



the denc

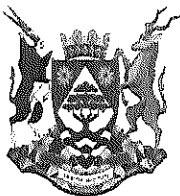
Department:  
Environment & Nature Conservation  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA



Black Mountain Mining (Pty) Ltd



smith ndlovu summers  
ENVIRONMENTAL LAW SPECIALISTS



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Department:  
Environment & Nature Conservation  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA



Black Mountain Mining (Pty) Ltd

## BIODIVERSITY OFFSET AGREEMENT

BETWEEN

**BLACK MOUNTAIN MINING (PTY) LTD**  
Registration number 2005/040096/07

herein represented by Andre Trytsman  
("BMM")

AND

**THE NORTHERN CAPE DEPARTMENT OF ENVIRONMENT AND NATURE  
CONSERVATION**

herein represented by Magdaline Cukelwa Chotelo, MEC

("DENC")

(collectively "the Parties")



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ENVIRONMENTAL LAW SPECIALISTS

*[Handwritten signatures and initials]*



## PREAMBLE

**WHEREAS** section 2(4) of the NEMA provides that sustainable development requires *inter alia* the consideration of all relevant factors including that:

- i. the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- ii. the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
- iii. a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;
- iv. negative impacts on the environment and on people's environmental rights are anticipated and prevented, and where they cannot be altogether prevented are minimised and remedied;

**AND WHEREAS** in terms of section 2(2) of NEMA environmental management is required to place people and their needs at the forefront, and to serve their physical, psychological, developmental, cultural and social interests equitably ensuring that development is socially, environmentally and economically sustainable;

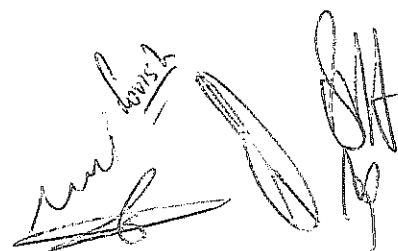
**AND WHEREAS** BMM has applied for and obtained from DENC Environmental Authorisation in terms of section 24 of the NEMA in respect of the activities described in the ESIA and which activities are to be undertaken by BMM in connection with the Gamsberg Zinc Mine Project;

**AND WHEREAS** BMM, due to the ecological importance of the site, caused a Biodiversity Offset Assessment to be conducted and a Biodiversity Offset Report to be compiled in conjunction with the ESIA;

**AND WHEREAS** the purpose of a biodiversity offset is to ensure an equivalent or better biodiversity outcome to the sites where biodiversity values may be lost due to impacts that may be caused by the Gamsberg Zinc Mine Project; to improve the long-term protection and viability of the biodiversity and its associated habitats; and to ensure that the developed site is ecologically sustainable;

**AND WHEREAS** the Environmental Authorisation contains certain conditions requiring BMM to enter into with DENC, and to implement, a Biodiversity Offset Agreement in accordance with the minimum requirements set out in those conditions;

**NOW THEREFORE** the Parties agree to enter into this Agreement for the establishment of a comprehensive biodiversity offset, and for the implementation thereof.



## 1. INTERPRETATION AND DEFINITIONS

- 1.1. For the purposes of this Agreement, the following words/expressions shall have the meanings set out below, unless a contrary intention clearly appears from the context of the terms of this Agreement:
- 1.1.1. "**Agency**" shall mean a body identified, established and/or incorporated by DENC for *inter alia* the purposes of receiving and utilising funds in accordance with the provisions of this Agreement. In the event that the Agency is not identified or established by the date upon which the first payment in terms of this Agreement becomes due and payable then any reference to the Agency must be read as being a reference to the Trust;
- 1.1.2. "**Agreement**" shall mean this Biodiversity Offset Agreement entered into between the Parties, including all the attached annexures thereto;
- 1.1.3. "**Annual Payments**" shall mean the payments to be made by BMM to the Agency or the Trust, as the case may be, in terms of clause 10.7 of the Agreement in respect of the annual management and operational costs of the Protected Areas;
- 1.1.4. "**Biodiversity Offset**" shall mean the land conservation initiatives specified in clause 4 of this Agreement and the financial contributions specified in clause 10 to be implemented by BMM in accordance with the Environmental Authorisation for the Gamsberg Zinc Mine Project as well as the preamble to this Agreement;
- 1.1.5. "**Biodiversity Offset Report**" shall mean annex F to the ESIA prepared by M Botha, P Desmet and S Brownlie and dated April 2013;
- 1.1.6. "**Black Mountain Mine**" shall mean the mining operations undertaken by BMM or its successor in title *inter alia* on the BMM Properties;
- 1.1.7. "**BMM**" shall mean Black Mountain Mining (Pty) Ltd (registration number 2005/040096/07);
- 1.1.8. "**BMM Properties**" shall mean the properties more fully described in Annex "A" hereto;
- 1.1.9. "**BMP**" shall mean the Biodiversity Management Plan applicable to the BMM Properties and to be prepared by BMM pursuant to and/or in terms of the EMP;
- 1.1.10. "**Business Day**" shall mean any day of the year that is not a Saturday, Sunday or public holiday;
- 1.1.11. "**Capital Costs**" shall mean any and all costs required or intended to fund any and all establishment, declaration, security, rehabilitation and other infrastructure requirements for the Protected Area but excludes any and all costs incurred by BMM in securing the properties referred to in clause 6.1;
- 1.1.12. "**DENC**" shall mean the provincial Department of Environment and Nature Conservation, Northern Cape Province;
- 1.1.13. "**Early Works**" shall mean those activities referred to in the letter from DENC dated 14 March 2013;

- 1.1.14. **"EMP"** shall mean the Environmental Management Plan prepared by ERM in connection with the ESIA and approved by DENC in terms of Section 24 of NEMA in connection with the Environmental Authorisation;
- 1.1.15. **"Environmental Authorisation"** shall mean the Environmental Authorisation issued by DENC to BMM in terms of section 24 of NEMA and in respect of the Gamsberg Zinc Mine Project; with DENC reference number NC/BA/NAM/KHA/AGG/2012-NCP/EIA/0000155/2012;
- 1.1.16. **"ERM"** shall mean Environmental Resources Management Southern Africa (Pty) Ltd;
- 1.1.17. **"ESIA"** shall mean the Environmental and Social Impact Assessment dated April 2013 undertaken by ERM in terms of NEMA in connection with the Gamsberg Zinc Mine Project;
- 1.1.18. **"Final Regulatory Approval Date"** shall mean the date upon which BMM secures the last of the following two (2) approvals required in connection with the Gamsberg Zinc Mine Project:
- 1.1.18.1. a mining right in terms of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002);
- 1.1.18.2. a water use licence in terms of the National Water Act (Act No. 36 of 1998);
- 1.1.19. **"First Time Period"** shall mean within eighteen (18) months calculated from the Final Regulatory Approval Date;
- 1.1.20. **"Gamsberg Zinc Mine Project"** shall mean the mining operations and/or activities described in the ESIA to be undertaken by BMM on its landholdings around Aggeneys, Northern Cape Province and pursuant to the Environmental Authorisation, but excludes the Early Works;
- 1.1.21. **"Implement"** when used in the context of the implementation of biodiversity offset contemplated in this Agreement shall, depending on the context, mean either the physical undertaking of the activities required in connection with the land conservation initiatives, or the payment of a financial contribution as specified in this Agreement by BMM to the Agency, or the Trust as the case may be, for undertaking of the activities constituting the Biodiversity Offset which activities include the funding of land acquisition (i.e. those properties referred to in clause 6) as well as the funding of the ongoing management of the offset properties referred to in clause 6;
- 1.1.22. **"Independent Auditor"** shall mean:
- 1.1.22.1. during the initial five (5) year period of the implementation of this Agreement (calculated from date of Environmental Authorisation or signature hereof, whichever is the later) the IUCN Committee or an independent specialist, appointed and overseen by the IUCN Committee, who or which is suitably qualified and experienced to assess and/or certify the implementation of the Biodiversity Offset;

- 1.1.22.2. upon the expiry of the five (5) year period, the Parties shall be required, jointly, to determine and appoint an Independent Auditor or to extend the period of appointment of the IUCN Committee;
- 1.1.22.3. if there is a dispute between the Parties, DENC shall appoint the Independent Auditor after consultation with the Steering Committee;
- 1.1.22.4. the Independent Auditor's role shall be limited to performance auditing to the exclusion of financial auditing;
- 1.1.23. **"IUCN Committee"** shall mean the IUCN's Biodiversity and Livelihood Co-ordination Committee established pursuant to a partnership agreement between the IUCN and BMM;
- 1.1.24. **"Liaison Committee"** shall mean the body established by the Parties from time to time to assist the Parties with the effective implementation of the Agreement and the day to day management of the Protected Area(s) established in terms of clause 13;
- 1.1.25. **"Management Authority"** shall mean the Management Authority appointed in terms of clause 8 of this Agreement and which shall be responsible for implementing the Management Plan to be prepared in terms of this Agreement;
- 1.1.26. **"Management Plan"** shall mean the plan to be prepared in terms of clause 9 of this Agreement;
- 1.1.27. **"MEC"** shall mean the Member of the Executive Council for Environment and Nature Conservation, Northern Cape;
- 1.1.28. **"Nearby Properties"** shall mean properties in the Bushmanland Inselberg Region, primarily situated in the Khai-Ma Municipality, Northern Cape Province not presently owned by BMM, which properties (either in part or in full) contain conservation worthy biodiversity (i.e. biodiversity that meets the conservation objectives set out in clause 6.3) and which properties are more fully described in Annex **"B1"** and Annex **"B2"** hereto;
- 1.1.29. **"NEMA"** shall mean the National Environmental Management Act (Act No. 107 of 1998), as amended;
- 1.1.30. **"Parties"** shall mean the parties to this Agreement, namely BMM and DENC and **"Party"** shall mean either one of them as the context may require;
- 1.1.31. **"Protected Areas"** shall mean the land required to be secured by BMM and declared by the MEC as a nature reserve and/or a protected environment in terms of section 23 or 28 of the Protected Areas Act, respectively, in terms of clause 6 of the Agreement;
- 1.1.32. **"Protected Areas Act"** shall mean the National Environmental Management: Protected Areas Act (Act No. 57 of 2003), as amended;
- 1.1.33. **"Recognised Vegetation Types"** shall mean the vegetation types recognised in The Vegetation of South Africa, Lesotho and Swaziland in *Strelitzia* vol. 19. Pretoria: South African National Biodiversity Institute; (2006), Mucina L, Rutherford MC (eds);

- 1.1.34. **"Second Time Period"** shall mean, subject to the additional timeframe contemplated in clause 6.10, the period commencing on the expiry of the First Time Period and ending 5 years after the Final Regulatory Approval Date;
- 1.1.35. **"Steering Committee"** shall mean a body to be established by the Parties comprising of representatives of the Parties and which may include *inter alia* representatives from:-
- 1.1.35.1. the MEC, the Head of Department, Chief Director responsible for biodiversity and/or protected areas, and the Director responsible for compliance at DENC;
- 1.1.35.2. the Chief Operating Officer of Vedanta; and
- 1.1.35.3. the General Manager, the Head of Health, Safety and Environment and the Manager Sustainability of BMM or any other authorised representative from BMM;
- 1.1.36. **"Suitable Alternative Properties"** shall mean suitable properties identified in terms of clauses 6.7, 6.8 and 6.9 of this Agreement;
- 1.1.37. **"Trust"** shall mean an independent trust to be formed by BMM and DENC for *inter alia* the purposes of receiving and utilising funds in accordance with the provisions of this Agreement. The trust deed, including the trustees for the time being as well as the objectives of the trust, must be agreed, in writing by the Parties, prior to the registration of the trust deed and/or the formation of the Trust against the criteria established and contained in Annex "D";
- 1.1.38. **"Vedanta"** shall mean Vedanta Resources plc, an entity registered in the United Kingdom, with its head office situated at 16 Berkeley Street, London, United Kingdom W1J 8DZ.
- 1.2. The headnotes to the clauses in this Agreement are for purposes of convenience and reference only and do not affect the interpretation of the terms of this Agreement.
- 1.3. Words importing the singular include the plural and vice versa. Words importing any gender include the other genders and words importing persons include partnerships, trusts, bodies corporate, government departments and public entities. A reference to the Parties to this Agreement shall include their successors in title.
- 1.4. When this Agreement prescribes any number of days, they must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a Business Day, it must be deemed to be the next Business Day.
- 1.5. Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that it has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this clause.
- 1.6. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply.

## 2. INTRODUCTION

- 2.1. The Biodiversity Offset is required to offset and/or to compensate for any adverse biodiversity impacts that may be occasioned by the Gamsberg Zinc Mine Project in a manner consistent with the protection and conservation of conservation worthy land identified in the Biodiversity Offset Report.
- 2.2. The potential impacts (and associated biodiversity loss) associated with the Gamsberg Zinc Mine Project are described in the ESIA and the Biodiversity Offset Report.
- 2.3. The Parties recognise and agree that this Agreement is entered into with a view to addressing the requirements in the Environmental Authorisation regarding the biodiversity offset referred to therein, and that this Agreement is in fulfilment of the relevant conditions of the Environmental Authorisation relating to the Biodiversity Offset (including, specifically, Conditions 50 – 56 of the Environmental Authorisation).
- 2.4. DENC herein records that it is satisfied that the implementation of this Agreement and the Biodiversity Offset contemplated herein is aimed at achieving no net loss beyond the established targets (i.e. the targets published in terms of the National Biodiversity Assessment (SANBI 2011)) for the conservation of biodiversity by providing for the conservation of Recognised Vegetation Types.

## 3. GENERAL DUTIES OF THE PARTIES

- 3.1. The Parties agree to co-operate in good faith regarding the implementation and execution of the Biodiversity Offset and with a view to ensuring the ongoing protection and maintenance of the areas of land contemplated in clause 5.
- 3.2. BMM shall not be considered to be in breach of any of its obligations under this Agreement, if due to no fault of its own (i.e. where any such delays are beyond the direct control of BMM), the declaration of Protected Areas contemplated in clause 6 have not been finalised to the point where the requisite notices have been published in the *Gazette*. BMM shall provide documentary evidence to DENC (including but not limited to written offers to purchase and/or lease the properties and written rejections of such offers) in support of any such reliance on this clause.
- 3.3. BMM and DENC shall implement and execute the Biodiversity Offset in accordance with the relevant clauses of this Agreement and/or the provisions of the Management Plan (where applicable) to be prepared in terms of this Agreement.
- 3.4. The Parties shall have the right to appoint sub-contractors to assist them in the exercise of their performance in terms of this Agreement, provided that any appointment shall be with the concurrence of the other Party to this agreement, which consent shall not be unreasonably withheld.
- 3.5. All payments required to be made by BMM in terms of this Agreement shall be paid into a dedicated account determined in writing by the Agency or, in the event that the Agency has not been identified or established at the time when the first payment becomes due and payable in terms of this Agreement, to the Trust.



- 3.6. In so far as the Agency is identified or established only after the Trust has been formed, the Parties may elect, at their discretion, to dissolve the Trust and rather to rely on the Agency for the purposes of implementing the relevant aspects of this Agreement.
- 3.7. All payments to the Agency, or to the Trust as the case may be, shall be made in accordance with the provisions of this Agreement.
- 3.8. DENC shall ensure that the Agency manages and utilises the financial contributions paid by BMM in terms of clause 3.5 in furtherance of implementing the objectives of this Agreement and for no other purposes whatsoever.
- 3.9. The Agency, and failing it the Trust (as the case may be), shall cause annual reports to be prepared regarding the allocation and use of funds paid by BMM to it in terms of this Agreement. Such annual reports shall be provided to BMM, DENC and to the Steering Committee within sixty (60) days from 28 February every year commencing on 1 March 2014.

#### 4. BIODIVERSITY OFFSET

- 4.1. It is recorded that the Biodiversity Offset contemplated in this Agreement shall consist of the following components:
- 4.1.1. The agreement and consent by BMM to conserve and manage the BMM Properties as contemplated in clause 5.
- 4.1.2. The identification and securing by BMM of additional conservation-worthy land in terms of clause 6 and the declaration thereof as Protected Areas.
- 4.1.3. The transfer of all immovable property secured in terms of clause 6 to, and registration thereof, in the name of the "Northern Cape Provincial Government".
- 4.1.4. The identification of a Management Authority for the Protected Areas declared pursuant to this Agreement.
- 4.1.5. The assignment of the responsibility for managing the Protected Areas to the Management Authority.
- 4.1.6. The preparation by the Management Authority, and submission to the MEC for approval, of a Management Plan for the Protected Areas.
- 4.1.7. The ongoing protection and management of the Protected Areas.

#### 5. PROTECTION OF THE BMM PROPERTIES

- 5.1. In accordance with the terms of this Agreement, BMM hereby agrees to protect the biodiversity and ecological functioning of the surface areas of the BMM Properties through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or the BMP.
- 5.2. The surface areas of the BMM Properties that are required to be protected in terms of clause 5.1 are those delineated in the diagram prepared by Messrs. Friedlaender, Burger and Volkmann attached as Annex "C":

- 5.3. The Parties acknowledge and agree that the protection of the BMM Properties shall be managed and implemented through the EMP and/or the BMP.
- 5.4. BMM shall, at its sole and exclusive cost, protect and maintain the areas of the BMM Properties as contemplated in clause 5.1 for a period of at least the duration of mining operations of the Gamsberg Zinc Mine Project plus a further ten (10) year period after a closure certificate has been applied for from the relevant authorities for the Gamsberg Zinc Mine Project.
- 5.5. Should BMM decide to contract any of the BMM Properties into a protected area in terms of the Protected Areas Act, the provisions of this Agreement shall not in any way detract from BMM's rights as the owner of these BMM properties contracted into a protected area, otherwise to alienate and/or to encumber a particular BMM property. These rights will only be limited in so far as this does not affect or compromise the terms and conditions of any notarial deed registered against the title deed(s) of the land involved in terms of section 38 of the Protected Areas Act.

## 6. DECLARATION OF ADDITIONAL LAND AS A PROTECTED ENVIRONMENT AND/OR NATURE RESERVE

- 6.1. In addition to clause 5, BMM shall secure, at its sole and exclusive cost, additional conservation-worthy land comprising of:
- 6.1.1. at least seven (7) of the twelve (12) Nearby Properties; or
- 6.1.2. Alternatively, 12 900 hectares of land containing the characteristics identified in clause 6.9.
- 6.2. The land required to be secured by BMM in terms of clause 6.1 shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the Protected Areas Act, respectively.
- 6.3. BMM shall use its best endeavours to ensure that land required to be secured by BMM in terms of clause 6.1 shall include areas of land and/or properties and/or portions of properties which, either individually or collectively, comprise of at least the following areas of substantially intact habitat of Recognised Vegetation Types:-
- 6.3.1. at least 3 700ha of land comprising **Aggeneys Gravel Vygieveld**, including those component habitats supporting quartz gravel communities and those that are range restricted or which support localised and endemic plant species;
- 6.3.2. at least 3 200ha of **Bushmanland Inselberg Shrubland**, including those habitat units supporting large succulent plants on the south facing aspects;
- 6.3.3. at least 4 000ha of **Bushmanland Arid Grassland**, including those component habitats supporting calcrete gravel communities; and
- 6.3.4. at least 2 000ha of azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains.
- 6.4. With regard to the timing of the obligation in clause 6.1, BMM shall:

- 6.4.1. within the First Time Period, secure at least four (4) of the Nearby Properties listed in Annex "B1", and do all that is necessary in order to make those properties (or portions thereof, as the case may be) available to DENC for declaration by the MEC as Protected Areas; and
- 6.4.2. within the Second Time Period, secure at least three (3) of the Nearby Properties listed in Annex "B2" (i.e. in addition to those secured in terms of clause 6.4.1), or where this is not possible, secure Suitable Alternative Properties in terms of clauses 6.7 and 6.8 below, and do all that is necessary in order to make those properties (or portions thereof as the case may be) available to DENC for declaration by the MEC as Protected Areas.
- 6.5. DENC shall, as soon as reasonably possible after the properties or portions thereof have been made available in terms of clause 6.4, cause those areas to be declared, by way of publication of the requisite notice in the *Gazette*, in terms of the Protected Areas Act as nature reserves or where same is not possible, protected environments, as the case may be.
- 6.6. In giving effect to clause 6.1 BMM shall first do all that is necessary to secure seven (7) of the twelve (12) Nearby Properties in the manner contemplated in clause 6.4.
- 6.7. Insofar as it becomes clear to BMM, within three (3) years of the Final Regulatory Approval Date despite its best endeavours, that fewer than seven (7) of the Nearby Properties can be secured in the manner contemplated in clause 6.4, BMM shall forthwith:
- 6.7.1. Submit to DENC documentary evidence (as contemplated in clause 3.2) documenting all attempts by BMM to secure the Nearby Properties; and
- 6.7.2. identify and secure Suitable Alternative Properties in accordance with this clause, and in terms of the criteria in clause 6.9.
- 6.8. In so far as BMM requires the assistance from DENC with the identification and/or selection of Suitable Alternative Properties, BMM shall request DENC, in writing, to identify such properties and DENC shall, within three (3) months of receipt of written request to do so, notify BMM, in writing, of the Suitable Alternative Properties.
- 6.9. In selecting Suitable Alternative Properties, BMM and/or DENC, as the case may be, shall have regard to the criteria in this clause. In order to qualify as Suitable Alternative Properties, the properties identified pursuant to clause 6.7.2 or 6.8 must:
- 6.9.1. contain samples of the vegetation types identified in clause 6.3 above; or
- 6.9.2. contain samples of any other endangered vegetation or other ecosystems in need of protection, as determined by DENC from time to time; and
- 6.9.3. be in good ecological condition as determined by DENC or a suitably qualified specialist appointed by the Parties for this purpose; and
- 6.9.4. be either contiguous with or form a cohesive management section of any existing protected area declared in terms of the Protected Areas Act; and

- 6.9.5. be available to be secured as a Nature Reserve in terms of section 23 of the Protected Areas Act.
- 6.10. Any time period taken by DENC to identify the Suitable Alternative Properties, in terms of clause 6.8, shall be added to the Second Time Period.
- 6.11. Upon the expiry of the Second Time Period, and in so far as BMM has failed in its obligations to secure the conservation-worthy land contemplated in clause 6.1, the penalty provisions in clause 15.4 will apply.

## **7. REQUIREMENTS REGARDING THE PROPERTIES**

- 7.1. Any Nearby Property and/or Suitable Alternative Property, or portion of such property, secured by BMM (either in terms of a lease agreement, sale agreement or otherwise) for the purposes of clause 6 shall be:
  - 7.1.1. presented by BMM to DENC for management and declaration in terms of the Protected Areas Act within six (6) months of being so secured by BMM; and
  - 7.1.2. transferred to the ownership of the Northern Cape Provincial Government as soon as reasonably possible after declaration of that property in terms of the Protected Areas Act.
- 7.2. All properties transferred in terms of this clause shall comply with the requirements of the Northern Cape Land Administration Act (Act No. 6 of 2002).
- 7.3. All properties, or portions thereof, secured by BMM for the purposes of clause 6 shall be adequately fenced by BMM as soon as reasonably possible after those properties have been secured by BMM. Such properties shall be fenced either as one area or individually, depending on the circumstances, and shall be otherwise rehabilitated at the sole and exclusive cost of BMM.
- 7.4. The specifications in respect of the fencing and rehabilitation measures to be implemented shall be communicated in writing beforehand to DENC. It is specifically agreed that any such fencing must:-
  - 7.4.1. be in compliance with the Northern Cape Nature Conservation Act (2009) and enhance the integrity of the management system;
  - 7.4.2. be at least 1.8 metres in height; and
  - 7.4.3. should not unduly inhibit the free movement or dispersal of small animals.

## **8. MANAGEMENT AUTHORITY**

- 8.1. The Parties agree that:
  - 8.1.1. in respect of the properties identified in terms of clause 6, and subject to clause 8.1.3 below, there shall, be one Management Authority for the Protected Areas and to which responsibility shall be assigned by the MEC in terms of the Protected Areas Act;

- 8.1.2. DENC shall be the Management Authority to which the management of the Protected Areas shall be assigned; and
- 8.1.3. the Management Authority, may enter into an agreement with a third party for the purpose of undertaking any other activity that may be required for the successful management of the Protected Areas.
- 8.2. To the extent required by law, BMM and DENC hereby record their consent to the assignment of the responsibility for managing the Protected Areas by the MEC in terms of the Protected Areas Act, in the terms set out in this clause 8.
- 8.3. To the extent that the Protected Areas includes a protected environment and/or a nature reserve declared in terms of sections 28 and 23 of the Protected Areas Act respectively, the Parties hereby acknowledge that consent to such assignment is required to be obtained from any landowner and/or lawful occupier of the land in question.
- 8.4. BMM shall use their best endeavours to obtain the consent envisaged in clause 8.3. In so far as same is not possible, the particular property, portion thereof or area of land shall not be considered as land for the purposes of clause 6.1 above.

## 9. MANAGEMENT PLAN

- 9.1. In respect of the properties to be identified in terms of clause 6.1, the Management Authority, shall prepare and submit the Management Plan to the MEC, for approval in terms of the Protected Areas Act, within twelve (12) months of being assigned as the Management Authority of the Protected Areas.
- 9.2. The object of the Management Plan shall be to ensure the protection, conservation and management of the Protected Areas in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which the area was declared.
- 9.3. The Management Plan must be compiled in consultation with interested parties including, for example, the Khai-ma Municipality; any organs of state interested in or affected by the declaration; local communities and BMM.
- 9.4. The Management Plan referred to above shall, where appropriate, contain the following information:
  - 9.4.1. the terms and conditions of any applicable biodiversity management plan;
  - 9.4.2. the planning measures, controls and performance criteria as may be prescribed by the Management Authority;
  - 9.4.3. a programme for the implementation of the Management Plan and its costing;
  - 9.4.4. the zoning of the different land areas indicating what activities may take place in different sections of the Protected Areas (and the conservation objectives of each of those sections);
  - 9.4.5. any financial and other support/mechanisms to ensure effective administration and implementation of the Management Plan and/or any co-



management agreement entered into by the Management Authority, and/or any spending of revenue generated from the Protected Areas;

- 9.4.6. schedules setting out the anticipated timing for the implementation and completion of any component of the Biodiversity Offset; and
- 9.4.7. anticipated costs and budgets associated with the implementation of the Biodiversity Offset and ongoing management of the Protected Areas.

## 10. FINANCIAL PROVISIONS

- 10.1. All payments made by BMM in connection with the implementation and execution of the Biodiversity Offset shall be made in accordance with this clause and, where applicable, the requirements of the Public Finance Management Act (Act No. 1 of 1999).
- 10.2. All payments made in terms of this Agreement shall be made to the Agency and failing its establishment, to the Trust.
- 10.3. In order to ensure transparency and to provide for appropriate monitoring in respect of the utilisation of the funds received in terms of this Agreement, the Agency, or the Trust, as the case may be, shall put in place accounting mechanisms necessary to ensure that the use of all funds received are "ring-fenced" and traceable to the implementation objective for which they were utilised.
- 10.4. Any and all payments in respect of this Agreement shall be paid by BMM into an account detailed in writing for this purpose by either the Agency or the Trust, as the case may be, for the exclusive purposes of furthering the objectives contained in this Agreement.

### Payments in respect of maintenance and operation of the Biodiversity Offset

- 10.5. In addition to any costs that may be incurred by BMM in securing the properties contemplated in clause 6.1, the following financial contributions shall be made by BMM in respect of the maintenance and operational costs of the Protected Areas.
- 10.6. During the initial five (5) year period calculated from the Final Regulatory Approval Date, alternatively until all the properties or portions thereof referred thereto in clause 6.1 have been made available to DENC for declaration (whichever is the earlier), payment in respect of maintenance and operational costs of the Protected Areas shall be made by BMM to the Agency or the Trust, as the case may be, as follows:
  - 10.6.1. the first payment shall be made within three (3) months of the first property(ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6. The first payment shall be in the amount of Five Hundred Thousand Rand (R500,000.00) per property or portion thereof presented for declaration;
  - 10.6.2. thereafter, and within three (3) months of each subsequent property(ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6 an amount of Five Hundred Thousand Rand (R500,000.00) per additional property or portion thereof shall be paid by BMM to the Agency; and

- 10.6.3. in addition to clause 10.6.2 an amount of Five Hundred Thousand Rand (R500,000.00) per property or portion thereof shall be paid by BMM to the Agency on or before 28 February of each subsequent year in respect of each property or portion thereof which had previously been made available to DENC for declaration and/or has been declared a protected area.
- 10.7. Upon the expiry of the five (5) year period, alternatively upon the presentation of the last of the properties or portion(s) thereof being made available to DENC for declaration in terms of clause 6 (whichever is the earlier), BMM shall make an Annual Payment on or before 28 February of each subsequent year as set out below:
- 10.7.1. the Annual Payment shall be in the amount of Three Million Five Hundred Thousand Rand (R3,500,000.00) per annum; and
- 10.7.2. the Annual Payment shall increase annually by six per centum (6%) or Consumer Price Index ("CPIX"), whichever is the lower in any given year, on the previous year's amount.
- 10.8. BMM shall make the Annual Payments for a period of at least the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate has been applied for.
- 10.9. In addition to the above, BMM shall, within three (3) months after making available to DENC the first property for declaration, and for the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate at the Gamsberg Zinc Mine Project has been applied for (and subject to increase in accordance with the CPIX) provide for the following to be utilised by the Management Authority:-
- 10.9.1. the provision of and operating costs of two (2) office units within the town of Aggeneys or another site to be agreed by the Parties;
- 10.9.2. the provision of and operating costs of three (3) accommodation units to house employees responsible for the day to day management of the Protected Areas; and
- 10.9.3. the servicing of motor vehicles to enable DENC, as the Management Authority properly to perform its functions, which amount shall be limited to Fifty Thousand Rand (R50,000.00) per annum from the date contemplated in clause 10.9 and shall increase annually by six per centum (6%) or CPIX, whichever is the lower in any given year, on the previous year's amount.

#### **Payment of Capital Costs for establishment of the Protected Area**

- 10.10. The Capital Costs for the establishment of the Protected Area shall be the capped amount of Two Million Five Hundred Thousand Rand (R2,500,000.00) payable by BMM to the Agency, or to the Trust as the case may be, as follows:-
- 10.10.1. the first payment of Five Hundred Thousand Rand (R500,000.00) shall commence on the Final Regulatory Approval Date and be due and payable annually thereafter on 1 March of each subsequent year;

- 10.10.2. payment shall be in the sum of Five Hundred Thousand Rand (R500,000.00) per annum for the total period of five (5) years from the Final Regulatory Approval Date.
- 10.11. The Agency or the Trust, as the case may be, shall decide how the Capital Costs received in terms of this clause are to be allocated in order to secure the establishment of the Protected Area and the implementation of any relevant parts of the Management Plan in accordance with this Agreement.

## 11. SURETYSHIP

- 11.1. This Agreement shall be of no force or effect until BMM has furnished to DENC a deed of suretyship signed by Vedanta in a form acceptable to DENC. This clause is inserted solely for the benefit of DENC who may waive it in part or in whole as DENC may deem fit.

## 12. ESTABLISHMENT OF A STEERING COMMITTEE

- 12.1. The Parties agree that a Steering Committee shall be established with the purpose of enabling the Parties jointly to oversee and to co-ordinate the implementation of the Biodiversity Offset in terms of this Agreement.
- 12.2. The Steering Committee shall meet twice per annum (unless otherwise agreed by the Steering Committee in writing). It shall *inter alia*:-
- 12.2.1. oversee the implementation of the Agreement including the adequacy of the biodiversity outcomes, and effective management thereof;
- 12.2.2. receive recommendations from the Independent Auditor, the Liaison Committee or other body regarding the adequacy of the implementation of the Agreement, including the adequacy of the financial provisions, biodiversity outcomes and management effectiveness;
- 12.2.3. review the recommendations of the Independent Auditor contemplated in clause 14.8.3, every five (5) years and to advise the Parties so that the Parties may exercise their discretion as to whether or not an amendment and/or variation of the Agreement in accordance with those recommendations is required; and
- 12.2.4. make recommendations to the Management Authority on the deployment of any revenue generated from the properties secured in terms of clause 6.1, in line with the Management Plan, so as to further the objectives of this Agreement.

## 13. ESTABLISHMENT OF A LIAISON COMMITTEE

- 13.1. The Parties agree that a Liaison Committee shall be established. The Liaison Committee shall have such responsibilities as are described in the Management Plan to be prepared in terms of this Agreement, including management and operational issues relating to the Biodiversity Offset and to participate in the periodic review by the Independent Auditor in accordance with clause 14.7–14.10 of this Agreement.
- 13.2. The Liaison Committee shall report to the Steering Committee, in writing, regarding the management and operation of the Biodiversity Offset, and the

performance of the Liaison Committee's functions in terms of the Management Plan.

#### 14. REPORTING AND MONITORING

- 14.1. BMM shall be liable for the reasonable costs associated with any of the monitoring, verification and review processes specified in terms of this clause.
- 14.2. The costs referred to in this clause 14 shall under no circumstances be paid from the Capital Costs and/or maintenance and/or operation costs and/or transaction costs to be paid by BMM to the Agency, or to the Trust as the case may be, in terms of clause 10 of this Agreement.

#### Verification of completion of Biodiversity Offset

- 14.3. An Independent Auditor shall verify completion of the Biodiversity Offset in terms of this Agreement.
- 14.4. The term "**completion**" when used in this clause shall mean the implementation and execution of the Biodiversity Offset, but excludes the continued management and maintenance of the Protected Area thereafter.
- 14.5. The Independent Auditor shall issue a certificate of compliance confirming completion of the Biodiversity Offset as contemplated in this Agreement. The Independent Auditor shall be entitled to undertake such environmental assessment or other process as may be reasonably necessary to confirm completion.
- 14.6. Insofar as the Independent Auditor is of the view that any aspect of the Biodiversity Offset has not been completed, he/she shall provide reasons to the Steering Committee in writing for that opinion and provide recommendations regarding the actions to be taken in order to achieve completion.

#### Independent review of the implementation of this Agreement

- 14.7. A review of this Agreement by an Independent Auditor or team of Independent Auditors shall be undertaken every five (5) years with the first review to be undertaken upon the expiry of the five (5) year period calculated from the date of signature of this Agreement.
- 14.8. The purpose of the review contemplated in clause 14.7 shall be to:
  - 14.8.1. determine compliance with the provisions of this Agreement by the Parties;
  - 14.8.2. determine the adequacy of the implementation of the Biodiversity Offset in terms of this Agreement; and
  - 14.8.3. provide recommendations to the Steering Committee on *inter alia* improving and/or enhancing the implementation of the Biodiversity Offset, including recommendations to adjust the financial provisions in terms of clause 10, where required.
- 14.9. The Parties shall co-operate in good faith with the Independent Auditor or team of Independent Auditors in order to enable the Auditors to achieve the objectives in clause 14.8.

- 14.10. A copy of the audit report to be prepared by the Independent Auditor pursuant to each review of this Agreement, shall be submitted by the Independent Auditor to DENC and to BMM and made available for inspection by the public by each Party including a copy thereof in its annual report to shareholders or to the provincial legislature as the case may be.

## 15. BREACH AND PENALTIES

### Breach of this Agreement

- 15.1. Should BMM fail to comply with any of its obligations in terms of this Agreement and remain in breach for a period of sixty (60) days after receipt by BMM of written notification from DENC to remedy the breach, then DENC shall be entitled to:-
- 15.1.1. claim specific performance by BMM of their obligations under this Agreement; or
  - 15.1.2. cancel the agreement and claim damages. The Parties agree that the damages suffered will be calculated with reference to the following:
    - 15.1.2.1. the footprint of the mining operations of the Gamsberg Zinc Mine Project at the date of cancellation versus the total footprint of mining operations envisaged in the Environmental Authorisation read with the ESIA; and
    - 15.1.2.2. the number of properties and/or hectares that have been secured and declared in terms of clause 6 versus the total number of properties/hectares to be secured and declared in terms of this Agreement;
  - 15.1.3. all amounts still outstanding in terms of clause 10 will immediately become due and payable.
- 15.2. Should DENC be in breach of the Agreement in so far as it fails properly to oversee the Agency and/or properly to perform its functions as Management Authority or otherwise, and remain in breach for a period of sixty (60) days after receipt from BMM of written notification to remedy the breach, then BMM shall be entitled to:
- 15.2.1. claim specific performance;
  - 15.2.2. substitute the Agency with the Trust, provided that DENC has first approved the objectives, trust deed and the trustees of the Trust, which approval shall not be unreasonably withheld; and
  - 15.2.3. request the MEC to assign the management functions being conducted by DENC at the time of breach to BMM and/or an entity elected by BMM to perform the management functions of the Protected Areas contemplated in clause 6 above.
- 15.3. Any notice referred to in this clause:
- 15.3.1. shall contain a detailed description of the alleged breach;



- 15.3.2. shall contain a demand that the defaulting party remedy the alleged breach within sixty (60) days of receipt of the notice; and
- 15.3.3. shall be sent, via registered post or electronic mail, to the defaulting party's chosen *domicilium citandi et executandi*.

### Penalties

- 15.4. In so far as the requisite properties referred to in clause 6.1 have not been secured by BMM within five (5) years of the Final Regulatory Approval Date, then:
- 15.4.1. DENC shall provide written notice to BMM calling upon BMM to remedy their breach within sixty (60) days of receipt of notice calling upon them to do so; and
- 15.4.2. failing which an amount of Three Million Five Hundred Seventy One Thousand Four Hundred Twenty Eight Rand (R3,571,428.00) shall be immediately due and payable by BMM to the Agency or the Trust, as the case may be, in respect of each of the seven (7) Nearby Properties not yet secured as a once off penalty payment. Where alternative land is secured in the place of any of the Nearby Properties then this shall be taken into account in the calculation.
- 15.5. The monies payable to the Agency or the Trust, as the case may be, in terms of clause 15.4.2 shall exclusively be used by DENC to further the objectives of this Agreement and to secure conservation-worthy properties within the target area identified in the Biodiversity Offset Report.
- 15.6. In addition to clause 15.4 above, DENC shall be entitled to levy a penalty on BMM in an amount of ten per centum (10%) of the total amount calculated in terms of clause 15.4.2. This penalty is to be paid into the account nominated by the Agency or the Trust, as the case may be, and to be utilised by it to further the objectives of this Agreement.

### 16. AUTOMATIC LAPSING

- 16.1 This Agreement shall automatically lapse if BMM do not commence with any of the listed activities authorised in the Environmental Authorisation within three (3) years of 13 August 2013 (being the date of issue of the Environmental Authorisation), or such extended period approved by DENC in terms of NEMA.
- 16.2 The Parties acknowledge that certain Early Works shall be conducted for the Gamsberg Zinc Mine Project. Such Early Works shall not be considered as commencement with listed activities for purposes of this Agreement.

### 17. EARLY SETTLEMENT

Nothing in this Agreement shall prohibit BMM from accelerating any or all of the payments due in terms of this Agreement.

## 18. DISPUTE RESOLUTION

- 18.1. If any dispute of whatever nature arises between the Parties in respect of any matter arising from or connected with the Agreement, the Parties shall be obliged to use their best endeavours acting in good faith to resolve the relevant dispute amongst themselves.
- 18.2. If the Parties cannot resolve a dispute within thirty (30) Business Days of the date upon which such dispute arose, or in the event of a dispute that must be resolved on an objectively urgent basis, on the same date that the dispute arose, any of the Parties to this Agreement may refer the dispute to arbitration.
- 18.3. Should a Party wish to refer a dispute to arbitration, that Party shall provide written notice to that effect to the other Parties.
- 18.4. An arbitrator or members of an arbitration panel, as the case may be, shall be appointed by the Parties by agreement. If agreement cannot be reached upon a particular arbitrator or arbitration panel within three (3) Business Days after the arbitration has been demanded in writing then the president of the Cape Law Society shall nominate the arbitrator or arbitration panel, as the case may be.
- 18.5. The arbitrator, or in the event of an arbitration panel being appointed, at least one of the arbitrators shall be either a senior advocate with no less than twenty (20) years' experience, alternatively a retired judge of the High Court, Supreme Court of Appeal or Constitutional Court of South Africa.
- 18.6. Such Arbitration shall be held in Kimberley, in accordance with the Arbitration Act (Act No. 42 of 1965) (as amended or re-enacted from time to time).
- 18.7. The costs of the arbitration, including costs of the arbitrator, the costs of the venue, the recording and transcribing of the proceedings and the costs of either Party in preparing for and conducting the arbitration, shall be costs in the cause, and the arbitrator shall be required to make an award in respect thereof.
- 18.8. Pending the making of any award for costs, the Parties shall be liable for such costs relating to the venue, transcription and costs of the arbitrator in equal shares as and when they fall due for payment.
- 18.9. The arbitrator shall determine in his award, which of the Parties is liable for the costs incurred by the Parties in the proceedings
- 18.10. The arbitrator shall have the fullest and freest discretion to determine the procedure to be adopted, it being the agreed intention that, if possible, the arbitration shall be held and concluded within twenty one (21) Business Days after it has been demanded.
- 18.11. The Parties agree to the arbitration award being made an order of Court.
- 18.12. Nothing contained herein shall prevent any party to approach a Court of Law for urgent relief.

## 19. FORCE MAJEURE

- 19.1. A party will not be liable for a failure to perform its obligations in terms of this Agreement if such failure is as a result of a *force majeure* (i.e. the happening of an event out of that Party's control).
- 19.2. If a Party asserts *force majeure* as an excuse for failure to perform that Party's obligation, then the non-performing Party must prove that it took reasonable steps to minimise any delay or damages and that the other party was timely notified of the likelihood or actual occurrence of the *force majeure*.

## 20. SUSPENSIVE CONDITION

- 20.1. This Agreement is subject to the fulfillment of the following suspensive conditions, namely that –
  - 20.1.1. BMM commences with the listed activities which are the subject of the Environmental Authorisation;
  - 20.1.2. final regulatory approvals for the Gamsberg Zinc Mine Project are granted, excluding Early Works;
  - 20.1.3. Vedanta's board approves the Gamsberg Zinc Mine Project.
- 20.2. The suspensive condition provided for in this clause 20 is for the benefit of BMM which shall be entitled to waive or relax the suspensive condition by giving written notice of such waiver or relaxation (as the case may be) to DENC.
- 20.3. Notwithstanding clause 24, any provisions of this Agreement which are separable and severable from the remaining provisions of this Agreement, shall not be of immediate force and effect and shall not be given effect to prior to the fulfillment of the suspensive condition.
- 20.4. If the suspensive conditions contained in 20.1.1 to 20.1.3 have not been fulfilled or waived within three (3) years of 13 August 2013, or such extended period approved by DENC in terms of NEMA, then this Agreement will automatically fail and will be of no further force or effect.
- 20.5. BMM shall notify DENC in writing as and when the suspensive condition is fulfilled. Such notification shall conclusively evidence the fulfillment of the suspensive condition.

## 21. WHOLE AGREEMENT

This Agreement together with its Annexures constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

## 22. NON-VARIATION

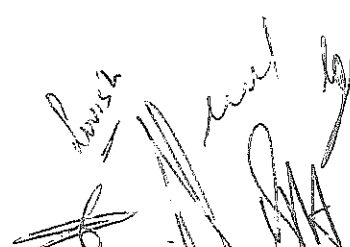
No amendments to or variations of this Agreement shall be valid unless reduced to writing and signed by both Parties.

### 23. REVISION OF THIS AGREEMENT

The Parties hereby agree to review the provisions of this Agreement in light of the outcomes of the independent review to be undertaken in terms of clause 14.7–14.10.

### 24. SEVERABILITY

If any clause and/or term of this Agreement is found to be defective or unenforceable or is cancelled for any reason (whether by any competent Court or otherwise) then the remaining clauses of this Agreement shall continue to be of full force and effect. Subject to clause 20, any term of this Agreement shall be construed as entirely separate and separately enforceable in the widest sense from any the other provisions and/or terms of this Agreement.

Handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are several distinct marks, including what appears to be a signature that says "Dennis" and other illegible initials and signatures.

**25. NOTICES AND DOMICILIA**

25.1. The Parties hereby choose *domicilium citandi et executandi* for purposes of receiving notices under this Agreement at their respective addresses being:

25.1.1. **BMM:**

Postal address: Private Bag X01,  
Postal code 8893

Physical address: 1 Penge Road  
AGGENEYS

25.1.2. **DENC:**

Postal address: Private Bag X6102

Physical address: Metlife Towers, Cnr Knight and Stead Street  
KIMBERLEY  
8300

25.2. Any notices for all purposes of this Agreement shall:

25.2.1. be in writing; and


25.2.2. be addressed to the respective Parties at their chosen *domicilium citandi et executandi* in terms of this Agreement.

Signed at Geogap Nature Reserve on this 16 October day of 2014.

AS WITNESS:

1. 

2. 

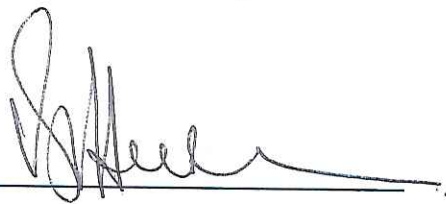
  
For and on behalf of  
**BMM** (who warrants that  
he/she is duly authorised  
thereto)

Signed at Geogap Nature Reserve on this 16 October day of 2014.

AS WITNESS:

1. 

2. 

  
For and on behalf of  
**DENC** (who warrants that  
he/she is duly authorised  
thereto)





## ANNEXURES TO THIS AGREEMENT

Annexure	Description
A	List of BMM Properties
B1	List of Nearby Properties
B2	List of Nearby Properties
C	Portions of the BMM Properties to be conserved
D	Objectives of the Trust
E	Summary of Financial provisions for the offset
F	Biodiversity Offset Report

Handwritten signature and initials, possibly "S. J. H." and "H. J. H.", in black ink.