

**Annexure C:**

**NON DISCLOSURE AGREEMENT:**

**CONFIDENTIALITY AND  
NON-DISCLOSURE AGREEMENT**

Between

**IMPALA PLATINUM LIMITED**

(Hereinafter “**Impala**”)

and

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(Hereinafter the “**Counterparty**”)

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**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

1.1.1 **"Agreement"** means this confidentiality and non-disclosure agreement;

1.1.2 **"Affiliates"** means, with respect to any Party, any Person which is directly or indirectly controlled by, or controls or is under common control with, another Person, provided that **"control"** shall mean ownership of more than 50% (fifty percent) of another Person or the power to direct the decisions of another Person, including, without limitation, the power to direct the management and policies of another Person, whether by reason of ownership or contract;

1.1.3 **"Confidential Information"** means any and all information, whether communicated in written form, verbally, visually, electronically or pursuant to any other media or that is gathered from an inspection by the Receiving Party or any of its Affiliates or Representatives, relating to the Disclosing Party or its Affiliates which by its nature or content is identifiable as, or could reasonably be expected to be, confidential or proprietary to the Disclosing Party or its Affiliates (even if not marked as being confidential, restricted, secret, proprietary or with any similar designation) which shall include, without limitation, in relation to the Proposed Transaction, any information disclosed during the Receiving Party's due diligence of the Disclosing Party and its Affiliates, including all information disclosed during any management or other presentations, any meetings or site visits as well as all analyses, compilations or other documents prepared by the Receiving Party or its Representatives based upon any such information as well as all inventions, processes, data, know-how arising in the context of the Proposed Transaction provided that Confidential Information shall not include information which the Receiving Party can establish:

(a) is or becomes, before or after receipt thereof, published or generally available to the public, other than as a result of a breach of this Agreement, or any unlawful act or negligent act or omission by the Receiving Party or the Permitted Discloses;

- (b) is already lawfully in the possession of the Receiving Party at the time of disclosure of such Confidential Information to the Receiving Party provided that such possession is documented by written evidence and provided further that the onus shall at all times rest on the Receiving Party to establish that the information in its possession falls within the ambit of this clause 1.1.3(b);
- (c) is or was lawfully acquired from a third party who did not, to the Receiving Party's best knowledge and after due enquiry, obtain it unlawfully or in contravention of a confidentiality agreement with the Disclosing Party or its Affiliates or other contractual, legal or fiduciary duty of confidentiality;
- (d) is independently developed by the Receiving Party without use of or reference to any Confidential Information;
- (e) must be disclosed pursuant to any law (excluding contractual obligations), regulation, governmental regulation, court order or the rules of any stock exchange by which the Receiving Party may be bound; or
- (f) the Disclosing Party has confirmed is disclosed on a non-confidential basis or which the Disclosing Party has authorised, in writing, the Receiving Party or its Representatives or Permitted Disclosees to disclose;

Information will not be deemed to be within the above exclusions merely because such information is embraced by more general information in the public domain or in the Receiving Party's possession and any combination of features will not be deemed to be within the above exclusions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principle of operation are in the public domain or in the Receiving Party's possession;

1.1.4 RFCA A1964

Supply and Delivery of Electric Cables

1.1.5 "Counterparty"

means [\_\_\_\_\_], having registration number [\_\_\_\_\_], a

[private] company duly registered in accordance with the company laws of [the Republic of South Africa] and with its registered address situate at [\_\_\_\_\_]];

- 1.1.6            **"Disclosing Party"**            means any Party disclosing Confidential Information to the Receiving Party pursuant to the Permitted Purpose, it being acknowledged that any Party can be a Disclosing Party or Receiving Party as the context so requires;
- 1.1.7            **"Impala"**                                means Impala Platinum Limited, having registration number 1952/071942/06, a public company duly registered in accordance with the company laws of the Republic of South Africa and with its registered address situate at 2 Fricker Road, Illovo, Gauteng, South Africa;
- 1.1.8            **"Parties"**                                means Impala and the Counterparty, being parties to this Agreement and **"Party"** means either one of them as the context indicates;
- 1.1.9            **"Permitted Discloses"**            means the Representatives of the Receiving Party who are involved in the Permitted Purpose and have a need to know the Confidential Information for the Permitted Purpose and any other Person to whom the Receiving Party discloses Confidential Information with the prior written consent of the Disclosing Party;
- 1.1.10           **"Permitted Purpose"**            means:
- (a)    evaluating the possibility of entering into the Proposed Transaction;
  - (b)    conducting negotiations in connection with the Proposed Transaction; and
  - (c)    implementing the Proposed Transaction;
- 1.1.11           **"Person"**                                means any individual or other entity possessing legal personality including, without limitation, a company, close corporation cooperative, partnership, trust, unincorporated association or governmental authority;
- 1.1.12           **"Receiving Party"**                means any Party receiving the Confidential Information from the Disclosing Party for the Permitted Purpose, it being acknowledged that any Party can be a Disclosing Party or Receiving Party as the context so requires;



- 2.5.1 the Confidential Information is a valuable, special and unique asset of the Disclosing Party and/or its Affiliates; and
- 2.5.2 the Disclosing Party and/or its Affiliates may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with this Agreement.
- 2.6 All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:
- 2.6.1 to be proprietary to the Disclosing Party and/or one or more of its Affiliates; and
- 2.6.2 not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.
- 2.7 The Receiving Party irrevocably and unconditionally agrees and undertakes:
- 2.7.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
- 2.7.2 to protect the Confidential Information by using the same degree of care, but no less than a high degree of care, to prevent the dissemination to third parties or publication of the Confidential Information as Receiving Party uses to protect its own confidential information of a like nature;
- 2.7.3 not to use or permit the use of the Confidential Information for any purpose other than for the Permitted Purpose and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Disclosing Party and/or its Affiliates or otherwise use it to the detriment of the Disclosing Party and/or its Affiliates;
- 2.7.4 except as permitted by this Agreement, not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the sole and absolute discretion of the Disclosing Party;
- 2.7.5 not to copy or reproduce or store in a retrieval system or database the Confidential Information by any means without the prior written consent of the Disclosing Party, it being recorded that any copies shall be and remain the property of the Disclosing Party;
- 2.7.6 to keep all Confidential Information safe and secure and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.

### **3. PERMITTED DISCLOSEES**

- 3.1 The Receiving Party shall be entitled to disclose the Confidential Information only to Permitted Disclosees.

- 3.2 The Receiving Party shall inform such a Permitted Disclosee of, and take all practical steps to impress upon him or it, the secret and confidential nature of the Confidential Information and the Receiving Party's obligations under this Agreement.
- 3.3 The Receiving Party shall be responsible for procuring that the Permitted Disclosees abide by the provisions of this Agreement and agree to be bound by the confidentiality undertakings given to the Disclosing Party by the Receiving Party in this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement by any Permitted Disclosee as if such Permitted Disclosee had been a Receiving Party under this Agreement and to the same extent such Receiving Party would have been responsible under this Agreement for its own breach of the same obligations.
- 3.4 The Receiving Party shall (if requested to do so by the Disclosing Party) procure that the Permitted Disclosees give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained in this Agreement.
- 3.5 The Receiving Party's failure to obtain receipt of the written undertaking shall in no way detract from the Receiving Party's obligations in terms of this Agreement and particularly in terms of the remaining provisions of this Agreement.
- 3.6 The Receiving Party shall keep a written record showing the names and addresses of all Permitted Disclosees to whom Confidential Information has been disclosed and shall furnish such written record to the Disclosing Party, upon request.

#### **4. RETURN OF CONFIDENTIAL INFORMATION**

- 4.1 The Receiving Party shall, at its own expense, within 10 (ten) business days of the date of written demand from the Disclosing Party:
- 4.1.1 return or destroy (as stipulated by the Disclosing Party), and procure the return or destruction of all Confidential Information disclosed by the Disclosing Party and/or its Affiliates and all copies of it (whether in paper, electronic or other format) held by the Receiving Party or by a Permitted Disclosee without keeping any copies or partial copies thereof;
- 4.1.2 destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents prepared by the Receiving Party or by any Permitted Disclosee which contain or otherwise reflect or are generated from the Confidential Information disclosed by the Disclosing Party and/or its Affiliates;
- 4.1.3 delete or procure the deletion of all Confidential Information disclosed by the Disclosing Party and/or its Affiliates from any computer, word processor or other device in the possession or control of the Receiving Party or any Permitted Disclosee; and
- 4.1.4 furnish the Disclosing Party with a certificate by an officer of the Receiving Party that the Receiving Party and (to the best of the Receiving Party's knowledge, information and belief having made all reasonable enquires) all Permitted Disclosees have complied with the provisions of this clause 4.1.

4.2 The Receiving Party shall not be required to return, destroy or delete Confidential Information disclosed by the Disclosing Party and / or its Affiliates to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Receiving Party or any Permitted Disclosee is subject or for the purposes of its own *bona fide* corporate governance purposes. For the avoidance of doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.

## 5. **FORCED DISCLOSURE**

5.1 In the event that the Receiving Party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:

5.1.1 advise the Disclosing Party thereof in writing prior to disclosure, to the extent legally possible;

5.1.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

5.1.3 afford the Disclosing Party a reasonable opportunity, to the extent legally possible, to intervene in the proceedings;

5.1.4 comply with the Disclosing Party's reasonable requests, if allowable, as to the manner and terms of any such disclosure; and

5.1.5 notify the Disclosing Party of the Receiving Party of, and the form and extent of, any such disclosure or announcement immediately after it is made, to the extent legally possible.

## 6. **DURATION**

The obligations of the Receiving Party with respect to each item of Confidential Information shall commence on the date on which such information is disclosed or otherwise received (whether before or after the Signature Date) and shall endure for a period of 5 (five) years from Signature Date.

## 7. **BREACH**

7.1 The Receiving Party agrees that its obligations in terms of this Agreement are necessary and reasonable in order to protect the Disclosing Party's and its Affiliates' business.

7.2 Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Receiving Party shall, at the sole cost of the Receiving Party:

7.2.1 immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and

7.2.2 use all reasonable commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

- 7.3 The Parties acknowledge and agree that:
- 7.3.1 cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties; and
- 7.3.2 damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement and that the remedies of interdict, specific performance and any other equitable relief (including, without limitation, injunctive relief) is appropriate for any threatened or actual breach of this Agreement. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).
- 7.4 The Receiving Party accepts full liability for the maintenance of the confidentiality of the Confidential Information and hereby unconditionally and irrevocably indemnifies and holds the Disclosing Party and each Affiliate harmless against any and all direct loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by the Disclosing Party or any of its Affiliates pursuant to:
- 7.4.1 a breach or threatened breach by the Receiving Party of the provisions of this Agreement; and
- 7.4.2 any Permitted Disclosee failing to keep the Confidential Information confidential.
- 7.5 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, the Disclosing Party shall, in addition to the foregoing, be entitled by written notice to the Receiving Party to terminate all obligations to provide information to the Receiving Party with immediate effect and no further information will be disclosed to the Receiving Party in terms of this Agreement.
- 7.6 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, the Disclosing Party shall, in addition to the foregoing, be entitled to claim indirect and consequential damages.

## **8. NO WARRANTY AND/OR OFFER AND/OR RIGHTS**

- 8.1 Unless otherwise specifically stated in writing, the Disclosing Party:
- 8.1.1 does not give or make any warranty, representation or undertaking, express or implied, as to the accuracy or completeness of any of the Confidential Information or other information received by the Receiving Party or its Permitted Disclosees or as to the reasonableness of any assumptions on which any of the same is based;
- 8.1.2 does not accept any responsibility or liability (direct or indirect) for the use of the Confidential Information by the Receiving Party or its Permitted Disclosees.
- 8.2 No Confidential Information or other information, communication or document made available to or supplied to the Receiving Party by the Disclosing Party or any of its Affiliates shall constitute an offer or invitation to the Receiving Party. Nothing in this Agreement shall be construed as committing either Party to enter into a further contractual relationship.



10.4 No member of the Cross Functional Team “(CFT)” will approach any tenderer as a single individual. In the event that a tenderer needs to be approached for any reason whatsoever, it shall be done in accordance with a decision of the CFT who will elect at least two members of the CFT to approach such a tenderer.

## 11. NOTICES AND DOMICILIA

11.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers:

<u>Name</u>	<u>Physical Address</u>
Impala Platinum Limited	2 Fricker Road Illovo 2196 Gauteng Republic of South Africa

<u>Name</u>	<u>Physical Address</u>
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Marked for the attention of:  
E-mail:

11.2 A Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

11.3 All notices to be given in terms of this Agreement will be given in writing, in English, and will:

11.3.1 if delivered by hand during business hours, be presumed to have been received on the date of

delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day;

11.3.2 if delivered by recorded delivery or by commercial courier, on the date and time that the delivery receipt is signed.

11.4 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

11.5 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

## 12. APPLICABLE LAW AND JURISDICTION

12.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

12.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded will be subject to any specific determination by the Court.

## 13. GENERAL

13.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters of confidentiality and non-disclosure dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

13.2 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

13.3 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same.

13.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of another Party.

13.5 Save as otherwise provided herein, neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior written consent of the other Party, provided that the Disclosing Party may cede, delegate or assign its rights under this Agreement to any one or more of its Affiliates on prior written notice to the Receiving Party

13.6 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the Signature Date of one of the counterparts.

14. **COSTS**

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

15. **SIGNATURE**

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

signed at \_\_\_\_\_ on \_\_\_\_\_ 2020

For and on behalf of

**IMPALA PLATINUM LIMITED**

\_\_\_\_\_  
who warrants that he/she is duly authorised hereto

signed at \_\_\_\_\_ on \_\_\_\_\_ 2020

For and on behalf of

\_\_\_\_\_  
who warrants that she is duly authorised hereto