

Dated 11 March 2016 [●]

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**THE REPUBLIC OF GHANA**  
**and**  
**GOLDFIELDS GHANA LIMITED, TARKWA**

**DEVELOPMENT AGREEMENT**

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THIS AGREEMENT is dated 11 March 2016 and made between:

- (1) **THE REPUBLIC OF GHANA**, represented by the Minister of Lands and Natural Resources, the Minister of Finance (hereinafter referred to as the **Government**); and
- (2) **GOLD FIELDS GHANA LIMITED**, of No. 7 Dr. Amilcar Cabral Road, Airport Residential Area, a company with limited liability established under the laws of Ghana represented by its Managing Director, Alfred Baku (hereinafter referred to as **GFGL**).

## BACKGROUND

### WHEREAS:

- (A) Under Section 49 of the Minerals and Mining Act, 2006 (Act 703) the Minister of Lands and Natural Resources (“the Minister”), on the advice of the Minerals Commission, may enter into a development agreement with the holder of a mining lease where the proposed investment by the holder will exceed Five Hundred Million United States Dollars (US\$500,000,000);
- (B) GFGL was at a point in time the largest tax payer in Ghana and is currently the second largest taxpayer in Ghana. GFGL remain the largest taxpayer in the minerals and mining industry in the country.
- (C) GFGL has already invested over US dollar 2.5 billion in the Tarkwa and Damang Mines to date and therefore qualifies under section 49 of the Minerals and Mining Act, 2006 (Act 703) to enter a development agreement with enhanced investment terms with the Government of Ghana.
- (D) GFGL has committed to invest in the future an amount of US dollar 2.5 billion during the life-of-mine of the Tarkwa and Damang Mines.
- (E) GFGL is a holder of the mineral rights listed in Appendix A in Tarkwa in the Tarkwa Nsuaem Municipality in the Western Region of Ghana. Gold Fields Limited holds ninety (90) percent of the issued shares of AGL. The Government holds the remaining ten (10) percent of the issued shares in accordance with Section 43(1) of the Act;



- (F) GFGL previously acquired the title, interests, rights and claims of Teberebie Goldfields Limited (Teberebie) in respect of the a portion of the area covered by two Mining Leases held by Teberebie listed in 6 and 7 of “Appendix A”;
- (G) GFGL urgently requires investment capital for its Tarkwa and Damang mines and fair and equitable incentives and stability provided by an Investment and Development Agreement with the Government are essential to proceeding with GFGL’s planned investments.
- (H) GFGL is committed to making additional significant investments in order to increase production and extend the life of the Tarkwa Mine and the Government has, subject to Parliamentary approval, agreed to grant GFGL certain financial and other concessions as set out in this Agreement.
- (I) GFGL agrees to negotiate and pay to the State Gold Mining Company Ltd (SGMC) for the use of assets of SGMC since the divestiture of the Mine.

**THE PARTIES AGREE AS FOLLOWS** each in consideration of the Agreement of the others:

## **1 Definitions and interpretation**

- 1.1 The following terms wherever used in this Agreement shall have the respective meanings set forth below:

**Act** means Minerals and Mining Act, 2006 (Act 703);

**Additional Areas** has the meaning set forth in Clause 15.10 below.

**Affiliate** means a legal Person that, with respect to GFGL, directly or indirectly controls, is controlled by, or is under common control with GFGL. For purposes of this clause, **control** means the possession, directly or indirectly, by one legal Person of fifty percent (50%) or more of the equity of or voting power in another legal Person



**Agreement** means this Investment and Development Agreement and includes those provisions of the GFGL Mining Leases that are not inconsistent or in conflict with this Agreement

**Centre** means the International Centre for the Settlement of Investment Disputes established under the auspices of the International Bank for Reconstruction and Development

**Constitution** means the 1992 Constitution of the Republic of Ghana

**Contract Area** means all production areas

**Convention** means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

**Development** means all preparation for the removal and recovery of Minerals, including the construction or installation of a mill, a Mining Plant or any other Infrastructure to be used for the mining, handling, milling, beneficiation or other processing of current and future Minerals

**Dollar and US\$** mean United States dollars and any other currency that is legal tender in the United States of America

**Effective Date** means the date described in Clause 2

**Environmental Assessment Regulations** means the Environmental Assessment Regulations 1999, LI1652, made under the Environmental Protection Agency Act 1994 (Act 490)

**EPA** means the Environmental Protection Agency

**Equity Capital** reflected on the balance sheet of the relevant company, the balance sheet having been prepared in accordance with IFRS

**Extended Stability Period** has the meaning given in Clause 4.3

**Extension Plan** has the meaning given to it in Clause 4.3(a)



**External Account** means an account approved by the Bank of Ghana and held by GFGL with a bank or other financial institution outside Ghana and denominated in foreign currency.

**Financial Year** means January 1 through December 31, or such other period as the Parties may agree from time to time

**Foreign Currency** means United States Dollars and any other currency except Ghana Cedis

**GFGL Exploration** means activities directed towards ascertaining the existence, location quantity, quality or commercial value of deposits of Minerals

**GFGL** means Gold Fields Ghana Limited a company incorporated in Ghana with registered number CS592542015, whose registered office is at 7 Dr. Amilcar Cabral Road, Airport Residential Area, Accra

**GFGL Mining Leases** means the Mining Leases listed under the heading GFGL Mining Leases at Appendix A

**Ghana Cedi** means the lawful currency of Ghana and any currency that is legal tender in Ghana

**Government** means the Republic of Ghana, its government, and any political subdivision, region, branch, division, instrumentality, authority and agency thereof

**IFRS** means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied

- (a) immovable port facilities (including docks, harbours, piers, jetties, breakwaters, terminal facilities and warehouses, and loading and unloading facilities);
- (b) immovable power, water and sewerage facilities (including electrical generating plants and transmission lines, dams, water drains, water supply systems and systems for disposing of tailings, plant waste and sewage);



- (c) immovable public welfare facilities (including schools, clinics and public halls) ;
- (d) immovable transportation and communication facilities (including roads, bridges, railroads, airports, landing strips and landing pads for aircraft, hangars and other airport facilities, garages, channels, tramways, pipelines and radio, telephone, telegraph, telecommunications, and electronic or other forms of communications facilities);

**Indebtedness** means indebtedness for money borrowed from an Affiliate

**Infrastructure** includes the following:

**Initial Investment** means the over US\$850,000,000 investment made by GFGL since 2011 in Ghana's mining sector as of the date of this Agreement

**Initial Stability Period** has the meaning given in Clause 4.3

**International Standards** means generally accepted world mining industry standards and procedures, due allowance being made for any special circumstances in Ghana

**Law** means any constitution, law, statute, decree, rule, regulation, judicial act or decision, judgment, order, proclamation, directive, executive order or other sovereign act of the Government that regulates, controls or relates GFGL and its Affiliates and/or to their Operations, or that is generally applicable in Ghana

**Mineral** means any naturally occurring, inorganic ores with a defined, characteristic chemical composition and physical properties that has economic value, but excluding oil, gas, coal and geothermal resources

**Minerals and Mining Act** means Minerals and Mining Act, Act 703

**Mining Lease** means a right and license granted by the Government to mine and produce Minerals in a specified area in Ghana;

**Mining Plant** means any machinery, equipment, vehicle, tool, building, mill and plant, employees' housing or other Infrastructure whether movable or immovable constructed



by GFGL in the Production Area or acquired by GFGL and used in connection with Operations

**Minister** means the Minister of Government responsible for mining

**Minister of Environment** means the Minister of Government responsible for the environment portfolio in the Republic of Ghana

- (e) miscellaneous immovable facilities used primarily in connection with the operation of any of the foregoing (including offices, machine shops, foundries, repair shops and warehouses);
- (f) movable facilities and equipment used as an integral part of the immovable facilities described above. For purposes of this Agreement, immovable items consist of all tangible items that are securely affixed and attached to the land or to buildings or other structures on the land. All other items are movable items.

**Notice** means notice given in accordance with Clause 25

**Operations** means any and all activities and transactions conducted by or on behalf of GFGL in connection with Exploration, Development, Production and reclamation and the financing of any of them

- (g) other immovable facilities used primarily in connection with or as an incident to Operations; and

**Parliament** means the Parliament of the Republic of Ghana or any successor legislative entity or authority

**Party** means the Government and GFGL (as well as any permitted assignee of either of them)

**Person** means any natural person and any legal person. For purposes of this Agreement, a natural person means a human being and a legal person means a partnership, joint venture, corporation, limited liability company, trust, estate, or any entity that is recognized by the laws of any state as a distinct legal entity, as well as a government or





state, and any branch, division, political sub-division or region, instrumentality, authority or agency of any government or state

**Prevailing Market Rate of Exchange** means the predominant rate, expressed in United States Dollars, on any day during which GFGL engages in a foreign exchange transaction under this Agreement, at which willing sellers and willing buyers, acting at arm's length, in the ordinary course of business have most recently purchased or sold or agreed to purchase or sell Ghana Cedis or any other currency except United States Dollars

**Production Area** means any area designated by the Mining Leases as the **Lease Area** or a part of the Lease Area

**Production** means the commercial exploitation of Minerals found in the Production Area and all other activities wherever performed that are incidental thereto including the design, construction, installation, fabrication, operation, maintenance and repair of Mining Plant or other Infrastructure, facilities and equipment and the mining, excavation, extraction, recovery, handling, beneficiation, processing, milling, stockpiling, transportation, export and sale of Minerals

**Profound Changes in Circumstances** has the meaning given to such term in Clause 11

**Project Development Agreement (PDA)** means the Agreement between the Republic of Ghana and GFGL dated 14th November 1992, as amended.

**Royalty** has the meaning given to such term in Clause 5.2(f)

**Signature Date** means the date stated at the beginning of this Agreement

**Stability Period** means the total of the Initial Stability Period as well as any Extended Stability Period as those terms are defined in Clause 4.2 and 4.3 respectively

**Tarkwa Mine** means the mine operated by GFGL in the Western Region of Ghana at the Effective Date pursuant to the GFGL Mining Leases and includes expansions that may take place at or as part of the Tarkwa Mine in future

**Taxes and Duties** means any direct and indirect income, profit, excess profit, windfall profit, additional profit, supplementary charge, gains, capital gains, corporation,



dividend, interest, financing, net worth, sales, goods, transaction, payroll, import, export, customs, consul, inspection, foreign exchange, value added, consumption, supply, use, turnover, severance, stumpage, cash flow, rental, land rental, surface rental, withholding, property, land, stamp and other taxes, duties, fees, levies, excises, rates, charges, imposts, surcharges, royalties (including Royalties), penalties and any other Government imposed revenue payments of whatever nature and however called, whether paid to the Government or to any other Person at the directive of the Government or under Law and whether similar or dissimilar to any of the foregoing

**UNICITRAL Rules** means the Arbitration Rules of the United Nations Commission on International Trade Law.

- 1.2 This Agreement shall be read with such changes in gender and number as the context shall require. Headings to the clauses of this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 Unless otherwise stated, a reference to hereof, hereunder, herein or words of similar meaning, means this Agreement and its appendices. The words and and/or includes the conjunctive and disjunctive, as the context may require or permit. The word include (and any variation of that word) means including but not limited to. Each of the Parties to this Agreement have participated in the drafting and negotiating of this Agreement and this Agreement shall not be construed against either Party as the drafting Party.
- 1.4 This Agreement shall have prospective effect only and shall from the Effective Date supersede the Project Development Agreement as amended and shall be the sole agreement between the Government and GFGL regarding operation of the Tarkwa Mine.

## **2 Effective Date and Conditions**

- 2.1 This Agreement having been signed by the Parties shall become effective and binding on them on the date on which it is ratified by Parliament.
- 2.2 The Law and terms of this Agreement shall govern and control the rights of the Parties under the GFGL Mining Leases and in the event of any conflict between the terms of this Agreement and the GFGL Mining Leases, the terms of this Agreement shall prevail.



The Parties acknowledge and agree that, other than to the extent of any such conflict, the GFGL Mining Leases shall remain valid and in full force and effect.

### 3 Term of the Agreement

The original term of this Agreement shall commence on the Effective Date and, unless sooner terminated in accordance with this Agreement, shall be the same as the Stability Period.

### 4 Stabilisation

4.1 Except as provided under this Agreement and notwithstanding any Law to the contrary, GFGL shall not, during the Stability Period, be affected by any Law enacted after 1 January 2016 or by any changes to any Law in existence as of 1 January 2016 or, if such new Law is enacted or existing Law amended, any other actions taken under such Law that has the effect or purports to have the effect of:

- (a) imposing upon GFGL any new or additional Taxes and Duties;
- (b) adversely altering the basis for determining or calculating the Taxes and Duties applicable to GFGL; or
- (c) increasing the level or rate of Taxes and Duties to which GFGL is subject.

4.2 The initial stability period shall be the period ending on the seventeenth (17<sup>th</sup>) day of April 2027 (the **Initial Stability Period**).

4.3 The Initial Stability Period shall be extended for a single additional term of five (5) years (the **Extended Stability Period**) if:

- (a) under a plan (the **Extension Plan**) presented to and accepted by the Minister, GFGL commits to make an additional investment, subsequent to the Initial Investment, of at least Three Hundred Million United States Dollars (US\$300,000,000) in a mining project which is the subject of the GFGL Mining Leases, provided that the period for the completion of the Development in connection with the additional investment described in the Extension Plan shall not exceed four (4) years beyond the Initial Stability Period; and



- (b) the additional investment is projected under the Extension Plan to result in any of the following:
- (i) an increase in gold production by GFGL of at least ten per cent (10%) when compared to the average of the three (3) calendar years before the completion of the Development described in the Extension Plan and financed by the additional investment;
  - (ii) an increase by at least three (3) years in the life of the mine which is the subject of the GFGL Mining Leases;
  - (iii) an increase of at least ten per cent (10%) in the number of permanent employees who are citizens of Ghana employed by GFGL at the mine which is the subject of the GFGL Mining Leases when compared to 31 December of the year prior to the year in which GFGL began construction or other activity required to complete the Development described in the Extension Plan and financed by the additional investment; or
  - (iv) the satisfaction of any other measure approved by the Minister.

Where the Minister has not acknowledged the Extension Plan ninety (90) days after it was delivered, GFGL shall deliver a reminder notice to the Minister. The Extension Plan shall be deemed to have been accepted by the Minister if notice of disapproval has not been delivered to GFGL thirty (30) days after delivery of the reminder notice.

- (c) Fulfilment of the measures described in Clause 4.3(b) and set forth in the Extension Plan shall be deemed to have occurred if, within one (1) year after the completion of Development with respect to an additional investment project, anyone of the conditions set forth in Clause 4.3(b) and as described in the Extension Plan has been met or, in the case of Clause 4.3(b)(ii), it can be demonstrated to the reasonable satisfaction of the Minister that activities have been completed and given effect such as will permit the attainment of that condition.



- (d) Should the conditions described in Clause 4.3(a) and 4.3(b) fail to be satisfied on the basis and within the period described in Clauses 4.3(b) and 4.3(c) and in the Extension Plan, unless such failure is due to Force Majeure or to action taken or inaction by the Government after acceptance of the Extension Plan that prevents the satisfaction of any of the relevant conditions in the Extension Plan, the Government may rescind the Extended Stability Period and GFGL will thereafter become liable for any additional Taxes and Duties that would have accrued but for the extension of the Initial Stability Period.
- (e) Any dispute arising out of or in relation to this Clause 4.3 shall be subject to the provisions of Clause 18.

## **5 Taxes and Duties**

With effect from the Effective Date and for the duration of the Basic Stability Period and any Extended Stability Period only, the following shall apply:

### **5.1 General**

GFGL shall be subject to all Taxes and Duties in force in Ghana from time to time under Law except:

- (a) where GFGL is exempt wholly or partly from the application of a Law relating to Taxes and Duties pursuant to a validly granted authority under any applicable Law; or
- (b) as otherwise provided in this Agreement.

5.2 GFGL shall be subject to taxation on its income at the rates and on the basis provided by this agreement during the basic and any extended stability period. At the expiration of the stability period, GFGL shall pay income tax and other taxes in accordance with applicable law.

#### **(a) Corporate Income Tax Rate and Basis**

- (i) The rate of corporate income tax applicable to the taxable income of GFGL and derived from its Operations shall be thirty two and a half per cent (32.5%) throughout the stability period.



- (ii) Subject to the other provisions of this Clause 5.2 and, except as may be otherwise provided for in this Agreement, the taxable income of GFGL shall be determined on the basis stipulated by the Law in effect on 1 January 2016 with all write-offs, deductions, reliefs and allowances permitted or allowed by the Law as at that date.
- (iii) GFGL may deduct for purposes of determining taxable income a fee for management and technical services provided by an Affiliate in an annual amount that in aggregate shall be 2.25% of either:
  - (A) total revenues from Production or Operations in the relevant Financial Year; or
  - (B) if during other periods when Production has been substantially interrupted, Development capital expenditures in the relevant Financial Year.

Such a management and technical services fee shall for purposes of this Agreement be subject to the arm's length principle as would apply between unrelated parties in the ordinary course of business for the provision of such services.

- (iv) GFGL may be allowed to deduct for the purposes of determining taxable income its waste/overburden stripping expenditure for tax purposes. All other assets and components that are of a capital nature shall be treated on the basis stipulated by Law in effect on 1 January 2016.
- (v) The tax written down value of any capital assets acquired by GFGL shall be depreciated for tax purposes in accordance with the law in effect as of 1 January 2016.
- (vi) Any unutilised capital allowances associated with the tax written down value of any capital assets acquired by GFGL shall, for a period not exceeding five (5) years, be carried forward to subsequent years and utilised.



(vii) The taxable income of GFGL shall be determined in United States Dollars in accordance with Law, except as otherwise provided in this Agreement.

(b) **Local Taxes and Duties**

GFGL shall pay Taxes and Duties imposed by local or municipal authorities under power granted by Law. GFGL shall not be liable to pay any such Taxes and Duties imposed by local or municipal authorities that would impose a disproportionate burden on GFGL when compared to other Persons in the same category, including Persons engaged in exploration or mining operations in that locality or municipality.

(c) **Withholding Taxes**

GFGL shall withhold tax on any fees paid for management and technical services on the basis and at the rate provided by Law or any double taxation agreement, and GFGL shall pay all such amounts within the time and in the manner and place required by Law.

(d) **Capital Gains**

Any capital gains realized as a result of the conveyance or transfer of any rights under this Agreement or of any Mining Leases or any other assets of GFGL or shares of GFGL held by Affiliates shall (subject to Clause 4) be subject to Taxes and Duties under Law provided that in the case of: (i) capital gains realized by GFGL the provisions of Clause 5.1 shall apply; and (ii) no Taxes and Duties shall be imposed upon capital gains accruing to or derived by GFGL or an Affiliate and arising out of the realization of a chargeable asset from a merger, amalgamation, or re-organization of GFGL or an Affiliate which is completed after 1 January 2016 where the Affiliate (or Affiliates) that owns or controls all other Affiliates involved in such transactions will retain at least a twenty-five per cent (25%) beneficial ownership interest in GFGL when the conveyance or transfer has been completed.

Where GFGL staggers mergers and acquisitions during the term of this agreement, the permitted beneficial structure shall be not less than fifty



percent (50%). For the purposes of this Agreement “re-organization” shall also mean an internal restructuring or reallocation of the ownership of GFGL such that ownership passes from one Affiliate to another.

(e) **Import Duties and Excise Taxes**

- (i) GFGL shall be exempt from Taxes and Duties on the import of plant, machinery, equipment, parts, fuels and petroleum products, supplies and accessories (including spare parts), as well as other items listed in the Mining List, and imported necessarily, specifically and exclusively for Operations.
- (ii) Where an item becomes necessary to import for the use of GFGL as a result of advances in technology, or to replace an item on the Mining List for any reason, GFGL shall make a representation to the Minister as to why such item is necessary for import and should be exempt from customs import duties and the Minister shall give due consideration to such representation in the light of the Mining List and applicable Law.

(f) **Royalty**

i. **Royalty Rate**

GFGL shall pay to the Government in United States Dollars royalty at the percentage rate specified below on the gross revenues received by GFGL from the sale of Minerals:

Gold according to a sliding scale starting at a floor of 3.0% at a gold price below US\$1,300 per ounce, increasing to 3.5% at a gold price between US\$1,300 and US\$1,449.99 per ounce, to 4.0% at a gold price between US\$1,450 and US\$2,299.99 per ounce and to 5.0% at a gold price of not less than US\$2,300 per ounce, as set forth and illustrated in Appendix C.





ii. GFGL shall continue to pay royalties in accordance with law until January 1, 2017 when GFGL shall pay royalties in accordance with Clause 5.2(f).

iii. Determination of Gold Price:

For the purposes of Clause 5.2(f)(i) above, the price for determining the applicable Royalty rate on the sliding scale shall be the average of the quoted gold price on the daily London Bullion Market Association Gold Fix (the "London PM Fix") for each calendar month with respect to sales of gold during such month.

iv. Should the London PM Fix cease to exist, then the Parties shall choose an alternative market index.

v. Right to Take Royalty in Kind:

A. The Government, acting through the Minister, may take all or a part of the Royalty to which it is entitled in Clause 5.2(f)iii, in gold that has a value based on the London PM Fix (or an alternative index in the circumstances provided for by Clause 5.2(f)) equivalent to the Royalty amount in United States Dollars payable to the Government on the day it is payable.

B. Where the Government desires to take its Royalty share or part thereof for the next Financial Year in gold, the Minister shall elect to do so by giving Notice to GFGL not less than six (6) months prior to the beginning of that Financial Year. Such election may be revoked by mutual agreement between the Parties if the Government gives at least one month's Notice before any gold to be delivered under Clause 5.2 is scheduled for delivery.

C. Should the Minister make the election to take all or a part of the Royalty in gold as described in Clause 5.2(f)(iii)(A) above, the Parties shall meet to agree upon the specific terms and the process for such



transfer or delivery of gold which shall be consistent with standard practice as between buyers and sellers of gold. If the Parties have not agreed on the transfer, delivery and other terms by a date that falls one month prior to the scheduled delivery date for such gold, then the Government shall receive the Royalty in United States Dollars in accordance with Clause 5.2(f)(iii)(A) above.

(g) **Value-Added Tax**

Except as otherwise provided in this Agreement, GFGL shall be exempt from the payment of Value-Added Tax (VAT) on all items specified on the Mining List to the extent used in connection with Operations.

Gold and other Minerals that GFGL exports to Persons outside Ghana shall be zero rated for VAT purposes.

**5.3 Integrated Activity**

GFGL's Operations in respect of the Production Area shall, for the purposes of any Law relating to the calculation of applicable Taxes and Duties, be applied separately to each Mining Operation. Accordingly, all write-offs, deductions, reliefs and allowances incurred by or on behalf of GFGL relating to Operations in respect of that Mining Operation may be deducted from any income or profits of GFGL arising from that Operation for purposes of determining any applicable Taxes and Duties.

**6 Government Carried Interest**

**6.1 Nature of Government Interest**

In satisfaction of the requirements of section 43 of the Minerals and Mining Act or of any other reserves for the Government a ten per cent (10%) free carried interest in the Operations of GFGL (in respect of which financial contribution shall not be paid by the Government), the Government shall receive dividends in accordance with the following:

- a. A sum equal to 10 per cent of the total amount paid as dividends to the shareholders of GFGL on each occasion when dividends are distributed by GFGL less any advance payments made pursuant to Clause 6.2 below; and



- b. Any guaranteed annual advance payments made pursuant to Clause 6.2 below

### **6.2 Guaranteed Advance Payments to the Government**

Where in any calendar year, GFGL does not declare and pay dividends to shareholders, GFGL shall pay to the Government, subject to the following conditions having been satisfied, and as an advance against the payments provided for in Clause 6.1 (a) above, 5% of the profit after tax.

- a) At the end of each calendar year, the eligibility of the Government to receive payment shall be determined on the basis set forth above in Clause 6.2 and if any advance payment is due to the Government it shall be made by GFGL, not later than June 30<sup>th</sup> of the calendar year after the calendar year with respect to which the advance payment is due;
- b) Any advance payment made at any time to the Government (or to any other Person at the Government's direction) shall be deducted from any future payments of which the advance payment is due;
- c) Upon termination of Operations or Mine closure in respect of the Tarkwa Mining Lease there shall be no recovery from the Government of the difference between the aggregate advance payments made to the Government under Clause 6.2 and the total amount due to the Government under Clause 6.1(a).

### **6.3 Permitted Payments and Distributions to GFGL from Operations**

GFGL shall not pay or distribute any amount to an Affiliate other than

- (a) to repay the principal of, and to pay interest on, a loan from an Affiliate;
- (b) as a distribution of dividends to an Affiliate subject to Clause 6.1(a) above;
- (c) as payment for management and technical services fees on the basis set forth in this Agreement;
- (d) as payment for goods or services provided to GFGL by such Affiliate; and
- (e) as reimbursement of costs incurred by an Affiliate on behalf of GFGL and with its authorization, on a Dollar for Dollar basis.



## 6.4 Termination Payments

On termination of Operations or mine closure in respect of the Tarkwa Mining Lease, GFGL shall:

- (a) pay or otherwise satisfy any liabilities including Taxes and Duties and make appropriate provision as required by Law for unknown or contingent liabilities (including reclamation and similar costs not otherwise provided for); and
- (b) undertake reasonable efforts to collect all amounts due to GFGL by any Person (or to offset any such amounts due to GFGL from a Person against amounts due to such Person by GFGL as permitted by Law or this Agreement).

Following settlement of all such payments and offsets referred to in Clause 6.5(a) above, GFGL shall pay to the Government ten per cent of its net remaining cash and may distribute the balance remaining after such payment to the Government under Clauses 6.1 and 6.2.

## 7 Financial Reporting and Exchange Control

### 7.1 Currency for Accounting

Accounting by GFGL under this Agreement shall be in United States Dollars and any amounts paid or received, and obligations incurred or transactions carried out, in Ghana Cedis or in any Foreign Currency other than United States Dollars shall be converted to United States Dollars at the Prevailing Market Rate of Exchange between United States Dollars and Ghana Cedis or any other Foreign Currency on the date of the applicable transaction in accordance with generally accepted accounting principles, as the Institute of Chartered Accountants, Ghana (ICAG) may from time to time adopt. Notwithstanding the foregoing, and solely for informational purposes, at the request of the Government with respect to any financial year, GFGL shall also keep a set of books in Ghana Cedis.

### 7.2 Exchange Control



- (a) GFGL may, without restriction, directly or indirectly, of the Government, obtain, hold, deal with and disburse funds in any manner, currencies and places as it chooses, provided that to the extent required by Law, GFGL shall return to Ghana a minimum of thirty (30) percent of its gross proceeds from the sale of Minerals towards its obligations in Ghana for Taxes and Duties, wages, salaries and employee benefits and other payments for goods and services. GFGL shall be entitled to establish and maintain an External Account and receive gross proceeds from the sale of Minerals into the said External Account. If any of the gross sales proceeds of GFGL results from the sale of Minerals within Ghana and such proceeds are remitted to bank accounts within Ghana, the obligation of GFGL to return a minimum of thirty per cent (30%) of its gross sales proceeds to Ghana shall be reduced by such amount.
- (i) Subject to Clause 7.2(a) above, and without limiting the rights granted in that clause, GFGL shall have the unrestricted and unencumbered right to sell all Minerals outside Ghana and receive payment for Minerals in any currency, and the proceeds from such sales may be deposited in bank accounts outside of Ghana and held there or remitted from there to anywhere in the world, in any currency.
- (b) GFGL shall maintain at least one bank account with a commercial bank or financial institution in Ghana and if required by Law, as soon as is reasonably practicable after a transaction with that bank, shall provide notice to the Bank of Ghana of any dealing in foreign exchange.
- (c) GFGL may acquire Ghana Cedis at the Prevailing Market Rate of Exchange, and also exchange Ghana Cedis for Foreign Currency at the Prevailing Market Rate of Exchange provided that any of the above transactions in Ghana shall comply with Law including any requirement that such transactions in Ghana will be conducted with Persons authorized by Law to engage in such transactions.
- (d) Additionally, any and all transactions between the Government and GFGL relating to Taxes and Duties stated in Ghana Cedis shall be converted to

United States Dollars at the Prevailing Market Rate of Exchange except for GFGL's withholding obligations under Law which shall be governed by and subject to Clause 7.3.

### **7.3 Currency of Payment**

Payment of the obligations of GFGL to the Government for Taxes and Duties shall be in United States Dollars subject to Clause 7.4. In this event any obligation originally stated in Ghana Cedis, or in any Foreign Currency other than United States Dollars, will be converted to United States Dollars at the Prevailing Market Rate of Exchange. However, GFGL shall pay sums it collects on behalf of the Government, including, but not limited to, Taxes and Duties withheld from the salaries or wages of its employees, and any other sums payable to other Persons from which a portion is required by Law to be withheld or retained by GFGL on behalf of the Government, in the currency in which such salaries or wages or such other sums are paid. GFGL may make all other payments whether to the Government or to other Persons in Ghana Cedis in accordance with Clause 7.2(c).

### **7.4 Right to Remit and Receive Payments**

GFGL shall be entitled to remit and receive in United States Dollars all payments of dividends, interest, finance charges, principal, management and technical services fees and other properly payable items arising from, as a result of, or related to Operations.

## **8 Adequate Capital**

GFGL shall maintain a ratio of Indebtedness to Equity Capital of 2:1 or such other higher ratio as may be permitted by Law, excluding for these purposes any Indebtedness that is non-interest bearing (any non-interest bearing Indebtedness and other Indebtedness within the permitted ratios is referred to as "Permissible Debt").

The penalty for failure to maintain a 2:1 ratio of Indebtedness to Equity Capital shall be that any interest or currency exchange losses accrued and attributable to the excess Indebtedness other than Permissible Debt shall not be deductible for the purposes of determining its taxable income.



## **9 Affiliated Company Transactions**

- 9.1 Transactions including the purchases of goods and services and the provision of loans and the accrual of interest between GFGL and an Affiliate or any other Person of whom GFGL or an Affiliate of GFGL is a controller shall unless otherwise provided by this Agreement or Law be conducted on an arm's length basis as would occur between unrelated parties and as required by Law. On request from the Government, GFGL shall provide documentation of the prices, discounts and commissions and a copy of any contracts and other relevant documentation related to transactions with Affiliates.
- 9.2 For the purposes of this Clause, 'controller' shall have the meaning given to it by Section 111 of the Act.

## **10 Joint Affirmations of the Parties**

GFGL shall in all respects be subject to Law and to each term of this Agreement as regards its presence and activities in Ghana. The Government hereby affirms that it shall also be bound by and shall honour each term of this Agreement, and that GFGL may fully rely on that affirmation. The Parties jointly further affirm that they shall each uphold and honour the rights and remedies provided herein to the other Party including the indemnification provided by Clause 15 of this Agreement.

## **11 Periodic review**

### **11.1 Profound Changes in Circumstances**

For the purpose of considering Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement under Clause 11.1, the Government and GFGL shall at the request of the other consult together. The Parties shall meet to review the matter raised after the request as is reasonably convenient for them both to determine if Profound Changes in Circumstances are established to have occurred. To the extent a Profound Change in Circumstances has occurred the Parties shall enter into good faith discussions to consider such modification change in or clarification of this Agreement as they may in good faith agree is necessary provided that it is agreed by the Parties that such good faith discussions shall not require a party to agree to any modification of this



Agreement. The Parties shall effect such modifications to this Agreement that the Parties agree are necessary. For purposes of this Agreement, Profound Changes in Circumstances shall mean such changes in the economic conditions of the gold mining industry worldwide or in Ghana, or such changes in the economic, political or social circumstances existing in Ghana or elsewhere in the world at large as to result in such a material and fundamental alteration of the conditions, assumptions and bases relied upon by the Parties at the Effective Date (or the time after any subsequent review pursuant to Clause 11.1 that the overall balance of equities and benefits reasonably anticipated by them will no longer be achievable as a practical matter.

#### **11.2 Other Consultation**

In addition to the consultation provided by Clause 11.1, each Party may at any time request a consultation with the other Party with respect to any matter affecting the rights and obligations of the Parties under this Agreement or any matter relating to Operations. The Parties shall meet to review the matter raised as soon after such request, as shall be reasonably convenient for them both. Subsequent to the consultation, the Parties shall take the action, if any, that is mutually agreed to address the matter.

### **12 Incidental rights**

#### **12.1 Conduct of Operations**

GFGL may conduct Operations by itself or through agents and contractors and shall do so in a manner consistent with Law and as required by (a) the terms of this Agreement and (b) the terms of the Mining Leases, except to the extent that such terms are inconsistent with the terms of this Agreement in which case the terms of this Agreement shall govern the rights and duties of the Parties.

#### **12.2 Imports/Re-exports**

GFGL may import and use in respect of Operations, and subject to Clause 17.3 and in accordance with Law subsequently export, any machinery, equipment, consumable





items, fuels, explosives and any other thing whatsoever reasonably required with respect to Operations, including, without limitation, the items listed on the Mining List. GFGL shall notify the Minerals Commission of the export of any machinery, equipment, consumable items, fuels or explosives and shall at all times comply with Law regarding the safe use, sale, disposal and security of explosives.

### **13 Undertakings of the Government**

#### **13.1 Issuance of Permits and Necessary Authorization**

Requests for licenses, permits, mining titles, easements, and other authorisations required to permit GFGL to conduct Operations and activities related to Operations shall be dealt with within the period required by Law. If there is no response within the timeframe required by law then there shall be a deemed approval. In all cases, the decision to grant or deny a request for a permit or other authorisation, and any license or title, shall be made in accordance with Law.

#### **13.2 Protection against Nationalisation or Expropriation**

Except as permitted and required by Article 15 of the Constitution (and subject both to prompt, adequate and effective compensation of the affected Party in United States Dollars and to the rules and principles of international law as described in Clause 18.1 below), the Government undertakes and affirms that it shall not nationalise or expropriate (or with respect to any of the following take any measures equivalent to nationalisation or expropriation):

- (a) any Infrastructure or other property, movable or immovable, owned by GFGL subject to its right to possess or use, and whether in its possession or in the possession of its Affiliates, agents, representatives or contractors;
- (b) Minerals in any form resulting from the Operations;
- (c) any equity, shares, loans or ownership interests of whatever nature held in or owned or issued by GFGL;
- (d) any structure or entity put in place by GFGL in connection with Production;  
and

- (e) any capital invested by GFGL .

Any action taken by the Government pursuant to the Constitution as described above, or any other action by the Government in violation of the terms of this Clause shall each entitle GFGL in addition to any other remedy provided by Law, international law or otherwise by this Agreement, to prompt payment by the Government equivalent to the fair market value of the investment, asset or property nationalized or expropriated immediately before the nationalization or expropriation (or the measures tantamount to nationalization or expropriation) took place or was announced.

### 13.3 Peaceful Enjoyment

The Government hereby warrants the title to, possession and peaceful enjoyment by GFGL of all rights granted by this Agreement and all of its property in Ghana in accordance with Law.

### 13.4 Due Authorisation

Each Party represents and warrants that it has all the necessary power and authority to execute and deliver this Agreement.

## 14 Confidentiality

### 14.1 Confidential Information

All information, reports, and documents provided to the Government in the context of this Agreement, including those conveying geological information, Mineral reserves, sales data, Production data, the amount set aside as a reserve for reclamation, financial information and data and all other information related to Operations shall be considered and treated as confidential information, subject to Clause 19.2 below and applicable Law. The Government agrees not to divulge this confidential information to any other Person without the prior written consent of GFGL (which consent shall not be unreasonably withheld) except in the following cases:

- (a) where the information is used by one Party in the course of arbitration or court proceedings against the other Party;



- (b) where such information is made available to a third party providing services to the Government if that third party undertakes an obligation to treat the information as confidential and use it only for the specified purposes; or
- (c) where disclosure of the information is required in accordance with this Agreement or with Law.
- (d) where the information is provided to a bank or another financial organization from which GFGL receives financial assets, under the condition that the bank or financial organization undertakes an obligation to treat the information as confidential and use it only for the specified purposes;
- (e) (d) where disclosure of the information is required in accordance with this Agreement or with Law, or with the laws of other jurisdictions applicable to GFGL or its Affiliates (including securities legislation that requires disclosure in the jurisdiction of incorporation of an Affiliate); or (e) where the information is requested by a third party that is interested in acquiring an interest in GFGL or an Affiliate, subject to the third party undertaking an obligation to be subject to the confidentiality obligation in this Clause 14.

#### 14.2 Public Information

The obligation of confidentiality stipulated in Clause 14.1 above shall not apply to information exchanged between the Parties that is or becomes in the public domain through no act or omission by a Party.

#### 15 Indemnification

Any breach of an obligation in this Agreement by either Party entitles the Party aggrieved by the breach to be indemnified by the other Party in an amount equal to the damage suffered by the aggrieved Party subject to the limitations of Clause 18. If a Party is required to make additional payments, including payments of Taxes and Duties, because of an inability by the Government to perform for the reasons set forth in this Clause or a breach as described in this Clause 15, then the Party so required shall, upon an award pursuant to any arbitration under Clause 18 with respect to its right to indemnification hereunder, be entitled to set off the amount of such additional payments



against any obligation it may have to make any payments to the other Party, including payments of Taxes and Duties.

## **16 Encumbrances**

GFGL may mortgage, charge or otherwise encumber all or part of its interest under this Agreement or the Mining Leases to raise, from one or more Affiliates or third parties, financing for its Operations and other obligations under this Agreement. The Government agrees that in the event of default by GFGL or an Affiliate a Person who holds such mortgage, charge or other encumbrance may either conduct Operations to the same extent and on the same basis as GFGL if it is qualified under Law and has demonstrated the technical and financial ability to conduct Operations under this Agreement or, with the prior consent of the Minister, which consent shall not be unreasonably withheld, and as permitted by Law to exercise any power of sale granted by any such mortgage, charge or other encumbrance.

## **17 Termination**

### **17.1 Termination by GFGL**

GFGL shall have the right to terminate this Agreement (including the Mining Leases) at any time, either in its entirety or as to any part of the Production Area, provided that in the case of termination of this Agreement in its entirety, such termination will be effective two hundred and seventy (270) days after giving Notice to the Government. Such termination shall be without prejudice to any obligation or liability incurred by GFGL or an Affiliate hereunder prior to the effective date of such termination.

### **17.2 Termination by the Government**

The Government shall have the right to terminate this Agreement only in the event that it validly terminates the Mining Leases and shall not exercise any such right if the failure or breach giving rise to such right is caused by or consented to by the Government or is caused by Force Majeure.

### **17.3 Disposition of assets**



On termination of this Agreement in its entirety the mining plant shall remain the property of GFGL, and may be transferred to an affiliate or to a third party within or outside Ghana in accordance with Law. The Government may also require GFGL to remove from the Contract Area any mining pant, including unusable assets, which are within the Contract Area under termination.

#### **17.4 Opportunity to Cure**

The Government shall provide Notice to GFGL of an alleged occurrence of any event entitling it to terminate the Mining Leases and of the Government's position on the matter and shall offer GFGL a fair opportunity to consult with the Government to resolve the matter. If, after a reasonable period of consultation, the Government is of the opinion that the matter cannot be resolved by further consultation, the Government may send to GFGL Notice of the Government's intention to terminate this Agreement with respect to GFGL. If the act or event giving rise to a termination right of the Mining Lease(s) is not cured within sixty (60) days after the Notice, or within such longer period as may be necessary to allow a reasonable period of time to effect the cure, then this Agreement shall be terminated with respect to the Party.

#### **17.5 Disputes Regarding Events of Default**

Notwithstanding the provisions of Clause 17.4, if GFGL disputes whether there has arisen a termination right of the Government and refers such dispute to arbitration in accordance with Clause 18, or demands non-binding mediation and/or conciliation as required by Clause 18.2, within sixty (60) days after receipt of the Government's Notice of its intention to terminate, termination of this Agreement shall not take effect until the conclusion of the arbitration or non-binding mediation and/or conciliation processes, and shall be in accordance either with an accord reached by the Parties after any mediation or conciliation or with an arbitration award upholding the Government's right to terminate.

### **18 Governing law and arbitration**

#### **18.1 Governing Law**



This Agreement shall be construed and interpreted in accordance with the laws of Ghana and by such rules and principles as are generally recognized by international law to be applicable to an investment by nationals of one country in another country.

## 18.2 Submission to Arbitration

Any dispute between the Government and GFGL that arises out of, in relation to or in connection with this Agreement or its formation, or the validity, interpretation, performance, termination, enforceability or breach (including any dispute concerning whether the Government or GFGL has violated or is in breach of this Agreement or of any Law affecting the rights, obligations or duties of any Party under this Agreement), for which resolution by submission to a referee is not specifically provided elsewhere in this Agreement shall be exclusively and finally settled by binding arbitration pursuant to the Convention and in accordance with the rules of the Centre in effect on the Effective Date except to the extent that it is in conflict with Clause 18 which shall prevail under those circumstances, provided that in any event the law governing the rights of the Parties under this Agreement shall be determined as set forth in Clause 18.1 above. Prior to the submission of any dispute to arbitration the Parties shall consult and negotiate with each other and use any non-binding mediation or conciliation processes available in Ghana and, recognizing their mutual interests, attempt to reach a satisfactory solution, provided that any such procedures need not take place in Ghana but on demand by any Party shall take place in such other venue as the Parties may agree or if they cannot agree then in London, England (provided that the travel and accommodation costs of the other Party shall be borne as provided in Clause 18.5 below by the Party making the demand that the mediation or conciliation take place elsewhere than in Accra, Ghana). The Parties agree that the period set aside for mediation shall not however bar a Party from applying for urgent interim relief. In any event if the Parties do not reach settlement within a period of 120 days after the date on which by Notice one Party has informed the other of its intention to seek arbitration of a dispute as provided hereunder, then, upon further Notice by any party to the other, any unresolved claim shall proceed to arbitration pursuant to Clause 18.

The Parties agree that GFGL's Operations under this Agreement constitute an "investment" due to, inter alia, the expenditure of a considerable amount of money in Ghana, the long term nature of the Agreement and the investment into Ghana's



infrastructure and that for purposes of Article 25(1) of the Convention, any dispute subject to Clause 18 is a legal dispute arising directly out of an investment. Either of the Parties to this dispute may institute arbitration proceedings by giving Notice to the other Party and Notice to the Secretary-General of the Centre including in each a statement of the issues in dispute.

If the Centre refuses to register any Request for Arbitration or a tribunal declines jurisdiction under Article 25 of the Convention, then the Parties agree to arbitrate under the UNCITRAL Rules in Ghana.

### 18.3 Nationality for Purposes of Arbitration

Notwithstanding the incorporation in Ghana of GFGL or of any of its successors or assignees, or of any of its other Affiliates, all these entities shall be treated under Clause 18 as if they were nationals of South Africa for purposes of any arbitration pursuant to the Convention and of this Agreement, provided such entities are or are controlled by nationals of South Africa, except that GFGL and any other such entity may, alternatively, elect to be treated instead as a national of any other state of which, under the Convention, international law or the law of such state, it is a national.

### 18.4 Arbitrators

Any arbitral tribunal constituted pursuant to this Agreement shall consist of one (1) arbitrator to be appointed by the Government, one (1) arbitrator to be appointed by GFGL and one (1) arbitrator, who shall be the president of the tribunal and shall be a citizen neither of Ghana nor of South Africa (or of any other state of which a Party is a national under Clause 18.2), to be appointed by the Secretary-General of the Centre. In making such appointment the Secretary-General shall not be limited to making an appointment from the Panel of Arbitrators. No such arbitrator shall have an interest in the matters in dispute.

### 18.5 Referee



At the request of a Party, any matter otherwise subject to arbitration under this Agreement shall instead be referred for resolution to a single referee to be appointed by the Secretary-General of the Centre, or of any successor entity as stipulated in Clause 18.10 below, except for any dispute arising out of or related to Clauses 2, 3, 4, 5, 5.3, 6, 7.2, 8, 9, 13.1, 13.2, 15, 17, 18 or 20 of this Agreement, which must be referred to arbitrators appointed under Clause 18.3 above unless the Parties jointly agree that any such dispute is not material, in which event it may be referred to the referee for decision at the option of either party. The referee shall act qua expert determiner and not as arbitrator. The decision of the referee shall be rendered pursuant to Clause 18.9 of this Agreement (except as regards the requirement for a decision by majority vote) and shall be final and binding unless appealed by any Party to arbitrators appointed as provided in Clause 18.4 who shall examine the referee's decision only as to manifest disregard of law, findings of fact that are not supported by any credible evidence, and abuse of authority, misconduct or other unauthorized act by the referee.

#### 18.6 Venue

Without prejudice to Article 62 of the Convention, and except as the Parties may otherwise agree in writing, the seat shall be as provided by the Convention. However, the venue of any hearing conducted pursuant to this Agreement shall be Accra, Ghana, provided that at the demand of either Party any such hearing may be held either at a place mutually agreed to by the Parties or in London, England. However, should either party demand that the hearing take place elsewhere than in Accra, Ghana, then the party making that demand shall be responsible to pay the reasonable transport and accommodation costs for the representative of the other Party and of its legal counsel as well for such witnesses resident in Accra, Ghana or such other country as the arbitral tribunal shall determine must appear in person before it to provide testimony. The arbitration proceedings shall be conducted in the English language. Subject to Clause 18.6 below, and except as otherwise provided in Clause 18.5, the arbitral tribunal shall decide how the costs of the proceedings shall be assessed against and borne by the Parties. Any procedural issues that cannot be determined under the arbitral rules of the Centre shall be determined pursuant to Law. Notwithstanding the venue of the hearing, the law governing the rights of the Parties under this Agreement shall be determined as set forth in Clause 18.1 above.





### 18.7 Award

The arbitrators shall, by majority vote, render a written decision stating the reasons for their award within the time required by the applicable rules of the Centre or such different period as the Parties shall agree. Any monetary award shall be assessed and payable in United States Dollars (determined at the Prevailing Market Rate of Exchange as of the date of the award if the award involved an obligation expressed in any currency other than United States Dollars). Payment shall be through a bank designated by the recipient, and in the case of an award to GFGL, shall be exempt from any Taxes and Duties imposed upon such award by the Government. Each Party shall bear its own costs and attorney fees. Neither Party shall have any liability for either consequential damages (except for purposes of set off) or exemplary or punitive damages, but interest shall be at a rate that does not exceed the London Interbank Offering Rate (LIBOR) existing at the time of such award, plus 6 percent per annum, multiplied by the amount of the award, shall be assessed from the date of any monetary award until its satisfaction. If LIBOR should cease to be reported, then the rate to be applied shall be another substitute rate agreed to by a majority of the arbitrators.

### 18.8 Waiver of Defences

The Government hereby agrees not to claim and irrevocably waives any defence of sovereign or other immunity or of the act of state doctrine to a claim asserted under this Agreement including all claims of immunity from any suit, execution or attachment. In addition, both Parties waive all defences to the arbitrators' jurisdiction or any other legal process and from the enforcement of any arbitral or other award rendered by a tribunal or other Person constituted pursuant to this Agreement. The Parties hereby submit to the jurisdiction of the courts of any state or nation in relation to the recognition and/or execution of any arbitral award rendered pursuant to this Agreement, and waive and agree not to claim immunity from the jurisdiction of the courts of any nation or state in relation to the recognition of any such arbitral award.

### 18.9 Reservation of Rights



The right to refer a claim or dispute to arbitration under this Agreement shall not be affected by the fact that a claimant or respondent has received full or partial compensation from another Person for a loss or injury that is the object of the claim or dispute, and any such other Person may participate in such proceedings by right of subrogation.

#### 18.10 Nature of Award

The Parties agree that the arbitral award of any arbitral tribunal constituted under this Agreement may contain orders for specific performance and other equitable relief or monetary damages in respect of or affecting any of the Parties (as well as any loss or damage suffered by any of them). The Parties shall take all such actions as are necessary to give full and complete effect to the award which, in accordance with its terms, shall be binding upon and enforceable against them.

#### 18.11 Successors

The consent to the jurisdiction of the Centre as stipulated in this Clause 18 shall equally bind any successor of or successor-in-interest to either Party to this Agreement. If the Centre is replaced by, or if its functions are substantially conferred upon or transferred to, any other international body for settlement by arbitration in accordance with the provisions of this Clause 18.

### 19 Notices

#### 19.1 Written Communication

Any orders, approvals, declarations and notices of any kind between the Parties which are required, expressly authorized or provided for under this Agreement (referred to as a **Communication**) shall be in writing and delivered by hand, by fax, by electronic mail or by prepaid internationally recognized courier service, in each case, in accordance with Clause 19.3, or by any other means of communication agreed upon by the Parties. Communication by fax or electronic mail is valid under this Agreement only to fax numbers or electronic email addresses set forth below or identified as acceptable to a Party by Notice to the other Party pursuant to this Clause 19. A Communication other than an electronic mail shall bear an original or facsimile reproduction of the signature of a representative of the sending party responsible for such Communication and all



Communications shall indicate the identity of such representative and state how he or she may be reached by telephone and, if practical, electronic mail. A Communication under this Agreement is not effective until delivery.

## 19.2 Delivery

A delivery of a Communication to a Party shall be deemed to have occurred in any one of the following circumstances:

- (a) if the Communication has been sent under Clause 19.3 below;
- (b) where a duly authorized representative of the Government, in the case of the Government, or a corporate officer of GFGL, in the case of GFGL, has signed a return receipt of registered mail or internationally recognized courier service;
- (c) where a fax or electronic mail confirmation of receipt has been electronically issued to the sender by a receiving device at a fax number or at an authorized electronic mail address indicating receipt of a Communication sent via fax or electronic mail;
- (d) where verification of receipt of the Communication has been obtained in any manner specifically agreed to in writing by the Parties; or
- (e) where a Party has acknowledged receipt of the Communication in writing.

## 19.3 Address for Service of Notice

All Communications from the Government to GFGL shall be delivered by hand or sent by prepaid internationally recognized courier service, to the following addresses:

Gold Fields Ghana Limited  
7 Dr. Amilcar Cabral Road, Airport Residential Area, Accra  
P.O. Box KA 30742  
Airport, Accra



All Communications from GFGL to the Government shall be delivered by hand or sent by prepaid internationally recognized courier service, to the following addresses:

The Minister  
Ministry of Lands and Natural Resources  
PO Box M212  
Ministries  
Accra, Ghana

and

The Minister  
Ministry of Finance  
PO Box MB40  
Accra, Ghana

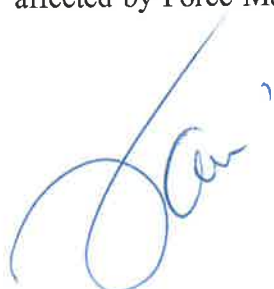
#### 19.4 **Change of Address**

Either Party may upon prior Notice to the other Party change the designation of the Person named to receive Communications from the other Party, the address or fax number of the office in Ghana or elsewhere authorized to receive such Communications.

### 20 **Force Majeure**

#### 20.1 **Application**

In the event of a Party being rendered unable, in whole or in part, by Force Majeure to carry out any obligation under this Agreement, other than an obligation to make payments of money that accrued before the commencement of Force Majeure, the Person shall give Notice and the particulars of the Force Majeure in writing to the other Parties as soon as practicable after the occurrence of the cause relied on. The obligation of the Party giving the Notice, insofar as it is affected by the Force Majeure, shall be suspended during the continuance of such inability. The inability shall be remedied with all reasonable dispatch, as far as practicable. The time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by Force Majeure, except in connection with an obligation to make payments



of money that accrued prior to the commencement of Force Majeure, but including the term of this Agreement, shall be extended by the period of time the inability caused by such Force Majeure exists.

## 20.2 Definition

The term "Force Majeure" as used in this Agreement shall mean acts of God, accidents, wars, acts of war, invasions, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign, embargoes, blockades, revolutions, riots, civil commotions, acts of terrorism, sabotage, strikes and/or other industrial, labour or employer-employee disputes (if not cured for a period of more than two (2) months), market conditions or other factors that render Production uneconomic, fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics, public health emergencies and any similar cause, provided that any such cause was beyond the reasonable control of the Party claiming suspension and could not have been avoided or overcome by the Party through the exercise of due diligence.

## 20.3 No Required Settlement

Nothing in Clauses 20.1 or 20.2 above shall, in and of itself, be construed to require GFGL to settle any strike, lockout or other labour or industrial dispute except as may be required by Law.

## 21 Entire agreement and modifications

### 21.1 Entire Agreement

This Agreement, including the Appendices attached to it, represents the entire agreement between the Parties and supersedes any previous oral and written negotiations and agreements.

### 21.2 Amendment

Any modification or amendment of any terms of this Agreement shall be by the mutual written agreement of the Parties and, except as otherwise specifically provided in this Agreement, shall not become effective until ratified by Parliament. However, by written



agreement, the Parties may amend and alter the terms and provisions of an Appendix to this Agreement, and take any other action or decision left to their mutual or individual discretion by the terms of this Agreement at any time throughout the duration of this Agreement, without the approval of Parliament.

**22 Assignment and succession**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors, beneficiaries and assignees of the Parties. The rights and obligations of the Parties under this Agreement shall not be affected by a corporate merger, consolidation, amalgamation, or other acquisition or change in control of any Affiliate or parent entity of GFGL.

**23 Survival**

Notwithstanding termination of this Agreement by either Party or for any reason, including a termination due to a finding that this Agreement or a portion thereof is void, invalid, or unenforceable, Clauses 1, 13.3, 15, 18, 19, 20 and 23 shall survive such termination and shall remain effective as to any matters which are the subject of this Agreement or which arise out of, in relation to or in connection with this Agreement. This termination shall be without prejudice to rights, duties and obligations that have accrued before termination. Despite the termination, provisions of this Agreement that are reasonably necessary for the full enjoyment and enforcement of the rights, duties and obligations shall survive for the period necessary.

**24 Non-waiver of rights**

The non-exercise or partial exercise by a Party of any of its rights under the terms of this agreement shall not in any case constitute a waiver of that right.


**25 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable, in whole or in part, the remaining provisions shall nevertheless remain valid and subsisting and shall be construed as if this Agreement had been executed without the illegal, invalid or unenforceable portion.



IN WITNESS WHEREOF, the Parties have signed this Agreement, through their respective duly authorised representatives, on the day, month and year indicated below.

SIGNED by the GOVERNMENT of the )  
REPUBLIC OF GHANA acting by )  
the Minister of Lands )  
and Natural Resources who by this execution )  
Warrants to the other party that [h]e is duly )  
Authorised and empowered to enter into this )  
Agreement in the presence of: )

  
.....  
Minister for Lands and Natural Resources

  
.....

SIGNED by the within-named )  
GOLD FIELDS GHANA LIMITED by )  
its Managing Director )  
[who by this execution Warrants to the other )  
party that he is duly authorised and )  
empowered to enter into this Agreement )  
  
in the presence of )

  
.....

  
.....

Signed in 6 originals on the 11<sup>th</sup> day of MARCH 2016

## APPENDIX A

### GFGL MINING LEASES

1. Mining Lease dated 18 April 1997 (LVB No. 8308/97) (Land Registry No. 2230/1997)
2. Mining Lease dated 18 April 1997 (LVB No. 8309/97) (Land Registry No. 2231/1997)
3. Mining Lease dated 18 April 1997 (LVB No. 8310/97) (Land Registry No. 2232/1997) as amended.
4. Mining Lease dated 18 April 1997 (LVB No. 8311/97) (Land Registry No. 2229/1997)
5. Mining Lease dated 18 April 1997 (LVB No. 8312/97) (Land Registry No. 2233/1997)
6. Portion of land covered in Mining Lease dated 2 February 1988 as referred to in the June 1, 2000 Agreement between Gold Fields Guernsey Limited, GFGL, the Government, SMGC and Teberebie Goldfields Limited, which provided for the inclusion of an area known as the Teberebie Lease Area (in respect of which GFGL had purchased the rights and obligations of Teberebie Goldfields Limited in terms of a Deed of Assignment dated 23 August 2000) within the scope of the November 16, 1992 Agreement and the May 2, 1993 Agreement and related matters
7. Portion of land covered by Mining Lease dated 18 June 1992 (LVB No. 3722/92) as referred to in the June 1, 2000 Agreement between Gold Fields Guernsey Limited, GFGL, the Government, SMGC and Teberebie Goldfields Limited, which provided for the inclusion of an area known as the Teberebie Lease Area (in respect of which GFGL had purchased the rights and obligations of Teberebie Goldfields Limited in terms of a Deed of Assignment dated 23 August 2000) within the scope of the November 16, 1992 Agreement and the May 2, 1993 Agreement and related matters

