

PARTNERSHIP AGREEMENT

entered into between:

*(full name and registration number, if applicable,
of first partner)*

("the First Partner")

and

*(full name and registration number, if applicable, of
second partner)*

("the Second Partner")

and

*(full name and registration number, if applicable,
of third partner)*

("the Third Partner")

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1 INTERPRETATION, DEFINITION

- 1.1 In this agreement, unless the context requires otherwise:
- 1.1.1 **“Agreement”** means this partnership agreement, including any schedules or annexures thereto;
 - 1.1.2 **“Effective Date”** means *(insert date from which the partnership is to take effect)*;
 - 1.1.3 **“Partnership Ratio”** means the following ratios:
 - 1.1.3.1 the First Partner: *(insert first ratio)*.
 - 1.1.3.2 Second Partner: *(insert second ratio)*; and
 - 1.1.3.3 the Third Partner: *(insert third ratio)*.
 - 1.1.4 **“Partners”** means the parties to this Agreement and “Partner” means the party as indicated in the context; and
 - 1.1.5 **“Partnership”** means the partnership constituted on the Effective Date between the Partners, the terms of which are recorded in this Agreement.
- 1.2 Any reference in this Agreement to:
- 1.2.1 clause headings are for reference purposes only and shall not influence the interpretation;
 - 1.2.2 reference to one gender shall include the other genders;
 - 1.2.3 reference to natural persons include juristic persons and vice versa;
 - 1.2.4 reference to the singular shall include the plural and vice versa;
 - 1.2.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Partner, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
 - 1.2.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
 - 1.2.7 all annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
 - 1.2.8 expressions defined in this Agreement shall bear the same meanings in annexures hereto;
 - 1.2.9 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
 - 1.2.10 durations shall be reckoned exclusively of the first and inclusively of the last day.

2 CONSTITUTION OF PARTNERSHIP

- 2.1 The Partners agree with effect from the Effective Date to carry on the business of *(describe business)*.
- 2.2 The Business will be undertaken by the Partnership under the name *(insert name of partnership)*.

3 DURATION

3.1 The Partnership will commence on the Effective Date and shall continue indefinitely subject to the right of any Partner to withdraw from the Partnership by giving not less than *(specify time period)* written notice to the other Partners, provided that no such notice shall be given so as to expire prior to *(if partnership has to endure for a minimum period, specify)*.

(Alternatively clause 3.1:

3.1 The Partners agree that:-

3.1.1 no Partner shall be entitled to renounce the Partnership or give notice to dissolve it save as expressly provided for in this agreement and a repudiation shall not dissolve the Partnership; and

3.1.2 the Partnership shall not terminate by reason of the death of any partner but shall continue between the surviving partners and the estate of the deceased partner.)

4 CAPITAL ACCOUNTS

4.1 Each partner shall have a capital account in the books of the Partnership recording the capital contributed and any other capital payment or withdrawal from time to time by such Partner.

4.2 A partner shall not be entitled to withdraw any amount standing to the credit of its capital account without the prior written consent of the other Partners.

4.3 The capital contributions due by the Partners are as follows:

4.3.1 The First Partner: *(descriptions of capital contributions and if necessary their values)* which contributions shall be made *(due date for contribution and method of effecting delivery, including if there are expenses involved, whether it is the liability of the first partner or the partnership)*.

4.3.2 The Second Partner: *(descriptions of capital contributions and if necessary their values)* which contributions shall be made *(due date for contribution and method of effecting delivery, including if there are expenses involved, whether it is the liability of the second partner or the partnership)*.

4.3.3 The Third Partner: *(descriptions of capital contributions and if necessary their values)* which contributions shall be made *(due date for contribution and method of effecting delivery, including if there are expenses involved, whether it is the liability of the third partner or the partnership)*.

5 LOAN ACCOUNTS

5.1 Each Partner shall have a loan account in the books of the Partnership which shall reflect any loans made to the Partnership.

5.2 Any credit balance in such loan account shall be subject to the following:

5.2.1 Subject to clause 5.3, such credit balance shall from time to time bear interest at *(rate or method of determining the rate and how it will be compounded if it is not to be simple)*.

- 5.2.2 Such credit balance shall be repaid as the Partners may agree from time to time provided that all repayments shall be made pro rata to the Partners' respective loan accounts but to the extent that any Partner's loan account in comparison to the other Partners' loan accounts exceeds the former's Participation Ratio at any time, such excess shall first be repaid.
- 5.2.3 Such credit balances shall be repaid on the granting of any order (whether provisional or final) for winding up the Partnership.
- 5.3 For so long as funding required by the Partnership is not provided by the Partners pro rata to their respective Participation Ratios, interest shall accrue and be payable monthly in arrears on the amount by which any Partner's loan account exceeds such Partner's pro rata share of all loan accounts of the Partners, at the rate contemplated in clause 5.2.1 plus *(state additional rate, if applicable)*.
- 5.4 Interest determined in accordance with clause 5.2 shall accrue only in respect of amounts credited to a Partner's loan account by reason of cash payments made to the Partnership by or on behalf of the Partner concerned.
- 5.5 Any debit balance on loan account shall be subject to the following:
 - 5.5.1 Interest shall be debited on such debit balance from time to time monthly in arrear at the rate contemplated in clause 5.2.1.
 - 5.5.2 The Partner in question shall be obliged to pay such debit balance, inclusive of accrued interest, on demand.

6 FINANCIAL YEAR

The financial year of the Partnership shall end on the last day of *(specify)* in each year.

7 BANKING ACCOUNT

- 7.1 The banking account of the Partnership shall be in the name of the Partnership at *(name of bank and branch)*.
- 7.2 All moneys received for the account of the Partnership shall as far as possible be deposited with such bank daily.
- 7.3 All payments made from the said account will be signed or authorised by *(number of partners or identify which specific partners)*.

8 BOOKS AND RECORDS

- 8.1 *(Name of partner responsible for keeping books and records)* shall keep proper books and records of all transactions concerning the Partnership.
- 8.2 Accounts for the Partnership shall be prepared at intervals not exceeding *(specify, for example: quarterly)*.
- 8.3 The Partnership books and records shall be audited annually by the Partnership's auditors.

- 8.4 The books and records of the Partnership shall be kept at the principal place of business of the Partnership from time to time and be open to inspection at all times by each Partner or its auditor.
- 8.5 *(Name of partner responsible for keeping books and records)* shall be entitled to charge a fee for undertaking such services for the Partnership of R..... (.....RAND) *(or state if no fee is payable because this service forms part of that partner's contribution).*

9 FINANCIAL STATEMENTS

- 9.1 As soon as possible after the end of each financial year of the Partnership, a balance sheet and income statement shall be audited by the auditors of the Partnership.
- 9.2 A copy of the financial statements shall be furnished to each Partner which shall be bound thereby unless it challenges such statements within *(specify)* days of receipt thereof.
- 9.3 Any dispute shall be referred to the auditors of the Partnership who shall act as experts and not as arbitrators and whose decision shall be final and binding. Thereafter accounts may only be re-opened for the purpose of correcting any manifest arithmetical errors.

10 AUDITORS

The auditors of the Partnership shall be *(name of auditors)* unless the Partners otherwise agree in writing or so resolve.

11 GOOD FAITH

- 11.1 Each of the Partners shall owe to the others a duty of the utmost good faith and be obliged to devote itself to the progress and welfare of the Partnership.
- 11.2 A Partner is not obligated to devote its full time and attention to the day to day management and administration of the affairs in the Partnership unless this is expressly agreed to.

12 MANAGEMENT

- 12.1 Each of the Partners shall be entitled to participate in the management of the business.
(Alternative clause 12.1)
- 12.1 The management of the business shall be vested in *(name(s) of Partner(s) to manage business)*. The managing Partner(s) shall not be entitled to any remuneration for undertaking such management.)
- 12.2 No individual Partner shall, notwithstanding that same may be within the scope of the Partnership Business, be entitled to *(state limitations on authority of individual partner - such as a monetary limit on indebtedness which can be incurred for the Partnership)*.
(Alternative clause 12.1)
- 12.3 Only the managing Partner(s) shall be entitled to bind the Partnership in any way in any contracts. The managing Partner(s) shall not be entitled to *(state limitations on authority of managing Partner(s) - such as a monetary limit on the indebtedness which can be incurred for the Partnership).*

13 DUTIES OF PARTNERS

13.1 No Partner shall without the prior written consent of the other Partners:-

13.1.1 employ any moneys, property or effects belonging to the Partnership or engage the credit thereof or contract any debt on account thereof except in the due and regular course of the Business and for the benefit of the Partnership;

13.1.2 compound, release or discharge any debt due to the Partnership;

13.1.3 do anything with the intention or result that the property of the Partnership may be attached, seized or taken in execution;

13.1.4 assign, mortgage or charge its interests in the Partnership or in the profits of the Partnership;
or

13.1.5 pledge or alienate or dispose of or in any other way deal with any asset of the Partnership to the detriment of the Partnership.

13.2 Each Partner shall punctually pay and satisfy all its present or future private debts and engagements and each Partner indemnifies the others against all actions, proceedings, damages and expenses which may be incurred on account thereof.

14 VOTING AND RESOLUTIONS

14.1 Each Partner shall be entitled to that number of the total votes as its Participation Ratio bears to all the participation ratios.

14.2 Resolutions, in order to be of force and effect must be approved by a majority of the Partners (*or "Partners holding a majority of the votes"*).

14.3 If in terms of the foregoing provisions the required majority for the passing of a resolution of Partners cannot be obtained, any such deadlock shall not constitute a ground for the winding up of the Partnership.

15 PROFITS AND LOSSES

15.1 Any profits or losses of the Partnership in respect of the Business shall be borne by the Partners in their Participation Ratios.

15.2 All funds of the Partnership shall, save to the extent necessary to enable the Partnership to meet its debts, be distributed to the Partners at (*specify intervals*).

16 LIQUIDATION OF PARTNERSHIP

In the absence of any written agreement to the contrary between the Partners, upon the dissolution of the Partnership, the business and assets of the Partnership shall be liquidated in accordance with the following:

16.1 The liquidator shall be a member of the auditors of the Partnership or if the auditors are not willing to act, a registered accountant and auditor agreed upon between the Partners and failing such agreement appointed by the auditors of the Partnership. The liquidator need not furnish any security

for his functions.

16.2 The liquidator shall:

- 16.2.1 demand an account from each Partner of the assets of the Partnership in its possession as well as any profits earned from the use or utilisation of those assets since the date of dissolution of the Partnership;
- 16.2.2 compile an account reflecting the assets and liabilities of the Partnership including amounts owed by the Partnership to the Partners;
- 16.2.3 collect all debts due to the Partnership by persons other than the Partners;
- 16.2.4 not realise the assets in the Partnership save to the extent necessary to discharge any liabilities of the Partnership to third parties and to discharge the expenses of realisation and liquidation and in that respect he shall be entitled to dispose of the necessary assets in whatever manner he deems fit, and whether to any one or more Partners or any third party;
- 16.2.5 return to the Partner concerned any of its assets let to the Partnership or made available for use by the Partnership;
- 16.2.6 in the event of the proceeds of the realisation of the Partnership assets proving insufficient to meet the liabilities of the Partnership, levy a contribution upon the Partners to contribute that deficit, in their respective Participation Ratios;
- 16.2.7 discharge all the liabilities of the Partnership to its creditors other than its Partners insofar as the proceeds of the realisation of the Partnership assets and contributions (if any) permit; and
- 16.2.8 compile and settle an account for the payment of claims owing by the Partnership to its Partners, the settlement of their claims against each other and the distribution of any assets remaining amongst the Partners in accordance with clause 16.4 with due account being taken of amounts owing by any of the Partners to the Partnership.

16.3 In the course of the liquidation of the Partnership's affairs, the liquidator shall be entitled in his sole discretion to allow a Partner to assume sole responsibility for a liability of the Partnership with the consent of the creditors concerned of the Partnership.

16.4 After discharging all the liabilities of the Partnership, the liquidator shall distribute any balance of Partnership assets or the proceeds thereof remaining after payment of the cost of liquidation as follows:

- 16.4.1 First, any debts due, whether on loan account or otherwise, by the Partnership to the Partners shall be satisfied, in the case of the loan accounts on a pro rata basis.
- 16.4.2 Second, any debts due on capital account or otherwise by the Partnership to any of the Partners shall be satisfied on a pro rata basis.
- 16.4.3 Third, the distribution of any profits or losses in accordance with the provisions of clause 15 shall be made.
- 16.4.4 Thereafter any assets remaining shall be distributed to the Partners in their respective Participation Ratios, provided that unless it is necessary to levy a contribution as

contemplated above, any amounts due to the Partnership by any of the Partners need not be paid to the Partnership but shall be set-off in the course of distribution set out herein.

- 16.5 The Partners irrevocably and *in rem suam* grant to the liquidator any authority or power of attorney he may require in order to give effect to the provisions of this clause.
- 16.6 Any costs incurred in dissolving the Partnership shall be borne by the Partners in their respective Participation Ratios.

17 BREACH

- 17.1 If any Partner breaches any material provision or term of this Agreement and fails to remedy such breach within (*specify*) days of the date of receipt of written notice requiring it to do so (or if it is not reasonably possible to remedy the breach within (*same period as above*), within such further period of time as may be reasonable in the circumstances) or even if the provision or term is not material but a breach thereof has been again committed after 3 (THREE) warnings from the other Partners, then the aggrieved Partners shall be entitled without notice, in addition to any other remedy available to them at law or in terms of this Agreement, including the right to:
- 17.1.1 obtain an interdict;
 - 17.1.2 cancel this Agreement against the defaulting Partner and acquire the defaulting Partner's share of the assets and liabilities at (*specify how this is to be valued*) (but without affecting this Agreement insofar as the other Partners are concerned); or
 - 17.1.3 claim specific performance of any obligation whether or not the due date for performance has arrived; such election being without prejudice to the aggrieved Partners' rights to claim damages.
 - 17.1.4 If any aforementioned breach is not capable of being remedied, it shall be deemed to have been remedied (but without prejudice to the aggrieved Partners' rights to claim damages) provided that the defaulting Partner has caused it to cease within the period aforesaid.
- 17.2 If this Agreement is cancelled against the defaulting Partner and its share of the assets and liabilities acquired by the remaining Partners, the remaining Partners shall be deemed to have taken delivery of the defaulting Partner's share of the Partnership assets and to have assumed liability for his share of the Partnership debts with effect from the termination of the Partnership against the defaulting Partner.

18 NOMINATED ADDRESS FOR NOTICES AND LEGAL PROCESSES

18.1 For all purposes of this Agreement the Partners respectively choose *domicilium citandi et executandi* (domicilium) as follows:-

FIRST PARTNER	SECOND PARTNER	THIRD PARTNER
Attention:	Attention:	Attention:
Email:	Email:	
Physical address:	Physical address:	Physical address:

18.2 Each of the Partners, by written notice to the other, shall be entitled from time to time to amend their *domicilium* to any other address within the Republic of South Africa, provided that such other address may not be a post office box or poste restante.

18.3 Any notice given and any communication or payment made by a Partner to the other (the addressee) which is delivered by hand during the normal Business hours of the addressee at the addressee's *domicilium* for the time being, shall be presumed, unless the contrary is proved, to have been received by the addressee at the time of delivery.

19 GENERAL

19.1 This Agreement contains the entire agreement between the Partners in regard to its subject matter.

19.2 No Partner will be bound by any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Agreement, whether it induced the contract and/or whether it was negligent or not.

19.3 No variation, amendment or consensual cancellation of this Agreement or any term hereof will be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Partners.

19.4 Any extension of time or waiver or relaxation of any of the terms of this Agreement will be construed as relating strictly to the matter in respect of which it was made or given and will not operate as an

estoppel against a Partner in respect of its rights under this Agreement.

- 19.5 No failure by a Partner to enforce any term of this Agreement will constitute a waiver of such term or affect in any way such Partner's right to require the performance of such term at any time in the future, nor will a waiver of a subsequent breach nullify the effectiveness of the term itself.
- 19.6 If any term or part of any term of this Agreement is for any reason whatsoever, including a decision by any court, any legislation or any other requirement having the force of law, declared or becomes unenforceable, invalid or illegal, the remainder of this Agreement shall not be affected and the invalid provision or part shall be replaced or amended, so far as it is necessary to maintain the purpose and continuity of the Partnership.
- 19.7 Each Partner confirms that it is acting as principal in its own right and not as agent for any other person.
- 19.8 The Partners acknowledge that they have been free to secure independent legal, tax and other advice as to the nature and effect of all the terms of this Agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so.

20 COSTS

The costs of and incidental to the preparation and execution of this Agreement shall be borne by the Partners in their respective Participation Ratios.

21 COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

22 SIGNATURES

Signed by the authorised signatories of the Partners, each signatory warranting his/her authority hereto.

For: FIRST PARTNER	For: SECOND PARTNER	For: THIRD PARTNER
(signature)	(signature)	(signature)

(name)	(name)	(name)
(date and place)	(date and place)	(date and place)