

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")**

WHEREBY IT IS AGREED AS FOLLOWS:

1. **Interpretation and preliminary** The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears:

1.1. words importing:

- 1.1.1. any one gender include the other two genders;
- 1.1.2. the singular include the plural and vice versa; and
- 1.1.3. natural persons include created entities (corporate or non-corporate) and vice versa;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1. **"the Effective Date"** means (date from which partnership is to take effect);

1.2.2. **"Participation Ratio"** means the following ratios:

- 1.2.2.1. the First Partner: *(first ratio)* .....
- 1.2.2.2. the Second Partner: *(second ratio)* .....

1.2.2.3. the Third Partner: (*third ratio*) .....

1.2.3. “**the Partners**” means (*insert names of partners*)

..... or any of them as the context may require;

1.2.4. “**the Partnership**” means the partnership constituted on the effective date between the partners, the terms of which are recorded in this agreement;

1.3. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

1.4. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

1.5. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

2. **Constitution of partnership** The Partners agree with effect from the Effective Date to carry on the business of (describe business which should be carefully done having regard to the duties of good faith imposed on partners, so that no conflicts arise by reason of businesses carried on already or which will be carried on in future by individual partners for their own account), in partnership under the name (name of partnership) (or such other name as they may agree upon from time to time).

3. **Duration** 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*) ..... 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*) .....

The Partners agree that:

3.1. 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;

3.2. 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. 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.

4.2. The capital contributions due by the Partners are as follows:

4.2.1. 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)*

.....

4.2.2. The Second Partner: (refer to 4.2.1)

.....  
.....

4.2.3. The Third Partner: (refer to 4.2.1)

.....  
.....

**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, but subject to the provisions of clause 5.2.3: 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 in any event be repaid on the granting of any order (whether provisional or final) for winding up the Partnership.

5.3. 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.

5.4. Any debit balance on loan account shall be subject to the following:

5.4.1. Interest shall be debited on such debit balance from time to time monthly in arrear at the rate contemplated in clause 5.2.1.

5.4.2. 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*) ..... All moneys received for the account of the Partnership shall as far as possible be deposited with such bank daily. All cheques drawn upon the said account will be signed by (*number of partners or identify which specific partners*)  
.....

7.2. Any payments made on behalf of the Partnership (other than those which would normally be paid from petty cash) shall be made by drawing Partnership cheques.

8. **Books and records** (*Name of partner responsible for keeping books and records*) ..... shall keep proper books and records of all transactions concerning the Partnership.<sup>12</sup> Accounts for the Partnership shall be prepared at intervals not exceeding (*specify, for example: quarterly*).<sup>13</sup> Such books and records shall be audited annually by the Partnership's auditors. Such 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.<sup>16</sup> (*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** 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. 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.

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

**11. Management**

Each of the Partners shall be entitled to participate in the management of the business.

11.1. (Alternative clause 11.1

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.)

11.2. 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 11.2:

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*)

.....  
.....

**12. Duties of partners**

12.1. No partner shall without the prior written consent of the other Partners:

12.1.1. 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 business and for the benefit of the Partnership;

- 12.1.2. compound, release or discharge any debt due to the Partnership
- 12.1.3. do or knowingly suffer to be done any act or thing whereby the property or effects of the Partnership or any part thereof may be attached, seized or taken in execution;
- 12.1.4. assign, mortgage or charge its interests in the Partnership or in the profits thereof
- 12.1.5. pledge or alienate or dispose of or in any other way deal with any asset of the Partnership to the detriment of the Partnership or any partner thereof
- 12.2. 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

### **13. Voting and resolutions**

- 13.1. Each partner shall be entitled to that number of the total votes as its Participation Ratio bears to all the participation ratios
- 13.2. 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").
- 13.3. 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.

### **14. Profits and losses**

- 14.1. Any profits or losses of the Partnership in respect of its business shall be borne by the Partners in their Participation Ratios.
- 14.2. 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).

### **15. Liquidation of the 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:

- 15.1. 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.<sup>21</sup> The liquidator need not furnish any security for his functions.

- 15.2. The liquidator shall:
- 15.2.1. 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;
  - 15.2.2. compile an account reflecting the assets and liabilities of the Partnership including amounts owed by the Partnership to the Partners;
  - 15.2.3. collect all debts due to the Partnership by persons other than the Partners;
  - 15.2.4. return to the Partner concerned any of its assets let to the Partnership or made available for use by the Partnership;
  - 15.2.5. 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;
  - 15.2.6. 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;
- 15.3. 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:
- 15.3.1. 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.
  - 15.3.2. 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.
  - 15.3.3. Third, the distribution of any profits or losses in accordance with the provisions of clause 15 shall be made.
- 15.4. Any costs incurred in dissolving the Partnership shall be borne by the Partners in their respective Participation Ratios.

**16. Breach** 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 under this agreement, including obtaining an interdict, to 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 to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved partners' rights to claim damages. 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. 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.

**17. Whole agreement, no amendment**

- 17.1. This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 17.2. No amendment 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.
- 17.3. 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.

17.4. 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.

**18. Domicilium citandi et executandi**

18.1. 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:

18.1.1. The First Partner: *(full postal and physical address, and telefax number)*  
.....  
.....

18.1.2. The Second Partner: *(full postal and physical address, and telefax number)*  
.....  
.....

18.1.3. The Third Partner: *(full postal and physical address, and telefax number)*  
.....  
.....

18.2. 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 telefax.

18.3. 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 *(state if there is a territorial limitation)*  
..... or its telefax number: Provided that the change shall become effective *vis-à-vis* that addressee on the *(specify)* ..... th business day from the deemed receipt of the notice by the addressee.

18.4. Any notice to a party:

18.4.1. 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 *(same as in clause 18.3)* .....th business day after posting (unless the contrary is proved);

18.4.2. 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

18.4.3. sent by telefax to its chosen telefax number stipulated in clause 18.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

18.5. 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*.

19. **Costs** The costs of and incidental to the preparation and execution hereof shall be borne by the Partners in their respective Participation Ratios

20. SIGNED at (*place*) ..... on this (*day, month, year*)  
..... in the presence of the undersigned witnesses

Witnesses:

1. ....

2. ....  
(*Signatures of witnesses*)                      (*Signature of first partner*)

SIGNED at (*place*) ..... on this (*day, month, year*)  
..... in the presence of the undersigned witnesses

Witnesses:

1. ....

2. ....  
(*Signatures of witnesses*)                      (*Signature of second partner*)

SIGNED at (*place*) ..... on this (*day, month, year*)  
..... in the presence of the undersigned witnesses

Witnesses:

1. ....

2. ....

*(Signatures of witnesses)*

.....

*(Signature of third partner)*