



HERBERT
SMITH
FREEHILLS

Draft 21 October 2018

FREEGOLD (HARMONY) PROPRIETARY LIMITED

and

MATJHABENG LOCAL MUNICIPALITY

and

FREE STATE DEPARTMENT OF HUMAN SETTLEMENT

DONATION AGREEMENT

Herbert Smith Freehills South Africa LLP

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THIS AGREEMENT is made

BETWEEN:

- (1) **FREEGOLD HARMONY PROPRIETARY LIMITED**, a private company incorporated in accordance with the laws of South Africa with registration number 2001/029602/07 ("**Harmony**"); and
- (2) **MATJHABENG LOCAL MUNICIPALITY** a Category B municipality situated in the Lejweleputswa District Municipality in the Free State Province ("**the Municipality**"); and
- (3) **THE FREE STATE DEPARTMENT OF HUMAN SETTLEMENT**, a provincial department of the Free State Government responsible for *inter alia* facilitating the provision of adequate housing within the Free State Province ("**the Department**").

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement each of the following words and expressions shall have the following meanings:

"**Agreement**" means this Donation Agreement;

"**Applicable Law(s)**" all laws, by-laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal exercising statutory or delegated powers and all codes of practice having force of law, statutory guidance and policy notes, in each case to the extent applicable to the Parties or any of them;

"**Authorisation**" means any permit, licence, authorisation, consent or any approval that is required in terms of the Applicable Laws required by the Parties to fulfil the obligations in terms of this Agreement;

"**Baseline Environmental Assessment**" means an investigation and assessment by an independent environmental assessment practitioner or other specialist appointed by Harmony and at Harmony's cost to assess and consider whether (i) there are any environmental impacts existing on or under the Property which may render it unsuitable for human settlement; (ii) human settlement may be permitted, subject to the implementation of the specific rehabilitation measures identified in the Environmental Management Plan;

"**Business Day**" a day (other than a Saturday or Sunday or public holiday) on which banks are open for general business in South Africa;

"**Conveyancing Attorneys**" means Samantha Saffy at Bowmans Gilfillan Inc or such other attorney that Harmony may appoint;

"**Donation**" means the donation of the Property to the Municipality;

"**Effective Date**" means that date on which the notice contemplated in clauses 4.1.2, 4.1.3(A) and 4.1.3(B)(2) 18 is delivered to the Municipality;

"**Environmental Management Plan**" means the plan prepared by an independent environmental assessment practitioner or other specialist arising from the Baseline Environmental Assessment, setting out the rehabilitation measures that Harmony must implement to ensure that the Property is suitable for human settlement;

"**MPRDA**" means the Minerals and Petroleum Resources Development Act 28 of 2002;

"**Northern Lights**" means Northern Lights Trading 246 (Pty) Ltd, a company registered in accordance with the laws of the Republic of South Africa and the applicant for a mining right in respect of *inter alia* the Property;

"**Party**" or "**Parties**" mean either the Municipality or the Department or Harmony or any combination of the Municipality, the Department and Harmony as the case may be;

"**Proceedings**" means the interdict and eviction application launched in the Bloemfontein High Court by Harmony and Harmony Gold Mining Company Limited against The people who intend invading the Remaining Extent of the Farm Mealie Bult 4, District, Welkom, the

unknown unlawful occupiers of the Remaining Extent of the Farm, Mealie Bult 49, District, Welkom, the Matjhabeng Local Municipality; Nkosinjani Speelman (Executive Mayor of the Matjhabeng Local Municipality); Phokojoe Mkondo. Matespiso Marea Helepi and the Department of Human Settlements, Free State Province under case number 1004/2018.

"Property" means the portion of the Remainder of the Farm Mealie Bult No 49 as determined by a Surveyor Diagram attached as Annexure A to this Agreement;

"Report" means the report compiled by the independent environmental assessment practitioner containing the findings of the Baseline Environmental Assessment and the Environmental Management Plan, to the extent that it is necessary;

"Signature Date" means the date on which this Agreement is signed by the last party signing the Agreement;

"Termination Date" means that date on which this Agreement terminates in terms of clause 6 and is (save for those sections of the Agreement that shall remain in force) of no further force and effect;

"Title Deed" means Title Deed T22792/2004; and

"Transfer Date" means the date on which ownership in the Property is transferred from Harmony's name into the Municipality's name by the Registrar of Deeds.

PART A - INTRODUCTION

2. BACKGROUND AND INTRODUCTION

- 2.1 Harmony is the owner of the Property.
- 2.2 On 24 February 2018 various persons ("**the unlawful occupiers**") resident within the Municipality's jurisdiction took occupation of the Property without Harmony's consent. Harmony (along with its parent company, Harmony Gold Mining Company Limited) launched the Proceedings to interdict any further persons from occupying the Property and to evict the unlawful occupiers.
- 2.3 Following negotiations with the Municipality, Harmony agreed to withdraw the Proceedings and donate the Property to the Municipality subject to a Basic Environmental Assessment declaring the land fit for human settlement.
- 2.4 The Parties therefore agree that Harmony shall appoint an independent environmental assessment practitioner to conduct a Baseline Environmental Assessment of the Property and, subject to this assessment finding that the Property is suitable for human settlement, Harmony shall donate the Property to the Municipality, who shall accept such donation.

PART B – THE BASELINE ENVIRONMENTAL ASSESSMENT REPORT

3. APPOINTMENT OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

- 3.1 Within 10 days of the Signature Date, Harmony shall (at its cost) appoint an independent environmental assessment practitioner to conduct the Baseline Environmental Assessment and prepare the Report.
- 3.2 Upon completion of the Baseline Environmental Assessment, the independent environmental assessment practitioner shall deliver a copy of the Report to Harmony with one of the following conclusions:
 - 3.2.1 The Property is unsuitable for human settlement and the unlawful occupiers must be relocated;
 - 3.2.2 The Property is suitable for human settlement, the unlawful occupiers may remain on the Property and Harmony is not required to implement any rehabilitation measures; or

- 3.2.3 The Property is suitable for human settlement and the unlawful occupiers may remain on the Property, subject to Harmony completing certain rehabilitation measures within the prescribed timelines contained in the Environmental Management Plan attached to the Report.

4. **OUTCOMES OF THE REPORT**

4.1 If the Report concludes that the Property is:

- 4.1.1 not suitable for human settlement, this Agreement shall terminate upon the notice contemplated in clause 4.2 being delivered to the Municipality;

- 4.1.2 suitable for human settlement without Harmony needing to implement any rehabilitation measures, the Donation shall proceed immediately following the notice contemplated in clause 4.2 being delivered to the Municipality;

- 4.1.3 suitable for human settlement subject to the fulfilment of the rehabilitation measures contained in the Environmental Management Plan, Harmony may:

- (A) elect to fulfil the rehabilitation measures contained in the Environmental Management Plan, in which case the Donation shall proceed simultaneously with the fulfilment of these rehabilitation measures following the delivery of the notice contemplated in clause 4.2; or

- (B) disagree with the rehabilitation measures contemplated in the Environmental Management Plan and / or the time periods within which to execute the rehabilitation measures, in which case Harmony must engage with independent environmental assessment practitioner to determine if there are reasonable alternative rehabilitation measures and / or more acceptable time periods within which to effect the rehabilitation measures. If Harmony and the independent environmental assessment practitioner

- (1) cannot reach agreement, Harmony may elect to:

- (a) terminate this Agreement by way of the notice contemplated in clause 4.2; or

- (b) undertake to implement the rehabilitation measures contemplated in the Environmental Management Plan within the prescribed time periods, in which case the Donation shall proceed simultaneously with the fulfilment of the rehabilitation measures, following delivery of the notice contemplated in clause 4.2.

- (2) reach agreement, the independent environmental assessment practitioner shall revise and re-issue the Report to Harmony. Harmony shall implement the rehabilitation measures contemplated in the revised Environmental Management Plan. The Donation shall proceed simultaneously with the fulfilment of the rehabilitation measures, following delivery of the notice contemplated in clause 4.2.

- 4.2 Within 20 days of receiving the Report from the independent environmental assessment practitioner, Harmony shall advise the Municipality of the outcome of the Report or revised Report contemplated in clause 4.1.3(B)(2).

PART C – COMMENCEMENT AND DURATION

5. DURATION

- 5.1 This Agreement commences on the Signature Date and shall continue until the Transfer Date or the Termination Date, whichever occurs first.
- 5.2 Notwithstanding the Transfer Date or the Termination Date, clauses; 7; 13 and 22-29 shall remain effective and enforceable between the Parties.

6. TERMINATION

- 6.1 Subject to clauses 4.1.1, 4.1.3(B)(1)(a) and 6.2, this Agreement will automatically terminate on the Transfer Date.
- 6.2 Harmony may on written notice to the Municipality immediately terminate this Agreement if following an unrectified breach contemplated in clause 25.

7. OBLIGATIONS ON TERMINATION

- 7.1 If the Agreement is terminated in terms of clauses 4.1.1, 4.1.3(B)(1)(a) or 6.2:
 - 7.1.1 The Parties shall immediately take steps to identify any alternative property to which the unlawful occupiers can be relocated within a reasonable time;
 - 7.1.2 The Parties shall engage with the unlawful occupiers and (at Harmony's reasonable cost) assist them in relocating to the identified property and remove all materials and infrastructure on the Property unless otherwise instructed in writing by Harmony.

PART C – THE MUNICIPALITY AND THE DEPARTMENT'S RIGHTS AND OBLIGATIONS

8. PROPERTY OCCUPATION AND RISK

- 8.1 The Municipality shall with effect from the Transfer Date:
 - 8.1.1 be liable for all expenditures in respect of the Property including the rates, taxes, security, insurance, water and electricity supplied to the Property;
 - 8.1.2 assume all risks associated with the Property including any damage to the Property or any infrastructure situated on the Property.

9. INTERIM SERVICES

- 9.1 The Municipality shall, with effect from the Signature Date until the Transfer Date or the Termination Date (whichever is first) and at its cost:
 - 9.1.1 provide reasonable temporary water supply services and temporary sanitation services as contemplated in the Water Services Act 108 of 1997 to the unlawful occupiers on the Property;
 - 9.1.2 provide adequate general waste disposal facilities and regular waste collection services to the Property;
 - 9.1.3 take all reasonable measures to provide temporary electricity to the unlawful occupiers on the Property;

10. **CONSTRUCTION**

- 10.1 The Municipality may not commence with any construction on the Property prior to the Transfer Date without the prior written approval of Harmony.
- 10.2 To the extent that Harmony permits the Municipality to commence with any construction activities prior to the Transfer Date, the Municipality shall ensure that any such construction:
- 10.2.1 is conducted in accordance with Applicable Laws and industry best practice;
 - 10.2.2 does not impose a health, safety or nuisance risk on the surrounding areas;
 - 10.2.3 does not prevent or inhibit Harmony from implementing the Investigation Study or the Rehabilitation Plan;

11. **REPORTING**

- 11.1 The Municipality shall immediately report in writing any incident, damage, environmental degradation, pollution, protest action, violence, compliance or other administrative notice or any other matter to Harmony that may have a direct or indirect impact on Harmony's operations, the Baseline Environmental Assessment or the implementation of the measures contained in the Environmental Management Plan attached to the Report.

12. **COMPLIANCE**

- 12.1 The Municipality and the Department shall:
- 12.1.1 comply with all Applicable Laws necessary to *inter alia* take transfer the Property;
 - 12.1.2 not do anything or allow anything to be done on the Property which may compromise:
 - (A) any Authorisations required by Harmony to conduct its mining and ancillary operations;
 - (B) the investigations required for purposes of completing the Baseline Environmental Assessment and / or the measures contemplated in the Environmental Management Plan;
 - (C) Harmony's compliance with Applicable Laws, including but not limited to the MPRDA, the National Environmental Management Act 107 of 1998, the National Water Act 36 of 1998 and the National Environmental Management: Waste Act 59 of 1998.
 - 12.1.3 Take all reasonable measures to assist Harmony in fulfilling its obligations in terms of this Agreement and to the extent necessary engage with the unlawful occupiers and other members of the community regarding the proposed Baseline Environmental Assessment, Environmental Management Plan and Donation.

13. **COSTS AND EXPENSES**

- 13.1 The Municipality shall be responsible for its own costs, expenses and liabilities accruing or resulting from the fulfilment of its obligations in terms of this Agreement;

14. **ACCESS**

- 14.1 With effect from the Signature Date permit Harmony and its contractors reasonable access to the Property to the extent that it is necessary for it fulfil its obligations in terms of this Agreement, the Baseline Environmental Assessment or Environmental Maangement Plan or in terms of Applicable Laws.

15. **ASSISTANCE**

- 15.1 With effect from the Signature Date to the extent that it is reasonably required by Harmony, prepare, sign or provide any document or do anything required to fulfil its obligations in terms of this Agreement or Applicable Laws.

PART D – HARMONY'S RIGHTS AND OBLIGATIONS

16. **REPORTING**

- 16.1 Harmony shall immediately notify the Municipality in writing of any incident, damage, environmental degradation, pollution, protest action, violence, compliance or other administrative notice or any other matter that may have a direct or indirect impact on the Property or the unlawful occupiers, arising from or related to Harmony's activities.

17. **COMPLIANCE**

- 17.1 Harmony shall:
- 17.1.1 comply with all Applicable Laws necessary to *inter alia* fulfil the obligations contained in this Agreement;
 - 17.1.2 obtain and maintain all necessary Authorisations required to fulfil the obligations contained in this Agreement;
 - 17.1.3 comply with all the conditions and requirements contained in the Authorisations; take all reasonable steps necessary to implement the Environmental Management Plan in an efficient manner and with the least possible risk to the unlawful occupiers.

PART F – DONATION AND TRANSFER OF OWNERSHIP

18. **CONDITIONS TO DONATION**

- 18.1 The Property can be donated to the Municipality and the transfer lodged with the Registrar of Deeds once the notice contemplated in clause 4.1.2, 4.1.3(A) or 4.1.3(B)(2) is delivered to the Municipality.

19. **DONATION**

- 19.1 With effect from the Effective Date, Harmony hereby donates to the Municipality, who hereby accepts, the Property on the terms and conditions set out in this Agreement.
- 19.2 The Parties confirm that donations tax is not payable as the donation falls within the scope of section 56(1)(h) of the Income Tax Act 58 of 1962.

20. **OWNERSHIP AND RISK**

- 20.1 The Property shall transfer to the Municipality on the Transfer Date.
- 20.2 To the extent allowed by law, the Property is donated as described in the existing Title Deed or Deeds thereof, and subject to all conditions, restrictions and servitudes (if any) attaching thereto or mentioned, or referred to in the said Title Deed or prior Deeds.

21. **TRANSFER AND COSTS**

- 21.1 Transfer of the Property to the Municipality shall be given to the Municipality as soon as practicable after the Effective Date.
- 21.2 Transfer shall be effected by the Conveyancing Attorneys.

- 21.3 Harmony shall be liable for, and shall on receipt of their account pay to the Conveyancing Attorneys:
- 21.3.1 the legal costs of and incidental to the transfer of the Property to the Municipality; and
 - 21.3.2 transfer duty or any other applicable taxes.
- 21.4 The Parties undertake to sign the transfer documents when called upon to do so and both parties record that they will use their best endeavours to ensure that the transfer of the Property can be registered as soon as possible.

PART F – WARRANTIES AND INDEMNITIES

22. WARRANTIES

- 22.1 The Municipality and the Department warrant that It has at all times and shall continue to comply with all Applicable Laws in giving effect to its obligations in terms of this Agreement;
- 22.2 Harmony hereby warrants, as at the Signature Date that the Property is unencumbered and Harmony has good and marketable title to it, and is able to transfer the Property to the Municipality free from encumbrance, lien or claim.
- 22.3 The Municipality expressly acknowledges that subject to the Report, Harmony makes no warranty as to the suitability of the Property for human settlement.
- 22.4 The Municipality expressly acknowledges that Northern Lights have submitted an application for a mining right in terms of the MPRDA which might be granted. This mining right application includes the Property..

23. INDEMNITY

- 23.1 The Municipality and the Department indemnifies and holds Harmony harmless against any liability, loss, claim, cost or damages which may be incurred or suffered by Harmony or brought against or claimed from Harmony arising directly or indirectly with the unlawful occupiers residing, dwelling or being present on the Property, including (without limitation):
- 23.1.1 any disease, death or injury of or to any of Harmony's employees, contractors, visitors or any other person present on the Property or any other person, however so arising;
 - 23.1.2 any claim against or liability of Harmony under or in terms of Applicable Laws in so far as such claim or liability relates to the Property arising from the Municipality's failure to comply with the Applicable Laws or Authorisations;
 - 23.1.3 any damage to Property arising out of, due to or in connection with the undertaking by the Municipality of its obligations in terms of this Agreement.
- 23.2 Neither Party shall be responsible nor liable for any special, indirect, or consequential damages (including that of pure economic loss) of whatsoever nature suffered by the other Party.

PART H - GENERAL TERMS AND CONDITIONS

24. CONFIDENTIALITY

- 24.1 Each Party undertakes to the other that it shall keep confidential and not disclose the provisions of this Agreement to any third party without first obtaining the written consent of the other Party to make such disclosure, provided that either Party may disclose this Agreement to its officers, employees and/or advisers to the extent necessary to enable such Party to perform its obligations under the Agreement and provided that such officers,

employees and/or advisers undertake in writing to keep the provisions of this Agreement confidential.

- 24.2 Notwithstanding the provisions of clause 24.1, either Party may disclose this Agreement without first obtaining the written consent of the other in the event that it is required to do so by Applicable Law or by the regulations of any stock exchange or regulatory authority to which such Party is or may become subject or pursuant to any order of court or other competent authority or tribunal, in which instance the Party required to disclose the Agreement will promptly inform the other Party of its requirement to disclose.

25. **BREACH**

- 25.1 If any Party ("**Defaulting Party**") breaches any material provision or term of this Agreement, and fails to remedy such breach within 30 Business Days of receipt of written notice from the other Party ("**Aggrieved Party**") requiring it to do so, the Aggrieved Party shall be entitled at its option and without prejudice to any other specific remedy or right that it may have in terms of this Agreement or in law, to:

25.1.1 uphold this Agreement against the Defaulting Party and sue for specific performance of the Defaulting Party's obligations to it under this Agreement, with or without a claim for damages; or

25.1.2 cancel this Agreement and sue for damages.

26. **DISPUTE RESOLUTION**

- 26.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, such dispute or difference shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the Arbitration Foundation of Southern Africa ("**AFSA**") rules, which arbitration shall be administered by AFSA.

- 26.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties or failing agreement within 10 (ten) business days of the demand for arbitration, then either Party shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate or attorney of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

- 26.3 Either Party may appeal the decision of the arbitrator in terms of the AFSA rules for commercial arbitration.

- 26.4 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to the court referred to in clause 28.2 for urgent relief or for judgment in relation to a liquidated claim.

- 26.5 Any arbitration in terms of this clause 26 (including any appeal proceedings) shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.

- 26.6 This clause 26 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

- 26.7 The Parties agree that the written demand by a Party in terms of clause 26.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the *Prescription Act, No 68 of 1969*.

27. NOTICES

- 27.1 A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

27.1.1 must be in writing;

27.1.2 must be delivered by courier to the address of the addressee or sent by email to the email address of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or email address or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each Party at the date of this Agreement are:

Harmony:

Address: Block 27
Randfontein Office Park
Corner Main Reef & Ward Avenue
Email: companysecretariat@harmony.co.za
Attention: The Company Secretary

The Municipality:

Address: Civic Building, Corner Ryk and Heeren Street, Welkom
Fax (057) 357 4584
Attention: Mlungisi Martins

The Department

Address:

Fax

Attention:

- 27.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 27.3.

- 27.3 Subject to Clause 27.4, a notice is deemed to be received:

27.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

27.3.2 in the case of an email, on despatch.

- 27.4 A notice received or deemed to be received in accordance with Clause 27.3 above on a day which is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day.

28. GOVERNING LAW AND JURISDICTION

- 28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-

contractual disputes or claims) shall be governed by and construed in accordance with laws of South Africa.

- 28.2 Subject to the provisions of clause 26, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa in respect of any dispute arising from or in connection with this Agreement.

29. GENERAL

29.1 Interpretation

In this Agreement:

- 29.1.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
 - 29.1.2 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition;
 - 29.1.3 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
 - 29.1.4 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
 - 29.1.5 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
 - 29.1.6 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
 - 29.1.7 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 29.2 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 29.3 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply.

29.4 Assignment

A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement, without the prior written consent of the other Party.

29.5 Entire agreement

29.5.1 Each of the Parties to this Agreement confirms that this Agreement, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

29.5.2 Each Party confirms that:

- (A) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are those pursuant to this Agreement, and no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in delict (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).

29.6 **Unenforceable provisions**

If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

29.7 **Waiver**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

29.8 **Variation**

No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

29.9 **Counterparts**

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original, but all the counterparts together constitute one instrument.

29.10 **Costs**

The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement.

For and on behalf of
HARMONY GOLD MINING COMPANY LIMITED

Name:
Capacity:
Who warrants authority

Signed at _____ on the _____ day of _____ 2018

For and on behalf of
MATJHABENG LOCAL MUNICIPALITY

Name:
Capacity:
Who warrants authority

Signed at _____ on the _____ day of _____ 2018

For and on behalf of
THE DEPARTMENT OF HUMAN SETTLEMENTS

Name:
Capacity:
Who warrants authority

Signed at _____ on the _____ day of _____ 2018

Annexure A