



MEMORANDUM OF UNDERSTANDING

Entered into by and Between

O. R. TAMBO DISTRICT MUNICIPALITY

And

KING SABATA DALINDYEBO LOCAL MUNICIPALITY

1. BACKGROUND

- 1.1. The O.R. Tambo District Municipality (“**the District Municipality**”), King Sabata Dalindyebo Local Municipality (“**the Municipality**”), AngloGold, and certain other stakeholders committed to the founding of the Enterprise Development Centre which is to be established in order to identify, develop and nurture entrepreneurs (SMME’s and/or co-operatives) to foster sustainable and measurable growth with meaningful participation in the local and national economy (“**Centre**”).
- 1.2. As a part of its commitment to the establishment of the Centre, the District Municipality undertook to make available the premises from which the Centre may operate.
- 1.3. Transkei United Woman’s Organisation (TUWO) together with kwa Peni Community will utilize the Wonkumntu Craft Complex will utilize the centre with prior authorization from the District Municipality for as long as the period of this memorandum endures.
- 1.4. The O.R. Tambo District Municipality intends to utilize premises under the control of the King Sabata Local Municipality, known as the Wonkumntu Craft Complex – KSD Toursim Centre, situated in Umtata, within the O.R. Tambo District Municipality (“**Premises**”).
- 1.5. Accordingly, O.R. Tambo District wishes to utilize the Property from the Municipality as demarcated on the annexed plan marked “A” (“**Premises**”), measuring approximately One thousand and fifty (1050) square meters.
- 1.6. The District Municipality, AngloGold and Entrepreneurs Survival Solutions (Pty) Ltd (registration number: 2002/028071/07) (“**ESS**”) intend to or have entered into a service level Agreement (“**SLA**”) whereby ESS was chosen as the implementing agent to establish and operate the Centre.

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- 1.7. Accordingly the Parties agree as set out in this Memorandum of Understanding (“Memorandum”).

2. INTERPRETATION

The headings of the clauses in this Memorandum are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Memorandum nor any clause hereof.

Unless a contrary intention clearly appears –

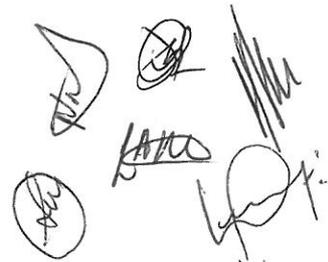
- 2.1. any reference in this Memorandum to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Memorandum;
- 2.2. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.3. when any number of days is prescribed in this Memorandum, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.4. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.5. expressions defined in this Memorandum shall bear the same meanings in schedules or annexures to this Memorandum which do not themselves contain their own definitions;



- 2.6. the use of any expression in this Memorandum covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 2.7. where any term is defined within the context of any particular clause in this Memorandum, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Memorandum,
- 2.8. the expiration or termination of this Memorandum shall not affect such of the provisions of this Memorandum as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 2.9. the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Memorandum, shall not apply;
- 2.10. any reference in this Memorandum to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be; and
- 2.11. this Memorandum will be governed by the law of South Africa and the South African courts will have jurisdiction with respect to the matters arising from and in connection with this Memorandum.

3. UNDERSTANDING

The King Sabata Dalindyebo Municipality lets to O.R. Tambo District Municipality, which



obtains from the Municipality, the use of Premises for the Period as defined in clause 4.1 below on the terms and conditions as set out in this Memorandum of Understanding.

4. PERIOD AND RENT

- 4.1. This Memorandum shall commence on the date of signature hereof and will continue for a period of three years. (“**Period**”).
- 4.2. It is the material part of the Memorandum of Understanding that the District Municipality, its successor in title or its appointed agents shall make use of the Premises from Monday to Friday of any week, to enable the Community of Kwa Peni access and use of the same Premises over weekends for the sole purpose of their Community needs. Provided that should such community needs be of a commercial nature, prior express authorization be sought from the municipality.
- 4.3. Should the need referred to in 4.2 *supra* arise, the community of Kwa Peni shall, not less than 7 (seven) working days, notify and make application to the O.R. Tambo District Municipality, of their intention to utilize the Premises.
 - 4.3.1. It is recorded as having been agreed that, in the event of such use and utilization of the Premises by the Kwa Peni Community over any weekend, the community shall, at their own expense and labour, returns the Premises in the similar clean, tranquil and usable state as they found it.
 - 4.3.2. Unless this Memorandum is renewed in accordance with **clause 4.3.3** of this Memorandum is otherwise cancelled or terminated in accordance with its terms prior to the expiry of the Period, this Memorandum will terminate on the expiration of the Period.
 - 4.3.3. This Memorandum may be extended beyond the expiry date by written Memorandum between the Parties. Any Party wishing to extend this Memorandum shall give a written notice to the other Party to this effect at least 6 (six) months prior to the expiry date. The Parties shall negotiate in good faith to agree the terms and conditions upon which the Memorandum will continue after the expiry date. In the event that the Parties fail to agree on the terms and conditions on which this Memorandum is to be extended

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beyond the expiry date, this Memorandum will expire on the date on which the agreed to period expires.

4.3.4. Should the Parties require further extension of this Memorandum, following the extension in accordance with clause 4.3.3, they may do so, provided that they follow the procedure set out in clause 4.3.3. References to the agreed period shall refer to the period previously so extended.

4.4 **The rental amount will be R10, 000.00 a month which is 120,000.00 (One hundred twenty thousand rands) per annum. The full annual rental is payable within a period of 90 days from the effective start date of this memorandum.**

4.5 **The Rental Amount shall be payable into the bank account nominated by the Municipality in writing.**

4.6 The Rental Amount shall not be payable and the District Municipality will not be under any obligation to pay the whole or any part of the Rental Amount if the Municipality does not provide a valid tax invoice therefore.

4.7 The Municipality shall pay all rates, taxes, and other charges that are levied during the occupation and utilization Period, and thus payable to any local authority, municipality, local council or relevant service provider in respect of the occupied Premises (such as, for example, charges for water, electricity and refuse removal).

5. SUB-LETTING

Neither of the Parties to this Understanding may sublet the premises without prior written authorization from the Municipality.

6. ALTERATIONS

6.1. Save for where necessary and with prior approval having been obtained from the Municipality, the O.R. Tambo District Municipality may not affect any structural changes to the buildings comprising the occupied Premises without the prior written approval of the Municipality which may not be unreasonably withheld.



- 6.2. The District Municipality must submit to the Municipality for its approval, sketch plans, site plans, working drawings, specifications and a schedule of finishes in respect of any structural alterations which Anglo Gold may wish to effect to the occupied Premises. No such alterations may not be commenced until the Municipality has approved the plans and schedule of finishes in writing. All such alterations carried out must conform strictly to the approved plans, specifications and schedule of finishes.
- 6.3. The District Municipality must at its own expense apply for the approval of plans for any structural alterations to the occupied Premises from any competent authority or official having jurisdiction.

7. MAINTENANCE

- 7.1. The District Municipality will at its own expense, keep and maintain the exterior structure/s of the occupied Premises, including all main walls, windows, gutters, down pipes, roofs, electrical installations and the air conditioners in good order and if any defect for which the Municipality is responsible in terms of this clause appears in the occupied Premises during the occupation Period, the District Municipality must notify the Municipality in writing of the defect and the Municipality will, as soon as is reasonably possible, commence and complete the repair of that defect.
- 7.2. The District Municipality must at its own expense and to the satisfaction of the Municipality keep the occupied Premises, including water, sewerage and electrical installations, in good order and condition.
- 7.3. The District Municipality must keep the Premises in a thoroughly clean, tidy and sanitary condition.
- 7.4. Save for where it is applicable and on termination of this Memorandum the District



Municipality must at its own cost repair any damage caused by it or it must reimburse the Municipality for the cost of making good or replacing any damaged or missing articles, and deliver the Premises to the Municipality in the condition it was after effecting the Refurbishment, fair wear and tear excepted.

- 7.5. The Municipality or its agents are entitled, at all reasonable times, upon prior notice, to enter the Premises to see its condition.
- 7.6. The Municipality will exercise its right of access in terms of clause 7.5 with as little inconvenience to the District Municipality (and, if applicable, its sub-lessees) as is reasonably possible and without rendering any part of the Premises unusable.
- 7.7. The Municipality will be obliged to make any repairs, alterations or additions to the Premises in order to comply with the requirements of the any local authority and/or competent authority or service provider having jurisdiction over the Premises.

8. **INSURANCE AND DAMAGE**

- 8.1. The Municipality shall at its own expense, insure all buildings and other immovable's comprising the Premises (except plate glass) against any risks which the Municipality may deem fit from time to time. The District Municipality must not, as far as reasonably practicable, do anything or allow anything to be done which may invalidate or prejudice these insurance policies in any way whatsoever or cause the premiums payable there under to be increased.
- 8.2. The Municipality shall ensure that the District Municipality is at all times during the currency of this Memorandum recorded as the co-insured and/or beneficiary as the case may be under the insurance policies in respect of the premises. The Municipality shall, if so required by the District Municipality, produce copies of the policy and receipts for the premiums required to be paid to maintain the policy in full force and effect. Furthermore in the event of any damages to or the destruction



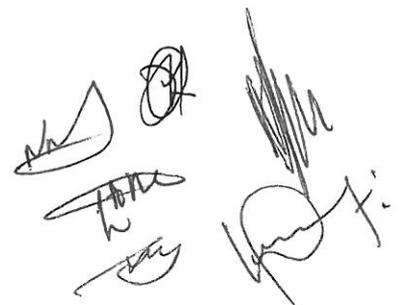
of the Premises which prove to be attributable to the negligence of the District Municipality or persons for whom it is responsible, the Municipality's claim against the District Municipality in respect thereof shall be limited to the extent to which it fails, notwithstanding the exercise by it of its best endeavours to do so, to receive a full indemnification of its loss or damage from the insurer. The common law onus on a lessee to disprove its responsibility for any damage to or destruction of the Premises shall not apply to the District Municipality.

- 8.3. The Municipality undertakes during the currency of this Memorandum to maintain in full force and effect political riot cover in respect of the Premises and to ensure that at all times the District Municipality's interest in such insurance is noted on the policy. The Municipality further undertakes upon request from time to time to furnish the District Municipality with a copy of the political riot cover policy and with proof that the insurance premiums payable thereon have been paid.

9. BREACH AND TERMINATION

9.1. If a Party ("**Defaulting Party**"):

- 9.1.1. commits a material breach of this Memorandum and fails to remedy that breach within 10 (ten) days after the Defaulting Party's receipt of a written notice from the other Party requiring it to remedy that breach; or
- 9.1.2. repeatedly breaches any of the terms of this Memorandum in a way which justifies the other Party in concluding that the Defaulting Party does not intend to comply with its obligations under this Memorandum of Understanding or is not able to comply with its obligations under this Agreement; or then the other Party ("**Aggrieved Party**") shall, without detracting from (a) its right to claim from the Defaulting Party any damages which the Aggrieved Party has suffered as a result thereof and (b) any other



claim of any nature whatsoever that the Aggrieved Party may have against the Defaulting Party as a result thereof, be entitled:

- 9.1.3. to cancel this Agreement; or
 - 9.1.4. to claim specific performance by the Defaulting Party.
- 9.2. The Defaulting Party must pay to the Aggrieved Party all reasonable legal costs (including collection charges) and other expenses which are incurred by the Aggrieved Party as a result of any breach of this Memorandum by the Defaulting Party or the occurrence of any other relevant event under clause 9.1 in respect of the Aggrieved Party. The Defaulting Party must pay these legal costs and other expenses to the Aggrieved Party when the Aggrieved Party demands payment thereof.
- 9.3. On the termination of this Memorandum for any reason the Premises will remain the sole and absolute property of the Municipality.
- 9.4. Should the Municipality cancel this Memorandum and the District Municipality disputes the Municipality's right to do so and remain in occupation of the Premises pending the determination of such dispute, the District Municipality must continue to pay all amounts due to the Municipality in terms of this Memorandum on the due dates thereof, and the Municipality will be entitled to accept and recover such payments, without prejudice to the Municipality's claim for cancellation then in dispute.
- 9.5. In the event of any changed operational circumstances of the District Municipality at any time, the District Municipality shall be entitled to unilaterally terminate this Memorandum by 3 (three) month's written notice to the Municipality.
- 9.6. In the unlikely event of the breach, by either party, happening within the currency of this memorandum of understanding, the Dispute Mechanism proposed by section 40 to 44 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), shall take precedence to all others proposed herein from clause 9.1 to 9.5
- 9.7. It is recorded as a material provision of the Memorandum of Understanding that should the mechanism proposed in 9.6 *supra* not succeed, then the mechanism in 9.1 to 9.5 shall apply,



within the meaning, purview, scope and penumbra of section 45 of the Intergovernmental Relations Framework Act, 2005 (Act of 2005).

10. CONSEQUENCES OF TERMINATION

10.1. Upon termination of this Memorandum for any reason whatsoever, the Municipality undertakes to:

10.1.1. grant the District Municipality access to the Premises in order to collect and remove all and any equipment, belongings or other property of the District Municipality, or its sub-lessee/s, if applicable, and their respective employees and contractors; and

10.1.2. for a period of 3 (three) months after the termination of this Memorandum forward to the District Municipality any correspondence which may arrive at the Premises and addressed to the District Municipality, or its sub-lessee/s, if applicable, or the Centre.

11. LABOUR UNREST

11.1. During any period of labour unrest at the part of the Property not forming part of the Premises, the District Municipality must obey all reasonable instructions given by the Municipality's duly authorized security personnel, property managers or other duly appointed and authorized officials.

11.2. During any period of labour unrest at the Premises, the Municipality must obey all reasonable instructions given by District Municipality's duly authorized security personnel, property managers or other duly appointed and authorized officials.



12. CESSION

- 12.1 The Parties record that one of the objectives of this Memorandum is to facilitate the establishment of the Centre with a view to ensure that the Centre is sustainable beyond the occupation and utilization Period.
- 12.2 In accordance with clause 47 of the SLA (*Cession and Exit Strategy*), the District Municipality is entitled to cede its rights and delegate its obligations to any third party identified as a vehicle for the operation and management of the Centre independent of its founding members.
- 12.3 To achieve the objectives set out in clauses 12.1 and 12.1 above and in the SLA, the District Municipality shall be entitled to delegate its obligations under this Memorandum to any third party identified as an independent vehicle for the operation and management of the Centre, with written prior consent from the Municipality.
- 12.4 Save as set out in clause 12.3, the Parties shall not be entitled to cede, delegate or assign, transfer or otherwise dispose of or encumber any of its rights, obligations, interest or benefit in terms of this Memorandum without the prior written consent of the other Party.

13 GENERAL

- 13.1 This Memorandum constitutes the whole Memorandum between the Parties relating to the subject matter hereof.



- 13.2 No amendment or consensual cancellation of this Memorandum or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Memorandum and no settlement of any dispute arising under this Memorandum and no extension of time, waiver or relaxation or suspension of or Memorandum not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Memorandum or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Memorandum shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 13.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Memorandum or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 13.4 No relaxation or indulgence granted by any Party (“Grantor”) from time to time shall be deemed to be a waiver of the Grantor’s rights in terms of this Agreement, nor shall any such relaxation or indulgence be deemed to be a novation or waiver of the terms and conditions of this Agreement.
- 13.5 This Memorandum may be signed by the Parties in one or more counterparts, provided that all such signed documents shall be deemed to be one Memorandum enforceable in accordance with its terms.

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13.6 Any action or proceeding which a Party may institute against the other Party under or in respect of this Memorandum of Understanding may at the discretion of the first Party be instituted in any Magistrate's Court otherwise having jurisdiction notwithstanding that the subject matter thereof may be beyond the jurisdiction of that Court. However, this clause will not exclude, restrict or hinder any Party's legal right/s or remedy/ies to take any legal action or exercise any other legal remedy in any other forum, regulator or court which it is otherwise entitled to do by law.

13.7 Any provision of this Memorandum (in other words, any clause or part of a clause of this Agreement) which is or becomes illegal, invalid or unenforceable in any jurisdiction to which a Party to this Memorandum is subject will not, in respect of that jurisdiction, be effective to the extent of that illegality, invalidity or unenforceability. That provision of this Memorandum will be removed from the balance of the Memorandum for purposes of that jurisdiction, but the remaining provisions of the Memorandum will remain legal, valid and enforceable.

13.8 No Party may rely on any representation which allegedly induced that Party to enter into this Agreement, unless that representation is recorded in this Agreement.

14 DOMICILIUM AND NOTICES

14.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement, as follows:

14.1.1 O.R Tambo District Municipality

Physical :

O. R. Tambo District Municipality

Private Bag X 6043

UMTATA

5100

Marked for the attention of:

The Municipal Manager



14.1.2 King Sabata Dalindyebo Municipality

Physical : Munitata Building
Sutherland Street
UMTATA
5100

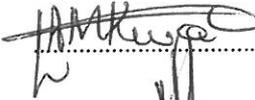
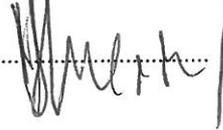
Marked for the attention of: The Municipal Manager

- 14.2 Each of the Parties shall be entitled from time to time, by written notice to the other of them, to vary its *Domicilium* to any other physical address, provided that the change shall become effective on the 5th (fifth) Business Day from the receipt of the notice by the other Party.
- 14.3 Any notice given by either Party to the other shall be in writing and if delivered by hand during the normal business hours of the addressee at the addressee's *Domicilium*, sent via email (subject to clauses 14.4 and 14.5) or telefax for the time being shall be presumed to have been received by the addressee at the time of delivery, if same was sent via registered mail same shall be presumed received on the 5th (fifth) Business Day from the date of dispatch.
- 14.4 Any communication dispatched via e-mail will be effective only when actually received in readable form and shall be deemed to be received by the Party only if that Party confirmed the receipt and reading of the e-mail.
- 14.5 Any communications to be made between the Parties under and in connection with this Memorandum may be made by other electronic means, provided that the Parties:
- 14.5.1 agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- 14.5.2 notify each other in writing of their electronic addresses for the purposes of such electronic communication, which would allow the sending and receipt of information by that means;
- 14.5.3 Notify each other of any change to their address or any other such information supplied by them.



SIGNED at Mthatha on the 30th day of January 2015.

WITNESSED BY:

1. 
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2. 
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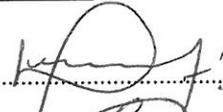
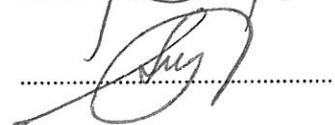
SIGNED BY



N.N. SOLDATI
ACTING MUNICIPAL MANAGER
For and on behalf of
KIND SABATA DALINDYEBO LOCAL MUNICIPALITY

SIGNED at Mthatha on the 30th day of JANUARY 2015.

WITNESSED BY:

1. 
.....
2. 
.....

SIGNED BY


.....

P.A.X DUNYWA
ACTING MUNICIPAL MANAGER
For and on behalf of
O.R TAMBO DISTRICT MUNICIPALITY

15 ANNEXURE A – DEMARCATED PROPERTY PLAN

