/or materials that have not been delivered to Site, if:

- 10.7.1. the work on the Plant or delivery of plant and/or materials has been suspended for more than 28 (twenty-eight) consecutive days; and
- 10.7.2. the Contractor has marked the plant and/or materials as the Company's property in accordance with the instructions of the Company Representative, including material in anticipation of off-take.

10.8. Prolonged Suspension

If any suspension of the Works has continued for more than 90 (ninety) consecutive days, the Contractor may request, in writing, the written permission of the Company Representative to proceed. If the Company Representative does not give permission within 28 (twenty eight) days after being requested to do so, the Contractor may, by giving notice to the Company Representative, treat the suspension as an exclusion from the Contract of the affected part of the Deliverables. If the suspension affects the whole of the Deliverables, the Contractor may give notice of termination to the Company Representative.

10.9. Resumption of Works

After permission to proceed is given, the Contractor and the Company Representative shall jointly examine the Works and the Plant and materials affected by the suspension. The Contractor shall make good any deterioration or defect or loss of the Works or Plant or materials that has occurred during the suspension.

**11. CESSATION OR CURTAILMENT OF OPERATIONS**

- 11.1. Notwithstanding any other Clause in the Contract, the Company shall be entitled to terminate, with a notice period reasonable for the circumstances, the Contract in the event of the Company experiencing a material and significant curtailment of operations, or ceasing to carry out gold-mining activities in the country where the Contract normally applies.
- 11.2. The Contractor will bear its own direct and indirect costs connected with or incidental to such termination, including the purchase of specialised equipment or vehicles for the Contract. The Contractor shall not in any event be entitled to additional or extra compensation by reason of this termination.
- 11.3. Upon termination in terms of this Clause 11, the Company shall not be liable to the Contractor for damages, any other claim or compensation arising out of the termination whether for loss of business, profits or any other cause.

**12. OWNERSHIP OF DELIVERABLES**

At the sole discretion of the Company, each item of Plant and/or Works and/or other Deliverable shall become the property of the Company at whichever is the earlier of the following times, and the Contractor warrants that such Plant and/or Works and/or other Deliverable is free of any liens and other encumbrances:

- when it is delivered to the Site; or
- when the Contractor receives payment.

**13. PRICE ADJUSTMENT**

- 13.1. Unless otherwise agreed to by the Parties, the Price shall be fixed and firm for the first 12 (twelve) months of the Contract.
- 13.2. Thereafter, unless agreed to otherwise by the Company, application for Price Adjustments shall be made by the Contractor to the Company 60 (sixty) days before the proposed effective date of the Price Adjustment, in writing by email to [priceadjustments@sibanwegold.co.za](mailto:priceadjustments@sibanwegold.co.za), which application shall be supported by such documentary evidence as may be required by the Company. No Price Adjustment shall be effective until all documentary evidence is received and the Price Adjustment has been approved in writing by the Company.
- 13.3. The Contractor shall give a cost breakdown of
- 13.3.1. variation in costs of labour, material, equipment and transport actually incurred by the Contractor;
  - 13.3.2. the period of time expressed in months, for which the adjusted Price, if any, will remain fixed;
  - 13.3.3. any additional employees required (complement);
  - 13.3.4. proposed Price for the Works and/or Plant and/or other Deliverables, and
  - 13.3.5. motivation for the adjustment of the Price.
- 13.4. The Company may, in the event of an application for the Price Adjustment being lodged, call for Tenders for supply of the Deliverables. Should more favourable tenders be submitted, the Company may elect to terminate the Contract in accordance with the termination provisions.



- 13.5. Should the application referred to in Clause 13.2 be accepted by the Company, the adjustment of the Price shall be reflected in an Amendment, signed by the Parties.
- 13.6. Should the application referred to in Clause 13.2 not be acceptable to the Company, the Company shall have the right to terminate the Contract by giving the Contractor 30 (thirty) days' written notice. The Contractor shall be obliged to continue to supply the service to the Company during such 30 (thirty) day period in terms of the Contract, at the Price paid by the Company immediately prior to any such application for Price Adjustment being made by the Contractor, until the termination of the Contract becomes effective.
- 13.7. In the event that the requested effective date has passed before the application for Price Adjustment is accepted by the Company, any Deliverables shall continue to be made at the current Price until the application for Price Adjustment is accepted in writing by the Company and an Amendment has been signed by the Parties.
- 13.8. The Company shall have the right to reject any proposed Price Adjustment and the Company may, at its discretion, cancel the Contract without payment of any compensation to the Contractor for any damages whatsoever, including loss of business and/or profits resulting from such cancellation.

#### 14. VARIATIONS AND AMENDMENTS

All variations to the Contract shall be processed according to the Company's policies and procedures and shall be reflected as Amendments and signed by the Parties to the Contract.

##### 14.1. Scope of Work Changes

- 14.1.1. The Scope of Work shall be subject to change by additions, deletions or revisions by the Company. The Contractor will be advised of such changes in writing.
- 14.1.2. The Contractor shall submit to the Company, within 10 (ten) days after receipt of notice of a change, document containing a detailed breakdown with supporting calculations and pricing for the change together with any additional time required for execution of the amended Scope of Work. Pricing shall be in accordance with the pricing structure of the Contract and shall clearly define increase, decrease or no change in compensation.
- 14.1.3. If the Contractor believes that execution of the change justifies modification of the Price or Time for Completion, the Contractor shall apply for a variation. The Contractor shall not suspend performance of the Contract during the review and negotiation of any change, except as may be instructed by the Company.

##### 14.2. Variation from Plan

- 14.2.1. The Contractor shall, within 7 (seven) days after the identification of a deviation from the original Scope of Work, advise the Company in writing of the order-of-magnitude, end-of-job cost impact of the potential variation from plan, as well as of the schedule implications.
- 14.2.2. Variation from Plan with zero monetary value must also be reported immediately. The Company Representative (Commercial) shall evaluate the proposed change and shall advise the Contractor whether to proceed with a definitive variation from plan (and possibly to proceed simultaneously with engineering and/or construction). After receipt of the definitive variation from plan and upon written approval by the Company, the Company Representative (Commercial) shall prepare an Amendment. The Contractor shall not perform changes in the Deliverables until the Company has approved the change in writing, and the change has been reflected as an Amendment to the Contract. The Contractor shall not proceed with, and shall not be reimbursed for, work not covered by an Amendment to the Contract.
- 14.2.3. The Contractor shall perform no work whatsoever, and shall not be reimbursed for, any work done without a formal agreement with the Company.

#### 15. PROVISIONAL SUMS AND PRIME COST ITEMS

- 15.1. Any provisional sum included in the Contract Price shall be used - either in whole or in part - in accordance with the Company's instructions and the Contract Price shall be adjusted accordingly. Prime cost items included in the Contract Price shall be used in accordance with the Company's instructions.

- 15.2. For each provisional sum, the Company may instruct work to be executed or to be supplied by the Contractor, or Plant, materials or Works to be purchased by the Contractor, for which there shall be added to the Contract Price, less the provisional sum:
- 15.2.1. the actual amount paid or due to be paid by the Contractor; and
- 15.2.2. a sum for overhead charges and profits, calculated as a percentage of these actual units by applying the relevant percentage rate, if any, stated in the Contract.
- 15.2.3. The Contractor shall, when required by the Company, produce quotations, invoices, vouchers and accounts or receipts in substantiation of the expenditure.
- 15.3. The Company shall have power to direct the Contractor to place orders with any other person (including a Subcontractor) approved by the Company Representative for Deliverables included in the Contract as provisional sums or prime cost items. The Contractor shall be responsible for work done or for Plant supplied by such other person, unless the Contractor shall have objected in writing to such person or Subcontractor prior to such work being carried out.

#### 16. DAYWORKS

- 16.1. The Company may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the dayworks schedule included in the Contract, and the following procedure shall apply:

- 16.1.1. Before ordering Plant for the Works, the Contractor shall submit quotations to the Company Representative. When applying for payments, the Contractor shall submit invoices, vouchers and accounts or receipts for any goods.
- 16.1.2. In the absence of a daywork schedule, the Contractor shall be paid the aggregate of:
- 16.1.2.1. the gross remuneration of the workmen and of any foremen for the time they are actually engaged for the work concerned;
- 16.1.2.2. the nett cost of the materials actually used and paid for by the Contractor;
- 16.1.2.3. the allowance percentages stated in the Contract, held to cover all charges for the Contractor's and Subcontractor's profits, timekeeping, clerical work, insurance, establishment, superintendence and the use of hand tools; and,
- 16.1.2.4. an amount in respect of Contractor's Equipment as provided for in the Contract.
- 16.1.3. The Contractor shall deliver to the Company Representative accurate statements in duplicate that shall include the following details of the resources used in executing the Contract:
- 16.1.3.1. names, occupations and working times of the Contractor's Employee;
- 16.1.3.2. the identification, type and time of Contractor's Equipment and Temporary Works; and
- 16.1.3.3. the quantities and types of Contractor's Equipment used.

- 16.2. One copy of each statement will, if correct and when agreed to, be signed by the Company Representative and returned to the Contractor. The Contractor will then submit invoices.

#### 17. INSPECTION, EXAMINATION, MEASURING AND TESTING

##### 17.1. Examination of Work Before Covering Up

- 17.1.1. No part of the Deliverables shall be covered up or put out of view without the prior written approval of the Company Representative. The Contractor shall give the Company Representative full opportunity to inspect, examine, measure and test any such part of the Works and/or Plant and/or other Deliverables that is about to be covered up or put out of view, and to examine any foundations before any part of the Works and/or Plant and/or other Deliverables is placed thereon. The Contractor shall give notice to the Company Representative whenever such work is ready for inspection, examination, measurement or testing and the Company Representative shall, without unreasonable delay, attend for the purpose of inspecting, examining, measuring and testing such part of the Works and/or Plant and/or other Deliverables, or for examining the foundations.
- 17.1.2. The Contractor shall uncover any part of the Works and/or Plant and/or other Deliverables or make any openings in or through the same, as the Company Representative may from time to time instruct, and shall reinstate and make good such part as required by the Company Representative. If any such part has been covered up or put out of view after compliance with the requirement of Clause 17.1.1 above, and is found to be executed in accordance with the Contract, the costs in respect of such uncovering shall be for the account of the Company.

##### 17.2. Notice of Inspections or Testing

- 17.2.1. If the Company Representative notifies the Contractor that he intends witnessing certain inspections and/or tests, the Contractor shall provide the Company Representative with at least five (5) days prior notice in writing of the time, date and place at which such Works and/or Plant and/or other Deliverables will be ready for the said inspections and/or tests. Special arrangements shall be agreed on in respect of Plant being manufactured overseas.
- 17.2.2. Inspections and testing shall be conducted so that progress of the Contract is not delayed and the witnessing of such inspections and/or tests shall not be reason for the Contractor to delay manufacture, delivery or completion of any Deliverables. Inspections and/or tests shall not be delayed by the absence of the Company Representative. Provided notice has been given by the Contractor in accordance with the above, the Contractor may proceed with the inspections and/or tests on the date and at the time and place indicated in the notice. The Contractor shall forward to the Company Representative duly certified copies of the results of the inspections and/or tests carried out.
- 17.2.3. Should the Company Representative not be present to witness inspections and/or tests on any Works and/or Plant and/or other Deliverables where he had indicated his intention to be present, and provided that notice had been given by the Contractor in accordance with the above, the Contractor shall again dismantle/disassemble, open or uncover such part of the Works and/or Plant and/or other Deliverables if the Company Representative so directs and again perform the specified inspections and/or tests to the satisfaction of the Company Representative at a time specified by the Company Representative. The cost of such dismantling/disassembling, opening or uncovering and inspection and/or testing shall then be for the account of the Company.
- 17.2.4. If, as a result of the inspection, examination, measurement or testing referred to above, the Company Representative decides that any Works and/or Plant and/or other Deliverables is defective or otherwise not in accordance with the Contract, he may reject such Works and/or Plant and/or other Deliverables and shall notify the Contractor thereof immediately. The notice shall state the objections and reasons for the objections. The Contractor shall then at its own cost and with all speed make good and rectify the defect to ensure that any defective Works and/or Plant and/or other Deliverables complies with the prescriptions of the Contract. If the Company Representative requires that the Works and/or Plant and/or other Deliverables be re-tested, the tests shall be repeated under the same conditions as the previous tests.
- 17.3. Additional Testing before Assembly or Closing-Up
- 17.3.1. The Company Representative may direct the Contractor to perform additional or alternative inspections and/or tests for specific Works and/or Plant and/or other Deliverables. Costs of such inspections and/or tests shall be for the Company's account.
- 17.3.2. The Tests on Completion shall be carried out by the Contractor before Taking Over by the Company.
- 17.4. Remedial Work
- Notwithstanding any previous test or certification, the Company Representative may instruct the Contractor to:
- 17.4.1. remove from the Site and replace any Contractor's Equipment or material that is not in accordance with the Contract;
- 17.4.2. remove and re-execute any work that is not in accordance with the Contract; and
- 17.4.3. provide all Contractor's Equipment and material required for such removal and re-execution, at the Contractor's expense; and
- 17.4.4. execute any work that is urgently required for the safety of the Works and/or Plant and/or other Deliverables, whether because of an accident, unforeseen event or otherwise.
- The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately, if urgency is specified under Clause 17.4.3 above.
- 17.5. If the Contractor fails to comply with the instructions of the Company, the Company shall be entitled to employ and pay other persons to carry out the work. To the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Company all costs arising from its failure to comply with the instructions of the Company.

## 18. TAKING OVER

On completion of the Contract and prior to leaving Site, the Contractor's Representative shall obtain a Taking Over Certificate from the Company Representative, stating the Deliverables to be complete and satisfactory,

and that the Site has been cleaned and the necessary environmental clean-up and rehabilitation have been completed.

- 18.1. Prior to the issue of a Taking Over Certificate, the Contractor shall clear away and remove from that part of the Site and Works and/or Plant and/or other Deliverables to which the Taking Over Certificate relates, all the Contractor's Equipment, surplus materials, wreckage, rubbish and Temporary Works or any other materials or equipment the Company requires the Contractor to remove. The Contractor shall leave the Site in a clean and safe condition and shall conduct an environmental clean-up and rehabilitation of the Site and any other areas affected by the Works and/or Plant and/or other Deliverables, in terms of the relevant Environmental Laws and the Environmental Management Plan. It is the Contractor's obligation to clean up and leave the Site in a safe condition to the entire satisfaction of the Company. If the area affected by the Contractor is not included in the Environmental Management Plan, then the Contractor must clean up and rehabilitate the affected area to the Company's satisfaction. However, the Contractor may retain on Site, during the Defects notification period, such Contractor's Equipment, materials and Temporary Works as are required for the Contractor to fulfil its obligations under the Contract.
- 18.2. Taking Over
- The Works and/or Plant and/or other Deliverables shall be taken over by the Company when they have been completed in accordance with the Contract, have passed the Tests on Completion and a Taking Over Certificate has been issued.
- 18.3. Taking Over Certificate
- The Contractor may apply in writing to the Company Representative for a Taking Over Certificate not earlier than 21 (twenty-one) days before the Deliverables will, in the Contractor's opinion, be complete and ready for taking over under Clause 18.1 above.
- 18.4. The Company Representative shall, within 21 (twenty one) days after the receipt of the Contractor's application, either:
- 18.4.1. issue the Taking Over Certificate to the Contractor with a copy to the Company, stating the date on which the Deliverables were complete and ready for taking over, or
- 18.4.2. reject the application, giving his reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued.
- 18.5. If the Company Representative fails either to issue the Taking Over Certificate or to reject the Contractor's application within the period of 21 (twenty one) days, the Taking Over Certificate shall be deemed to have been rejected.
- 18.6. If the Deliverables are divided into Sections by the Contract, the Contractor shall be entitled to apply for separate Taking Over Certificates for each such Section.
- 18.7. The issuing by the Company of a Taking Over Certificate shall not effect or terminate any right of the Company under Clauses 19 (Defects After Taking Over) and 34 (Warranties).
- 18.8. Use Before Taking Over
- 18.8.1. The Company shall not use any part of the Deliverables unless a Taking Over Certificate has been issued in respect thereof.
- 18.8.2. Notwithstanding Clause 18.7.1, should the Company use any part of the Deliverables, the part that is used shall be deemed to have been taken over at the date of such use. The Company Representative shall, on request of the Contractor, issue a Taking Over Certificate accordingly. If the Company uses any part of the Deliverables before issuing a Taking Over Certificate, the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.
- 18.8.3. The Deliverables shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.
- 18.9. Interference with Tests on Completion
- 18.9.1. If the Contractor is prevented from carrying out the Tests on Completion due to a cause for which the Company or the Company Representative or other contractors employed by the Company are responsible, the Company shall be deemed to have taken over the Deliverables on the date when

- the Tests on Completion would have been completed, had such prevention not occurred. The Company Representative shall issue a Taking Over Certificate accordingly.
- 18.9.2. If the Deliverables are taken over under this Clause, the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Company Representative shall instruct the Tests on Completion to be carried out by giving 14 (fourteen) days' notice. The Tests on Completion shall be performed in accordance with the relevant provisions of the Contract.
- 18.9.3. Any additional costs that the Contractor may incur in performing the Tests on Completion during the Defects Liability Period shall be added to the Contract Price.

18.10. Title

Good and clear title to all material and equipment furnished by the Contractor under the Contract for the Deliverables shall pass to the Company upon signing/deemed signing of the Taking Over Certificate. The Contractor shall ensure that all vendors and suppliers from which the Contractor obtains materials, supplies and equipment do not retain, encumber or reserve title to such items.

**19. DEFECTS AFTER TAKING OVER**

19.1. Defects Liability Period

Where any part of the Deliverables is taken over separately from the whole of the Deliverables, the Defects Liability Period for that part shall commence on the date it was taken over.

19.2. Notice of Defects

If any defect in or damage to any part of the Deliverables appears or occurs during the Defects Liability Period and that arises from, either:

- 19.2.1. any defective materials, workmanship or design, or  
 19.2.2. any act or omission of the Contractor,  
 the Company or Company Representative shall forthwith notify the Contractor thereof.

19.3. Making Good Defects

The Contractor shall be responsible for making good any defect in or damage to any part of the Deliverables that may appear or occur during the Defects Liability Period and that arises from, either:

- 19.3.1. any defective materials, workmanship or design, or  
 19.3.2. any act or omission of the Contractor.

If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may, with the written consent of the Company Representative, remove from the Site for the purposes of repair any such part of the Deliverables that is defective or damaged.

The Contractor shall make good the defect or damage as soon as practicable and at its own cost.

19.4. Extension of Defects Liability Period

The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor during the Defects Liability Period as if the replacements and renewals had been taken over on the date they were completed. The Defects Liability Period for the Deliverables shall be extended by a period equal to the period during which the Deliverables cannot be used by the Company by reason of a defect or damage. If only part of the Deliverables is affected, the defects liability period shall be extended only for that part. In neither case shall the defects liability period be extended by more than one year.

19.5. Failure to Remedy Defects

- 19.5.1. If the Contractor fails to remedy a defect or damage within a reasonable time, the Company may fix a final time for remedying the defect or damage.
- 19.5.2. If the Contractor fails to do so within the fixed time, the Company may:
- 19.5.2.1. carry out the work itself or have it carried out by others at the Contractor's risk and cost, provided that the Company, after informing the Contractor in writing of its intention, does so in a reasonable manner. The costs properly incurred by the Company in remedying

the defect or damage shall be deducted from the Contract Price, but the Contractor shall carry no responsibility for such work; or

- 19.5.2.2. require the Contractor to grant the Company a reasonable reduction in the Contract Price, to be agreed on between the Parties or to be determined by Arbitration.
- 19.5.3. If the defect or damage is such that the Company has been deprived substantially of the Deliverables or a part thereof, the Company may terminate the Contract in respect of such parts of the Deliverables that cannot be put to the intended use. The Company shall, to the exclusion of any remedy it may have in terms of the Contract or under law, be entitled to recover from the Contractor all sums paid in respect of such parts of the Deliverables, together with the cost – as applicable - of dismantling same, clearing the Site and returning unusable Contractor's Equipment and material to the Contractor or otherwise disposing of it in accordance with the Contractor's instructions.

19.6. Supplementary Tests on Completion

If the replacements or renewals are such that they may affect the performance of the Works and/or Plant and/or other Deliverables, the Company may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice within 28 (twenty eight) days after the replacement or renewal. The Tests shall be carried out in accordance with Clause 17 (Inspection, Examination, Measuring and Testing). Any costs incurred such supplementary tests will be for the Contractor's account.

19.7. Right of Access

Until the Taking Over Certificate has been issued for the remedied defects, the Contractor shall have the right of access to all parts of the Deliverables and to records of the Deliverables. Such right of access shall be during the Company's normal working hours at the Contractor's risk and cost. Access shall also be granted to any authorised representative of the Contractor whose name has been communicated in writing to the Company Representative. Subject to the Company Representative's approval, the Contractor may also at its own risk and cost make any tests that it considers necessary.

19.8. Defects in Company's Designs

The Contractor shall not be liable for any defects resulting from designs furnished or specified by the Company or Company Representative.

19.9. Determining the Cause of the Defect

The Contractor shall, if required by the Company Representative in writing, search for the cause of any defect, under the direction of the Company Representative. In the event that the defect is one for which the Contractor is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be for the Contractor's account.

**SCHEDULE OF DEFECTS**

When... before/after TO? Both?

19.10. Taking Over after Defects Liability Period

When the Defects Liability Period for the Deliverables or any part thereof has expired and the Contractor has fulfilled all of its obligations under the Contract for defects in the Works and/or Plant and/or other Deliverables or that section, the Company Representative shall issue a Taking Over Certificate to the Contractor within 28 (twenty eight) days.

**20. REMEDIES IN CASE OF DEFAULT IN PERFORMANCE**

- 20.1. If any part of the whole of the Works and/or Plant and/or other Deliverables is of defective quality, the Company shall, without prejudice to any other rights that the Company may have in terms of the Contract or in law, be entitled
- 20.1.1. to instruct the Contractor to redo the defective Works and/or Plant and/or other Deliverables : or

- 20.1.2. to purchase replacement Works and/or Plant and/or other Deliverables from a third party and the Contractor shall be liable to the Company for any excess cost of the Works and/or Plant and/or other Deliverables incurred by the Company; or
  - 20.1.3. to instruct the Contractor to purchase replacement Works and/or Plant and/or other Deliverables from a third party and the Contractor shall be liable to the Company for any excess cost of the Works and/or Plant and/or other Deliverables incurred by the Company; or
  - 20.1.4. put the Contractor in breach as in Clause 23 (Breach and Termination).
- 20.2. Failure on the part of the Company to implement the provisions of this Clause 20 shall not prejudice or affect the rights of the Company to invoke the said provisions in a subsequent delivery of service.

**21. CLAIMS**

- 21.1. If there are any circumstances in which the Contractor considers itself entitled to claim additional payment, the Contractor shall:
- 21.1.1. give written notice to the Company Representative of its intention to claim for additional payment, within 28 (twenty eight) days of the circumstances giving rise to the claim becoming known to it; and
  - 21.1.2. as soon as reasonably possible after the date of the written notice, but not later than 90 (ninety) days from such written notice, submit full and complete details of its claim to the Company Representative, together with any additional information that may be required to assess the validity of its claim.
  - 21.1.3. After due consultation between the Company Representative and the Contractor, the Company Representative will determine whether the Contractor is entitled to additional payment or not, and advise the parties accordingly. The Company Representative shall initiate an Amendment if the Company Representative determines that an additional payment is required.
  - 21.1.4. Subject to Clause 14 (Variations and Amendments), a Party shall give the other Party written notice within 7 (seven) days after the occurrence of any event that the Party anticipates may give rise to a claim for a Variation or Amendment. Within 10 (ten) days after the occurrence of such event or after such extended period agreed to in writing by the Parties, the Contractor shall supply the Company with a statement supporting the Contractor's claim, which statement shall include the Contractor's detailed estimate of the expected effect on the Price.
  - 21.1.5. The Company shall not be liable for - and the Contractor hereby waives its right to - any claim or potential claim of the Contractor that was not reported by the Contractor in accordance with the provisions of Clause 21.1.4 above. The Contractor agrees to continue performance of the Contract during the time that any claim of the Contractor is pending. The Company shall not be bound to any adjustments in the Price or scheduled time for the Contractor's claim unless expressly agreed to by the Company in writing. No claim by the Contractor in terms of this Clause 21 shall be allowed if asserted after final payment under the Contract has been made.
- 21.2. Other than as provided for in the Contract, the Contractor shall not be allowed to claim costs incurred in anticipation of, or in planning for, the Contract or for any Contractor's Equipment or material purchased that can only be used for the Contract. The Contractor may not claim the cost of any labour costs relating to the Contract.
- 21.3. The Contractor may not claim for any additional work that it has done outside the specifications of the Contract, for which the Company has not issued a formal Variation or Amendment or other contractual instrument.

**22. RESOLUTION OF DISPUTES**

- 22.1. Informal Dispute Resolution - Any dispute or difference between the Parties relating to or arising from the Contract, excluding a dispute in respect of the validity of termination, may be submitted to the managing directors or chief executive officers of the Parties.
- 22.2. Formal Dispute Resolution - Either Party may, if the other Party agrees thereto in writing, demand that the dispute be referred for arbitration, in accordance with the commercial arbitration Rules of the Arbitration Foundation of South Africa ('AFSA'). Such arbitration shall be held in Johannesburg, unless otherwise agreed to.

- 22.3. Technical Disputes - If a dispute is of a technical nature, either Party may refer the matter to a technical expert nominated by the head of the South African Consulting Engineers Association. The decision of the technical expert shall, in the absence of manifest error or fraud, be binding on the Parties.
- 22.4. Each Party irrevocably consents to the arbitration proceedings, and no Party shall be entitled to withdraw from such arbitration proceedings or to claim that it is not bound by this Clause.
- 22.5. Each Party agrees that the decision of the arbitrator in the arbitration proceedings
  - 22.5.1. shall be final and binding on each of them; and
  - 22.5.2. will be carried into effect; and
  - 22.5.3. may be made an order of Court by agreement between the Parties.
- 22.6. There shall be one arbitrator, who shall be, if the question in issue is
  - 22.6.1. primarily an accounting matter, an independent chartered accountant of not less than 10 (ten) years' standing;
  - 22.6.2. primarily a legal matter, a practising advocate or commercial attorney of not less than 10 (ten) years' standing;
  - 22.6.3. any other matter, a suitably qualified, independent person.
- 22.7. The appointment of the arbitrator shall be agreed on between the Parties, but failing agreement between them within 5 (five) Business Days after the arbitration has been demanded, either of the Parties shall be entitled to request the Registrar of AFSA to make the appointment. In making the appointment, the Registrar shall have regard to the nature of the dispute and the Parties' requirement for speedy arbitration.
- 22.8. The arbitrator shall have the powers conferred upon an arbitrator under the Rules, except that the arbitrator shall have no authority to award punitive, consequential, special or indirect damages. The arbitrator shall not be entitled to issue injunctive and other equitable relief.
- 22.9. The cost of the arbitration proceedings and any proceedings in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrators, and shall be awarded as part of the arbitrator's award.
- 22.10. Notwithstanding the foregoing, nothing shall preclude either Party from
  - 22.10.1. applying to court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator, or
  - 22.10.2. choosing to resolve the dispute through court processes instead of arbitration, on the condition that arbitration proceedings have not been instituted in respect of the same relief being sought by the relevant Party.
- 22.11. The Parties agree that any legal action or proceedings arising out of or in connection with the Contract may be brought in a court of competent jurisdiction in the Republic of South Africa, and submit to the exclusive jurisdiction of that court.
- 22.12. This Clause is severable from the rest of the Contract and shall therefore remain of full force and effect after the Contract is terminated or cancelled.

**23. BREACH AND TERMINATION**

- 23.1. Either Party may terminate the Contract forthwith on written notice to the other Party, in the event of a breach of the Contract by the other Party that is incapable of remedy. Where the breach is capable of remedy, the innocent Party may terminate the Contract on written notice to the breaching Party, where the breaching Party has failed to remedy the breach within 7 (seven) days from receipt of a written notice from the innocent Party requesting that the breach to be remedied.
- 23.2. The innocent Party's remedies in terms of this Clause 23 are without prejudice to any other remedy to which the innocent Party may be entitled in law.
- 23.3. The Contractor shall be deemed to have breached the Contract, entitling the Company (without prejudice to any other rights that the Company may have in law or in terms of the Contract) to cancel the Contract forthwith, with or without claiming damages or to obtain an order for specific performance, with or without claiming damages, in the event that:
  - 23.3.1. the Contractor goes into liquidation or judicial management (whether provisional or final), or commits any act of insolvency;
  - 23.3.2. a judgement is given against the Contractor in any competent court for more than R5 million, which

- judgement is not paid or appealed within 14 (fourteen) Business Days;
- 23.3.3. a change in ownership or shareholding occurs that may affect the quality or delivery of Works and/or Plant and/or other Deliverables ;
- 23.3.4. the Contractor fails to comply with the Company Standards;
- 23.3.5. the Contractor breaches any of the warranties in the Contract (Clause 34 - Warranties);
- 23.3.6. the Contractor carries out the same or a similar breach more than once in 6 (six) months;
- 23.3.7. the Contractor or anyone in its employ pays or offers to pay, or gives or offers to give, any money or any gift of whatsoever nature, whether by way of a commission, gratuity or otherwise, or lends or offers to lend any money or any asset, or gives or offers to give any other valuable consideration to any person in the employ of the Company or Sibanye Gold Limited;
- 23.3.8. the Contractor and Company fail to reach agreement on a variation in Price.
- 23.4. The Company shall be entitled to indemnification and payment by the Contractor of its legal costs on a scale as between attorney and own client in any legal proceedings arising from or associated with any breach by the Contractor of its obligations in terms of this Clause 23.
- 23.5. In the event that the Company terminates the Contract for whatsoever reason and appoints a contractor of its choice to complete the Works and/or Plant and/or other Deliverables, the Contractor shall actively participate and ensure a smooth handover to the new contractor. This shall include, but is not limited to, providing all relevant documentation.

## 24. PERFORMANCE GUARANTEE

- 24.1. If agreed by the Parties, the Contractor shall provide a Performance Guarantee (including Advance Payment and Retention Guarantees) within 14 (fourteen) days of notification of Contract award. The Performance Guarantee shall be in favour of the Company and shall be furnished by a bank or financial institution approved by the Company, in the prescribed format. It shall not have a termination date. The Contractor will ensure that the Performance Guarantee is issued and will implement and manage the Performance Guarantee and any claims on behalf of the Company for payment of the bonded amount. The Contractor will, at the option of the Company, make any claims against the surety on behalf of the Company.
- 24.2. The Performance Guarantee shall be valid until the Contractor has executed and completed the Works and/or Plant and/or other Deliverables and remedied any Defects in accordance with the Contract. The Performance Guarantee shall thereupon, at the request of the Contractor, be returned to the Contractor.
- 24.3. Failure to present the required Performance Guarantee shall result in the Contractor being prevented from proceeding with the Works and/or Plant and/or other Deliverables or receiving payment for any work executed until the Performance Guarantee is received and approved by the Company. Failure by the Contractor to provide the Company with the Performance Guarantee shall give the Company the right to terminate the Contract with immediate effect.
- 24.4. The cost of any delays occasioned by the Contractor's failure to obtain the Performance Guarantee within 14 (fourteen) days shall be for the Contractor's account and the Company shall refuse to grant the Contractor any extension of time for the completion of the Works and/or Plant and/or other Deliverables, necessitated by such delay.
- 24.5. The costs of complying with the requirements of this Clause shall be borne by Contractor.
- 24.6. Prior to making a claim under the Performance Guarantee, the Company shall notify the Contractor, stating the nature of the default in respect of which the claim is to be made.

## 25. PARENT/GROUP COMPANY GUARANTEE

On request of the Company, the Contractor shall provide a guarantee by the parent company, or the company Group, or the major shareholder, of the Contractor in respect of the performance by the Contractor of its obligations in terms of the Contract. The Company shall not request a guarantee under this Clause in addition to a Performance Guarantee as set out in Clause 24.

## 26. FOREIGN CURRENCY CONTROL

- 26.1. Foreign Currency

Should the Contract Price contain any amounts, in respect of imported Plant, that are subject to exchange rate variation, then the Contractor shall declare such amounts to the Company Representative at the time of submission of the Tender. The Contractor shall furnish the following information: -

- 26.1.1. country of origin of such imported goods;
- 26.1.2. actual FOB value of the imported goods (not expressed as a percentage of the Contract Price); and
- 26.1.3. bank's selling rate of exchange on which the price is based.

- 26.2. The Company reserves the right to pay either the Contractor's principal direct, bearing the foreign currency risk on such amounts declared, or request the Contractor to provide forward cover for such amounts. If the Company instructs the Contractor to purchase forward cover, the Contractor shall obtain and confirm forward cover within 7 (seven) days of the date of the last party signing the Contract and the Contractor shall carry the risk of failure to obtain forward cover after the seventh day.

- 26.3. Should additional cost be incurred due to the Contractor defaulting in the following obligations, then such additional cost shall be for the account of the Contractor:

- 26.3.1. the submission of a declaration of exchange rate variation with its offer; or
- 26.3.2. in the timely provisioning of forwarded cover when requested to provide such; or
- 26.3.3. the timely submission of commercial invoices in the foreign currency; or
- 26.3.4. the delivery date.

- 26.4. Control Documents

Where the Company has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency, then the Contractor shall within one (1) month of the date of receipt of the goods at the port of entry into the Republic of South Africa provide the Company Representative with the originals of:

- 26.4.1. commercial invoices, duly stamped by the Department of Customs and Excise;
- 26.4.2. bill of lading, duly stamped by the Department of Customs and Excise;
- 26.4.3. bill of entry, duly stamped by the Department of Customs and Excise.

- 26.5. In the event that the Contractor is unable to submit originals of the said documents to the Company Representative, then the Contractor shall provide to the Company Representative, in a form approved by the Company Representative, with an undertaking, signed by an official of the Contractor having authority to do so, guaranteeing that the Contractor will hold the original documents in its safe keeping and make them available for inspection by either the Company or an official of the South African Reserve Bank when required to do so. The said documents shall be retained by the Contractor for two (2) years from the completion date of Contract or for the period prescribed by the South African Reserve Bank Rules and Regulations.

- 26.6. The Contractor shall be liable to the Company for any liability incurred by the Company for breach by the Contractor of South African Reserve Bank Rules and Regulations due to failure of the Contractor to supply appropriate documentation.

- 26.7. CIF and SA Port Charges shall be fixed and firm and free of adjustment, except when affected by statutory or exchange rate variations. Any variation to CIF and SA Port Charges resulting from statutory or exchange rate variations must be claimed separately by the Contractor and substantiated by documentary evidence to the satisfaction of the Company Representative. Any claims for CIF and SA Port Charges and any variations thereof shall be approved and confirmed by the Company Representative issuing an Amendment to the Contract in that regard. Any claim for variations to CIF and SA Port Charges shall be submitted as soon as possible to the Company Representative, but in any event not later than 30 (thirty) days from the date of receipt of the goods at the port of entry into the Republic of South Africa.

## 27. ENVIRONMENTAL ASSESSMENTS, ACCESS TO AND POSSESSION OF SITE

- 27.1. The Company shall within 7 (seven) days of the date specified in the Contract, grant the Contractor access to and possession of the Site, which may, however, not be exclusive to the Contractor. The Company shall, to the extent stated in the Contract, provide means of access for the delivery of all Contractor's Equipment to the Site. If it is necessary for the Contractor to make any temporary modification to, or reinforcement or diversion of any fences, roads, railways, service lines or any other existing thing, in order to meet any of his obligations in fulfilment of the Contract, the costs of such modification, reinforcement or diversion and any necessary reinstatement thereof shall be borne in full by the Contractor.

- 27.2. If required by law, the Contractor shall conduct or appoint a person approved by the Company to conduct an Environmental Impact Assessment, and shall obtain authorisation from the relevant authority for the activity for which the Environmental Impact Assessment is required. Such authorisation will be submitted to the Company

- for acceptance in writing, prior to the Contractor taking possession of or setting up the Site or executing the Contract. The costs of conducting the Environmental Impact Assessment will be borne by the Contractor.
- 27.3. If the Contractor is not required to conduct an Environmental Impact Assessment by law, the Contractor shall conduct a Mini Environmental Impact Assessment, to the Company's satisfaction, prior to taking possession of or setting up the Site or executing the Contract. The costs of conducting the Mini Environmental Impact Assessment will be borne by the Contractor.
- 27.4. The Contractor will compile an Environmental Management Plan to the Company's satisfaction, based on the findings of the Environmental Impact Assessment (or Mini Environmental Impact Assessment, as the case may be). The Contractor shall comply with the Environmental Management Plan and any conditions imposed by the relevant authority in its authorisation of any activity for which an Environmental Impact Assessment was required.
- 27.5. If the Contract requires the Company to provide any building, structure, foundation or approach to the Contractor, such building, structure, foundation or approach shall be in a condition suitable for the purpose for which it is intended, in size, mass and other specifications specified by the Contractor and agreed to by the Company Representative in writing.
- 27.6. The access to and possession of the Site referred to in this Clause shall not be exclusive to the Contractor, but only to such an extent as is necessary to enable it to execute its obligations in fulfilment of the Contract. The Contractor shall, in accordance with the instruction of the Company Representative, afford to all other contractors engaged by the Company to work on the Site and all other persons lawfully upon the Site, all reasonable opportunities for carrying out their work, provided that this does not obstruct or disturb the progress of the Contractor's work. The Contractor shall also afford such opportunities to the Employees of the Company.
- 27.7. The Contractor is not permitted to conduct any business other than in connection with the Contract on the Site, or on any part of the Company's premises.

## 28. LIENS ON COMPANY'S PROPERTY

- 28.1. The Contractor shall not have any lien or right of retention of whatsoever nature in respect of Company Property/Mine and/or Site and/or any part thereof and expressly waives all rights that it may have in this regard whether in terms of the common law or otherwise.
- 28.2. The Contractor shall at all times promptly pay for all works, materials, equipment and labour used or furnished by the Contractor in the execution of the Contract and shall, at its own expense, keep the Company Site and all property belonging to or acquired by the Company free and clear of third party liens and rights of lien or possession. Should the Contractor fail to release and discharge any such claims of lien within 7 (seven) days after receipt of written notice from the Company to remove such claim of lien, the Company may, at its own option, discharge or release the claim of lien or otherwise deal with the lien claimant, and the Contractor shall pay the Company any and all costs and expenses that the Company incurs in so doing, including legal and other fees.

## 29. ASSIGNMENT, SUBCONTRACTING AND CESSION OF BOOK DEBTS

- 29.1. Assignment
- The Contractor shall not cede, assign or transfer the Contract or any part thereof or any benefits or obligations thereunder to any other person, except with the prior written consent of the Company Representative.
- 29.2. Subcontracting
- 29.2.1. The Contractor shall not subcontract the whole of the Contract. The Contractor shall not subcontract any part of the Contract without the prior written consent of the Company Representative (which consent shall not be unreasonably withheld).
- 29.2.2. The Contractor shall be responsible for the acts, errors, omissions, defaults and neglects of any Subcontractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions, defaults or neglects of the Contractor, its agents, representatives or employees.
- 29.3. Cession of Book Debts
- 29.3.1. The Contractor shall not, during the currency of the Contract, cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business, except with the prior consent, in writing, of the Company.
- 29.3.2. The Contractor shall notify the Company at the time of Tender of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts, or

both. Should the Contractor fail to comply with the above provisions, the Company shall be at liberty to terminate the Contract.

## 29.4. Monies Due from the Contractor

Any costs, damages or expenses for which the Contractor is liable to the Company may be off-set or deducted by the Company from any monies due or becoming due to the Contractor as a result of its business dealings with the Company; alternatively, these may be recovered from the Contractor by action at law.

## 30. ETHICAL STANDARDS

In accepting the Contract, the Contractor undertakes to act only with utmost good faith and care in the execution thereof. Should the Contractor commit an act that may compromise the ethical relationships between the Contractor and Company, in terms of this or other contracts, or that is contrary to standard business practices, then the Company shall have the power, at its discretion, to terminate the Contract immediately by giving notice to that effect to the Contractor.

## 31. RIGHT TO AUDIT

- 31.1. The Company shall have the right to appoint an auditor, being either an independent auditing firm or the Company's Internal Auditing Department, (the Auditing Authority) to audit the Contractor's records that specifically relate to the Contract. The auditor shall give the Contractor notice of its intention to conduct an audit, and the Contractor shall assist and co-operate with the auditor. The cost of any such audit shall be for the Company's account.
- 31.2. The Contractor agrees that the Company may disclose findings from these audits to stakeholders from time to time, including Company Management, Union leadership and Regulatory bodies.

## 32. CONFLICT OF INTEREST

The Contractor shall 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 shall immediately report such conflict of interest to an appropriate senior manager of the Company, or shall use the confidential reporting mechanism, details of which can be obtained from the Company's website. The obligation on the Contractor is continuous and a conflict of interest must be reported when it arises, not merely at the inception of the Contract.

## 33. JOINT AND SEVERAL LIABILITY

- 33.1. If the Contractor constitutes under applicable laws a joint venture, partnership, consortium or other unincorporated or incorporated grouping of two or more persons, these persons shall be deemed to be jointly and severally liable to the Company for the performance of the Contract. The persons shall notify the Company of their representative who shall have the authority to bind the Contractor and each of the joint venture parties or groupings of persons.
- 33.2. The Contractor shall not alter its composition or legal status in a manner that materially affects the Contract without the prior written consent of the Company. If the Contractor makes any non-material changes, the Contractor shall ensure that it remains able to carry out its obligations in terms of the Contract.

## 34. WARRANTIES

- 34.1. The Contractor warrants to the Company that the Works and/or Plant and/or other Deliverables shall:-
- 34.1.1. comply with the specification and/or the standard agreed by the Parties;
- 34.1.2. be carried out in a professional manner by suitably trained Employees of the Contractor;
- 34.1.3. comply with all applicable legislation, by-laws and regulations and that the Works and/or Plant and/or other Deliverables will not contain any recommendation that constitutes a contravention of any applicable legislation, by-laws or regulation;
- 34.1.4. be to the complete satisfaction of the Company, which shall have the right, without prejudice to any other rights that it may have in terms of the Contract or in law, to reject any Works and/or Plant and/or other Deliverables that are defective and to instruct the Contractor to redo those Works and/or Plant and/or other Deliverables to the satisfaction of the Company;

- 34.1.5. not infringe any third party's Intellectual Property Rights;
  - 34.1.6. be subject to a Quality Assurance programme and quality management system required by the Company;
  - 34.1.7. be free from both patent and latent defects and be of good quality and workmanship;
  - 34.1.8. be fit for the purpose for which it is intended by the Company; and
  - 34.1.9. be supplied with the full benefit to the Company of any manufacturer's warranty.
- 34.2. The Contractor warrants it has obtained and maintains all permits, licences, certificate of roadworthiness, other certificates or other consents or approvals required by the Contractor under any statute and shall, when requested to do so by the Company, provide the Company with copies thereof.

34.3. The Company enters into the Contract on the strength of the warranties undertaken by the Contractor.

### 35. INSURANCES

The Contractor shall, at its own cost and expense, obtain and maintain in force during the currency of the Contract:

- 35.1. insurance policies indemnifying the Contractor and the Company from and against any losses, damages, costs, claims and demands referred to in Clause 36 (Indemnities);
- 35.2. insurance policies indemnifying the Contractor and the Company from and against any losses, damages, costs, claims and demands in respect of any of its equipment that is to be used in the execution of the Contract;
- 35.3. insurance against any liability to pay damages or compensation to its Employees with an insurer approved by the Company (which approval shall not be unreasonably withheld). The Contractor shall ensure that all its Subcontractors insure against this liability with regard to their own Employees; and
- 35.4. insurance on all the Contractor's Equipment owned, hired or operated by it. Such insurance shall provide cover to the full value of the Contractor's Equipment, shall be arranged in the joint names of the Contractor and the Company and shall be effected with an insurer approved by the Company (which approval shall not be unreasonably withheld). The Contractor shall ensure that all Subcontractors have such insurance with regard to their own equipment.

### 36. INDEMNITIES

- 36.1. The Contractor indemnifies and holds the Company and its directors and employees harmless from and against:
- 36.1.1. any liability, loss and expense that the Company, directors or employees may sustain or incur (including legal fees and expenses), based on any act or omission of the Contractor or any of its employees and arising from whatsoever cause, including delict, contract or a breach of any statutory duty; and/or
  - 36.1.2. any liability, loss and expense that the Company, directors or employees may sustain or incur (including legal fees and expenses), arising from any injury to, death or disease of any of their employees and whether or not in the course of supplying the Works and/or Plant and/or other Deliverables; unless such injury or death or disease was caused by the wilful conduct of the said companies, directors or employees.
- 36.2. The Contractor hereby indemnifies and holds the Company harmless against any liability, loss, claim, costs or damages or degradation of the environment (including legal fees and expenses) that may be incurred by the Company or brought against or claimed from the Company arising out of or in connection with the conclusion of the Contract, the supply of the Works and/or Plant and/or other Deliverables, and/or its presence at the Site, including, without derogating from the generality of the foregoing,
- 36.2.1. liability, loss, claim, costs or damages or degradation that arise out of or in the course of or by reason of the Contractor's execution of the Contract or any part thereof;
  - 36.2.2. any Defect of whatsoever nature in the Works and/or Plant and/or other Deliverables or the remedying of any Defect;
  - 36.2.3. is attributable to any negligence on the part of the Contractor, its Employees or Subcontractors;
  - 36.2.4. the unauthorised use or the infringement of any Intellectual Property rights in respect of the Works and/or Plant and/or other Deliverables;
  - 36.2.5. any disease, death of or injury to any of the Company's or the Contractor's Employees, howsoever arising,
  - 36.2.6. any damage to property by the Contractor; or
  - 36.2.7. the cost of any damages arising from any industrial action by the Contractor's Employees.

- 36.3. Should the Company at any time incur any liability, loss, damages, costs or claims as envisaged in this Clause, it shall be entitled, without prejudice to any other rights that it may have, to withhold any or all monies due to the Contractor in terms of the Contract until such time as the Contractor has made good its obligations in terms of this Clause 36.

### 37. ANTI-CORRUPT PRACTICES AND COMPLIANCE WITH LAW

- 37.1. The Parties undertake that their employees, members, constituency or related third parties shall at all times and in respect of all engagements in terms of this Contract –
- 37.1.1. Comply with all international and local anti-bribery laws to which the Parties are subject, including those of any jurisdiction where they conduct business;
  - 37.1.2. Not to engage in any corrupt activities;
  - 37.1.3. Not to directly or indirectly pay, give or offer to pay or give any loan of money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, including but not limited to a government official, governmental employee, or any political party or political party official, or candidate for political party official, or candidate for political office, in his/her official capacity or to induce an official to use his/her influence to effect a decision so as to assist the Party in obtaining or retaining business or directing business to any person/entity or to secure any improper advantage; and not to make facilitation payments to facilitate or expedite any routine governmental action. Facilitation payments are prohibited;
  - 37.1.4. Comply with all applicable laws and legislation, including the Public Finance Management Act, 01 of 1999 (as amended), Municipal Finance Management Act, 56 of 2003, the General Terms and Conditions for the appointment of Contractors issued by the Treasury of the Republic of South Africa.
- 37.2. If the Company reasonably suspects that the Supplier has breached any of the undertakings contained in this Clause, then the Company shall be entitled, without prejudice to any other rights that the Company may have, to immediately cancel this Contract.

### 38. CONFIDENTIALITY

- 38.1. 'Receiving Party' shall mean the Party receiving the other's Confidential Information and 'Disclosing Party' shall mean the Party disclosing its Confidential Information to the other Party.
- 38.2. The Receiving Party may disclose Confidential Information only to its officers and employees and then only such officers and employees to whom such disclosure is necessary, provided that such officers and employees agree in writing to be bound by the terms and conditions of this Clause.
- 38.3. The Receiving Party agrees:
- 38.3.1. not to disclose Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party;
  - 38.3.2. not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose whatsoever other than in relation to the Contract;
  - 38.3.3. that the unauthorised or unlawful use or disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party, which Party make take recourse in the law.
- 38.4. The Receiving Party agrees to protect Confidential Information by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information.
- 38.5. The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return any material containing, pertaining to or relating to Confidential Information and to expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material. The Receiving Party shall comply with all requirements in terms of this Clause 38.5 within 7 (seven) days of receipt of written notice thereof.
- 38.6. The obligations of the Receiving Party pursuant to the provisions of the Contract shall not apply to any information that:
- 38.6.1. is known to or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
  - 38.6.2. is or becomes publicly known, otherwise than pursuant to a breach of the Contract by the Receiving Party;

- 38.6.3. is acquired or developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of the Contract;
- 38.6.4. is disclosed by the Receiving Party to satisfy the order of a Court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard; provided further that the Receiving Party will disclose only that portion of the Confidential Information that it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 38.6.5. is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party;
- 38.6.6. to the extent necessary under the rules of any recognised stock exchange.
- 38.7. The Contractor shall not make press releases or issue other advertising pertaining to the Contract without first obtaining the written approval of the Company.
- 38.8. The Contractor shall not use the Company's name for marketing or advertising purposes.
- 38.9. Breach of this Clause 38 shall be a material breach of the Contract, entitling the non-breaching Party to summarily terminate the Contract in addition to any other remedies available to it in law.
- 38.10. The rights and obligations contained in this Clause 38 shall continue in full force and effect after termination or completion of the Contract.

#### 39. INTELLECTUAL PROPERTY RIGHTS CREATION

- 39.1. The Contractor undertakes that the Contractor's Employees, Subcontractors and independent consultants agree that the Company will become the owner of the Intellectual Property Rights in any work that is eligible for Intellectual Property Rights and that is created by the Parties in the course and scope of providing Works and/or Plant and/or other Deliverables in terms of the Contract.
- 39.2. The Contractor cedes and assigns to the Company all Intellectual Property Rights in any work created or executed by it in the course and scope of the Contract and undertakes to procure that the Contractor's Employees and independent consultants likewise cede and assign such Intellectual Property Rights.
- 39.3. The Contractor undertakes not to exercise any residuary rights and undertakes to obtain assurances that affected parties shall not exercise any residuary rights in respect of any work created or executed by it or them in the course and scope of the Contract.
- 39.4. All work created or executed by the Contractor, in any fields pertaining to the Works will, unless the Contractor establishes to the contrary, be deemed to have been created or executed by it in the course and scope of the Contract.

#### 40. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

- 40.1. The Contractor indemnifies - and shall keep indemnified - the Company against all losses and costs of whatsoever nature that may be incurred as a result of any action, proceeding or claim arising from the acquisition, use, reproduction or adaptation of Intellectual Property provided by the Contractor that constitutes an infringement of any Intellectual Property Rights.
- 40.2. The indemnity shall not apply to any infringement of Intellectual Property Rights that is due entirely to the Contractor following a design or process stipulated by the Company, provided that such infringement was not at the time known by the Contractor to be an infringement.
- 40.3. It is a condition of this indemnity that the Company shall give the Contractor prompt notice of any action, proceeding, claim or threat instituted or made against it. The Company shall consult with the Contractor and the Company has the option to either:
- 40.3.1. permit the Contractor, at Contractor's expense, to conduct all negotiations or any litigation that may ensue with the proviso that the Company is informed of all actions taken and the results thereof; or

- 40.3.2. conduct any negotiations or litigation that may ensue, with the proviso that the Contractor shall be consulted and shall not be liable for costs incurred, outside the normal course of litigation, of which the Contractor does not approve.

- 40.4. The Contractor shall keep the Company informed of any action, proceeding or claim made against it in respect of any infringement of Intellectual Property Rights.
- 40.5. The Contractor hereby authorises the Company to reproduce or publish any documentation, other than Confidential Information as defined in Clause 38 (Confidentiality), that is made available in connection with the Contract for whatsoever reason that the Company sees fit.
- 40.6. The rights and obligations contained in this Clause shall continue in full force and effect for a period of ten (10) years from the date of completion or termination of the Contract.

#### 41. TAXES, DUTIES, FEES AND PERMITS

- 41.1. The Contractor shall pay or cause to be paid, when due, any and all payroll taxes and contributions that are measured by wages, salaries or other remuneration paid to Employees employed by the Contractor or a Subcontractor, that arise by virtue of their employment and that now or hereafter are imposed by any government, provincial, municipal, local or other lawful authority, including - without limitation - taxes or contributions for annual holiday pay, Unemployment Insurance, Industrial Council Levy, sick pay, Provident Fund, Medical Aid, Service Levy and Living-out allowances.
- 41.2. The Contractor shall be responsible for complying with all importation regulations and the payment of all customs and excise duties, levies or any other costs incurred by the Contractor in respect of any imports into the Republic of South Africa. In the event that the Contractor is to be reimbursed by the Company, such costs shall be shown separately in the Contract. The Company will not be responsible for any costs incurred by the Contractor due to the Contractor's failure to comply with import control regulations.
- 41.3. Any import permit obtained by the Contractor in terms of the foregoing is to be in the joint names of the Contractor and the Company, if so stated in the Contract.
- 41.4. The Contractor shall, at its cost, obtain from the relevant authorities and administer all necessary permits and licences and fulfil all immigration formalities to enable the Contractor to fulfil its obligations in terms of the Contract.
- 41.5. Copies of all authorised Documentation are to be provided to the Company Representative, if so stated in the Contract.
- 41.6. The Company will, at its cost, obtain from the relevant authorities the necessary permission to carry out the Works and/or Plant and/or other Deliverables.

#### 42. PROTECTION OF PERSONAL INFORMATION

- 42.1. The Contractor shall:
- 42.1.1. comply with the information protection principles under POPI and any equivalent or associated legislation and with the Company's information protection policies (in so far as they are relevant), in respect of the processing of the Personal Information as provided to the Contractor by the Company from time to time;
- 42.1.2. subject to compliance with POPI and any other Clause in the Contract, on the Company's request, permit any authorised officers of the Company to inspect the Contractor's premises and information systems, and have access to, and be provided with, copies of any information (including, without limitation, Personal Information), to enable the Company to:
- 42.1.2.1. satisfy itself that the Contractor is complying with its obligations under this Clause and furthermore;
- 42.1.2.2. assess compliance with the Contract and the provision of the Works and/or Plant and/or other Deliverables;
- 42.1.2.3. comply with its own legal functions, duties and responsibilities in respect of the Services;
- 42.1.3. only undertake processing of Personal Information reasonably required in the execution of the Contract and, in any event, strictly in accordance with the Company's instructions from time to time;
- 42.1.4. not disclose Personal Information to any person other than to employees and Subcontractors to whom disclosure is necessary for the execution of the Contract;



- 42.1.5. ensure that any disclosure to a Subcontractor is subject to a binding legal obligation on the Subcontractor to comply with the obligations set out in this Clause. For the avoidance of doubt, any such Subcontract shall not relieve the Contractor of its obligation to comply fully with this Clause, and the Contractor shall remain fully responsible and liable for ensuring full compliance with this Clause in all respects;
- 42.1.6. immediately inform the Company of any request from an individual for access to its Personal Information, and comply with the Company's instructions in relation to complying with that request;
- 42.1.7. have in place, and undertake to maintain during the term of the Contract, appropriate technical and organisation measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of Personal Information, and adequate security programmes and processes to ensure that unauthorised persons do not have access to the Personal Information or to any equipment used to process the Personal Information; and
- 42.1.8. take all reasonable steps to ensure that any of its Employees who have access to Personal Information are honest, reliable and competent.
- 42.2. The Personal Information:
- 42.2.1. is the property of the Company;
- 42.2.2. shall be returned immediately to the Company upon termination or expiration of the Contract; and
- 42.2.3. shall not be copied and/or retained in any form by the Contractor upon expiration or termination of the Contract, except as required by law or under the Contract.

42.3. The Contractor will indemnify and keep indemnified the Company against all claims, demands, actions, proceedings, damages, charges, costs and expenses (including legal costs and expenses) that may be brought against the Company in respect of or in any way arising out of or in connection with the Contract.

#### 43. LAWS AND REGULATIONS

43.1. The Contractor shall at all times conform in all respects with the provisions of all applicable statutes, ordinances, proclamations, by-laws and regulations, both local and domestic. The Contractor shall hold the Company harmless against all penalties and liabilities incurred by the Contractor in breach thereof.

43.2. If the cost to the Contractor for the performance of the Contract is increased or reduced by reason of the passing or amendment of any applicable legislation after the date of the Contractor's Tender, the Contractor may apply for an adjustment to the Price so that such increase or reduction shall be added to or deducted from the Contract Price, as the case may be.

#### 43.3. Radiation

Material on Site may be radioactive. The Contractor shall, at its own cost, comply with the rules, regulations and laws of the National Nuclear Regulator ('NNR') and the Company's Standards, when working on Site or handling the Company's property. If necessary, prior to the commencement of any Works and/or Plant and/or other Deliverables the Contractor shall obtain from the Company a Radiation Protection Certificate. Such a certificate shall state the protective measures the Contractor must take. Prior to the dismantling or stripping of any Company's property, the Contractor shall obtain, and in all respects comply with, a Radiation Protection Certificate, issued by the Company and approved by the NNR.

The Company reserves the right to claim against the Contractor any loss or damage which the Company may suffer as a result of any claim for compensation or otherwise from any person which arises from nuclear damage that was caused by the Contractor, its agents, employees or servants either through any act or omission, negligence, default or deliberate misconduct.

#### 43.4. Black Economic Empowerment and Local Economic Development

43.4.1. In complying with the Mining Charter, the Company is required to meet particular BEE procurement spend targets and to report on all such expenditure incurred and spent with its Contractors. The Company requires the Contractor to maintain a Level 4, or higher, Contributor status in terms of the Department of trade and industry BBBEE codes or proof of the Contractor's exemption.

43.4.2. In the event that the work to be done in execution of the Contract does not require a specific skill set, or may be done by unskilled labourers, the Contractor shall be obliged to source the required complement for the Contract from local communities. The Contractor shall endeavour to support the Company's local development initiatives through developing skills of the sourced complement

- 43.4.3. from the local communities. The Company will track measurement of the requirement as per this clause 43.4.
- In the event that the Company, in its sole and absolute discretion, at any time determines that the Contractor's BEE credentials or compliance to sourcing from local communities are unsatisfactory, the Company shall notify the Contractor thereof in writing, whereafter representatives of the Company and the Contractor shall meet in an attempt to agree on an appropriate resolution to the requirement. In the event that no such resolution is reached within 7 (seven) days of delivery of the written notice to the Contractor, the Company shall be entitled (but not obliged) to terminate the Contract by giving 30 (thirty) days written notice to the Contractor.

#### 43.5. International Compliances and Benefits

43.5.1. The Company reports on its carbon footprint, including Scope 3 emissions (emissions associated with purchased goods and services). The Contractor will support this process by endeavouring to supply information on greenhouse gas emissions for the products/services procured by Sibanye through submission of their annual carbon footprint or related information to determine carbon intensities of products/services where no carbon footprint monitoring is in place as yet.

43.5.2. The Company reports on its water footprint. The Contractor will support this process by endeavouring to supply information, as and when requested to do so by the Company, in regard to the products/services supplied to the Company.

#### 44. FORCE MAJEURE

44.1. A Party shall be relieved of liability for the non-performance or defective performance of an obligation under the Contract caused by an event or series of events of *force majeure* or *casus fortuitus* (herein referred to as a force majeure event) beyond the reasonable control of that Party.

44.2. If the obligations of a Party are adversely and materially affected by a force majeure event that results in cessation, lessening or degradation of an essential service such as electricity, water or sewerage, and/or an actual or potential hazard that affects or may affect the health and safety of persons on the Company's property, a Party will not be liable for performance of the obligation affected.

44.3. A Party subject to force majeure shall, as soon as possible, notify the other Party in writing of the circumstances amounting to force majeure and shall provide an estimate (updated in writing from time to time) of when those circumstances are expected to cease.

44.4. In conditions of force majeure, each Party shall take all reasonable, lawful steps to resume performance of the Party's obligations under the Contract as soon as reasonably possible, and shall discuss with the other Party ways and means to overcome such conditions.

44.5. If conditions of force majeure persist continuously in respect of a Party for a period of more than 6 (six) months, either Party may terminate the Contract with immediate effect on written notice.

44.6. The affected Party will bear the direct and indirect costs for the time that it is affected by the force majeure event, as well as the costs connected with or incidental to termination of the Contract. A Party shall not in any event be entitled to additional or extra compensation by reason of the force majeure event. Standing time will not be paid. A Party subject to a force majeure event shall not be liable for any costs or damages, penalties or inconvenience suffered by the other Party.

44.7. Force majeure events may include, but not be limited to: war (whether declared or not), armed conflict or the serious threat of same, blockade, military embargo, civil war, act of a foreign enemy, terrorism, sabotage, piracy, act of governmental authority, expropriation, compulsory acquisition, seizure of works, nationalisation, acts of God - plague, natural disaster, seismic event, lightning damage/strike; also fall of ground, ingress of water, explosion, fire, epidemic, industry strike and/or lock out. Temporary cessation of mining operations due to Government instructions is a force majeure event.

44.8. If either Party experiences economic hardship as a result of a force majeure event, then that Party may apply to the other Party to amend the relevant Contract obligations.

**45. NO WAIVER**

No act of relaxation, indulgence or grace on the part of a Party shall operate as or be deemed to be a waiver by that Party of any of its rights in terms of the Contract.

**46. GOVERNING LAW**

The Contract shall be governed, construed and interpreted in accordance with the law of the Republic of South Africa, including its conflict of laws rules.

**47. SEVERABILITY**

If any one or more of the provisions of the Contract shall be declared or adjudged (formally or informally) by a competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which the Contract is to be performed (the 'Severable Provision'), that provision shall be severable and divisible from the other terms and conditions of this Agreement, and if the Severable Provision is invalid or unenforceable, the parties shall retain the right to enforce all the other terms of the Contract and shall retain all such rights as are validly conferred on them by the Contract.

**48. DOMICILIUM AND NOTICES**

Each party chooses *domicilium citandi et executandi* at its respective registered office or at such alternative address in the Republic of South Africa of which it may notify the other in writing from time to time; provided that, if the registered address of the Contractor is outside the Republic of South Africa, the Contractor shall choose *domicilium citandi et executandi* at an address in the Republic of South Africa.

Any communication or notice required to be given or made under the Contract between the parties shall be in writing and shall be deemed:

- 48.1. to have been duly made or given if either sent by prepaid registered post or hand delivered to the addresses of the Parties given in the Contract or by facsimile to the appropriate numbers or by email, or to such other address as provided in terms hereof;
- 48.2. to have been received by the intended addressee, for all purposes:
  - 48.2.1. if delivered by hand or transmitted by facsimile on the day of normal business following the date of dispatch of such communication or notice; and
  - 48.2.2. if made by prepaid registered post, on the tenth day following the date of dispatch of such communication or notice; if such tenth day is not a normal business day, then on the next normal business day thereafter.
  - 48.2.3. if delivered by e-mail, when the e-mail message is available on the recipient's network for reading.

**49. INDEPENDENT CONTRACTOR**

Nothing in the Contract shall be deemed to constitute or appoint the Contractor or any of the Contractor's Employees or agents to be the agent, representative or employee of the Company. The Contractor is an independent contractor and has the responsibility for and control over the details and means for performing the Works and/or Plant and/or other Deliverables, provided that the Contractor acts within the scope of the Contract. Notwithstanding the provisions of this Clause, the Company reserves the right to direct the Works and/or Plant and/or other Deliverables of the Contractor in any manner that the Company may deem necessary within the terms and scope of the Contract.

**50. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties thereto. Any variation of the Contract and of this Clause 50 shall be in writing by means of an Amendment to the Contract, issued by the Company Representative (Commercial).

**51. PREPARATION OF CONTRACT**

Each Party will bear their own cost for the preparation of the Contract document.



**POLICY AND PROCEDURE FOR CONTRACTORS WORKING ON SITE**  
**(including Health, Safety and Security Rules for Contractors and Sub-Contractors)**

**1. GOVERNING HEALTH AND SAFETY LAW**

- 1.1 The Site and the Owner or Company's premises are governed by the Mine Health and Safety Act, No. 29 of 1996 (MHSA), the Occupational Health and Safety Act, No. 85 of 1993, (OHSA), the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 (COIDA), the Occupational Diseases in Mines and Works Act, No. 78 of 1973 (ODMWA), and the Hazardous Substances Act, No. 15 of 1973, and any other applicable Acts, as amended, and all Regulations promulgated under the Acts.
- 1.2 The Contractor, the Contractor Employees, agents and all Subcontractors Employees (hereafter referred to collectively as Contractor Employee(s)) shall comply with these Acts. Any reference to the Contractor and/or Contractor Employee shall include reference to the Contractor's subcontractors and consultants.
- 1.3 The Contractor shall ensure all Contractor Employees entering Site are fully conversant with the Owner's or Company Standards, health, safety and security Policies, Procedures, rules, regulations (hereinafter referred to as the Owner or Company Standards) and any other requirements detailed hereunder governing performance of the Works at the Site. ("Works" shall include any work done on Site, as well as transport, delivery, installation, commissioning, and Services).

**2. SUPERVISION AND APPOINTED PERSONS**

- 2.1 The Contractor shall appoint a Subordinate Manager in terms of the MHSA and/or a Supervisor under OHSA. The Contractor shall accept appointment and confirm that it is a mandatory under Section 37(2) of the MHSA. In terms of Section 37(2) of the OHSA. The Contractor agrees that the Owner and or Company is relieved of any liability in terms of Section 37 (1) in respect of any act or omission of the Contractor to the extent permitted by the OHSA and the obligation on the Contractor to comply with the Owner or Company's Standards will be the written agreement between the Parties for the purposes of Section 37(2).
- 2.2 The Contractor shall advise the Owner and the Company of the name, address and telephone number of the Subordinate Manager and/or Supervisor before work commences. Should the

Contractor replace the said Subordinate Manager and/or Supervisor, the Contractor shall within 24 (twenty-four) hours advise the Owner and the Company of the successor's name, address and telephone number in writing.

- 2.3 The Subordinate Manager and/or Supervisor shall be responsible for the safety of Contractor Employees who undertake Works on Site. The appointed persons shall ensure compliance by the Contractor Employees with the said Acts, the Owner or Company Standards, and with any special rules on Site.
- 2.4 Before the Contractor commences Works on Site, the Owner or Company's representative and Contractor representative and the appointed persons, shall meet so that the Contractor can be informed of various aspects related to the Works such as health, safety and security obligations of the Contractor.
- 2.5 An instruction or notice which the Company's Representative gives to the Contractor's Representative shall be deemed to have been given to the Contractor.
- 2.6 The Contractor's Sub-ordinate Manager and/or Supervisor shall continually ensure that Contractor Employees are kept fully up-to-date and are constantly trained in applicable health, safety and security rules and regulations.

**3. SAFETY EQUIPMENT/PROTECTIVE GEAR**

- 3.1 The Contractor shall at its expense:
  - 3.1.1 supply all necessary and appropriate health and safety facilities and equipment for each Contractor Employee;
  - 3.1.2 maintain the above facilities and equipment in a serviceable and hygienic condition;
  - 3.1.3 ensure that sufficient quantities of necessary personal protective equipment are available for each Contractor Employee to use;
  - 3.1.4 ensure that Contractor Employees who are required to use personal protective equipment are instructed in the proper use, limitations and maintenance of that equipment.
- 3.2 The Contractor shall at all times ensure that safety equipment and protective gear to be used during execution of the Works is in an acceptable condition and fit for use for the purpose for which it is intended and conforms to the relevant SANS standards and the Owner or Company Standards.

**3.3** Contractor Employees on Site shall wear hard hats of distinguishing colours subject to the approval of the Owner or Company with the Contractor Employee's number, the Contractor's logo, and safety boots and suitable, long-sleeved protective clothing (overall) with the Contractor's logo. Additional health and/or safety equipment shall be used and/or worn appropriate to the activity being performed e.g.

**3.3.1** safety glasses/goggles and earmuffs shall be worn whenever grinding is carried out.

**3.3.2** self-rescue and/or breathing apparatus shall be worn whenever anybody enters a hostile atmosphere or environment.

**3.3.3** Examples of health and safety equipment include but are not limited to:-

- Safety goggles/spectacles
- Appropriate gloves
- Ear plugs or ear muffs
- Overalls
- Safety boots
- Hard hats
- Safety belts/harnesses

**3.3.4** Noise level of machinery and equipment

No equipment, whether new, repaired or modified, shall have a noise level higher than the legislated 85dBA. It is the duty of the Contractor to ensure that the sound pressure levels of equipment are attenuated through the aid of acoustic material or closed off, in order to limit the sound pressure levels to the required dBA levels of <85dBA, when measured at a 1m distance. Contractors shall submit a test certificate with their tender document, reflecting the actual dBA measured for the equipment in question, and in the event of an order being placed, a Certificate of Compliance shall be issued to the Company's Representative.

Noise Induced Hearing Loss.

In addition to 3.3.4 above, the Contractor's hearing conservation programme must ensure that there is no deterioration in hearing greater than 10 percent amongst occupationally exposed individuals.

By December 2013, total noise emitted by equipment installed must not exceed a sound pressure level (SPL) of 110 dB (A) at any location in the workplace, and includes individual pieces of equipment. (The present noise-exposure restriction in the MHSA Regulations is limited to 85 dBL Aeq, 8h, meaning an average noise exposure level of 85 dB throughout an eight hour exposure period). The Contractor must ensure that the relevant engineering controls are implemented in such a way that the operator is not exposed to the above SPL. The use of

Hearing Protection Devices (HPD's) is regarded as personal protection and not as an engineering control.

It shall be a material breach of the Company's Standards if equipment does not comply with the above noise level requirements and shall be a material breach of the Contract to which this Annexure is appended.

## **4 GENERAL CONDUCT**

**4.1** The Contractor shall comply with the Company's Standards, laws and regulations governing safety for the duration of the Contract and shall maintain the health and safety of the Contractor's Employees. The Contractor shall at its cost comply with the Owner or Company's Standards. The Contractor shall at all times conform to any reasonable instruction given by a safety officer having jurisdiction in or about the Site.

Failure by the Contractor to comply with this Annexure, especially the Contractor's duty to safeguard the health and safety of Contractor Employees, shall be a material breach of the Contract to which this Annexure is appended.

**4.2** Smoking on Site is strictly prohibited except in designated areas. The Contractor shall erect/establish his own facilities with the safety / firefighting equipment prescribed by the Owner or the Company available at all times.

**4.3** Horseplay, fighting or other irresponsible behaviour on Site is strictly prohibited. The Contractor shall ensure that good discipline be maintained by Contractor Employees on Site.

**4.4** Alcohol or illegal drugs will not be permitted on Site. Contractor Employees found to be under the influence of alcohol and/or drugs will be refused entry onto Site. The use of any drugs or alcohol on Site will lead to the immediate removal and banning from further Works on Site of the offending Contractor Employee.

**4.5** Contractor Employees must remain in their particular working areas on Site. Unauthorised operation or interference with the Owner or Company's existing plant or equipment may create serious hazards. Any unauthorized activity of this nature is strictly prohibited and will result in the immediate banning of the offending Contractor Employee from Site.

**4.6** The Contractor shall ensure that first aid facilities prescribed by the Owner or Company and sick bay, and ambulance services are available/accessible at all times at the Site and at any accommodation for the Contractor's Employees. The Contractor shall maintain the facilities and equipment in a serviceable and hygienic condition.

4.7 The Contractor's Employees shall not be permitted to sleep or lodge on the Owner or Company's property, with the exception of a Site security employee.

4.8 If the Contractor is required to provide accommodation for its Employees, the Contractor shall at all times take the necessary precautions to protect the Contractor's Employees from insects, rats and other pests and shall reduce the dangers to health, and the general nuisance of pests.

## 5 SITE ACCESS PROCEDURE

5.1 The Contractor shall submit a completed Security Clearance Form for each Contractor Employee, and a copy of the applicant's identity document to the Owner or Company security office at least 24 (twenty-four) hours prior to entering Site.

5.2 The Contractor shall ensure Contractor Employees are inducted and trained in accordance with Company Standards. Training costs not borne by the Owner or Company shall be for the cost of the Contractor.

5.3 The Contractor shall ensure Contractor Employees are fully trained and understand the environmental and health hazards, dangers, risks and obligations associated with the Contract and the Site.

5.4 The Contractor shall not without prior written permission from the Owner or Company's Representative withdraw a Contractor Employee who remains in the Contractor's employ and who has undergone an induction or training programme of the Owner or Company.

## 6 SECURITY

6.1 All Contractor Employees shall be subject to security clearance by the Owner or Company's security department prior to commencing Work at the Site. Application forms for security clearances can be obtained from the Owner or Company.

6.2 All Contractor Employees and any person entering or leaving the Site shall be subject to search and, in the cases of any parts of the Works on or in the vicinity of metallurgical processing plants, such search shall include the detection of any metals, for which purpose any person entering or leaving the Site and/or premises may be subject to urine-testing for traces of mercury.

6.3 Owner or Company security staff may conduct random searches at any time, including but not limited to: searching of Contractor Employee's tool boxes, vehicles or plant or equipment of the Contractor.

6.4 Contractor Employees will be issued with identification badges on the successful completion of safety induction and security clearance. Initial identification badges will be issued free of charge. Badges must be returned to the Owner or Company. R200.00 will be charged for lost or damaged identification badges. Should a Contractor Employee leave the employ of Contractor the Contractor shall return his identification badge to the Company or Owner on departure from Site, failing which the Company or Owner shall be entitled to deduct R300.00 per identification badge not returned from the Contract price. The Contractor Employee shall wear his identification badges at all times.

6.5 All tools, equipment and material the Contractor brings onto Site for the execution of the Works shall be detailed by the Contractor on inventory forms available from the Owner or Company security representative. All tools, equipment and materials brought onto Site by the Contractor shall be clearly marked and shall not be removed from Site without approval by the Owner or Company. Equipment and materials ordered by the Contractor for delivery to Site for incorporation in the Works shall be clearly marked by the Contractor. The Contractor shall advise the Owner or Company at least 24 (twenty-four) hours prior to the time of delivery.

6.6 The removal of excess materials and/or waste must be authorized in writing by the Owner or Company prior to its removal.

6.7 No firearms or cameras shall be permitted on Site. Taking of photographs on or in the vicinity of Site shall not be permitted without the prior written authorization of the Owner or Company. Cell phones may not be taken into production or shaft areas, or underground.

6.8 The Contractor shall immediately notify the Owner or Company in writing of any accidents, incidents, near misses, dismissals, replacements and/or changes relating to the Contractor's Employees, or any other occurrence which may affect the Works or Site.

6.9 The Owner or Company shall not be responsible or liable for any loss of or damage to Contractor's personal effects, tools, equipment, plant, materials or any equipment and/or free issue materials. The Contractor shall supply any additional security requirements necessary for the protection of Contractor personal effects, tools, equipment, plant, materials and equipment or free issue materials.

## 7. MEDICAL REQUIREMENTS

### 7.1 General

The Contractor shall at all times and at its own cost comply with Owner or Company's Standards and the statutory rules and regulations regarding the health of Contractor Employees.

The Contractor Employees on the Site shall be under the supervision of the Owner or Company's Health Services (which shall include Occupational Health Services) whose staff shall have the right to submit Contractor Employees for medical examination and treatment for any short or long term condition necessary.

The Owner or Company shall not be responsible for and shall have no liability for the maintenance or provision of any medical facility to the Contractor's Employees.

The Contractor indemnifies and holds harmless the Owner or Company its staff and healthcare professionals (contracted) in respect of all claims, damage, loss or expense made against and/or suffered by the Contractor's Employees pursuant to or arising from the use by the Contractor's Employees of the Owner or Company's Health Services.

## 8. MEDICAL SURVEILLANCE

### 8.1 Contractor's Employee Examination and Certification

The Contractor shall ensure Contractor Employees are in good health, and fit to carry out the Works for which they have been employed. The Contractor shall present Contractor Employees for medical examination by the Owner or Company's appointed occupational health facility in terms of prevailing legislation prior to their being employed for the Works on the Site.

### 8.2 Contractor Employee Information

The Contractor shall furnish the following information in respect of each Contractor Employee:

- Name of Contractor's Representative
- Name of Contractor
- Address of Contractor
- Contractor Employee's Nationality
- Name of Owner or Company Representative
- Contractor Employee's full name

- Contractor Employee's ID/passport number
- Sibanye Gold Contract Number
- Name of Sibanye Gold Contract
- Contractor Employee's employee/industry number
- Contractor Employee's medical clearance certificate number
- Confirmation that the Contractor Employee has medical aid cover or is covered by a Contractor buffer fund.
- Contractor Employee Blood Group
- Contractor Employee allergies
- Contractor Employee diabetes, epilepsy, asthma, TB and hypertension status.

8.3 Should the expected hazards or conditions change, then the Contractor shall advise the Owner or Company's Health Services.

8.4 The Contractor shall ensure that Contractor Employees who have worked in controlled mines and or works before, present to the Sibanye -Gold Occupational Health Centre with a correctly completed exit medical certificate from the mine worked at most recently including all appendices such as baseline audiograms and present with these for fitness for work assessments.

8.5 Medical surveillance examinations will be done as follows:

8.5.1 An initial examination prior to the commencement of work on the Contract;

8.5.2 Follow-up examinations at intervals decided by the Occupational Medical Practitioners, but generally not exceeding (twelve) 12 months;

8.5.3 Re-examination when a Contractor Employee returns from an absence from work due to sick leave which exceeds 7 (seven) calendar days;

8.5.4 Re-examinations in cases where the "hazards expected", as indicated in the Hazard Assessment, change;

8.5.5 Re-examination in cases where Contractor Employees will be employed in a different job category e.g. team member to loco driver, (including transfers and or promotions);

8.5.6 Exit medical examinations on withdrawal of the Contractor Employee from the Contract.

8.6 Exit certificate

As required by the MHSA the Contractor shall present Contractor Employees whose employment on the Site of the Owner or Company is being terminated to the Owner or Company's Medical centre for an exit medical examination immediately prior to that Contractor Employee's withdrawal from Site.

#### 8.7 Special considerations

Contractor Employees will be required to undergo medical surveillance examinations as determined by the Occupational Medical Practitioners including, but not limited to heat tolerance testing

If a Contractor Employee is required to work in an underground environment then such Contractor Employee shall undergo heat tolerance tests at the Owner or Company's heat tolerance screening facility, at the discretion of the Owner or Company.

Where such heat tolerance testing is necessary, if a Contractor Employee is absent from the underground environment for a period of 7 (seven) successive days or more, then that Contractor Employee shall again be tested at the Owner or Company's facility for heat tolerance.

### 9. FIRST AID

9.1 The Contractor shall provide and maintain easily accessible, adequate, first aid facilities and equipment on Site as prescribed by the Owner or Company.

The Contractor shall in terms of the MA, MHSA and OSHA employ at all times on Site a suitable number of, but at least one, persons suitably qualified in the administration of first aid. The Contractor shall ensure that medical equipment under the Contractor's supervision is operated by a qualified operator and in accordance with accepted medical practices.

The Owner or Company's Health Services staff shall have the right to inspect all such facilities and equipment and the Contractor shall carry out any instruction given in writing by such staff.

If the Contractor uses any equipment which is the property of the Owner or Company then all costs incurred by the Owner or Company will be for the Contractor's account. The Contractor shall ensure safekeeping of Owner or Company equipment.

### 10. ILLNESS OR INJURY TO CONTRACTOR EMPLOYEES

10.1 The Contractor shall ensure Contractor Employees are fit and able to carry out the Works. Should a Contractor Employee have a pre-existing clinical condition, become ill, or be injured on Site through whatsoever cause, the Contractor shall immediately advise the Owner's and Company Representative thereof, with the prior written consent of the Contractor Employee. In case of illness, serious injury as defined in MHSA, and a major Environmental Incident the Owner or Company's Representative shall be informed immediately, regardless of time of day or night. The Contractor shall then provide a written report of the illness, injury or incident to the Owner and Company.

10.2 The Contractor shall immediately inform the Company in Writing if a Contractor Employee is diagnosed with a medical condition by an outside provider, with the prior written consent of the Contractor Employee. .

10.3 The Owner and/or Company shall have the right to arrange for such medical, surgical and/or hospital services (collectively referred to as "the Medical Services") for Contractor Employees who are working or resident on Site that the Owner's Health Services staff considers necessary.

10.4 If it is necessary to stabilise the Contractor's Employee, this will be carried out by the Owner or Company's Health Services until the condition is stabilised and the Contractor Employee may be safely discharged or transferred to any other medical service provider acceptable to the Owner or Company Health Services.

10.5 In the event that a Contractor Employee requires emergency care any Medical Services that may be required in the opinion of the Owner or Company's Health Services staff will be rendered by the Owner or Company's Health Services. At the discretion of the Owner or Company's Health Services, the Owner or Company may order and arrange any other Medical Services, including evacuation, to a medical facility that the Owner or Company's Health Services considers suitable for the care of the Contractor's Employee.

10.6 The Contractor will refer a Contractor Employee who is resident or working on Site to the Owner or Company Health Services for treatment. The Contractor Employee will receive Medical Services to the same standards as Owner or Employer employees for chronic injury or illness, especially long term, chronic, diseases such as TB, for the account of the Contractor. The duration and method of treatment will be at the discretion of Health Services and will be appropriate for the diagnosis.

Health Services will be stipulated by the Owner or Company, including hospitalization, and referral for life-threatening conditions. The Contractor shall in addition be liable to pay for any Medical Services that fall outside of the stipulated treatment.

This clause is intended to ensure continuity of healthcare treatment for the Contractor Employee, and does not affect the Contractor's responsibility to bear all costs for indisposed Contractor Employees for as long as they are unable to work, whatever the cause.

The Contractor shall inform Contractor Employees of the availability of medical facilities on Site.

**10.7** Cost

The Contractor shall bear all costs accruing for situations as set out in this clause 10 for injured, and/or ill Contractor Employees for as long as they are unable to work and for any medical surveillance or Medical Services by the Owner or Company, whatever the cause.

The Contractor shall refund on written demand all costs incurred by the Company in giving the Contractor Employee Medical Services.

**10.7.1** Treatment

All costs incurred by the Owner or Company in the examination, certification, treatment, testing or evacuation of the Contractor's Employee shall be for the account of the Contractor, whether the Contractor is aware of the Contractor Employee's medical requirements or not. The Parties shall co-operate to ensure that levies and refunds are legally and equitably managed.

In the event that the Contractor fails to pay a medical account in full on demand the Owner or Company shall either set off the account against amounts due to the Contractor under the Contract or recover the amount due from the Contractor at law.

**10.8** Epidemic

In the event of an epidemic, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, the Owner or Company or local medical authority for the purposes of dealing with the epidemic.

Should such an event occur it would be the Owner or Company's Health Services sole choice as to what Medical Services shall be given on Site and what facilities shall be utilised for that treatment.

**10.9** Acute illness

In the event that a Contractor Employee develops an illness requiring emergency care, then any Medical Services as may be required will be rendered by the Company's Health Services.

**10.10** Non-mine related accidents

In the event of a non-mine-related accident occurring to a Contractor Employee on Site, that Employee shall report to the nearest appropriate medical facility. In the event that the Contractor Employee reports to the Owner or Company's Health Services, with or without the knowledge of the Contractor, then any necessary Medical Services will be given by the Owner or Company's Health Services.

**10.11** Notification

The Owner or Company shall not be obliged to inform the Contractor prior to commencing Medical Services, transfer or evacuation. The Owner or Company shall, however, inform the Contractor within 2 (two) days of commencement of Medical Services to the Contractor Employee.

**10.12** Occupational Injuries or Diseases

The Contractor shall at its cost comply with all the rules and regulations, statutory and domestic, regarding occupational injury and diseases.

If a Contractor Employee becomes ill or shows any symptoms of or is suspected of suffering from any occupational injury or disease as defined in the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993, (COIDA) or the Occupational Diseases in Mines and Works Act, Act 78 of 1973, (ODMWA) then the Contractor shall immediately present that Contractor Employee to Health Services for medical examination. Following such medical examination Health Services shall have the right to provide such Medical Services as may be necessary.

**10.12.1** Compensation for Occupational Injuries and Diseases Act (COIDA)

The Contractor shall take out and maintain insurance or any similar requirements as are stipulated and required by COIDA with an insurer that is approved by the Owner or Company. The Contractor shall be responsible for completing an accident report in respect of IOD (Injuries on Duty) to the Contractor Employee, or any other person, for the COIDA Commissioner. The



Contractor will assist the Contractor Employee to submit documentation to get refunds from COIDA.

The Contractor shall furthermore be required to provide proof of the accident report having been submitted to the COIDA Commissioner, within seven (7) days of the accident, to the Owner/Company failing which payment in respect of work executed in terms of the Contract will be withheld.

If the Company is paid for Health Services under COIDA by the Contractor, the Company will collect the amount from COIDA on behalf of the Contractor and will refund to the Contractor.

**10.12.2 Occupational Diseases in Mines and Works Act (ODMWA)**

The Contractor shall at its cost comply with the all rules and regulations, statutory and domestic, regarding occupational lung diseases in mineworkers. In the event of a Contractor Employee becoming ill or showing any symptoms of or be suspected of suffering from an occupational injury or diseases, then the Contractor shall immediately present the Contractor Employee to the Owner or Company's Health Services for medical examination. Following such medical examination the Owner or Company's medical officer shall have the right to provide Medical Services to the Contractor's Employee.

**10.12.3 Motor Vehicle Accidents.**

The Contractor will be responsible for the cost of treatment to a Contractor employee who is involved in a motor vehicle accident.

**10.13 Continuity of Treatment for Disclosed illnesses**

Where a Contractor Employee has waived confidentiality and disclosed a long term illness such as HIV, and was treated by Health Services during the Contract term for this or another long term condition, Health Services will advise that Contractor Employee during the exit medical examination on continuation of treatment and may refer the Contractor Employee to a suitable third party facility. The Contractor Employee will then make his own arrangements for payment.

**10.14 Confidentiality**

Information relating to the diagnosis or treatment of a Contractor Employee will only be given to the Contractor after Written consent has been obtained from the Contractor Employee.

**11 TEBA REQUIREMENTS**

**11.1** A Contractor Employee who will be on Site for longer than 3 (three) days consecutively must be processed through the local Employment Bureau of Africa (TEBA) Office. This is to ensure that all Contractor Employees have valid work permits (in the case of foreign nationals), are properly screened, and have a TEBA Industry Number. The above will enforce proper record keeping which is a requirement of the MHSA.

All TEBA costs will be for the Contractor's account. No Contractor's employees will be allowed on Site until they can produce the TEBA Industry Number documents.

**12 SIMRAC**

**12.1** The Contractor shall be liable to pay any sum of money levied in terms of Safety in Mines Research Advisory Committee (SIMRAC) where such sum of money levied arises out of any accident death or injury found to be due to any act, error, omission and / or default of the Contractor, or Contractor Employee.

**13 RADIATION**

**13.1** Ore mined by the Owner or Company may be radioactive. The Contractor shall at its own cost comply with the rules, regulations and laws of the National Nuclear Regulator ("NNR") and the Owner or Company's Standards when either working on Site or handling the Owner or Company's property.

**13.2** Prior to the commencement of any Works the Contractor shall obtain from the Owner or Company a copy of Certificate of Registration and associated Procedures which must be complied with at all time.

**13.3** Prior to the dismantling or stripping of any Owner or Company's property, or the removal or any material or equipment from Site, the Contractor shall obtain an approval from the NNR.

This clause applies to all Site work contracts and sale contracts for Scrap metal.

**14 SAFETY PROCEDURES**

**14.1** All Contractor Employees will undergo a safety induction course as instructed by the Owner or Company prior to commencing work on Site.

- 14.2** The Contractors safety representative/responsible person shall be responsible for preparing, organizing, co-ordinating and executing safety induction courses for their own employees.
- 14.3** No work shall be performed by a Contractor Employee on Site in the absence of a safety induction certificate recognized by the Owner or Company.
- 14.4** If a Contractor Employee is found to be working unsafely, any Owner or Company employee shall have the authority to stop the Contractor Employee working until acceptable safety standards have been adopted, at the cost of the Contractor. The Contractor shall report any such stoppages to the Owner or Company without delay. The cost of such stoppage will be for the Contractor's account.
- 14.5** The Contractor shall immediately report any unhealthy and/or unsafe conditions to the Owner or Company.
- 14.6** Contractor Employees shall comply with warning signs and notices on use of safety equipment and staying out of roped-off areas unless specifically authorized to be within such areas.
- 14.7** Site in general and, in particular, access/walkways and immediate working areas shall be kept clear of debris, unused materials (e.g. piping spool pieces), tools and equipment (e.g. scaffolding material) at all times. Designated areas in the vicinity of Contractor working areas shall be allocated for the lay down of piping spool pieces, scaffolding and other material, etc. General Site debris and in particular litter, shall be collected, removed and transported to designated areas daily by the Contractor.
- 14.8** The Contractor shall immediately report any fires to the Owner or Company Representative and shall endeavour to extinguish or contain the fire until Owner or Company the fire fighting team arrives.
- 14.9** The Contractor is to note the following with regard to any emergency conditions: including but not limited to hazardous gas leaks, fires, explosions, spillages and leaks of any hazardous chemical or other substance:
- 14.9.1** An alarm will be sounded to indicate the start and end of an emergency condition. The durations and sound patterns of the alarms will be advised prior to the commencement of execution of any part of the Works;
- 14.9.2** Smoking, including within any designated smoking areas, is completely prohibited during an emergency condition;

- 14.9.3** During an emergency condition, Contractor Employees shall remain at their respective working areas unless otherwise directed by the Owner or Company Representative;
- 14.9.4** Designated assembly points will be advised prior to the commencement of execution of the Works.
- 14.10** Contractor plant, equipment or tools shall not obstruct access to any escape route or safety or firefighting equipment.
- 14.11** The Contractor shall determine, take note of and prominently display within their establishment areas the emergency telephone numbers for the following, as applicable:-
- i. LOCAL Ambulance Service
  - ii. LOCAL South African Police
  - iii. LOCAL Fire Brigade
  - iv. First Aid Facility/Medical Station on Site
  - v. Owner or Company Responsible Safety Representative
  - vi. Contractor Responsible Security Representative
  - vii. Owner or Company Fire Department

## **15 RISK ASSESSMENTS**

### **15.1 Issue Based**

In terms of Section 11 and 21 of the MSHA Sibanye Gold Limited requires that all contracting firms carry out issue based risk assessments of the Works. A copy of such assessment must be handed in when the Contract is signed. Where the Company is not happy with the quality of the assessment it must be returned to the Contractor to rectify before any work or Works may commence. Contractor risk assessments must be carried out by an accredited Risk Assessment Facilitator, who must ensure that all hazards and risk associated with the Works have been identified and assessed.

### **15.2 Ongoing/Continuous Assessments**

Hazard Identification and risk assessment must also be carried out continuously as work progresses on the Site. Hazards encountered and not identified in the initial issue-based assessment, should then be assessed and rectified. Guidelines and logbooks for carrying out continuous risk assessments must be obtained from the relevant Chief Safety Officer.

- 15.3 Equipment must have a baseline risk assessment, combined with issue based risk assessments. The Contractor must ensure all safety, health and hygiene risks are identified and relevant action plans are implemented by the Contractor and Company/Owner to address exposure.

## 16 PERMITS TO WORK (START NOTES)

- 16.1 The Site will be governed by a blanket permit system. Wherever applicable on Site, the Contractor shall ensure that a suitably authorized specific start note or permit to work has been issued to him by the Owner or Company before commencing Works. The Contractor shall adhere to all permit requirements including health and safety precautions and shall further ensure that Contractor Employees comply with permit requirements at all times.

## 17 PLANT, EQUIPMENT AND TOOLS

- 17.1 The Owner or Company shall have the right at any time to inspect the Contractor's plant, equipment and tools and require the Contractor to confirm that same are fit and safe for use.
- 17.2 The Owner or Company shall have the right to require replacement of any plant, equipment and tools, which are in the Owner or Company's opinion, unsafe for use on Site and to that end may stop any work where or in which unsafe items are being used.
- 17.3 The Contractor shall ensure that the moving parts of any plant or equipment used on Site are suitably and properly guarded at all times while such plant or equipment is in operation.
- 17.4 The Contractor shall ensure that all rigging and lifting equipment, plant, tools, slings, shackles, etc., used by the Contractor shall be in good condition at all times and shall be suitably marked to indicate the maximum loading/lifting capacities that can be handled by such rigging and lifting equipment, plant, tools, slings, etc. The Contractor shall provide recent, suitable testing certification to the satisfaction of the Owner or Company.
- 17.5 The Contractor shall ensure scaffolding shall be sturdy and effectively braced to ensure stability before being put into use. Every scaffold board which forms an integral part of the scaffold platform shall be firmly secured to prevent displacement and suitable guardrails and kick plates will be installed on all sites. A convenient and safe method of access shall be provided to every scaffold platform. All erected scaffoldings structure shall be checked by the Contractor in

accordance with the stipulations and requirements of the OSHA and records to this effect must be available for the Owner or Company's inspection at all times.

- 17.6 The Contractor shall ensure ladders shall be provided with non-skid devices at the bottom ends and hooks or similar devices at the upper ends including lashings at intermediate levels (if possible) to ensure stability during normal use. Ladder rungs shall be suitably fixed to the styles and be in a good state of repair at all times. Nails, screws or wire fixings shall not be permitted. Safety belts and/or harnesses securely fixed to a higher point are pre-requisites for carrying out any part of the Works using a ladder.
- 17.7 The Contractor shall ensure that gas cylinders shall be suitably stored and secured in the upright position to prevent them from falling over. All hoses, valves, gauges etc. shall be fit for use and free from defects, damage and leaks. Valve protection covers shall be in place at all times with valves securely closed when not in actual use. The minimum number of gas cylinders reasonably required by the type of work shall be in use at any time and cylinders shall be removed from the immediate working area and placed in secure storage at the end of every day.
- 17.8 The Contractor shall ensure that proper safety precautions are taken before, during and after any refueling operations involving any hydrocarbon fuels. Refueling of any and all plant and equipment items shall not be permitted unless the particular motor and other motors in the vicinity have been switched off and all hot work within a radius of 20m has been stopped.
- 17.9 The Contractor shall ensure only qualified Contractor Employees operate equipment.
- 17.10 The Contractor shall ensure safe transport of Contractor equipment, on surface and below ground.
- 17.11 The Contractor shall ensure insurance, security and safekeeping of Contractor material and equipment.

## 18 ELECTRICAL EQUIPMENT

- 18.1 The Contractor shall ensure that all electrical equipment the Contractor proposes to use in the execution of the Works is properly protected by standard earth leakage equipment at all times.
- 18.2 Portable electrical equipment shall be fitted with a serviceable ON/OFF switch in an accessible position.
- 18.3 Welding cables, extension cords and other electrical cables shall be properly sized, free from damage, and fit for their intended purpose. Cables shall not be used unless the whole cable

has been unwound. Overland cables and/or extension cords shall be suitably routed so as not to hinder or prevent access to any part of the Works and/or escape route and be suitably protected from potential damage caused by traffic on Site.

**18.4** Should the Owner or Company agree to provide electrical power to the Contractor for temporary facilities, the Owner or Company shall be responsible for the installation and all facilities up to a distribution board. The provision of safe distribution reticulation thereafter shall be the responsibility of the Contractor and the installation and terminations thereof shall be supervised by a currently registered installation electrician. The installation electrician shall provide the Owner or Company with written certification that the installation is acceptable to him and in accordance with accepted procedures.

**18.5** Portable two-way radios shall only be used with the prior approval of the Owner or Company and provided the Contractor's licences are valid and that the Contractor's frequencies do not clash or interfere with those of the Owner or Company or any other portable two-way radios currently in use on Site.

## **19 CONTRACTOR'S ESTABLISHMENT AREA**

**19.1** The Contractor may erect and establish temporary buildings such as workshops, storage facilities, office space, ablution, messing and change room facilities, etc., for use during the execution of the Works. The design, suitability for use, appearance and the location of such temporary buildings shall be subject to the Owner or Company's approval. The Contractor shall supply temporary buildings and/or facilities in sufficient numbers to meet the requirements of the OHSA. Such temporary buildings and/or facilities shall be regularly cleaned and properly maintained by the Contractor to the satisfaction of the Owner or Company at all times.

## **20 HAZARDOUS SUBSTANCES**

**20.1** A Contractor that manufactures, imports or supplies any hazardous substance for use at or applies such substance at a mine, at work or at any premises must provide clear and complete directions and information about:

**20.1.1** the proper application and use of the substance;

**20.1.2** the known risks to health and safety associated with the substance;

**20.1.3** any restriction or control on the transport, storage, handling, processing or use of the substance, including but not limited to exposure limits;

**20.1.4** the practical precautions to minimize the risk to health or safety, during transport, storage, handling, processing and use of the substance;

**20.1.5** the procedure to be followed in the case of an accident involving excessive exposure to the substance, spillage or any other emergency involving the substance;

**20.1.6** the disposal of any waste of the substance, any solvents or associated substances and/or used containers in which the substance has been stored.

**20.2** The Contractor shall comply with the Hazardous Substances Act.

**20.3** The Contractor shall ensure, as far as is reasonably practicable that the substance is safe and without risk to health and safety when transported, stored, handled, processed and/or used at a mine, at work or at any premises in accordance with the directions and information provided by the Contractor.

**20.4** The Contractor shall ensure MSDS sheets are available during transport, storage and handling.

## **21 GENERAL**

**21.1** Each working day the Contractor shall submit to the Owner or Company Representative by no later than 10:00 that day, a Manpower and Major Equipment Return accurately reflecting all manpower and major equipment on Site for that day.

**21.2** Fire fighting equipment in the form of fire extinguishers for use by the Contractor shall be supplied by the Contractor in sufficient numbers to successfully control any fire. All fire extinguishers shall be properly and regularly maintained and shall be located and fixed in strategic positions. They shall be kept charged, in a good state of repair and fit for their intended purpose at all times.

**21.3** No dumping of ground, rubble, waste or any excess material is permitted on the Owner or Company Site. The Contractor shall at all times be responsible for the care and general tidiness of its areas.

**21.4** No braais shall take place on Site without the prior approval of the Owner or Company.

## 22 RECRUITING OF CONTRACTOR EMPLOYEES

- 22.1** Poaching of labour on Site is prohibited. Movement of labour between contractors working on Site shall only be permitted by the Owner and/or Company when accompanied by duly authorized Employment Release Notes.
- 22.2** Recruiting of labour on Site, at the access gates and/or within or in the vicinity of the Owner or Company premises is strictly prohibited. A Contractor recruiting labour shall utilize existing facilities designated by the local Labour/Manpower authorities or, in their absence, establish such recruiting locations away from the Site.
- 22.3** The Contractor shall at all times endeavour to use local labour without compromising the quality of the Works, the project programme or the health, safety and security requirements applicable at Site.

## 23 TRAINING OF CONTRACTOR EMPLOYEES

- 23.1** Contractor Employees shall be appropriately qualified, skilled and experienced in their respective trades or occupations and to carry out the Works. The Owner or Company may require the Contractor to remove any person employed on the Site or Works, including the Contractor's Representative, if applicable, who:
- 23.1.2** carries out duties incompetently or negligently;
- 23.1.3** fails to conform with any provisions of the Contract, any South African legislation, or the Company Standards; or
- 23.1.4** persists in any conduct, which is prejudicial to safety, health, or the protection of the environment.
- 23.2** If appropriate, the Contractor shall immediately appoint a suitable replacement person.
- 23.3** To the extent that it is reasonable practicable, the Contractor must consider its Employee's training and capabilities in respect of health and safety before assigning a task to the Employee; and must ensure that work is performed under the general supervision of a person trained to understand the hazards associated with the work and to have the authority to ensure that the precautionary measures laid down by the Owner or Company are implemented.

- 23.4** The Contractor must, as far as reasonably practicable, provide Contractor Employees with any information, instruction, training or supervision that is necessary to enable them to perform their work safely and without risk to health.
- 23.5** The Contractor must, as far as reasonably practicable, ensure that every Contractor Employee is familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks.
- 23.6** The Contractor must, as far as reasonably practicable, ensure that every Contractor Employee is properly trained;
- 23.6.1** to deal with every risk to such employee's etc health and safety that is associated with any work that the Contractor Employee has to perform;
- 23.6.2** in the procedures to be followed to perform the Works;
- 23.6.3** in relevant emergency procedures, including any of the Owner or Company's internal procedures.

## 24 RECORDS OF CONTRACTOR EMPLOYEES

- 24.1** The Contractor shall prior to the commencement of work on Site submit to the Owner or Company's Representative documentary evidence of the qualifications and experience of Contractor Employees the Contractor wishes to employ for the Works. The Owner or Company's Representative may give written notice objecting to any Contractor Employee and the Contractor shall not permit such representatives or persons to enter the Site.
- 24.2** The Contractor shall submit to the Owner or Company's Representative details showing the number of each employment class of Contractor's Employee and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Owner or Company, until the Contractor has completed all Works.

## 25. SAFETY FOR DELIVERABLES

- 25.1** Contractor's Duty for Health and Safety

Where the Contractor designs, manufactures, repairs, imports or supplies any article for use by the Owner or Company, the Contractor must ensure, as far as reasonably practicable:

- 25.1.1** the article is safe and without risk to environment, health and safety when used properly; and
- 25.1.2** that it complies with all the legislative requirements and Environmental Law.
- 25.2** Where the Contractor erects or installs any article for use by the Owner or Company, the Contractor must ensure, as far as reasonably practicable, that nothing about the manner in which the article is erected or installed makes it unsafe or creates a risk to environment, health and safety when used properly.
- 25.3** Where the Contractor designs, manufactures, erects or installs any article for use by the Owner or Company, the Contractor must ensure, as far as reasonably practicable, that ergonomic principles are considered and implemented during design, manufacture, erection or installation.
- 25.4** Where the Contractor is required to design or construct a building or structure, including a temporary structure, for use by the Owner or Company, the Contractor must ensure, as far as reasonably practicable, that the design or construction is safe and without risk to environment, health and safety when properly used.
- 25.5** Where the Contractor manufactures, imports or supplies any hazardous substance for use by the Owner or Company the Contractor must:
  - 25.5.1** ensure as far as reasonably practicable that the hazardous substance is safe and without risk to health and safety when used, handled, processed, stored or transported at the property of the Owner or Company and is in accordance with the information provided on the following;
    - 25.5.1.1** the use of the hazardous substance;
    - 25.5.1.2** the risks to environment, health and safety associated with the hazardous substance;
    - 25.5.1.3** any restriction or control on the use, transport and storage of the hazardous substance, including but not limited to exposure limits;
    - 25.5.1.4** the safety precautions to ensure that the substance is without risk to environment, health or safety;
    - 25.5.1.5** the procedure to be followed in the case of an accident involving excessive exposure to the substance, or any other emergency involving the substance, including an emergency incident that pollutes or has the potential to pollute the environment;

- 25.5.1.6** the safe disposal of used containers in which the substance has been stored and any waste involving the substance.

## **26 VEHICLES**

- 26.1** The minimum number of vehicles will be allowed on Site. Any vehicles shall be roadworthy. The Contractor shall comply with all road traffic signs and notices on Site and shall obey specific speed limits and shall not exceed the general speed limit of 30 kph.
- 26.2** Vehicle entry application forms are available from the Owner or Company representative.
- 26.3** A vehicle parking area will be allocated by the Owner or Company at or in the vicinity of Site for use by all Contractor Employees. The Owner or Company shall not be obliged to provide security and the Owner or Company accepts no liability whatsoever for theft, damage, or any other incident or loss of any kind.

The Contractor vehicles shall only use recognized access ways or roads.

- 26.4** The National Road Traffic Act and regulations (93/1996) as they apply to vehicle drivers and vehicle roadworthiness are applicable.

Persons will not be transported on the back of a truck or bakkie. A person in the cab of a truck or bakkie shall remain seated at all times and shall be buckled into an individual seat belt.

Contractor Employees and other Persons may only be transported in fully enclosed vehicles such as busses, motor cars, passenger cab of LDV's, specially modified LDVs (Commercial & Light Delivery Vehicle licensed load up to 1 ton), mini-bus (less than 18 passengers), light truck (GVM less than 3600kg) and multi-purpose vehicles (e.g. 4x4 vehicle)) that have been equipped with professionally designed seating, with seatbelts, and Roll Over Protection System (ROPS), which is a system of structural members arranged on a vehicle in such a way as to reduce the possibility of an operator or passenger being crushed, when wearing a seatbelt, should the vehicle roll over. This system may form an integral part of the vehicle body, structure or canopy, or may be an additional structural system with such primary purpose. Structural members include any subframe, bracket, mounting, socket, bolt, pin suspension, or flexible shock absorber used to secure the system to the vehicle frame.

**26.5**      Seat Belts

All passengers seated in or on a vehicle must wear a seat belt. All seats and seat belts must be inspected regularly to ensure that they are in a good condition.

**26.6**      Seating Arrangement

Seating arrangement for vehicles used for the transport of Contractor Employees may vary depending on the application but should be subject to a full risk assessment and the seating arrangement should be such that the vehicle's load capacity is not exceeded.

Tools and equipment may not be transported with passengers in the passenger compartment of a vehicle, and must be transported in the load body of utility vehicles or in suitable, roadworthy trailers.

**26.7**      New Vehicles

New vehicles must be correctly specified at the time of purchase. If the vehicle is an LDV and may be required to transport Contractor Employees, a risk assessment must be carried out to determine the vehicle specification.

**26.8**      Tyres

No retreads will be used on front axles of vehicles that are driven on Owner or Company Site.

**26.9**      Risk Assessment

The Contractor will carry out a risk assessment on new and/or existing vehicles.

The Owner or Company reserves the right at all times to inspect the vehicles used by the Contractor and to check that their condition does not constitute a danger to personnel and property. Any defects identified must be rectified with immediate effect or such longer period as may be reasonable in the circumstances, without impacting on the Contractor's performance in terms of a Contract.

Standby vehicles must be kept ready to be brought into service in the event of a breakdown or other unavailability.

The Contractor accepts all direct and indirect costs of repair associated with breakdowns, repairs, etc. to the Contractor's vehicles or equipment. The Owner or Company shall not be held responsible for any damage to Contractor's equipment unless and to the extent that the damage to the Contractor's equipment was caused by the willful or negligent acts or omissions of the Company.

**26.10**      Maintenance and Inspection

Seats, seatbelts and ROPS equipment shall be examined on a regular basis by a competent person to ensure that it is kept in good working order.

**26.11**      Training

The Contractor will ensure that vehicle drivers are licensed and authorised to drive the class of vehicle to which they are allocated.

Seats, seat belts and ROPS equipment shall be inspected as part of the pre-use inspection carried out by the vehicle driver.

Vehicle drivers shall be responsible to ensure that their passengers are correctly seated and secured by means of the safety belt provided, before commencing to travel.

**26.12**      Owner or Company Vehicles

**26.12.1**      The Contractor indemnifies and holds the Owner, Company, Sibanye Gold and their respective directors and employees harmless from and against any liability, loss and expense which a Contractor Employee sustains or incurs as a result of the Contractor Employee using an Owner or Company vehicle.

**26.13**      Drivers

The Contractor shall ensure that all drivers reporting for duty are physically capable of safely operating the specific vehicles assigned to them.

No driver shall be allowed to operate any vehicle or equipment while under the influence of alcohol or any other narcotic drug.

Contractors will ensure that all drivers have their driving license with professional drivers permit and identity document with them at all times while on duty.

All drivers shall have means of contact in case of emergency. A drivers who has been found guilty of a serious driving offence or had his license endorsed shall not be permitted to operate vehicles on site

**26.14** Illumination

The lighting of self-propelled vehicles must obtain an average reading of not less than 20 Lux measured across 3m over a distance of 10m from the vehicle in the direction of travel. The Lux meter must be held at a 90° angle to the light beam.

Lights must create a minimum amount of glare. Amber lights and SABS approved reflector strips must be fitted,

**27 CONTRACTOR HEALTH AND SAFETY RATING**

**27.1** The Contractor will be periodically audited by the Company safety officer at intervals mutually agreed upon between the two parties but not exceeding 30 (thirty) days.

The results of these audits contribute towards a 'health and safety rating' of the Contractor, which will be considered when extending or entering into further contracts.

**28 COMPLIANCES**

**28.1** The Company's Internal Audit department will check that the Contractor and/or each Contractor Employee has proof of compliance with legislation and/or registration requirements.

**29 OCCUPATIONAL ENVIRONMENT REQUIREMENTS**

**29.1** The use of equipment, self propelled vehicles and machinery in the modern gold mining environment has resulted an ever increasing risk exposure to the health and safety of employees. The requirements were compiled with the objective to identify possible Occupational Environment & Hygiene (OE&H) related exposures and hazards. It must be noted that the requirements are generic and specific action plans must be compiled by the Contractor and/or Original Equipment Manufacturer for the equipment, vehicles or machinery (Unit) that are supplied to any of the Company's or Sibanye Gold Limited Operations.

**29.2** The main requirements will be categorized as follows:

- 1) Fire remedial measures
- 2) Mine Health and Safety (MHSC) Milestones
- 3) Risk Assessments
- 4) SANS Requirements

**29.2.1** Fire Remedial Measures

All flammable liquids and materials must be identified and reported by the Contractor to the Company Representative before any such liquid or material may be delivered onto the premises of the Company. The Fire Remedial Measures will be applicable even if the majority of equipment supplied may consist of non-flammable materials (e.g. hydraulic hoses, etc fitted to mechanical loaders).

The Contractor must adhere to the Sibanye Gold Fire Prevention Guidelines for the prevention measures for all flammable materials and liquids. The Guideline is available from the Group Fire Manager and or the Company Representative. Note that no material will be considered for evaluation unless the material has successfully passed the relevant flame spread and toxicity index tests conducted by both FireLab and SABS.

All tests conducted by FireLab and SABS will be for the account of the Contractor. The Company retains the right to request that the above tests are conducted even if the equipment is in use. This will include equipment stored for use as a standard stock items at any of the mine stores.

**29.2.2.** Eliminating Silicosis

95 percent of all exposure measurement results will be below the occupational exposure limit for respirable crystalline silica of 0.1 mg/m<sup>3</sup> (these results are individual readings and not average results).

After December 2013, using present diagnostic techniques, the Contractor shall ensure that no new cases of silicosis occur amongst previously unexposed individuals (previously unexposed individuals are individuals unexposed prior to 2008, i.e. equivalent to a new person entering the industry in 2008).



### **29.2.3** Vibration

Equipment may not generate a vibration level of more than 2mm/second. The Contractor must ensure that engineering controls are implemented to ensure the operator is not exposed to the above vibration level.

### **29.2.4** Dust

Equipment may not generate a dust level of more than 1.0mg/m<sup>3</sup> measured in the general atmosphere. The Contractor must ensure that the relevant engineering controls are implemented to prevent exposure of the operator, or any other employee in the return air, to the above dust level.

The dust extraction efficiency must be more than 98% for respirable dust (<7 micron) and 95% for normal dust (> 7 micron).

### **29.2.5** Other Occupational Hygiene Exposures

Equipment may not generate an occupational exposure concentration in excess of the relevant time weighted average (TWA) or short term exposure limit (STEL) as tabulated in the Mine Health and Safety Act, measured in the downstream general atmosphere.

The Contractor must ensure that the relevant engineering controls are implemented to prevent exposure of the operator or any other employee in the return air is not exposed to the above concentrations.

### **29.2.6** Diesel powered equipment must be supplied complete with catalytic CO converters and exhaust fume diluters (venturi).

### **29.2.7** SANS Requirements and testing

Equipment shall comply with the relevant SABS standards. The Contractor must purchase the SABS standards at its own costs. The cost of testing will be for the account of the Contractor.