

# **AGREEMENT**

**MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN:**

\_\_\_\_\_

**IDENTITY NUMBER:** \_\_\_\_\_

(hereinafter called "the Owner")

and

\_\_\_\_\_

**IDENTITY NUMBER:** \_\_\_\_\_

(hereinafter called "the Occupier")

**WITNESSES THAT:**

**WHEREAS** the owner is the registered owner of the farm \_\_\_\_\_,  
Registration Division \_\_\_\_, \_\_\_\_\_,  
Province (\_\_\_\_\_ ha) (commonly known as the farm  
\_\_\_\_\_” and hereinafter referred to as the “farm”);

**AND WHEREAS** the Occupier is employed on the farm and has solely by virtue of such employment, on the farm been given permission to reside on the farm as part of the benefits he/she will enjoy as an employee.

**AND WHEREAS** the Occupier and his/her family members, and all persons residing on the farm through their association with the Occupier, by virtue of the aforementioned permission granted to the occupier, occupies a certain portion of the farm in accordance with the provisions of the *Extension of Security of Tenure Act, Act 62 of 1997* (hereinafter referred to as "ESTA");

**AND WHEREAS** the parties have expressed their desire to have their relationship, for the legal certainty of both parties, to be governed by a written agreement;

**AND WHEREAS** the parties have formalised the existing terms and conditions of their relationship and the terms and conditions that will henceforth govern the occupier's right of residence on the farm;

**AND WHEREAS** the parties are desirous to hereby reduce the terms of their agreement to writing.

**NOW THEREFORE THEIR AGREEMENT IS RECORDED AS FOLLOWS:**

**1. PLACE OF RESIDENCE:**

- 1.1 The Owner hereby grants permission and allocates an existing house and a camp in a fenced area (the fence to be provided by the owner) around the house, in the extent as per the boundaries between the following GPS coordinates and where the Occupier currently resides:

---

---

---

(hereinafter referred to as “the site”) to the Occupier, to accommodate *inter alia* the Occupier together with his/her family members and associates, subject hereto and as depicted on the list attached hereto marked Annexure “B” hereto.

**2. THE OCCUPIER’S EMPLOYMENT:**

- 2.1 It is agreed that the Occupier is employed on the farm and has derived the rights, agreed to herein, solely on the basis of his/he employment on the farm.
- 2.2 By virtue of the fact that this agreement stems from an employment agreement, and by virtue of the fact that the occupier will exercise the rights and obligations as described herein on the farm, that will also be his/her place of employment, it is agreed that terms and conditions of this agreement shall form part of any terms and conditions of the occupier’s employment on the farm.
- 2.3 By virtue of 2.2 above and the overlapping nature of this agreement with the occupier’s employment on the farm, it is agreed that any breach of this agreement may also constitute misconduct insofar as the occupier’s employment on the farm is concerned and may over and above any remedy provided for in this agreement, result in disciplinary action as a result of such misconduct.

2.4 The owner agrees to comply with the applicable labour legislation and in the event of any disciplinary action taken against the Occupier, not to evict the Occupier from the farm up until such time as when any legal and lawful dispute pertaining to such disciplinary action or a sanction imposed has been finalised.

2.5 It is recorded that the site that the occupier will be occupying has very specifically been designated by the owner to provide housing for persons employed on the farm and as an employment benefit that is only afforded to employees.

2.6 Subject to the provisions of ESTA, it is agreed that the owner will not be expected to accommodate the occupier or any other person occupying the farm through their family relationship with the occupier, beyond the specific purpose for which the owner has granted permission to the Occupier herein.

**3. THE OCCUPIER'S RIGHT TO A FAMILY LIFE AND FAMILY MEMBERS:**

3.1 The Occupier agrees that and his/her family members, the names of whom appear on the list attached hereto marked annexure "B" will occupy the site permanently and the Occupier undertakes never to allow any other person to permanently occupy the premises/site, without the owner's written consent.

3.2 The family members residing on the farm do so solely on the basis of their relationship with the Occupier and by virtue of the owner recognising and giving effect to the Occupier's right to a family life as described in section 6(2)(d) of ESTA and shall for no reason considered to be occupiers in own right or have occupational rights that are enforceable against the owner.

- 3.3 In the event of the need arising for the employment of temporary staff or other staff on the farm, the Owner may offer such temporary or permanent employment opportunities to the Occupier's family members, but on condition that such employment will at all times be subject to this agreement and will not constitute any rights for such employee other than the rights referred to in 2.1 & 2.3 above. It is agreed between the parties that the Occupier and her immediate family members, will occupy the premises only for residential purposes.
- 3.4 The Occupier, his/her family members and all persons visiting the site and through their association with the Occupier, will not interfere with any of the farming operations and/or other activities of the Owner or any other person in charge of the farm or any employee of the Owner or other Occupier or Tenant of the farm or any other farm belonging to the owner.
- 3.5 The Occupier hereby takes the responsibility for the behaviour of all persons occupying the property as a result of the association with him/her and also for the behaviour of all persons that will, from time to time, be present on the site as *bona fide* visitors.
- 3.6 The Occupier will abide to all reasonable security measures agreed to herein or that may by virtue of necessity, be implemented in the future to safeguard the lives and property of all persons living on the farm.

**4. VISITORS. SECURITY AND FARM SAFETY:**

- 4.1. The parties agree that they are mutually depended upon each other to ensure the safety of their families and personal belongings.

4.2. In order to promote and ensure safety on the farm, the following security arrangements shall apply for the duration of the Occupier's tenure on the farm:

4.2.1 No person, including *bona fide* visitors shall make use of any other access routes to and from the farm than that are currently in use.

4.2.2 No person shall climb through or over any boundary or other fences on the farm and only gates allowing access to the farm and specific camps on the farm will be utilised.

4.2.3 No person will be permitted to damage any fence and any damaged fence should be reported to the owner within 72 (seventy two) hours after it reasonable came to Occupiers knowledge.

4.2.4 The Occupier agrees to disclose the nature and identity number and the person visiting the farm at the entrance to the farm on the request of the owner during any time of a visit.

4.2.5 No visitor shall be permitted to be present on any part of the farm, save for the access road to the site and the site, without him / her

been accompanied by the Occupier or an adult member of the Occupier's family.

4.2.6 The Occupier will at all times and for the duration of his / her tenure of the farm hold a duty to inform the owner of any suspicious activity on the farm that may pose a threat to the property, safety and lives of any person living on the farm.

4.2.7 All persons living on the farm shall respect the tranquil environment they are afforded to live in on the farm and accordingly no person, his/her family members and visitors shall unreasonably cause any disturbance or nuisance to other persons living on the farm.

4.2.8 No person shall convene any gathering or any other event involving the attendance of more than 20 (twenty) visitors that are not residing on the farm without, written consent of the owner pertaining to the date, time and duration of the event and provision of the details of visitors in 4.2.4 above.

4.2.9 The Occupier shall be liable for any act, omission or conduct of any of his/her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage.

4.2.10 No person shall leave any closed gate open, when passing through same.

**5. OCCUPIERS OBLIGATIONS:**

The Occupier agrees:

- 5.1 not to harm any other person occupying the land and/or engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity;
- 5.2 not to cause damage to any equipment, fences, livestock, fauna and flora on the farm and will respect the Owner's property rights.
- 5.3 not to trade in any commodity and more specifically any illegal trading in any article/substance will not be permitted on the premises or the site.
- 5.4 not to use any of the natural resources on the farm, such as wood from trees, shale, minerals, sand, soil, water or any wildlife without the Owner's permission or any other way as agreed herein.
- 5.5 not to cultivate any crops on the site other than a small vegetable garden where vegetables for household consumption is cultivated.
- 5.6 Subject to provisions of ESTA not to make any graves or to bury any persons on the premises/site or on the farm without the owner's permission.

- 5.7 not sublet the site or any part thereof;
- 5.8 not enable or assist unauthorised persons to establish new dwellings on the farm;
- 5.9 ensure that he/she and or any person at any time present on the farm through his/her association with the Occupier observe a duty of utmost good faith towards the Owner.

**6. HOUSE AND NEW STRUCTURES:**

- 6.1 It is recorded that the Occupier will only occupy the site, consisting of the structures as described in paragraph 1.1 above.
- 6.2 The Occupier will not be entitled to erect any new, permanent or temporary structures or to effect any structural additions to the site without the Owner's written approval. The Owner will not be responsible to compensate the Occupier for any additions, alterations or improvements to the site, that was brought about by the Occupier for the duration of this agreement, irrespective of whether such additions, alterations or improvements were brought about with the Owner's consent or not.
- 6.3 Should the Occupier vacate the farm or should the Occupier's right of residence be lawfully terminated and he or she be lawfully evicted, he/she will be entitled to salvage and remove any re-usable building material from the building or structure he/she currently occupies or in future may construct with the Owner's consent. (optional)

- 6.4 The Occupier is permitted to maintain existing structures occupied by him/her, with at least 7 (seven) days prior notice to the owner and providing full details of the envisaged improvements.
- 6.5 The Occupier will establish an area in the proximity of the site and in the common area where ash and rubbish will be discarded and will maintain this area at all times and not allow any part of the farm to be polluted by waste and/or refuse.
- 6.6 The Occupier will also establish suitable toilet facilities in the immediate vicinity of the said homestead at his/her own costs and will upkeep and maintain same at all times. The site and its surrounding area will at all times be maintained in a neat and tidy condition.
- 6.7 The Occupier in his/her capacity as head of his/her family will, along with the other Occupiers, jointly and severally be responsible for the maintenance of the existing fences and buildings used for their benefit at all times and at their expense.
- 6.8 The Owner will not be responsible for any damage loss, injury or death incurred by anyone, as a result of any structural failure of any building or structure on the site.

**7. LIVESTOCK AND ANIMALS:**

The occupier will be not be permitted to keep any livestock on the farm.

**8. CULTIVATION AND GARDENING:**

- 8.1 The Occupier will be permitted to cultivate fruit and vegetables for domestic consumption in the fenced area surrounding the homestead and will as such also be regarded as a garden.
- 8.2 The Occupier will not burn for domestic purposes any of the wood on the farm without the Owner's permission and will in particular not damage any of the growing plants and trees on the farm with the objective of using it for burning wood.
- 8.3 The occupier will observe and comply with any requirements imposed on the owner insofar as any products produced on the farm that are subject to industry standards and that relates to bio security and the prevention of diseases emanating from the cultivation of such products.

**9. WATER:**

- 9.1 It is recorded that the Occupier may obtain water for domestic purposes from *(to be adapted for specific circumstances)*. It is accordingly agreed that the supply of water will at all times be subject to:
  - 9.1.1 the recognition of water as a scarce resource on the farm;
  - 9.1.2 the responsible use thereof and any equipment used or permanently installed by the Owner to make water accessible for the Occupier and other people and animals depended on water for their survival on the farm;

9.1.3 the strength of the water resources on the farm;

9.1.4 the responsibility of everyone living on the farm including the Occupier and his/her family members or visitors to prevent the unnecessary waste of water and the contamination thereof in whatsoever way.

9.2 Except for a change in operational requirements and the financial viability of the Owner's farming operations, the use of the site together with buildings that are lawfully occupied, and the supply of water during the Occupier's lawful residence on the farm will be provided by the Owner free of charge.

**10. DEATH OF THE OCCUPIER:**

Should the Occupier pass away, any person residing on the farm through their association with himself/herself shall vacate the farm within the period prescribed in the Act and as may be applicable to him/her.

**11. LIABILITY:**

It is agreed that the use of the site and any of the facilities on the farm will be at the Occupier's, his/her family's, all persons residing on the farm through their association with the Occupier and visitors' own risk and the Owner is hereby indemnified from any loss, damage, death or injury that the Occupier, his/her family members, all persons residing on the farm through their association with the Occupier and/or any visitors to the farm may suffer whilst they are present within the boundaries of the farm.

**12. BREACH:**

It is recorded between the Parties that the Occupier's occupation of the site will be subject to the provisions of the ESTA and therefore the parties will further direct their behaviour towards sustaining relationship of mutual respect for the rights derived from ESTA.

- 12.1 Subject to the provisions of ESTA and 1.4 below, in the event of any party breaching any term of this agreement, the other party will be entitled to cancel the agreement and claim any damages suffered by him/her from the party in breach.
- 12.2 It is specifically agreed that, over and above any other remedies the Owner may have, in the event of the Occupier breaching any term of this Agreement the Owner will be entitled, subject to the provisions of the Act, to terminate the Occupier's right of residence and to institute proceedings against the Occupier in terms of the provisions of Section 8,9,10,11,12,13 and 15 or any other appropriate provisions of ESTA, where applicable.
- 12.3 The Occupier will not preclude the Owner from exercising any of his/her rights in terms of this agreement or as provided for in ESTA.
- 12.4 Should the Occupier allege a breach of this agreement by the Owner, he/she shall give the Owner or its representative 30 (thirty) days' notice in writing of such breach, where after the Occupier will be entitled to seek the relief at his/her disposal as provided for in ESTA.

**13. VOLUNTARY TERMINATION BY OCCUPIER:**

- 13.1 The Occupier shall terminate this agreement and vacate the farm within 30 (thirty) days.
- 13.2 Should the Occupier terminate and vacate the premises, he/she along with his/her family members and their personal belongings shall vacate the farm and leave the premises in a good and tidy state.
- 13.3 Residence by the Occupier shall if the Occupier no longer resides on the farm and no person shall be permitted to continue occupying the farm if the Occupier resides elsewhere.
- 13.4 In addition to any legal interpretation that may be provided to the term “reside elsewhere”, for purposes of this clause, the Occupier will be regarded to have vacated the farm and residing elsewhere in the event of the following:
- 13.4.1 He/she is occupying another house elsewhere that is registered into his/her name or the name of a family member for a period that exceeds 3 (three) months.
- 13.4.2 He/she has moved his personal belongings to another premise outside the boundaries of the farm.
- 13.4.3 He/she only returns to the farm on weekends and on public holidays for a period of 3 (three) months.
- 13.4.4 His/her house on the farm is, in the absence of the Occupier, occupied by other persons unknown to the owner and that are not listed in annexure “B”.

**14. IMPROVEMENTS:**

Should the Occupier vacate the farm for whatsoever reason, the Owner shall not:

- 14.1 be liable to compensate the Occupier for any improvements or additional buildings build by the Occupier without the Owner's permission.
- 14.2 be liable to compensate the Occupier for structure or building that can be removed without causing damage to the owner's property or of which the remaining structures or buildings will not have any use or value to the Owner.

**15. AGREEMENT IN GENERAL:**

- 15.1 The Parties agree that the terms of this agreement were duly negotiated between them and their respective legal representatives and acknowledge the fact that the terms are fair and reasonable and in all respects acceptable to them with due regard to the provisions of ESTA.
- 15.2 The parties further hereby agree that this agreement represents the consensus between them and confirms materially with the principles of ESTA and that this agreement accordingly is permitted by ESTA and will thus be binding on the parties.
- 15.3 The parties agree that this agreement contains the full terms and conditions of the agreement between them and no amendment, alteration or addition thereto, will be binding upon them unless reduced to writing and signed by both parties.

15.4 This agreement supersedes all previous agreements irrespective whether it was concluded orally and / or in writing.

15.5 This agreement and the rights and obligations created herein for the parties and except for the event of a lawful termination of the occupation of the Occupier will be binding in respect of all successors in title of the farm.

15.6 The parties acknowledge that the status of their relationship depends on good faith and will ensure that their conduct will at all times be directed at maintaining such good faith and a workable relationship.

**16. LEGAL CHANGES AND VALIDITY:**

16.1 It is recorded that this agreement is concluded with a full understanding that the legislation that governs the relationship between the parties and its interpretation, is subject to future changes.

16.2 In lieu of the prospect of such future changes, the parties record that where any term and / or condition contained herein is affected by a change in the application of the law as it currently stands, that such change will not have any effect on the validity of the agreement, but instead it is agreed that the agreement is to interpreted and given effect to in a way that it conforms with what is legally required and gives full recognition to both parties' rights in the Constitution of the Republic of South Africa, Act 108 of 1996.

**THUS DONE and SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_.

**AS WITNESSES:**

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

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

\_\_\_\_\_  
**THE OWNER AND LEGAL  
REPRESENTATIVE**

**THUS DONE and SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_.

**AS WITNESSES:**

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

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

\_\_\_\_\_  
**THE OCCUPIER AND LEGAL  
REPRESENTATIVE**

*Disclaimer: This is a proposed contract which should be adjusted for specific circumstances and it is recommended that it is finalized by a professional.  
In the event that one of the parties is unable to read, such person should appoint an interpreter. The interpreter must then read and explain said document and attach a certificate to that effect and co-sign the document.  
In the event that one of the parties is unable to write, he or she can make a mark (such as an "X") where the signature is required.  
With recognition to Hans Jurie Moolman from Moolman Pienaar Attorneys, Potchefstroom | [www.mmlaw.co.za](http://www.mmlaw.co.za) | (018) 297-8799*

**ANNEXURE B**

**The Occupier:**

---

**Associates:**

---

**Adult Children:**

---

**Children:**

---

**ADDENDUM**

**TRANSLATOR**

I, the undersigned \_\_\_\_\_

do hereby certify that I have on this day and date in the presence of the parties and the above witnesses translated the contents of this agreement from English/Afrikaans to \_\_\_\_\_ and that I have satisfied myself that the Occupier fully understands the contents thereof, where after he/she proceed to sigh this document in the presence of the said witnesses.

\_\_\_\_\_  
**NAME IN PRINT AND SIGNATURE OF TRANSLATOR**

**IDENTITY NUMBER:** \_\_\_\_\_

**PHYSICAL ADDRESS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**ADDENDUM**

**CERTIFICATE BY LEGAL REPRESENTATIVE FOR OCCUPIER'S AND AS APPOINTED  
BY THE THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**

I, the undersigned \_\_\_\_\_

do hereby certify that I, in my capacity as legal representative appointed by the Department of Rural Development and Land Reform to represent the interests of the occupier and confirm that the parties have negotiate the terms of this agreement. I have furthermore satisfied myself that the agreement reached between the parties, is the result of a negotiated process where no one was unduly influenced or forced against their will to consent to anything recorded in this agreement. The contents of the agreement was comprehended and agreed to with full knowledge of all rights and obligations that may result from the agreement and as contained in the provisions of the Extension of Security of Tenure Act, Act 62 of 1997, as amended.

\_\_\_\_\_  
**NAME IN PRINT AND SIGNITURE OF LEGAL REPRESENTATIVE**

**LAW FIRM:** \_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_