



## MEMORANDUM OF AGREEMENT

Entered into Between:

Name of Institution: \_\_\_\_\_

(herein after referred to)

as (\_\_\_\_\_)

and

Researcher/Student Name: \_\_\_\_\_

Student Number (if applicable): \_\_\_\_\_

Herein after referred to as ("the Researcher")

and

DE BEERS CONSOLIDATED MINES LTD  
REGISTRATION NUMBER: 1888/000007/06

Hereinafter referred to as "De Beers"

AND/OR

E OPPENHEIMER & SON (PTY) LTD  
REGISTRATION NUMBER 1998/020781/07

Hereinafter referred to as "EOS"

And herein represented by Duncan MacFadyen, Diamond Route, Manager Research & Conservation, (Duncan.macfadyen@eason.co.za)

The Parties are hereinafter collectively referred to as “the Parties” and in the singular as “a Party”  
In the case of a Student registered for a degree (Name of degree):  
\_\_\_\_\_ at an academic institution (Name of university & faculty):  
\_\_\_\_\_, under the supervision of (Name of professor):  
\_\_\_\_\_

WHEREAS The Parties have established an understanding between them whereby De Beers and/or EOS has undertaken to allow the Researcher to collect data relating to a (description of study and research): \_\_\_\_\_

ANNEXURE A – on the Diamond Route property known as (Name of Reserve)  
\_\_\_\_\_

AND WHEREAS

The Parties wish to enter into an agreement and to set out the terms and conditions to govern their relationship.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

In this Agreement:

**1. DEFINITIONS**

In the Agreement unless inconsistent with the context the following expressions and words bear the meanings set out below and derivative expressions and words will have a corresponding meaning;

1.1 “Agreement” means these terms and the Annexures hereto:

1.2 “Area” means (description / name of property on which research will be conducted):  
\_\_\_\_\_

1.3 Background Intellectual Property means all Intellectual Property rights in existence before the commencement date of this Agreement as well as Intellectual Property developed by a party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property;

- 1.4 “Confidential Information” shall mean information that (a) relates to the Disclosing Party’s past, present or future research, development, business activities, products, services and technical knowledge, relating to the field and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party Disclosing Confidential Information is referred to as the “Disclosing Party” and the Party receiving the Confidential Information is referred to as the “Recipient” or the Receiving Party”);
- 1.5 “Commencement date” means the date of signature hereof;
- 1.6 “Data” means of collection of data on description of species etc.
- 1.7 “Research Project” means the title and description as per Annexure A.
- 1.8 De Beers means De Beers Consolidated Mines Limited – Company Registration number 1888/000007/06 and EOS means E Oppenheimer & Son (Pty) Ltd , Registration number 1998/020781/07
- 1.9 “DR Research Representative” means the person nominated in writing by De Beers and EOS from time to time.
- 1.10 “Foreground Intellectual Property” means such Intellectual Property as may be created or developed by the Researcher in the course of his research;
- 1.11 “Intellectual Property” (IP) means such Intellectual capital embodied in any and all technical, confidential and commercial information including but not limited to all information relating to the necessary resources, techniques, know-how, production, development and research, all technical, scientific, theoretical, processing and principals, marketing, promoting, financing, engineering, manufacturing, distributing and transporting, storage and handling, testing and controlling, integrate-able techniques, technologies, data systems and processes, methodologies, trade secrets as well as undisclosed inventions, registered and unregistered patents, trade marks and designs and copyright in any works including literary works and computer software programs;

1.12 The annexures to this agreement shall be read as if repeated and in this agreement itself and any reference to “this Agreement” shall be read as including all the annexures to this agreement.

## **2. COMMENCEMENT AND DURATION**

2.1 This agreement commences on the date of last signature hereof and shall terminate on \_\_\_\_\_ “the Contract Period”

2.1 Notwithstanding the provisions of clause 2.1 above, the parties may amend the periods determined for the research project by mutual written agreement.

2.2 On expiry of the Contract Period, this Agreement may be extended for another period subject to the review and approval of the terms and conditions of this agreement to the satisfaction of De Beers and/or EOS and (Name of Institution).

\_\_\_\_\_.

## **3. RESPONSIBILITIES OF DE BEERS AND/OR EOS**

3.1 Provide the Research with such access to the collection of data pertaining to the area as defined in this Agreement as may be necessary to enable him to compile his research for purposes of completing the research.

3.2 Not unreasonably withhold its permission to use the data.

3.3 Designate, in writing, a person to act as its representative (the De Beers/EOS Representative). De Beers and/or EOS may from time to time and on written notice designate another person to act as its representative. This representative will liaise with (Name of Institution) \_\_\_\_\_ and/or the Researcher as often as required for purposes of access to the data and is authorized to transmit instructions from De Beers and/or EOS to (Name of Institution) \_\_\_\_\_ and/or the Researcher, and to receive information from (Name of Institution) \_\_\_\_\_ and/or the Researcher.

- 3.4 Give written notice to (Name of Institution) \_\_\_\_\_ if and whenever it becomes aware of any unauthorized use of or access to the data by the Researcher.
- 3.5 Create a channel of communication and forum for exchange of views between the Parties.
- 3.6 Maintain the confidentiality of any Confidential Information of the Disclosing Party he/she may be allowed access to under this Agreement.

**4. RESPONSIBILITIES OF INSTITUTION:**

NAME : \_\_\_\_\_

RESEARCHER: \_\_\_\_\_

- 4.1 Obtain the necessary permission from De Beers and/or EOS to use the data as defined herein, which permission may not be unreasonably withheld by De Beers and/or EOS.
- 4.2 Obtain the necessary permits from the relevant provincial authorities in order to conduct/collect the research data/samples. Copies of these permits must be submitted to De Beers on/or prior to the commencement date.
- 4.3 Ensure that the data is utilized solely for the academic purposes of researching and submitting a thesis/report if relevant and consequential research publications, with such skill, care and diligence as may be reasonably expected.
- 4.4 Inform De Beers / EOS in writing of the names of any persons employed by it to assist in the research. De Beers' and/or EOS Representative may object on reasonable grounds to the employment of any such person.
- 4.5 Acknowledge and properly reference the data in the research and submission of the \_\_\_\_\_.
- 4.6 Provide De Beers and/or EOS with a copy of the final thesis/report and all publications arising from the research as they become available. In all outputs, the role of De Beers and/or EOS will be acknowledged in accordance with standard international, academic practice governing the publication of research.

- 4.7 Maintain the confidentiality of any Confidential Information of the Disclosing Party he/she may be allowed access to under this Agreement.
- 4.8 Research activities have to be conducted in such a way that operational requirements of the Reserve are not affected.
- 4.9 The Researcher declares that he/she is in good health, physically fit and capable of withstanding the rigorous nature of the activities, that will be taken (or alternatively have personally decided to dispense with) full medical advice before undertaking the activities.
- 4.10 The Researcher shall inform the Research and Reserve Managers about their field schedules at least three weeks prior to visiting the Reserve.
- 4.11 The Researcher shall report to the reserve office on arrival and ensure all indemnities are completed and general whereabouts while on the property are discussed.
- 4.12 The Researcher shall liaise with the Research and Reserve Managers regarding their research activities on the reserve.
- 4.13 The Researcher shall adhere to all applicable Reserve rules and regulations when doing fieldwork in the Reserve.
- 4.14 The Researcher shall be accompanied by a guard during their fieldwork, and will pay for the use of the guard and/or overtime, where necessary (if required by the reserve manager).
- 4.15 The Researcher shall report to the Research and Reserve Managers as to progress of the project.
- 4.16 It is agreed between the parties that issues relating to benefit sharing of the proceeds of the Intellectual Property developed from the Research will be discussed as they arise, and appropriate sharing proportions will be formalized in an addendum to this agreement.
- 4.17 The Researcher agrees to participate or present the findings of his research at the annual Diamond Route Research Conference held in Johannesburg (or other location announced with reasonable warning).

- 4.18 The Researcher agrees to write suitable popular articles for marketing purposes should the need arise.
- 4.19 It is agreed that the Researcher will acknowledge De Beers and/or EOS staff should it be necessary; in the case of significant assistance, co-authorship of articles should be granted. All articles and reports must acknowledge the Diamond Route and carry the Diamond Route logo.
- 4.20 The Researcher shall not disclose the details of the Research Project to the media, without prior approval from the Research Committee. The Diamond Route shall provide comment on any proposed release within 7 days of receipt. However, The Diamond Route shall not have the right to prohibit academic publications.
- 4.21 The Researcher agrees to provide a six monthly report at the end of June, and an outcome based annual report on the year's research findings, prior to 15th December.
- 4.22 The Researcher should be aware of the requirements of the Diamond Route Standards.

## **5. EMPLOYMENT RELATIONSHIP**

It is specifically recorded that no employment relationship or relationship of agency arises out of this Agreement.

## **6. FINANCIAL PROVISIONS**

- 6.1 It is hereby recorded that no fees are payable by (Name of Institution): \_\_\_\_\_ and/or the Researcher to De Beers and/or EOS or any other party in respect of the use of the data.
- 6.2 All the equipment which (Name of Institution): \_\_\_\_\_ and the Researcher require in order to properly conduct the research will be supplied by (Name of Institution): \_\_\_\_\_ and at all times remain the property of (Name of Institution): \_\_\_\_\_.

6.3 (Name of Institution): \_\_\_\_\_ and the Researcher will carry out the research on the Reserve at no cost to De Beers and/or EOS whatsoever except in instances where assistance by De Beers and/or EOS has been agreed in writing by the De Beers and/or EOS representative.

## **7. ACCOMMODATION**

7.1 De Beers and/or EOS will provide accommodation (where available) on the Reserve in order to adequately house the members of the research team. This is subject to availability and upfront reservation and approval by Reserve Management. Accommodation outside the designated research accommodation will be charged at a standard price schedule.

7.2 The duration of such accommodation will be for the duration of the research project as per clause 2.

7.3 Accommodation will be provided at a rate of R100 per person per day. Please note payment must be made a month prior to arrival (unless otherwise stipulated by the relevant site manager). With regards long term research projects, fees outstanding longer than three weeks may result in cancellation of the project in question.

7.4 It is incumbent upon the researcher and (Name of Institution): \_\_\_\_\_ to advise De Beers and/or EOS in advance of their accommodation requirements in terms of numbers of people and dates to ensure that adequate accommodation will be available.

## **8. GENERAL PRACTICE OF RESEARCHERS:**

8.1 No member of the research team may cause or commit a nuisance on the Reserve;

8.2 Do not leave refuse or allow it to accumulate in or about the premises except in the bins provided;

8.3 Refrain from interfering with the electrical, plumbing or gas installations or systems serving the premises;

- 8.4 Take all reasonable measures to prevent blockages and obstruction from occurring in the drains, sewerage pipes and water pipes serving the premises;
- 8.5 Not make any alterations to the premises whatsoever;
- 8.6 Comply with all policies and procedures, and health and safety regulations of the Reserve and all reasonable instructions from the Reserve Manager;
- 8.7 The members of the research team will be required to undergo safety induction training in order to adhere to the Health and Safety requirements on the property. The members will be required to sign an indemnity form prior to any access on the Reserve;
- 8.8 In line with De Beers and/or EOS strategy of zero tolerance on health and safety, no person will be allowed on the property under the influence of alcohol or drugs and De Beers and/or EOS reserves the right to apply the applicable policy for testing.

## **9. RISK AND INDEMNITY**

- 9.1 De Beers and/or EOS will not hold the Researcher or (Name of Institution): \_\_\_\_\_ liable for the death of any animals used in this project (except where such death arises from the gross negligence or any willful act on the part of (Name of Institution) \_\_\_\_\_). However, De Beers and/or EOS will have the sole discretion to terminate this project should the mortality rate reach unacceptable proportions.
- 9.2 Every member of the research group must sign the standard De Beers and/or EOS disclaimer forms issued to the Researcher and (Name of Institution) \_\_\_\_\_ upon them entering the Reserve.
- 9.3 The research group shall report, make good and/or replace at the cost of the Researcher and/or (Name of Institution): \_\_\_\_\_ any damages of De Beers and/or EOS property caused by any employee, representative, guest or contractor employed by them.

9.4 (Name of Institution): \_\_\_\_\_ and the Researcher acknowledges that every aspect of its activities on the Reserve shall be conducted by them at their sole and absolute risk and that (Name of Institution): \_\_\_\_\_ and the Researcher shall at all times be solely responsible for the safety and health of all persons involved in the research project conducted in accordance with this Agreement. De Beers and/or EOS has the right to address any health and safety related issue in conflict with set standards.

9.5 (Name of Institution): \_\_\_\_\_ and the Researcher shall not under any circumstances have any claims against De Beers and/or EOS arising from the loss of or damage to any goods or the injury or death of any person upon the Reserve (except where such claim arises from the gross negligence or any willful act on the part of De Beers and/or EOS) and (Name of Institution): \_\_\_\_\_ and the Researcher hereby waive all such claims.

9.6 (Name of Institution) \_\_\_\_\_ and the Researcher hereby indemnify De Beers and/or EOS against, and undertake to compensate De Beers and/or EOS for, all and any claims (including claims arising from the loss of or damage to any goods or the injury or the death of any person) which may be brought against De Beers and/or EOS by any person as a result of any act or omission on the part of (Name of Institution): \_\_\_\_\_ or the Researcher or on the part of any member, employee, representative, guests, consultant, agent, or invitee of (Name of Institution) \_\_\_\_\_ or the Researcher, on the Reserve.

## 10. INSURANCE

10.1 In order to cover itself against the risk of having to indemnify De Beers and/or EOS against any of the events referred to in clause 9 above, (Name of Institution): \_\_\_\_\_ will at its own expense, and for the duration of the Contract above take out third party cover, as from the date of commencement of the Contract Period referred to in clause 2.1 above, with a limit of indemnity of not less than R10 000 000.00 (Ten Million Rand) with an Insurance company that meets with De Beers and/or EOS approval.

10.2 The insurance policy shall be affected before (Name of Institution): \_\_\_\_\_ and the Researcher enter upon the Reserve for the purpose of conducting the research project

10.3 (Name of Institution): \_\_\_\_\_ shall make available to De Beers and/or EOS, within a period not exceeding 14 (fourteen) calendar days after the date of commencement of this Agreement, documentary evidence of the insurance so affected.

10.4 De Beers and/or EOS will be required to submit its approval in respect of the aforesaid insurance within 10 (ten) calendar days of the production of the aforesaid evidence and such approval shall not be unreasonably withheld.

10.5 In the event that (Name of Institution): \_\_\_\_\_ required on terms of clause 10.1 above has been affected, De Beers and/or EOS reserve the right to either:

10.5.1 effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover the same as a debt from (Name of Institution): \_\_\_\_\_ or the Researcher; or

10.5.2 prohibit (Name of Institution): \_\_\_\_\_ and/or Student access to the Reserve until such time as the said insurances have been effected and copies thereof furnished to De Beers and/or EOS.

## 11. BREACH OF AGREEMENT

Should any party commit a breach of any of the provisions of this Memorandum of Agreement and fail to remedy the breach within a period of 7 (seven) business days after receipt of the notice by the injured party to remedy the breach, the injured party shall at its discretion and without prejudice to any other rights be entitled to terminate the Agreement.

## 12. AMENDMENT

- 12.1 This document constitutes the entire Agreement between the two parties and no amendment shall have effect unless reduced to writing and signed by both parties.
- 12.2 No indulgence on the part of either party shall constitute a waiver of rights in terms of this Agreement.
- 12.3 The Researcher shall not be entitled to cede or assign this Agreement, nor in any other way transfer any of its rights or obligations under this Agreement.

## 13. INTELLECTUAL PROPERTY

- 13.1 The Parties hereby record that the ownership of and rights in and to all Background Intellectual Property shall be and remain vested exclusively with the relevant Party who owns same. No transfer, assignment or license in regard thereto shall be of any force and/or effect, unless specifically recorded by the Parties in writing.
- 13.2 The Researcher's affiliation with (Name of Institution): \_\_\_\_\_ and De Beers and/or EOS shall be acknowledged in all publications and presentations based on the utilization of the data.
- 13.3 Ownership of copyright in the Researchers thesis/final report and consequent research publications shall be determined according to relevant University policy.

## 14. THESIS/DISSERATIONS/RESEARCH PROJECT REPORTS

Nothing in this Agreement will prevent a registered student of (Name of Institution): \_\_\_\_\_ from submitting for a degree of the University a thesis, dissertation or Studies/Research Project report based on the results from utilization of the data. The thesis or dissertation will be examined by examiners appointed by (Name of Institution): \_\_\_\_\_ under an agreement of confidentiality between (Name of Institution): \_\_\_\_\_ and the examiners, and a successful thesis or dissertation deposited in (Name of Institution): \_\_\_\_\_ Library in accordance with University regulations.

## **15. VIS MAJOR**

Should either party be prevented from or hampered in the performance of that party's obligations for any reason beyond its control, which would excuse that party's performance as a matter of law and these circumstances persist for a period of more than fifteen days, then after consultation between the parties this Agreement may be terminated.

## **16. GENERAL TERMS AND CONDITIONS**

16.1 Neither party may bind the other in any way to a third party.

16.2 Neither party may assign or cede any benefit, obligation or interest it may have in the contract to any other person without the prior written consent of the other party which consent may not be unreasonably withheld.

16.3 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter herein and shall supersede all previous proposals, both verbal and written, negotiations, representations, writings and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. This Agreement and every part herein and the arrangements herein contemplated shall be treated by both parties as confidential and shall in no way be disclosed, published or circulated by either party without the written consent of the other first having been had and obtained.

16.4 In the event of any clause of this Agreement or any part thereof being found to be invalid for any reason whatsoever, such clause or part thereof shall be severable from the remainder of this Agreement and shall not affect the validity of such remainder.

## **17. DISPUTES OR CLAIMS**

17.1 In the event of any dispute or claim arising from this Agreement, the Parties will make every effort to settle such dispute or claim amicably.

- 17.2 If the dispute is not capable of being settled in terms of 17.1, such dispute shall be elevated to the Senior Management of the University, De Beers and/or EOS respectively, or their duly designated representatives for mediation purposes. (For purposes of this clause, "Senior Management" shall, in the case of De Beers mean the DBCM/EOS CEO and in the case of the University, shall mean the Vice-Chancellor and/or the Deputy Vice-Chancellors and/or responsible person/s).
- 17.3 Should the dispute, despite such mediation, remain unresolved for a period of 30 (thirty) days after being so referred, the dispute will be referred for mediation by a mediator agreed to by both parties, failing which the mediator will be chosen by the Independent Mediation Services of South Africa (IMSSA) or similar body.

## 18. DOMICILIUM CITANDI ET EXECUTANDI

- 18.1 The parties select, as their respective *domicilia citandi et executandi* for purposes of serving notices in terms of this Agreement the following physical addresses, telefacsimile numbers and e-mail addresses.

18.1.1 De Beers and/or EOS chooses its *domicilium et executandi* at:

Physical address: Diamond Route  
6 St Andrews Road  
Parktown  
2107

Postal address: Diamond Route  
P O Box 61631  
Marshalltown  
Johannesburg  
2107

18.1.2 (Name of Institution): \_\_\_\_\_ chooses its domicilium et executandi at:

(Name of Institution) \_\_\_\_\_

(1) ATTENTION:

Postal address: \_\_\_\_\_

Physical address: \_\_\_\_\_

(2) ATTENTION:

Title/Relevant Researcher: \_\_\_\_\_

Physical address: \_\_\_\_\_

18.1.3 The Researcher chooses his domicilium et executandi at:

Physical address: \_\_\_\_\_

Postal address: \_\_\_\_\_

Telefax Communication: \_\_\_\_\_

18.2 Any change to this Agreement shall be in writing and shall be deemed, unless contrary is proven:

18.2.1 If delivered by hand to the other party, to have been given on the first business day following the signature of such delivery having been received;

18.2.2 If transmitted by telefacsimile to the other party, to have been given on the first business day following the day of transmission thereof, provided confirmation of such successful transmission is available or;

18.2.3 If sent by electronic mail, to have been received by the other party on the first day following the date of successful transmission thereof.

18.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by any party from the other party, shall be deemed to have been delivered to such party's domicilia citandi et executandi on the date when such notice was received.

## **19. VISITORS AND GUESTS**

19.1 The Institution and the Researcher agree to comply with applicable safety regulations and the rules and requirements applicable in relation to the premises of De Beers and/or EOS or the area, during the course of any visit to such properties or area.

19.2 Site visits have to be pre arranged and agreed with the De Beers and/or EOS representative. Visitors in addition to the agreed number have to pay for accommodation.

19.3 Guests will only be allowed on prior arrangement with the De Beers and/or EOS representative.

19.4 Guests will be required to pay for accommodation if required.

19.5 Guests will not have access to the greater reserve and is not allowed to accompany researchers to research sites without permission of the Manager.

19.6 All other health and safety regulations and farm rules will apply to guests.

## **20. PERFORMANCE**

The Parties shall do all acts and sign all documents as may be required from time to time in order to implement and carry out the terms and conditions of this Agreement.

**21. GOOD FAITH**

It is the intention of all parties to act in good faith with a common commitment to the successful execution of this Agreement in the best interests of all concerned.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011

WITNESSES

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

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

\_\_\_\_\_

FOR AND ON BEHALF OF

(NAME OF INSTITUTION)

\_\_\_\_\_

\_\_\_\_\_

Student Supervisor  
(if relevant)

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011

WITNESSES

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

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

\_\_\_\_\_

The Researcher

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011



WITNESSES

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

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

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FOR AND ON BEHALF OF DE BEERS/  
E OPPENHEIMER & SON