

**DRAFT/EXAMPLE:**  
**TO BE AMENDED BY SIGNATORIES AS DEEMED  
NECESSARY**

**MEMORANDUM OF AGREEMENT**  
**FOR PROSPECTING OR MINING ACTIVITIES**

Agreement in terms of Section 52 of Act No. 33 of 1992: Minerals (Prospecting and Mining) Act, 1992(hereinafter referred to as “the Act”)

between

\_\_\_\_\_  
(hereinafter referred to as “the Owner” or “Lessee” as defined in the Act)

and

\_\_\_\_\_  
(hereinafter referred to as “the Prospector” or “Miner”, being the holder of a non-exclusive prospecting licence and/or mineral licence)

in respect of

Farm(s)/State land: \_\_\_\_\_

\_\_\_\_\_  
(hereinafter referred to as “the Property”)

situated in the \_\_\_\_\_ District;

\_\_\_\_\_ Region

1. **PREAMBLE:**

The parties to this agreement acknowledge the following:

- 1.1 All rights to prospect and mine on the Property are vested in the State.
- 1.2 The Prospector or Miner has obtained a non-exclusive prospecting licence and/or mineral licence from the Mining Commissioner.
- 1.3 This agreement complies with the provisions of Section 52 of the Act regarding the payment, or waiver of payment, of compensation by the Prospector or Miner to the Owner.

- 1.4 The Owner shall, at all times, have the right to consult with the Mining Commissioner regarding any aspect of the Prospector's or Miner's activities.

## **2. DURATION OF THE AGREEMENT**

- 2.1 This agreement shall commence on the date of signature by the Owner provided that the Prospector or Miner is in possession of a valid non-exclusive prospecting licence and/or mineral licence.
- 2.2 This agreement shall remain in force for as long as the Prospector's or Miner's rights remain in force, unless the Prospector or Miner gives one month's notice, in writing, of cancellation; with the following proviso that should the Prospector or Miner wish to temporarily suspend activities on the Property for longer than three (3) months, advice of such cessation shall be sent to the Owner in writing and payments (as contained in paragraphs 4, 5 and 6) shall be suspended until operations resume.

## **3. ACCESS**

- 3.1 The Prospector or Miner shall be granted access to and egress from the Property and shall, wherever possible, make use of existing roads on the property.
- 3.2 The Prospector or Miner shall not construct any new roads without prior consultation and the written consent of the Owner.
- 3.3 If any road constructed by the Prospector or Miner crosses any fence, the Prospector or Miner shall, if so required by the Owner, install a gate in such a fence. Such gate shall be kept locked except for the passage of vehicles.
- 3.4 Any new road, referred to 3.2 above, shall be maintained at the cost of the Prospector or Miner.
- 3.5 Upon termination of this agreement and unless otherwise agreed with the Owner, the Prospector or Miner shall restore as near as possible the road area to its natural state.

Should the Prospector or Miner default within a reasonable period of the abandonment of the land then the Owner shall have the right to rehabilitate the area at the expense of the Prospector or Miner.

## **4. PERSONNEL**

- 4.1 The Prospector or Miner shall, in agreement with the Owner, provide all employees with a visible means of identification.
- 4.2 Notwithstanding the provisions of paragraph 4.11, the Prospector or Miner shall inform the Owner as to the number of employees and/or contractor's workforce which will be on the Property.

- 4.3 Employees of the Prospector or Miner and/or the Prospector's or Miner's contractor shall not, except for the purposes of access or egress, proceed beyond the boundaries of the work/site area without the written authorisation of the Owner.
- 4.4 Neither the Prospector or Miner nor the Prospector's or Miner's employees nor the Prospector's or Miner's contractors shall interfere in any way with the fauna and/or flora on the Property without the express written permission of the Owner.
- 4.5 Any campsite(s) established by the Prospector or Miner on the Property shall only be established after consultation with the Owner.
- 4.6 Such campsite(s) shall be maintained by the Prospector or Miner in a proper manner and, at the termination of this agreement, the area shall be restored as near as possible to its natural state.
- 4.7 The Prospector or Miner shall provide adequate sanitary facilities and such facilities shall be maintained in a hygienic condition.
- 4.8 The Prospector or Miner shall provide refuse pits, the location of which shall be determined by the Owner, which shall be filled in by the Prospector or Miner at the termination of this agreement.
- 4.9 No firearms or weapons of whatever nature may be brought and/or kept on the Property by the Prospector's or Miner's employees and/or Prospector's or Miner's contractor without written authorisation of the Owner.
- 4.10 No dogs or other animals may be brought onto and/or kept on the Property by the Prospector or Miner, Prospector's or Miner's employees and/or Prospector's or Miner's contractor without written authorisation of the Owner.
- 4.11 The Prospector or Miner shall compensate the Owner in respect of the residence of the Prospector's or Miner's employees on the Property by a payment of N\$ \_\_\_\_\_ per month, provided that where their number exceeds \_\_\_\_\_ people, the Prospector or Miner shall pay an additional amount of N\$ \_\_\_\_\_ per person. Included in the aforementioned amounts is compensation for water supplied by the Owner for domestic use, the collection of firewood for domestic purposes and the use of access roads to the campsite(s).

## 5. **WATER SUPPLY**

- 5.1 Temporary supply - subject to the provisions of paragraph 4.11, the Prospector or Miner shall compensate the Owner at the rate of N\$ \_\_\_\_\_ per cubic metre. The Prospector or Miner shall be responsible for the transport of water from the designated supply point to the Prospector's or Miner's site of operations.
- 5.2 Permanent supply - where the Owner can assist in the supply of industrial water the Prospector or Miner shall compensate the Owner at the rate of N\$ \_\_\_\_\_ per cubic metre. In the event of the Owner being unable to furnish a permanent supply, the Prospector or Miner may drill boreholes at own cost provided that no existing water supply is adversely affected and the requisite abstraction permit is obtained from the Department of Water Affairs.

- 5.3 In the event of the Prospector or Miner not using a borehole which provides water and subject to the condition that the pumping of water and farming operations do not interfere with the Prospector's or Miner's future operations, the Owner shall be entitled to use such borehole without compensation. If such borehole is not utilised then the borehole should be capped and, as far as possible, reserved by the Owner for future use.

## 6. **PROSPECTING ACTIVITIES**

- 6.1 Insofar as it affects this agreement, prospecting and the compensation thereof are divided into three phases:
- 6.1.1 Reconnaissance prospecting, including geological, geophysical and geochemical surveys, soil and rock sampling, and line cutting (provided that no trees are cut without prior consultation with the Owner), for which an amount of N\$ \_\_\_\_\_ per month for the Property, or part thereof, is payable to the Owner.
- 6.1.2 General prospecting, namely pitting and trenching and drilling operations by means of percussion and diamond drills, for which an amount of N\$ \_\_\_\_\_ per month for the Property, or part thereof, is payable to the Owner, plus N\$ \_\_\_\_\_ per percussion drill hole and/or N\$ \_\_\_\_\_ per diamond drill hole.
- 6.1.3 Sinking of prospecting shafts and/or the establishment of a pilot plant, including a dump site for waste rock, workshops and all other purposes incidental thereto, for which an amount of N\$ \_\_\_\_\_ per month for the Property, or part thereof, is payable to the Owner.
- 6.2 Prior to the commencement of bona fide mining operations a new agreement shall be negotiated between the parties, with the proviso that normal prospecting activities shall be allowed to continue during such negotiations.
- 6.3 The amounts payable as stated in paragraphs 4.11, 6.1.1, 6.1.2 and 6.1.3 shall be subject to an annual increase, on the anniversary date of this agreement, of \_\_\_\_\_ % per annum, as agreed by both parties.
- 6.4 All excavations of whatever nature resulting from the activities of the Prospector or Miner shall be fenced off, or otherwise be adequately protected, to prevent livestock from inadvertently falling therein. At the cession of prospecting and/or mining activities and/or the termination of this agreement all excavations shall be at the cost of the Prospector or Miner, securely be fenced off or filled in such a manner as to restore the surface as near as possible to its original condition.

## 7. **ADDITIONAL COMPENSATION**

### EITHER

- 7.1(a) For any operation or act of proven negligence on the part of the Prospector or Miner or Prospector's or Miner's employees or Prospector's or Miner's contractors that cause:

- 7.1.1 damage to the property;
- 7.1.2 diminution of the surface value of the Property;
- 7.1.3 total or partial interruption of the right of occupation;
- 7.1.4 damage or loss of grazing and/or crops, infrastructure and livestock, including game;

an amount based on fair market value of the damage, loss, diminution in surface value, or interruption of occupation, as the case may be, shall be paid to the Owner.

OR

7.1(b) Payable in terms of Section 52(2) of the Act, which states:

“When, in the course of any prospecting operations or mining operations in any prospecting area, mining area or retention area, as the case may be, any damage is caused or done to the surface of any land or to any water source, cultivation, building or other structure therein or thereon as a result of such operations, the holder of a mineral licence in question shall be liable to pay compensation to the owner of the land, water source, cultivation, building or other structure as the case may be, in relation to which such damage has been caused or done”.

7.2 Compensation in terms of this agreement shall be payable:

- 7.1.1 In respect of paragraphs 4,5 and 6, within thirty days of the last day of the calendar month in which the activity occurred.
- 7.1.2 In respect of paragraph 7.1, within fourteen days of the parties having agreed thereto or a ruling having been made by the Minerals Ancillary Rights Commission.

## 8. **COSTS**

All costs arising from the preparation and signature of this agreement shall be borne by the Prospector or Miner.

## 9. **CESSION**

In the event of the Prospector or Miner wishing to cede, assign, transfer or otherwise dispose of any or all rights and/or obligations in respect of this agreement, the Prospector or Miner shall have the right to give notice in writing to the Owner fourteen days prior to such action, subject to the condition that the recipient party assumes all rights and/or obligations contained in this agreement.

10. **SUCCESSION OF PROPERTY**

This agreement shall be binding upon the Owner's successors-in-title in the event of the Owner disposing of the Property and upon the Lessee in the event of the Owner leasing the Property.

11. **DOMICILIUM**

11.1 The Owner chooses its domicilium citandi et executandi as:

\_\_\_\_\_  
\_\_\_\_\_

The Prospector or Miner chooses its domicilium citandi et executandi as:

\_\_\_\_\_  
\_\_\_\_\_

11.2 Any notice or letter intended for the Owner shall be directed by registered letter to:

P O Box \_\_\_\_\_ / Private Bag \_\_\_\_\_

\_\_\_\_\_

Any notice/letter shall be deemed to have been received seven days after the date on which it was posted.

11.3 Any notice or letter may be transmitted by telefacsimile for the Owner at:

\_\_\_\_\_

and for the Prospector or Miner at:

\_\_\_\_\_

The facsimile transmission confirmation slip will be considered to be proof of receipt of correspondence.

12. **DISPUTES**

12.1 All disputes arising from, or in connection with this agreement shall be referred to the Minerals Ancillary Rights Commission as stipulated in Part XV of the Minerals (Prospecting and Mining) Act of 1992.

12.2 Prospecting or Mining operations will continue in respect of this agreement notwithstanding a dispute so referred to the Minerals Ancillary Rights Commission.

13. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Owner and the Prospector or Miner. The parties acknowledge and confirm that no undertaking, warranty or representation not contained in this agreement has been made by a party hereto, and that any variations hereto shall only be valid if reduced to writing and signed by both parties.

Signed by the Prospector or Miner at: \_\_\_\_\_ on  
\_\_\_\_\_ 20 \_\_\_\_\_

As witnesses to the Prospector or Miner:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
The Prospector or Miner

Signed by the Owner at: \_\_\_\_\_ on \_\_\_\_\_  
20 \_\_\_\_\_

As witnesses to the Owner:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
The Owner