

MEMORANDUM OF AGREEMENT

Entered into and between:

NKOSANA KENNETH MAKATE

ID:

Address:

E-mail: kennethmakate@gmail.com

(hereinafter referred to as "Makate")

and

Christiaan Schoeman

ID: 481220 5005 089

Address: 77 Ambassador Crescent, Waterkloof Valley, 14 Squirrel

Avenue, Waterkloof, Pretoria

E-mail: chris@litfin.co.za

In his capacity as authorized representative of a Company

to be nominated

(hereinafter referred to as "The Company")

WHEREAS Makate issued Summons against Vodacom under Case Number
20980/2008 South Gauteng, High Court;

AND WHEREAS Makate needs funds to proceed with the litigation;

AND WHEREAS the Company will provide funding to pursue the claim;

NOW WHEREAFTER THE PARTIES AGREE AS FOLLOWS:



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1. DEFINITIONS

Claim: means Claim issued in Summons Case No 2011/01660 South Gauteng High Court and all interlocutory applications thereto in such litigation.

Attorneys: means Stemela & Lubbe Inc, 141 Charles Street, Brooklyn, Pretoria.

Effective

Date: means date of signature of this Agreement by the party last signing.

Vodacom: means Vodacom (Pty) Ltd, Registration No: 1991/001471/07.

2. FUNDING

The Company shall fund all legal costs and expenses reasonably necessary to prosecute the claim instituted by Makate against Vodacom.

Subject to clause 7, the legal costs shall not include the legal costs already incurred before the effective date in connection with the issuing of Summons and the litigation proceedings thus far.

The company indemnify Makate against all and any claims which may be instituted against him during the cause of the litigation, including any adverse cost orders which may be granted during the litigation



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The Company shall deposit with the attorneys sufficient funds as reasonably required and requested by the attorneys from time to time to finance the litigation, within 10 days of being requested to do so.

3. LITIGATION

The Company undertakes to pursue the litigation to the best of its abilities.

In consideration for funding the litigation and taking the associated risk, the Company shall be entitled to control and direct the litigation, and to appoint its own legal team to present the action to Court. Where the matter is settled by negotiation and agreement, neither Makate or the attorneys shall be entitled to effect settlement without the written consent and approval of the Company, unless the amount payable in terms of such settlement agreement exceeds R650,000,000.00 (SIX HUNDRED AND FIFTY MILLION RAND).

4. NO CESSION OR ASSIGNMENT

The parties confirm that the claim is not ceded or assigned to the Company and this Agreement only relates to the sharing of any recovery made from Vodacom.

5. REWARD

In consideration for the funding the litigation, and taking the risk associated therewith, the Company shall be entitled to control and direct the litigation through Makate as Plaintiff, who shall act upon all of the companies reasonable and necessary instructions.

Upon conclusion of the matter, whatever award is made and recovered by Makate from Vodacom, shall be paid to Sternela & Lubbe Inc (Trust Account) who shall be instructed to divide such recovery in such a manner that Makate will receive 60% thereof and the company 40%



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Any legal costs recovered from Vodacom due to favourable costs orders awarded to Makate during the course of the litigation, will not form part of the reward and will be retained by the legal team.

Upon success of the merits of claim, the company will pay a minimum deductible advance of R4,000,000.00 (FOUR MILLION RAND) to Makate as up front distribution of rewards obtained.

6. LEGAL REPRESENTATION

The Company has the exclusive authority to appoint a legal team to represent Makate in the litigation.

The instructing attorneys will be Stemela & Lubbe Inc, 141 Charles Street, Brooklyn, Pretoria, who will appoint correspondents in Johannesburg for purposes of service and in compliance of the Uniform Rules of Court.



The attorneys will appoint the following Counsel:

Adv. CE Puckrin SC;

Adv. R Michau SC

A junior Counsel to be appointed by the legal team.

The amount of R50,000.00 (FIFTY THOUSAND RAND) will be set aside for the services of the junior Counsel referred to in paragraph 6.3.3. The purpose would be to allow Makate to consult with such junior counsel to assist him in understanding the legal process and issues. Makate will first address any questions to the attorneys, but if he wants to consult with junior counsel as well, he will be at liberty to do so subject to the limit of R50,000.00. All such consultations or telephonic conferences will be arranged by the Attorneys.



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7. ATTORNEYS R MASILO

It is recorded that Makate's present attorneys in the litigation is R Masilo Attorneys, 98 President Street, Old Mutual Building, Suite 11, First Floor, Germiston

Upon signature of the funding agreement, Stemela & Lubbe Inc will address a letter to Masilo Attorneys informing them of the funding agreement and that Makate has terminated their mandate.

R Masilo Attorneys will be requested to withdraw as Attorneys of record and Stemela & Lubbe will file a new Notice to be Attorneys of Record.

Stemela & Lubbe Inc will enter into negotiations with Masilo Attorneys to arrange for a fair and reasonable compensation to them for work done and services rendered prior to the effective date. Makate confirms that Masilo Attorneys agreed to work on a contingency basis and that they have assumed the risk of the litigation. Any agreed reasonable remuneration will be paid from Makate's 60% share if the litigation is successful. The provision of the Contingency Fees Act 86/1997 will be applied to any agreement reached.

The Company will indemnify Makate from any claims which may be instituted against him in consequence of Masilo Attorney's involvement in the litigation prior to the effective date.

8. PUBLICITY AND CONFIDENTIALITY

Each party undertakes to keep confidential and not to disclose to any third party, save as may be required in Law or by ruling of a Court, the nature, content or existence of this Agreement and any and all information given by a party to the other parties pursuant to this Agreement.

9. SUPPORT AND BONA FIDES

Handwritten signatures and initials in the bottom right corner of the page.Handwritten initials 'NM' and 'EB' in the bottom right corner of the page.

The parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

10. BREACH

In the event of any of the Parties ("Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 21 days after receipt of a written notice from another Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.

The Parties agree that any costs awarded will be recoverable on an attorney- and own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

11. DISPUTE RESOLUTION - INTERNAL ARBITRATION

In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by any Party be submitted to informal arbitration in Pretoria, which needs to be finalised within one month of date of declaration of dispute.




The parties shall decide on an Arbitrator, failing which the Chairman of the Pretoria Bar will appoint an Advocate with no less than 10 years standing as Arbitrator. The decision shall be final and binding on all the parties to the dispute. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

Any arbitration in terms of this clause 11 shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.

This clause 11 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

12. NOTICES AND DOMICILIA

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

<u>Name</u>	<u>Physical Address, Telefax and e-mail address</u>
NK Makate:	48 Midland Estates , 8 th Street , Noordwyk, Midrand. <u>KennethMakate@gmail.com</u>

<u>Name</u>	<u>Physical Address, Telefax and e-mail address</u>
C Schoeman:	77 Ambassador Crescent, Waterkloof Valley, 14 Squirrel Avenue, Waterkloof, Pretoria E-mail: <u>chris@litfin.co.za</u> , Fax: 012 346 6029

<u>Name</u>	<u>Physical Address, Telefax and e-mail address</u>
W Lubbe. (Stemela & Lubbe Inc)	141 Charles Street, Brooklyn, Pretoria, Tel: 012 346 0136, Fax: 012 346 6029 E-mail: <u>sonja@stemelalubbe.co.za</u>

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

12.1 All notices to be given in terms of this Agreement will be given in writing and will -

12.1.1 be delivered by hand or sent by telefax.






12.1.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

12.1.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

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

13 APPLICABLE LAW AND JURISDICTION

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

14 DEPENDENT ADVICE

Each of the Parties to this Agreement hereby acknowledges and agrees that –

14.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and

14.2 all of the provisions of this Agreement and the restrictions herein

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contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.

15 GENERAL

15.1 Whole Agreement

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

15.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

15.2 Variations to be in Writing

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

15.3 NO ASSIGNMENT

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior written consent of the other Parties, save as otherwise provided in clause 15 herein.

16 COSTS

Except as otherwise specifically provided herein, the Company will bear and pay all legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this




Agreement

17 SIGNATURE

17.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

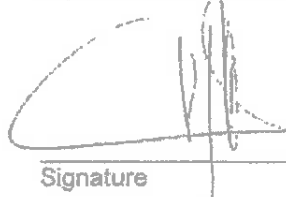
17.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

17.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

17.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at *Pretoria* on *17 November* 2011

Signed by: NK MAKATE




Signature

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SIGNED at Pretoria on 7 November 2010

For and on behalf of


Signature

C SCHOEMAN

As witness:





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MEMORANDUM OF AGREEMENT

Memorandum of agreement made and entered into by and between

SIMBA CAPITAL VIII SARL a company duly organised and legally existing under the laws of Luxembourg (Company Registration No. B175040) having its registered office in L -- 8308 Mamer/Capellen 75 Parc d'Activités, care of 1 Fullerton Road, #02-01 One Fullerton, Singapore 049213 or its assigns or nominee

(hereinafter referred to as "the financier")

and

BLACK ROCK MINING LTD a company with limited liability duly registered and incorporated in the British Virgin Islands

(hereinafter referred to as "Black Rock")

and

ERROL ELSDON an adult male residing at Silkwood Linden Road, Sandton South Africa

(hereinafter referred to as "Elsdon")

and

CHRISTIAAN SCHOEMAN an adult male residing at 174 Smith Street, Muckleneuk, Pretoria

(hereinafter referred to as "Schoeman")

and

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