



## **DEED OF SURETYSHIP**

by

**“SAMUEL VELAPHI NKOSI”**

(Identity Number: \_\_\_\_\_,  
\_\_\_\_\_) (hereinafter  
referred to as the “surety”) The surety  
hereby binds itself in favour of

**MILA AZANIA HOLDINGS (PTY) LTD**

(Registration Number 2015/002533/07)

its successors or assigns  
(hereinafter referred to as the “creditor”)

as surety for and co-principal debtor for the due and punctual payment and discharge on demand of all sums of money and obligations for which

**MNAKA MINING (PTY) LTD**

Registration Number: 2001 / 058665 / 23  
(hereinafter referred to as the “debtor”)

may now and from time to time hereafter owe or be indebted or be obliged to fulfil to the creditor and/or the creditor's successors and assigns howsoever and from whatsoever cause arising, whether such indebtedness be incurred by the debtor solely or jointly or in partnership with any other person or persons, company or companies, close corporation or close corporations.

## **1. SURETYSHIP**

- 1.1. The surety hereby interposes and binds itself, jointly and severally, the one paying the other to be absolved with the debtor, as surety for and co-principal debtor *in solidum* unto and in favour of the creditor for the due and punctual payment and discharge on demand of all sums of money and obligations which the debtor may now or from time to time hereafter owe or be obliged to fulfil to the creditor including, but not limited to:
  - 1.1.1. All associated costs and charges including all reasonable legal costs on the scale as between attorney and his own client as are incurred by the creditor in attempting to recover and/or in recovering payment of all and any amounts as might be or have been owing by the debtor to the creditor; and
  - 1.1.2. Damages for breach of contract
- 1.2. This suretyship shall be in addition to and without prejudice to any other suretyship, guarantee, indemnity or security of whatsoever nature which the creditor holds or may obtain from or on behalf of the debtor.
- 1.3. This suretyship shall remain in force as a continuing covering suretyship until all and/or any indebtedness of the debtor to the creditor has been paid to the creditor in full, notwithstanding any interim settlement of account and notwithstanding the legal incapacity or other legal disability of the surety until terminated by written consent in accordance with the terms hereof.

## **2. ACKNOWLEDGEMENTS AND RELEASES**

- 2.1. The creditor shall be at liberty, without prejudice to its right under this suretyship and in its sole and absolute discretion, whether before or after any obligation has fallen due for performance to –
  - 2.1.1. release any other surety, guarantor or indemnifier of the debtor or release, abandon, realise or sell any security given in respect of the debtor's indebtedness to the creditor and to compound or make any other arrangement with the debtor, surety, either of them or any other surety;
  - 2.1.2. grant any indulgence, leniency, extension of time, waiver to or make any compromise with the debtor, the surety or any other surety, guarantor or indemnifier of the debtor and such indulgence, leniency, extension of time, waiver, compromise or arrangement shall not be construed as a waiver of any of the rights or claims of the creditor against the surety hereunder and the surety hereby waives any right to rely on any defence involving or based on waiver, estoppel or prejudice to the surety in its capacity as surety.
- 2.2. Notwithstanding any part payment by the surety or on its behalf, the surety shall have no right to –
  - 2.2.1. any cession of action in respect of such part payment; or
  - 2.2.2. take any action against the debtor or any other surety for the debtor, in respect thereof unless and until the indebtedness of the debtor to the creditor shall have been discharged in full.

- 2.3. The suretyship can be enforced against the surety regardless of any negligence or breach of contract on the part of the Creditor or the Debtor, or the non- notification to the surety of any default , delay, omission or contractual breach on the part of the debtor and the Surety shall not be released from liability hereunder if the creditor makes any payment to the debtor which ought not to have been made.
- 2.4. The nature, extent, amount and terms of any agreement between the debtor and the creditor shall at all times be within the sole discretion of the creditor and the surety shall not be released from any liability by reason of the entering into of any such agreement or the failure on the part of the creditor to perform in whole or in part under any such agreement.
- 2.5. The surety's liability under this suretyship shall extend to any indebtedness or obligation which may take the place of the obligations referred to in this suretyship which have been novated, it being agreed in the event of any such novation that the surety shall be liable for the original indebtedness or obligation or the novated indebtedness or obligation at the election of the creditor and whether or not the surety was aware of the novation.
- 2.6. The surety waives its rights to rely upon prescription at the expiry of 3 (three) years after any principle or accessory obligation became due, or any act interrupting prescription has occurred, and agrees to a period of 5 (five) years in this regard for prescription for either any principal obligation or any accessory obligation created by this suretyship. The parties agree that this clause does not circumvent the legal purposes of prescription and that the principle of legal certainty is upheld as an amended fixed time period has been agreed to. Without limiting the generality of any other severance clause contained herein, this clause shall be expressly severable from the agreement in the event that it is found to be invalid or unlawful, and such severance shall not effect the validity of the remaining clauses.

### **3. APPROPRIATIONS**

- 3.1.** The creditor is irrevocably authorised to apply any monies received by the creditor from either the surety in terms of this suretyship or from the debtor against the indebtedness to the creditor in such manner as the creditor in its entire discretion may think fit.
  - 3.1.1.** The surety waives the right to name the debt to which the creditor applies any monies received by the creditor from the debtor, or any dividend received from the debtor's liquidator.

### **4. PROOF**

- 4.1.** A certificate under the signature of any manager or director of the creditor shall constitute *prima facie* proof of the amount of the indebtedness of the debtor and/or the surety hereunder to the creditor at any time, including any principal amount, accessory obligation, interest, rate of interest and the method of calculation thereof. It shall not be necessary to prove the appointment or signature of the manager or director signing any such certificate.



**4.2.** Such certificate shall be –

- 4.2.1.** *prima facie* proof of the obligation and/or amounts of the surety's and/or the debtor's indebtedness hereunder including *prima facie* proof of an amount which would otherwise be illiquid or of any other matters therein stated; and
- 4.2.2.** valid against the surety for all purposes including the purpose of obtaining any judgment or provisional sentence against the surety thereon; and
- 4.2.3.** *prima facie* deemed to be sufficient particularly for the purposes of pleading or trial in any action instituted by the creditor against the surety under this suretyship.

**5. DISABILITY OF THE DEBTOR**

**5.1.** If the debtor –

- 5.1.1.** is wound-up or placed under judicial management in either case whether provisionally, finally, compulsorily or voluntarily; or
  - 5.1.2.** suffers any other legal disability; or
  - 5.1.3.** becomes subject to a compromise, composition or other arrangement with any creditor of the debtor, the creditor shall be entitled to prove a claim against the estate of the debtor for the full amount of any indebtedness due to it, whether actual or contingent, and to accept any dividend on account and in reduction of the indebtedness without prejudice to the rights of the creditor against the surety.
- 5.2.** The surety further acknowledges that in any of such events and for as long as any of the obligations of the debtor to the creditor remain undischarged, the surety shall not be entitled to prove any claim against the debtor without the prior written authority of the creditor.
- 5.3.** Should the debtor be placed under judicial management or wound-up, whether provisional or final, then the obligations of the surety under this suretyship shall cover all debts incurred by the debtor to the creditor whilst under judicial management or winding-up.

**6. IMMEDIATE PERFORMANCE**

Should the debtor fail to discharge any of its obligations to the creditor or any one of its other creditors, the creditor shall be entitled notwithstanding any contrary arrangement with the debtor, to demand from the surety immediate performance of all the obligations then owing by the debtor to the creditor, whether or not the due date for the performance of the obligations shall have arrived.

**7. PAYMENT TERMS**

The parties agree that any payments due by the surety to the creditor in terms of this agreement shall be made directly into the bank account of the creditor nominated in writing from time to time.



## 8. INTEREST

Any sum due by the surety to the creditor in terms of this suretyship shall carry interest calculated at the prime rate reckoned from the date on which such sum became owing by the debtor to the date of repayment in full, both days inclusive.

## 9. WAIVER OF BENEFITS

**9.1.** The surety acknowledges that the debtor is a juristic person as defined in section 4(1)(a)(i) of the National Credit Act No 63 of 2005 ("NCA"), and has an asset value or annual turnover which equals or exceeds R1 000 000,00 (One Million Rand), or any threshold determination prescribed in accordance with the NCA, and warrants that they have acquainted themselves with any such amended value. The Surety therefore acknowledges that the NCA cannot be relied on for protection as the principle debt and this suretyship are exempt from the provisions thereof.

**9.2.** The surety hereby expressly waives and renounces –

**9.2.1.** the benefits of excusione, division and cession of action and the exceptions *non numeratae pecuniae, non causa debiti*; revision of accounts, no value received, *errore calculi* and *de duobus vel pluribus reis debendi* in so far as each may be applicable and declare itself to be fully acquainted with the meaning and effect of those benefits and exceptions and to renunciation thereof;

**9.2.2.** any right to claim an accounting from the creditor or to terminate liability.

**9.2.3.** presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument now or hereafter made, drawn, accepted, endorsed or discounted by the debtor, the surety or any other surety and the surety's liability hereunder in respect of any such instrument shall not in any way be affected by any failure to present, give notice of dishonour or protest.

## 10. RELEASE

**10.1.** The surety warrants that the execution of this suretyship is to the surety's benefit and it has a material interest in securing the indebtedness and obligations of the debtor covered by this suretyship.

**10.2.** The surety acknowledges that this suretyship shall only be capable of being terminated with the written consent of the creditor, provided that there has been a permanent and valid discharge by the debtor of all its indebtedness and obligations to the creditor, or if the creditor in its sole discretion decides to terminate this suretyship prior to the discharge by the debtor of all its indebtedness and obligations owed to the creditor, or if this suretyship is within the sole discretion of the creditor substituted for a similar form of security.

**10.3.** Any such release of the surety from this suretyship must be in writing and shall be restrictively interpreted to apply only to the creditor giving the release, to the surety receiving the release and to the debt in respect of which the release is given.

**10.4.** When the debtor has discharged all of its indebtedness and obligations to the creditor, the creditor shall furnish the surety with a notice, as contemplated in clause 10.2, and the surety's obligations to the creditor shall *ipso facto* be discharged and this suretyship shall lapse and be of no force and effect.





## **11. LEGAL ACTION**

- 11.1.** The surety acknowledges that the creditor may, without prejudice to its rights under this suretyship, in its sole and absolute discretion institute legal proceedings or take any steps it may deem fit against the debtor without prior notice to the surety of the debtor's default or of the creditor's intention to take proceedings.
- 11.2.** The surety hereby agrees that if the creditor exercises its rights in terms of this suretyship against the surety, the surety shall be obliged to pay to the creditor on demand such costs, expenses and amounts which the creditor may reasonably incur or pay in the exercise of its rights in terms of this Agreement, including in particular but without derogating from the generality of the foregoing, all reasonable legal costs which the creditor may incur on the scale as between attorney and his own client, collection commissions, tracing agent charges, stamp duties, taxes and other disbursements including costs reasonably incurred by the creditor in proving its claim in the event of the debtor's or surety's legal incapacity.

## **12. FORMALITIES**

The surety acknowledges that this suretyship was fully completed prior to the date of signature of this suretyship and was not subject to any condition precedent.

## **13. JURISDICTION**

The parties agree that that the Creditor may at its option institute legal proceedings in any Magistrates Court having jurisdiction of the surety's person or the cause of action, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of such Magistrates Court.

## **14. PERSONAL INFORMATION**

- 14.1.** For the purposes of this clause and its subclauses, all terms which are not specifically defined elsewhere in this Agreement shall bear the meaning attributed thereto in terms of the Protection of Personal Information Act, 2013, as well as the Promotion of Access to Information Act 2000.
- 14.1.1.** The Surety specifically authorises the Cessionary to share any details or information of the Surety with any 3<sup>rd</sup> parties where the sharing of such information is required by the 3<sup>rd</sup> party in accordance with any agreement between the Cessionary and such 3<sup>rd</sup> party or is, in the discretion of the Cessionary, required to enforce any rights under this agreement. The Cessionary undertakes that such information shall only be shared when such is required in accordance with the ordinary operations of the Cessionary, or where such is required to give effect to any contractual arrangement between the Cessionary and such 3<sup>rd</sup> party. The Surety consents to the sharing of their information for any purpose as set out herein.



**14.1.2.** The Surety further authorises the Cessionary to process any details or personal information of the Surety to the extent necessary in accordance with the internal procedures of the Cessionary. The Surety specifically authorises the Cessionary to store and retain any information provided, for an indefinite period, and to transfer any information transborder for the purposes thereof until the Cessionary, in their sole discretion, is of the opinion that such information is not and will not become necessary or useful. The Surety acknowledges that they have read the POPI and POPIA Manual (the 'Manual') of the Cessionary, as available on the introduction/consent letter and further agrees to the terms and use of information set out therein, specifically including the use and processing of personal information in accordance therewith.

## **15. WHOLE AGREEMENT, NO AMENDMENT**

- 15.1.** This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 15.2.** No amendment, variation or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 15.3.** No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 15.4.** No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.



## **16. DOMICILIUM CITANDI ET EXECUTANDI**

**16.1.** The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses-

16.1.1. the surety at: \_\_\_\_\_

16.1.2. the creditor at: 210 Amarand Avenue, Pegasus Building, Pretoria 0181

16.1.3. the debtor at: \_\_\_\_\_

**16.2.** Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail at the following e-mail address for each party respectively:

16.2.1. Surety: \_\_\_\_\_

16.2.2. Debtor: \_\_\_\_\_

16.2.3. Creditor: info@milaazania.co.za

**16.3.** Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi* vis-à-vis that party to another physical address in the Republic of South Africa or its telefax number or e-mail address: provided that the change shall become effective vis-à-vis that addressee on the 7<sup>th</sup> (seventh) business day from the deemed receipt of the notice by the addressee.

**16.4.** Any notice to a party –

16.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 7<sup>th</sup> (seventh) business day after posting (unless the contrary is proved);

16.4.2. delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

16.4.3. sent by e-mail address to its designated e-mail address shall be deemed to have been received on the date of dispatch (unless the contrary is proved).



16.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## **17. MISCELLANEOUS**

**17.1.** All payments in terms of or arising out of this suretyship shall be made free of bank exchange, commission and all other deductions to the party entitled thereto.

**17.2.** No party shall have the right to defer, adjust or withhold any payment due to the other/s in terms of or arising out of this suretyship or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any deduction, set-off or counterclaim of whatsoever nature or howsoever arising.

**17.3.** The agreements and undertakings of the parties contained in this deed of suretyship shall each be construed as an agreement and undertaking independent of any other provision of this suretyship. The parties hereby expressly agree that it is not the intention of any party to violate any public policy, statutory or common law, and that if any sentence, paragraph, clause or combination of the same is in violation of the laws of the Republic of South Africa, such sentence, paragraph, clause, part thereof or combination of the same alone shall be severable and void in the jurisdiction where it is unlawful, and the remainder of such clause and this deed of suretyship shall remain binding upon the parties hereto. The parties further acknowledge that it is their intention that the provisions of this deed of suretyship be binding only to the extent that they may be lawful under existing applicable laws of the Republic of South Africa, and in the event that any provision hereof is determined to be overly broad or unenforceable, the parties hereto agree to the modification of such provisions to the minimum extent required to make them valid and enforceable.

**17.4.** The creditor shall be entitled in its sole discretion to cede, assign and transfer all or any of its rights and interest under this suretyship to any person whatsoever, and on such cession the surety's liability shall continue in favour of the cessionary/cessionaries for the fulfillment by the debtor of its obligations hereunder.

## **18. COSTS**

Each party shall be responsible for its own costs in the preparation of this deed of suretyship, provided that the surety shall pay all stamp duties or similar charges that may become due and payable pursuant to this agreement.





Signed at \_\_\_\_\_ on \_\_\_\_\_

for \_\_\_\_\_

**“the debtor”**  
who warrants that he is duly  
authorised hereto

Signed at \_\_\_\_\_ on \_\_\_\_\_

for \_\_\_\_\_

**“the surety”**  
who warrants that he is duly  
authorised hereto

Signed at \_\_\_\_\_ on \_\_\_\_\_

For

**MILA AZANIA HOLDINGS  
(PTY) LTD**  
who warrants that he is duly  
authorised hereto