



# ANGLOGOLD ASHANTI AUSTRALIA

AngloGold Ashanti Australia Limited (formerly AngloGold Australia Limited) \ A.B.N. 42 008 737 424  
Level 13 \ 44 St Georges Tce \ Perth \ WA 6000 \ Australia \ PO Box Z5046 \ Perth \ WA 6831  
Tel +61 8 9425 4600 \ Fax +61 8 9425 4650 \ Website: [www.AngloGoldAshanti.com](http://www.AngloGoldAshanti.com)

## FACSIMILE

To: Company Secretary

Company: Red 5 Limited CC: Company Announcements Platform ASX

Fax Number: 08 9443 8496 Date: 25 October 2004

Sender: Bill Cowan

Number of Pages: 3 (incl this one)

Subject: Substantial Shareholding Notice

Date 25 October 2004

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Attached is a copy of the Substantial Shareholder Notice we have lodged today with the ASX.  
The originals were posted to you today.

Kind regards

Bill Cowan  
Chief Financial Officer

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## Form 603

Corporations Act 2001  
Section 671B

### Notice of initial substantial holder

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To: Red 5 Limited  
ACN: 068 647 610

#### 1. Details of substantial holder

Name: AngloGold Ashanti Australia Ltd  
ACN: 008 737 424

The holder became a substantial holder on: 22 October 2004

#### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or associate had a relevant interest in on the date the substantial holder became a substantial holder area as follows:

Class of securities	Number of securities	Person's votes	Voting power
Ordinary fully paid shares	31,000,000	31,000,000	12.3%

#### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest	Class and number of securities
AngloGold Ashanti Australia Ltd	Refer attached Subscription and Relationship Agreement	31,000,000 ordinary fully paid shares

#### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder	Class and number of securities
AngloGold Ashanti Australia Ltd	AngloGold Ashanti Australia Ltd	AngloGold Ashanti Australia Ltd	31,000,000 ordinary fully paid shares

## 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration		Class and number of securities
		Cash	Non-cash	
AngloGold Ashanti Australia Ltd	22 October 2004	\$5,478,000	N/A	31,000,000 ordinary fully paid shares

## 6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder as are follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	N/A

## 7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
AngloGold Ashanti Australia Ltd	Level 13, 44 St Georges Tce, Perth, WA 6000

## Signature

print name William Paul Cowan capacity Secretary

sign here  date 25/10/04

# Subscription and Relationship Agreement

Red 5 Limited

AngloGold Ashanti Australia Limited

Placement to AngloGold Group

Provision of Technical Services

Option to Joint Venture

Allens Arthur Robinson  
Stock Exchange Centre  
530 Collins Street  
Melbourne VIC 3000  
Tel 61 3 9614 1011  
Fax 61 3 9614 4661  
[www.aar.com.au](http://www.aar.com.au)



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# Subscription and Relationship Agreement

Allens Arthur Robinson



Date	11 October	2004
Parties		
1.	Red 5 Limited (ABN 73 068 647 610) of Level 1, 43 Ventnor Avenue, West Perth, Western Australia ( <i>Red 5</i> )	
2.	AngloGold Ashanti Australia Limited (ABN 42 008 737 424) of Level 13, St Martins Tower, 44 St Georges Terrace, Perth, Western Australia ( <i>AngloGold</i> )	
Recitals		
A	Red 5's issued capital as at the date of this Agreement is 220,304,333 ordinary shares. AngloGold has agreed to subscribe for the Subscription Securities on and subject to the terms of this Agreement.	
B	Subject to the issue of the Subscription Securities, AngloGold has agreed to the provision of technical services to Red 5, on and subject to the terms of this Agreement.	
C	Subject to the issue of the Subscription Securities, Red 5 has agreed to grant AngloGold an option to joint venture, on and subject to the terms of this Agreement.	

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

*Accounts* means the audited accounts of Red 5 and the consolidated accounts of the Group (in each case, including the statements, directors' reports, auditors' reports and notes attached to or intended to be read with the accounts) for the financial years ending 2003 and 2004.

*Affiliate* means any person or entity that is directly or indirectly in control of, controlled by, or under common control with, such other entity, including but not limited to, parent or subsidiary corporations or entities.

*AngloGold Group* means AngloGold and its Affiliates.

*Area of Influence* means the area set forth on the map set out in Schedule 2.

*ASIC* means the Australian Securities and Investment Commission.

*ASX* means Australian Stock Exchange Limited (ACN 008 624 691).

*AUD* means Australian dollars.

*Authorisation* includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

*Board* means the board of directors of Red 5.

*Business Day* means a day on which banks are open for business in Perth.

*Confidentiality Deed* means the deed entitled 'Confidentiality Deed' between Red 5 and Anglo American Exploration (Philippines) Inc, dated 16 March 2004.

*Constitution* means the constitution of Red 5.

*Corporations Act* means the *Corporations Act 2001* (Cth).

*Earn-in Date* has the meaning given in clause 26.1.

*Excluded Areas* means the areas coloured blue on the map set out in Schedule 2.

*Governmental Agency* means any:

- (a) government or governmental, semi-governmental or judicial entity or authority; or
- (b) minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government.

It also includes any regulatory organisation established under statute or any stock exchange.

*Group* means Red 5 and each of its subsidiaries.

*Group Member* means any member of the Group.

*Inside Information* means information that is not generally available and, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the securities of Red 5.

*Intellectual Property* means all statutory and other rights in respect of patents, trade marks, service marks, trade names, technology, processes, products, circuit layouts, registered designs, design rights, copyright, inventions, improvements, works, trade secrets and know-how which are conceived, created, produced or reproduced by the Service Provider or the Personnel solely or jointly with another in providing the Services.

*Listing Rules* means the official listing rules of ASX.

*ME* has the meaning given in clause 26.1.

*Options* means the 59 276 020 options granted by Red 5 as at the Signing Date.

*Personnel* means each and every employee, contractor, agent, consultant or officer of the Service Provider, who is involved in providing the Services.

*Premium means:*

- (a) if the Weighted Average Price is less than or equal to AUD 0.17 per share, 30% of the Total Weighted Average Price;
- (b) if the Weighted Average Price is greater than AUD 0.17 per share but less than or equal to AUD 0.20 per share, 25% of the Total Weighted Average Price; and



- (c) if the Weighted Average Price is greater than AUD 0.20 per share, 20% of the Total Weighted Average Price.

*Professional Investor* has the meaning given in the Corporations Act.

*Settlement Date* means 22 October 2004, or such date as is agreed by AngloGold and Red 5.

*Service Fees* means the fees payable by Red 5 to AngloGold for the provision of the Services, which shall be a direct reimbursement of the costs incurred by the Service Provider in providing the Services, including all out of pocket expenses and an agreed percentage recovery of corporate overheads.

*Service Provider* has the meaning given in clause 15.2.

*Services* means those technical support and consulting services expressly requested by Red 5 for consultancy and technical advice relating to:

- (a) the development of the Siana Project in the Republic of the Philippines;
- (b) Red 5's regional exploration programs (including exploration work at Mapawa) in the Republic of the Philippines; and
- (c) the expending of the subscription moneys received by Red 5 for the Subscription Securities.

*Siana Project* means the area indicated on the map set out in Schedule 2.

*Signing Date* means such date as is agreed by AngloGold and Red 5, which date shall be no later than 13 October 2004.

*Studies* has the meaning given in clause 7.

*Subscription* means the subscription contemplated by clause 2.

*Subscription Price* means the Total Weighted Average Price plus the Premium

*Subscription Securities* means 31,000,000 fully paid ordinary shares in Red 5.

*Threshold Shareholding* means 12% of the number of the issued ordinary shares in Red 5 at any time following the Subscription.

*Total Monthly Service Charge* means the total of the Service Fees for all Services provided by the Service Provider to Red 5 in any month of the term of the Agreement.

*Total Weighted Average Price* means the Weighted Average Price multiplied by 31,000,000.

*USD* means United States dollars.

*Weighted Average Price* means the weighted average price of fully paid ordinary shares in Red 5 (excluding specials) as advised by ASX for the 5 trading day period up to but excluding the Signing Date.

## 1.2 General

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.



- (a) The singular includes the plural and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule to a reference to a clause or schedule of this Agreement.
- (f) A reference to a party to this Agreement or another agreement or document includes the party's successors and substitutes or assigns (and, where applicable, the party's legal personal representative).
- (g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (i) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to includes or including or similar expressions means includes, without limitation, or including, without limitation, respectively.
- (l) Nothing in this Agreement is to be interpreted against a party solely on the grounds that the party put forward this Agreement or any part of it.

## 1.3 Payments due on Business Days

If any amount becomes payable under this Agreement on a day which is not a Business Day, that amount is payable on the next Business Day.

## Part A – Subscription for shares

### 2. Agreement to Subscribe

AngloGold will subscribe for the Subscription Securities at the Subscription Price on the terms of this Agreement.

## 3. Allotment of Subscription Securities and Payment

Settlement of the Subscription will occur on the Settlement Date, at which time:

- (a) AngloGold will pay the Subscription Price to Red 5 in immediately available Australian Dollars;
- (b) Red 5 will issue the Subscription Securities to AngloGold; and
- (c) Red 5 will apply for quotation of the Subscription Securities in accordance with the Listing Rules and will use its best endeavours at its own cost to obtain quotation of the Subscription Securities within three Business Days of AngloGold complying with clause 3(a).

## 4. Rights attaching to Subscription Securities

The Subscription Securities will rank equally in all respects with the existing ordinary shares of Red 5 as at the Settlement Date.

## 5. Representations and Warranties

### 5.1 Representations and Warranties by Red 5

Red 5 represents and warrants to AngloGold that each of the statements in Schedule 1 is true, accurate and not misleading as at each of the Signing Date and the Settlement Date. The representations and warranties by Red 5 set out in this clause 5 and Schedule 1 are continuing obligations of Red 5 and survive the issue of the Subscription Securities and do not merge on the Settlement Date.

### 5.2 Representations and Warranties by AngloGold

AngloGold represents and warrants to Red 5 that each of the following statements is true and accurate and not misleading as at each of the Signing Date and the Settlement Date:

- (a) (*status*) It is a body corporate validly existing under the laws of its place of incorporation or establishment.
- (b) (*corporate power*) It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- (c) (*corporate action*) It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) (*binding obligation*) This Agreement is its valid and binding obligation.
- (e) (*no contravention*) Neither the entry into nor performance by it of this Agreement nor any transaction contemplated under this Agreement violates in any material respect

any provision of any judgment binding on it, its constituent documents, any law or any document, agreement or other arrangement binding on it or its assets.

- (f) (*Professional Investor*) It is a Professional Investor.

## 6. Undertakings

### 6.1 Red 5's undertakings

- (a) During the period after the Signing Date and prior to the Settlement Date, Red 5 will:
- (i) prepare and lodge on a prompt and timely basis all documents required by the Listing Rules as necessary for quotation of the Subscription Securities in accordance with the Listing Rules as contemplated by this Agreement;
  - (ii) immediately notify AngloGold if it becomes aware of any third party objecting to, challenging, interfering with or obstructing (or proposing to object to, challenge interfere with or obstruct) any of the transactions contemplated by this Agreement; and
  - (iii) not enter into any agreement or legally binding commitment to give to any person any right to invest in or acquire shares or any security convertible into or exercisable for shares in Red 5 and will not issue, redeem or cancel any ordinary shares in Red 5, with the exception of any ordinary shares issued as a result of the exercise of the Options, in which event Red 5 shall give AngloGold immediate notice of such exercise and advise the impact on AngloGold's percentage shareholding in Red 5.
- (b) Within five Business Days after the Settlement Date, Red 5 will lodge with the ASX a notice that complies with the requirements of section 708A(6) of the Corporations Act.
- (c) During the period from the Signing Date until the date that is two years after the Signing Date, Red 5 will not reduce its share capital in any way (including by way of share buy-back, capital reduction or other means) without the prior consent of AngloGold.
- (d) During the period from the Signing Date until the date that is two years after the Signing Date, and for as long as AngloGold holds the Threshold Shareholding:
- (i) Red 5 must not commit to debt funding from any person unless AngloGold has first been given an opportunity to provide the debt funding on terms that are reasonably satisfactory to Red 5 and AngloGold; and
  - (ii) Red 5 will not place or issue any shares or other securities, or enter into any agreement to do so, unless:
    - (A) such placement or issue is a bona fide placement or issue;
    - (B) AngloGold is given an opportunity to participate in the placement or issue:



- (1) at the price and on the terms of that placement or issue; and
- (2) to the extent necessary to ensure that AngloGold's percentage interest in the issued capital of Red 5 immediately before the placement or issue is maintained; and
- (C) any necessary ASX waiver of Listing Rule 6.18 is first obtained by Red 5, in consultation with AngloGold

## 6.2 AngloGold's undertakings

- (a) AngloGold will use all reasonable endeavours to co-operate with Red 5 and its representatives in:
  - (i) preparing all documents to be lodged with ASX in connection with the execution, delivery and performance of this Agreement and the transactions contemplated by it; and
  - (ii) timely lodgment of all such documents.
- (b) AngloGold will not, and will procure that its associates (as that term is defined in the Corporations Act) do not, utilise the "3% creep in 6 months" exemption referred to in section 611 of the Corporations Act so as to increase the total voting power (as that term is defined in the Corporations Act) of AngloGold and its associates (as that term is defined in the Corporations Act) in Red 5 above 20%, without the prior written consent of Red 5.
- (c) AngloGold will not increase the total voting power (as that term is defined in the Corporations Act) of AngloGold and its associates (as that term is defined in the Corporations Act) in Red 5 above 20% except by way of a takeover offer for all the ordinary shares in Red 5 not already held by AngloGold and its associates (as that term is defined in the Corporations Act), except with the prior written consent of Red 5.

## 7. Application of Subscription Price and Development Studies

- (a) The money received by Red 5 in satisfaction of the Subscription Price will, unless otherwise agreed in writing by Red 5 and AngloGold, be applied solely towards funding of exploration along strike of the current mineral resources at the Siana Project (commencing approximately 100 meters North West of the existing pit area and continuing North westerly to Crackerjack and Fritz Weber), Mapawa and the porphyry gold-copper targets south, east/North East and West/North West of Siana in the republic of the Philippines.
- (b) Upon reasonable notice, from time to time, Red 5 will provide AngloGold with full access to the books and records of Red 5 and to Red 5's personnel and accountant, as is reasonably necessary, for the purposes of evaluating and confirming that Red 5 is complying with the obligations set out in clause 7(a).



- (c) Red 5 will use all reasonable endeavours to undertake or procure the undertaking of development studies over the identified resources of the Siana Project (*Studies*), within the following time frames:
  - (i) Scoping Study: 15 October 2004;
  - (ii) Pre-Feasibility Study: 31 January 2005; and
  - (iii) Bankable Feasibility Study: 30 June 2005.
- (d) Red 5 must provide all data and information arising out of or in connection with the Studies to AngloGold.
- (e) Red 5 will use all reasonable endeavours to ensure that all information provided to AngloGold (including, but not limited to, the information referred to in clause 7(d)) is not Inside Information. If either AngloGold or Red 5 considers that information provided to AngloGold may be Inside Information, AngloGold or Red 5 (as the case may be) must notify the other party as soon as practicable, identifying the specific information.
- (f) If AngloGold reasonably considers that any information provided to AngloGold by Red 5 is Inside Information, AngloGold may give notice to Red 5 requiring Red 5 to disclose the information to the ASX.

## 8. Confidentiality

- (a) Subject to clause 8(b), the parties each party must keep the terms of this Agreement confidential.
- (b) A party may make any disclosures in relation to this Agreement as it reasonably thinks necessary to:
  - (i) its professional advisers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;
  - (ii) comply with any applicable law or requirement of any Governmental Agency or by any recognised stock exchange on which its shares are listed; or
  - (iii) any of its employees, or any of an affiliate's employees, to whom it is necessary to disclose the information if that employee undertakes to keep the information confidential.
- (c) Except as required by law or the rules of any stock exchange, all press releases and other public announcements relating in any way to this Agreement must be in terms agreed by the parties. Unless otherwise required by the rules of any stock exchange, the parties will co-ordinate both the timing and the substance of any releases or announcements. Consent to any announcements or releases will not be unreasonably withheld or delayed.
- (d) Subject to clause 8(f), Red 5 and AngloGold acknowledge and agree that the rights and obligations under the Confidentiality Deed will apply to AngloGold as if it were a



Recipient (as that term is defined in the Confidentiality Deed) under the Confidentiality Deed.

- (e) Subject to clause 8(f), nothing in this clause 8 will limit or otherwise affect the terms of the Confidentiality Deed.
- (f) Red 5 acknowledges and agrees that, on and from the Signing Date, the obligations set out in clause 2.4 of the Confidentiality Deed will cease to apply and Red 5 agrees to all waive rights in relation to a breach of clause 2.4 of the Confidentiality Deed by AngloGold. Red 5 agrees that AngloGold holds the benefit of this clause 8(f) for itself and on behalf of each Affiliate of AngloGold.

## 9. Representation on Red 5 's Board

- (a) The parties agree that AngloGold will be entitled to nominate at least one director to the Board for as long as it holds at least the Threshold Shareholding.
- (b) Red 5 will procure the appointment to the Board of the nominee of AngloGold referred to in clause 9(a). Red 5 and AngloGold acknowledge that any nominee of AngloGold appointed by the Board will be subject to election at the first general meeting of Red 5 after the Settlement Date and, if applicable, re-election as required by the Listing Rules or the Constitution. Red 5 will support the nominee of AngloGold and will use all reasonable endeavours to encourage shareholders to support any such election or re-election, subject to AngloGold retaining at least the Threshold Shareholding.
- (c) Other than where AngloGold makes a takeover offer for all the ordinary shares in Red 5, AngloGold will not seek to influence or effect a change in the composition of the Board in a way that would result in AngloGold's representatives or nominees comprising more than 20% of the Board by number.

## 10. On-sale of Subscription Securities

AngloGold acknowledges that no formal disclosure document (such as a prospectus) will be lodged with ASIC and that this will restrict AngloGold's ability to on-sell the Subscription Securities in the 12 months after their issue as a result of section 707(3) of the Corporations Act.

## 11. Termination

### 11.1 Termination by AngloGold

AngloGold may terminate this Agreement by notice in writing to Red 5 before the Settlement Date if:

- (a) AngloGold is satisfied that the representations made by Red 5 to AngloGold do not accurately reflect the status of Red 5's business or are not true and accurate or are misleading by reason of any material representation or omission;
- (b) an event or circumstance occurs which results in, or could reasonably be expected to result in, a material adverse change in the financial position, business, operations or prospects of Red 5 or Red 5 and the Group Members (taken as a whole) between the Signing Date and the Settlement Date inclusive (including the proposal or coming into effect of any law which could reasonably be expected to, or which has, such material adverse effect);
- (c) Red 5 does not comply with its undertakings under clause 6.1; or
- (d) a Governmental Agency or other person (including ASX) notifies either party that it considers it has reason to, or intends to, challenge the Subscription, or any of the parties' obligations under this Agreement.

## 11.2 Non-Listing by ASX after Settlement Date

If, after the issue of the Subscription Securities, ASX does not agree to quote the Subscription Securities, Red 5 must do all things within its power to procure the cancellation of the Subscription Securities and, upon such cancellation, must procure the immediate refund to AngloGold of the Subscription Price.

## 12. Indemnity

Red 5 indemnifies AngloGold (and agrees that AngloGold holds the benefit of this indemnity for itself and on behalf of each Affiliate of AngloGold) against each claim, action, proceeding, judgment, damage, costs, loss, expense or liability (including legal costs on a full indemnity basis) incurred or suffered by or brought by or made or recovered against AngloGold and/or any Affiliate of AngloGold in connection with or arising out of any breach of any provision of this Agreement by Red 5. This indemnity in this clause 12 is a continuing indemnity and will survive the expiry or termination of this Agreement or the issue of the Subscription Securities and will not merge on the Settlement Date.

## 13. FIRB approval

AngloGold will notify Red 5 as soon as practicable if it seeks, or if it becomes aware that any of its associates (as that term is defined in the Corporations Act) proposes to seek, the approval of the Treasurer of the Commonwealth of Australia under the Foreign Acquisition and Takeovers Act to increase its relevant interest in Red 5 above 15%.



## Part B – Provision of Technical Services

### 14. Condition Precedent to matters contemplated by Part B

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The provisions of this Part B of the Agreement will be of no force and effect unless and until settlement of the Subscription contemplated by Part A of this Agreement has occurred.

### 15. Services

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#### 15.1 Provision of Services

Provided that AngloGold (and/or another member of the AngloGold Group) holds at least the Threshold Shareholding, Red 5 may from time to time request in writing the provision of Services by AngloGold or its nominee, in accordance with the terms of this Agreement and, in particular, this clause 15.

#### 15.2 Service Provider

Upon receipt of any request pursuant to clause 15.1, AngloGold may in its absolute discretion elect to provide the relevant Services, either itself or through its nominee (being another member of the AngloGold Group), provided that Red 5 must first indicate that the nominee is acceptable to it. In this Agreement, AngloGold or its nominee, as the provider of the Services, is defined as the *Service Provider*.

#### 15.3 Right to withdraw

The Service Provider will be permitted at any time to withdraw the Personnel and the staff of any subcontractor if, in the reasonable opinion of the Service Provider, those people would face any risk to their personal safety in performing the Services.

### 16. Payment for Services

---

#### 16.1 Payment for Services

Red 5 must pay to the Service Provider the amount of the Total Monthly Service Charges invoiced to it in accordance with the terms of this Agreement.

#### 16.2 Invoicing and payment

- (a) The Service Provider must deliver invoices monthly in arrears to Red 5 setting out the Total Monthly Service Charges payable in respect of Services provided by it during the previous month. The invoice must set out in reasonable detail the tasks undertaken by the Service Provider over the preceding month and must be accompanied by a statement setting out in reasonable detail the calculation of the amounts shown in the invoice.

- (b) Red 5 must pay the amount invoiced in accordance with clause 16.2(a) within 30 days after the date of the invoice.
- (c) If Red 5 is compelled by law to make any deductions on account of withholding or other taxes from amounts payable to the Service Provider in relation to the Services, it must pay such additional amounts as may be necessary so that the net amount received by the Service Provider after such deductions or withholdings is equal to the amount it would have received had no such deductions or withholdings been required to be made. Red 5 must, if required by law, pay to the revenue authority any such withholdings or other taxes so payable and deduct the amount so payable from any payment to the Service Provider.

## 17. Consultation in Respect of Services

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### 17.1 Consultation and cooperation

Red 5 and the Service Provider must act in close consultation and cooperation with each other in relation to the provision of any Services.

### 17.2 Information

- (a) The Service Provider may request, and Red 5 must ensure that the Service Provider is given, all data and information reasonably required or reasonably requested by the Service Provider to fully perform the Services requested under this Agreement.
- (b) Subject to paragraph (a) above, the Service Provider will not be responsible for the consequences of any omitted or erroneous data or information. Additional reasonably incurred costs resulting from the provision of additional Services, or the variation of Services, necessary to remedy the consequences of any omitted or erroneous data or information will be payable by Red 5 on demand by the Service Provider.

## 18. Protection of Intellectual Property

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### 18.1 Obligations

- (a) In relation to all Intellectual Property created or to be created by, or arising out of any thing or idea or matter created by, the Service Provider or the Personnel solely or jointly with others during the term of this Agreement and arising out of or in pursuance of the provision of Services, including all records, documents, concepts, ideas and software conceived or made by the Personnel in the course of providing the Services, Red 5 acknowledges that the Service Provider owns all rights, title and interest to any and all such Intellectual Property and agrees not to register or attempt to register any interest in respect of any Intellectual Property;
- (b) assigns to the Service Provider upon creation any and all of the rights of Red 5 in such Intellectual Property; and

- (c) agrees to provide all reasonable assistance to the Service Provider both during and after the expiry or termination of this Agreement to assist the Service Provider in protecting its interests in the Intellectual Property. Such assistance must include the execution of any and all applications, assignments or other documents which Service Provider may deem necessary for the registration or protection of any of its interests in the Intellectual Property in any country of the world, provided that following termination of this Agreement, the Service Provider will meet Red 5's reasonable costs with respect to the execution of documents required pursuant to this clause 18.1.

## **18.2 Improvements or development of Intellectual Property**

Any improvement to or development of any Intellectual Property referred to in clause 18.1 made by the Service Provider following termination of the provision of Services under this Agreement will be the sole property of the Service Provider, and the Service Provider will be entitled to apply for, in its name and at its cost, any rights in respect of such improvements or developments.

## **18.3 Licence for Intellectual Property**

If the Service Provider develops any Intellectual Property referred to in clause 18.1, then the Service Provider will grant a non-exclusive, royalty free licence to Red 5 for the use of that Intellectual Property solely in connection with the Siana Project and any of the other projects referred to in the definition of Services.

## **18.4 Reports**

Any reports provided by the Service Provider pursuant to this Agreement are for the sole benefit and use of Red 5 in connection with any of the projects referred to in the definition of Services, and they may not be disclosed by Red 5 to any other person without the prior written consent of the Service Provider.

# **19. Relationship of the Parties**

## **19.1 Independent contractor**

In providing Services to Red 5 under this Agreement, the Service Provider is acting in the capacity of independent contractor. This Agreement does not set up or create an employer and employee relationship, a partnership of any kind, or an association or trust between the relevant parties.

## **19.2 No obligation**

The Service Provider and the Personnel do not have the authority to act as agent for Red 5 for any purpose, and the Service Provider and the Personnel may not, on behalf of Red 5, enter into any contract, warranty or representation as to any matter.



## **20. Limitation of Liability**

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### **20.1 Time limit for claims**

Despite any other provision of this Agreement, the Service Provider is not liable to Red 5 to make any payment (whether by way of indemnity, damages or otherwise) in connection with any Services (whether for any breach of this Agreement, negligence or otherwise), unless a claim is made in writing by Red 5 within six months after the circumstances giving rise to the claim first became known by Red 5 or could, with reasonable diligence, have become known by Red 5. Any claim must set forth in reasonable detail the nature of the claim and the amount sought to the extent the amount can reasonably be determined.

### **20.2 Liability cap for payments**

Despite any other provision of this Agreement, the Service Provider is not liable to Red 5 to make any payment (whether by way of indemnity, damages or otherwise) in connection with any Services (whether for any breach of this Agreement, negligence or otherwise), to the extent that such payment, when aggregated with all other such payments in respect of any Services, exceeds the aggregate of all Service Fees paid by Red 5 under this Agreement for the performance of the Services. In lieu of making any such payment, the Service Provider may elect (at its sole discretion) to re-perform the relevant Services.

### **20.3 Exclusion of indirect or consequential loss**

Despite any other provision of this Agreement, the Service Provider is not liable to Red 5 to make any payment (whether by way of indemnity, damages or otherwise) in connection with any Services (whether for any breach of this Agreement, negligence or otherwise) in respect of any indirect or consequential loss (including loss of profit or loss of production).

### **20.4 Other limitations and exclusions**

- (a) Despite any other provision of this Agreement, the Service Provider is not liable to Red 5 for any loss it suffers in connection with any Services, to the extent that the loss arises from any act or omission of Red 5.
- (b) Subject to clause 20.4(c), the Service Provider will be liable to Red 5 for claims, costs, expenses, losses and liabilities sustained or incurred by Red 5 in connection with the Services provided by that Service Provider, where those claims, costs or expenses, losses or liabilities result from any breach by the Service Provider of any of its obligations under this Agreement, if the Service Provider has breached its obligations in relation to the provision of those Services under this Agreement.
- (c) The Service Provider will not be liable under this clause 20.4 except in respect of any wanton or reckless act or omission by the Service Provider, not justified by special circumstances, as amounts to a fraud or wilful misconduct, which act or omission is not an error of judgment or mistake (whether negligent or otherwise) made in good faith.



## **21. Termination of Provision of Services**

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### **21.1 Payment of outstanding fees**

Upon termination of the provision of Services pursuant to this Part B of the Agreement for any reason, Red 5 will pay to the Service Provider any Service Charges which remain unpaid as at the effective date of termination, but to the extent only that Chargeable Costs have been incurred or Services have been duly performed by the Service Provider up to that date.

### **21.2 Continuing clauses**

For the avoidance of doubt, clauses 18, 20 and 22, and the relevant provisions of this clause 22, will continue to apply after any such termination.

## **22. Red 5's Indemnity**

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Except in respect of any matter for which the Service Provider is liable pursuant to clause 20.4, Red 5 will and does hereby indemnify and hold harmless the Service Provider, any related body corporate of the Service Provider, and any of its or their employees or subcontractors, from, against and in respect of all claims, costs, expenses, losses and liabilities which any of them may incur or sustain as against Red 5 or any other person in connection with the provision of Services under this Agreement.

## **23. AngloGold holds benefit for AngloGold Group**

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AngloGold enters into this Part B of the Agreement, and holds the benefit of all of the provisions in this Part B, for itself and on behalf of any member of the AngloGold Group that is the Service Provider in respect of any Services.

## **Part C – Option to Joint Venture and Access Rights**

## **24. Condition Precedent to Transactions Contemplated by Part C**

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The provisions of this Part C of the Agreement will be of no force and effect unless and until settlement of the Subscription contemplated by Part A of this Agreement has occurred.

## **25. Exclusive option to exercise earn-in right**

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Despite the provisions of clause 28.4, provided that AngloGold (and/or another member of the AngloGold Group) holds at least the Threshold Shareholding, then for a period of two years from the date of this Agreement, AngloGold shall have a non-assignable and exclusive option to exercise an earn-in right enabling it to acquire a majority of Red 5's equity in specific projects undertaken in the Surigao region within the Area of Influence, apart from the Excluded Areas.

## 26. Option to enter joint venture

### 26.1 Right to negotiate

If AngloGold advises Red 5 that it wishes to enter a joint venture on any specific project within the Area of Influence, AngloGold shall have a first right to negotiate with Red 5 the terms of earn-in and joint venture for that specific project. Such negotiation must be undertaken by the parties in good faith, and will be based on the following indicative terms, including all usual clauses generally accepted within the mining industry as applicable to joint ventures of this kind:

- (a) In relation to any such project, AngloGold shall expend a minimum commitment as prescribed in clause 26.2 (*ME*) in the first year. Once AngloGold has completed its ME (the *Earn-in Date*), it may elect whether to proceed to acquire a participating interest in that specific project.
- (b) If AngloGold elects to proceed, it shall earn a 65% participating interest (in Red 5's 80% participating interest, giving AngloGold a direct interest of 52%) by expending a further USD4 million by the expiration of 2 years from the Earn-in Date.
- (c) Once AngloGold has completed its expenditure of USD4 million, it may elect whether to proceed to acquire an additional participating interest in that specific project of 10% (in Red 5's 80% participating interest, giving AngloGold a direct interest of 60%), by expending a further USD5 million by the expiration of 4 years from the Earn-in Date.
- (d) AngloGold may withdraw from the relevant joint venture at any time after the completion of its ME.

For the avoidance of doubt, AngloGold may exercise its right separately in respect of any number of such projects, with the result that there may be multiple joint ventures.

### 26.2 Minimum commitment

For the purposes of this provision, ME shall be the sum of USD1 million if the Subscription Price is 20 cents or more (per share) and shall be increased by USD250,000 for each whole cent below 20 cents at which the Subscription is made, to a base of 17 cents. For the avoidance of doubt, the ME shall be no greater than USD1.75 million.

### 26.3 Management of project

During the ME period for any such project, Red 5 will act as manager of the JV, and AngloGold will have the right to second one Personnel member to the project during field activities. All costs associated with this secondment shall be included in calculating the amount of expenditure by AngloGold for the purposes of Clause 26.1.

### 26.4 Option to manage project

After AngloGold has expended the ME in respect of a project, and in the event that AngloGold elects to proceed to acquire a participating interest in that project, AngloGold



shall have the option to assume management of the JV, in its absolute discretion, either itself or through another member of the AngloGold Group.

## 27. Access right

- (a) For so long as AngloGold (and/or any other member of the AngloGold Group) holds at least the Threshold Shareholding, AngloGold will have a right at all times, with reasonable prior notice to Red 5, to visit and review any of the operations, projects or other activities in which Red 5 is involved. Red 5 will have the right to accompany AngloGold personnel at all times during any such visit and review.
- (b) Whenever AngloGold exercises the access right set out in clause 27(a), Red 5 will be obliged to co-operate fully with the AngloGold personnel undertaking the visit and review, to facilitate and ensure full and meaningful access by those AngloGold personnel to all of the applicable Red 5 operations, projects and/or activities (including all associated relevant information).

## Part D – General

### 28. General

#### 28.1 Further Assurances

Each party may do anything (including executing agreements and documents) necessary to give full effect to this Agreement and the transactions contemplated by it.

#### 28.2 Governing law

This Agreement is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### 28.3 Notices

Any notice, communication, consent or other document authorised or required to be given or served under this Agreement:

- (a) must be in writing addressed to the address of the recipient shown in this Agreement or to the address last notified by the recipient to the sender; and
- (b) will be taken to have been duly given or made: (in the case of delivery in person or by post, facsimile transmission) when delivered at the above address;

but if delivery or receipt is later than 7 pm (local time) on a day on which business is generally carried on in the place to which the communication is sent, it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in the place.



## **28.4 Rights Personal**

No party may assign, transfer or in any other manner deal with its rights under this Agreement without the prior written agreement of the other parties, except to Affiliates of the party.

## **28.5 No waiver**

No acquiescence, waiver or other indulgence granted by any party to any other party will in any way discharge or relieve that other party from any of its other obligations under this Agreement.

## **28.6 Stamp duty**

AngloGold must pay any stamp duty assessed on this Agreement.

## **28.7 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

## **28.8 Extent of obligations**

If any payment under this Agreement becomes void by any statutory provision or otherwise, the obligations of the party that made the payment will be taken not to have been discharged in respect of that payment and the parties shall be restored to the rights which each respectively would have had if that payment had not been made.

## **28.9 Entire agreement**

This Agreement and the Confidentiality Deed contain the entire agreement of the parties with respect to the subject matter and set out the only conduct relied on by the parties and supersede all earlier conduct by the parties with respect to the proposed transactions.

## **28.10 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.



## Schedule 1

### Warranties

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Red 5 warrants that:

- (a) **(status)** It is a body corporate validly existing under the laws of its place of incorporation or establishment.
- (b) **(corporate power)** It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- (c) **(corporate action)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement. On the Settlement Date, full beneficial title in the Subscription Securities will vest in AngloGold.
- (d) **(compliance with laws)** The Subscription Securities have been offered for issue to AngloGold without disclosure under Chapter 6D or Part 7.9 of the Corporations Act and/or shareholder approval, and will not violate the Listing Rules, the Constitution, the Corporations Act, or any other applicable rules, regulations or laws;
- (e) **(accuracy and completeness)** Despite anything to the contrary in the Confidentiality Deed, all information relating to Red 5 and the Group and Red 5 and/or the Group's operations provided to AngloGold or its advisers in connection with the proposed investment by AngloGold in Red 5 as contemplated by this Agreement, and all information publicly disclosed by Red 5, is true in all material respects and is not by omission or otherwise misleading in any material respect. Nothing has occurred which renders any of the material which has been disclosed to AngloGold or its advisers, or which has been publicly disclosed by Red 5, inaccurate in any material respect.
- (f) **(non disclosure requirements)** Each of the statements set out in section 708A(5) of the Corporations Act is true and accurate in so far as it applies to Red 5 and the Subscription Securities.
- (g) **(disclosure compliance)** It has complied with all its disclosure requirements under the Corporations Act and the Listing Rules and there is no material information or circumstance which Red 5 is not obliged to notify ASX about, pursuant to Listing Rule 3.1.
- (h) The Accounts provide a true and fair view of the profit and loss of Red 5 and the Group for the period from 1 July 2002 to 30 June 2004 and have been prepared in accordance with the Corporations Act (or previous applicable corresponding legislation) and applicable accounting standards.
- (i) **(conduct since 30 June 2004)** Since 30 June 2004 each of the following has occurred.

- (i) **(Conduct of business)** The business of each Group Member has continued in the ordinary and usual course and not otherwise.
- (ii) **(Dealings)** No Group Member has dealt with any person except at arm's length. No property has been acquired by any Group Member for more than market value..
- (iii) **(Deferral of capital expenditure)** No decision has been made to defer any capital expenditure of any Group Member.
- (iv) **(No material adverse change)** There has been no material adverse change in the financial condition or prospects of any Group Member.
- (v) **(Contracts)** No contract has been terminated or has expired which could reasonably be expected to have a material adverse effect on the profitability of any business conducted by a Group Member.
- (vi) **(Authorisations)** No Authorisation from which any Group Member benefits has been terminated or has expired and in either case could reasonably be expected to have a material adverse effect on the profitability of any business of a Group Member.
- (j) **(binding obligation)** This Agreement is its valid and binding obligation.
- (k) **(no contravention)** Neither the entry into nor performance by it of this Agreement nor any transaction contemplated under this Agreement violates any provision of any judgment binding on it, its constituent documents, any law or regulation, including section 1043A of the Corporations Act, or any document, agreement or other arrangement binding on it or its assets.
- (l) **(material contracts)** To the best of Red 5's knowledge and belief, all contracts entered into by Red 5 that are material for the carrying on of its business are valid and enforceable in accordance with their terms and entry into this Agreement will not result in any person having the right (whether actual or contingent) to terminate any material contract material to the carrying on Red 5's business.
- (m) **(no litigation)** Except as disclosed in the Accounts for the financial year ended 30 June 2004, Red 5 is not aware of any facts or circumstances likely to lead to any prosecution, litigation or arbitration involving Red 5 or any person for whom Red 5 may be liable, and has not been threatened with any prosecution, litigation or arbitration involving Red 5 or any person for whom Red 5 may be liable. Red 5 is not involved in any proceeding before or investigation by any Governmental Agency or other body and no such proceeding or investigation is pending or threatened against Red 5 or any person for whom it may be liable.
- (n) **(consents/approvals)** Except for the admission of the Subscription Securities to the Official List of ASX, no consent, approval, authorisation, order, registration or qualification of or with any Governmental Agency or any other person is required for Red 5 to perform its obligations under this Agreement.

# Subscription and Relationship Agreement

Allens Arthur Robinson

- (o) **(capitalisation)** As of the Settlement Date, prior to Red 5 issuing the Subscription Securities to AngloGold, the issued capital of Red 5 is 220,304,333 ordinary shares. As of the Signing Date and the Settlement Date, Red 5 and/or the Group Members have no outstanding obligations or intent to issue, redeem or cancel any shares or options in Red 5, and there exist no rights to acquire capital or voting rights in Red 5 other than this Agreement.
- (p) **(no finder)** Neither Red 5 nor any party acting on its behalf has paid or become liable to pay any fee or commission to any broker, finder or intermediary for or on account of transactions contemplated by this Agreement.
- (q) **(no insider information)** Neither Red 5 nor any party acting on its behalf has provided to AngloGold or its advisers any Inside Information.

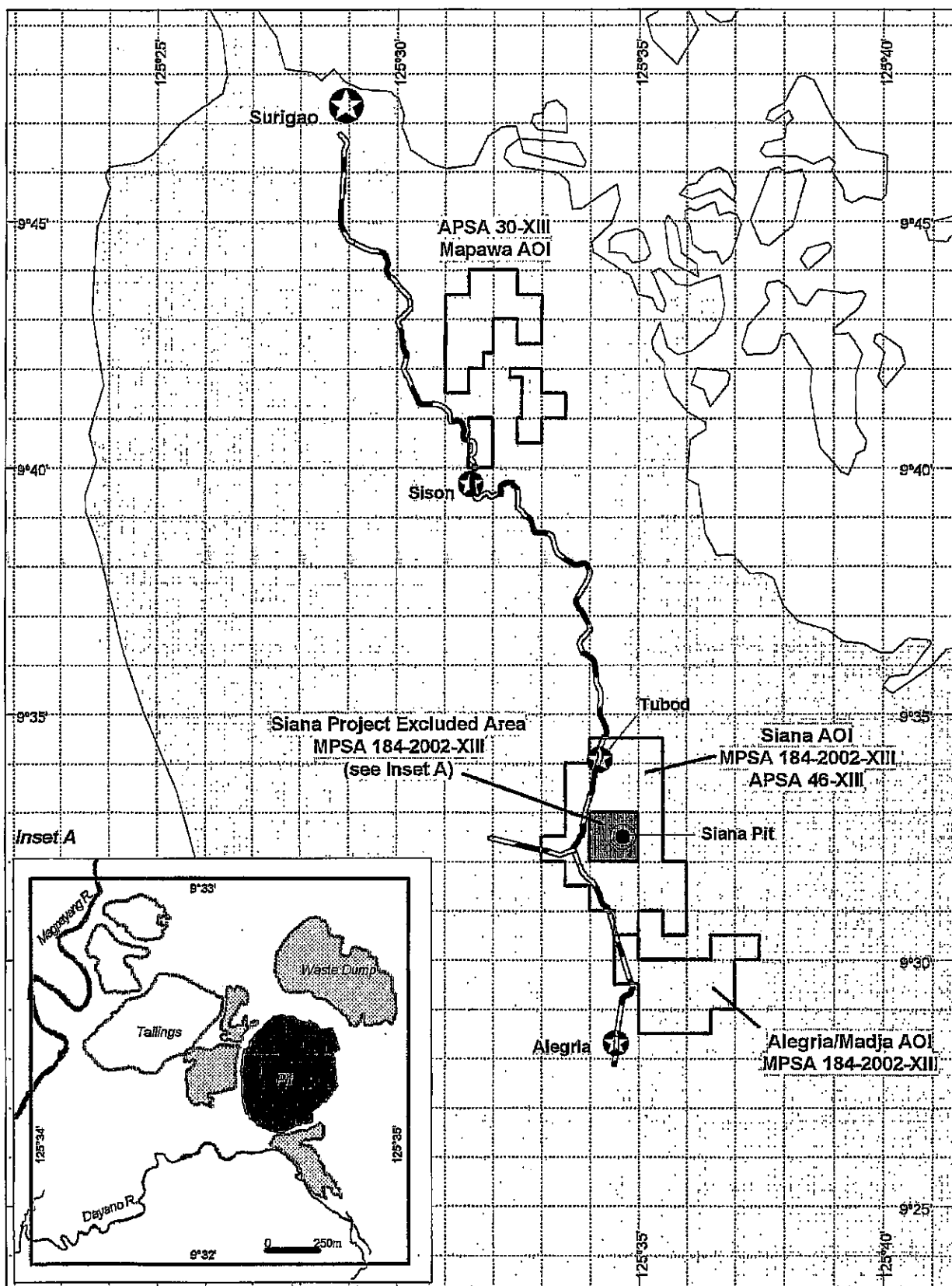
# Subscription and Relationship Agreement

Allens Arthur Robinson



## Schedule 2

### Area of Influence



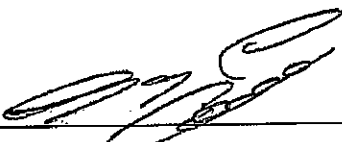
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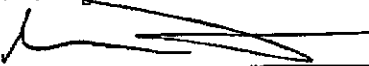
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Kilometers  
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Surigao del Norte  
Mindanao Island, Philippines

**Executed in Perth**

Signed for and on behalf of Red 5 Limited by  
its duly authorised officer:

  
\_\_\_\_\_  
Director Signature


  
\_\_\_\_\_  
Witness Signature

GREGORY C EDWARDS  
Print Name

NICHOLAS J. SMITH.  
Print Name

Signed for and on behalf of AngloGold  
Ashanti Australia Limited by its duly  
authorised officer:

  
\_\_\_\_\_  
Director Signature

  
\_\_\_\_\_  
Witness Signature

PETER WILLIAM ROWF  
Print Name

William Paul Cowan  
Print Name