

SALE OF SHARES AGREEMENT

1	PURCHASER:	
	Registration Number/Identity Number:	
	VAT Number:	
	Accountable Representative:	
	Physical address:	
	Postal address:	
	Phone number:	
	Email address:	
2	SELLER:	
	Registration Number/Identity Number:	
	VAT Number:	
	Accountable Representative:	
	Physical address:	
	Postal address:	
	Phone number:	
	Email address:	
3	COMPANY:	
	Registration Number/Identity Number:	
	VAT Number:	
	Accountable Representative:	
	Physical address:	
	Postal address:	
	Phone number:	
	Email address:	

4	CLASS OF SHARES AND NUMBER OF SHARES BEING SOLD:	
5	TERMS OF SALE:	
6	COST OF SHARES (EXCLUDING VAT):	
7	Seller's nominated banking account into which the purchase price is to be paid	
8	TRANSFER DATE:	
9	DOCUMENTS TO BE DELIVERED TO THE PURCHASER BY THE SELLER WITHIN 30 DAYS OF THE TRANSFER DATE:	<ul style="list-style-type: none"> • Notification to the Company of the sale, and accompany such notice by the share transfer forms signed and dated that day by the Seller to the Purchaser; • Copies of such Shareholders' and/or directors' resolutions in order to give effect to this Agreement; and • Such other documents as may be necessary to evidence the sale of Sale Shares and cession of the Sale Claims to the Purchaser.

Hereinafter referred to as "the Parties"

1. **PREAMBLE**

- 1.1. **WHEREAS** the Seller is the owner of the Sale Shares.
- 1.2. **AND WHEREAS** the Company is indebted to the Seller in respect of the Sale Claims (if applicable).
- 1.3. **AND WHEREAS** the Seller is able to dispose of the Sale Shares and cede the Sale Claims to the Purchaser free from any encumbrance.
- 1.4. **AND WHEREAS** the Parties hereto record that this Agreement comprises an arms-length transaction between the Parties, with the Purchaser and Seller having acted in their own respective interests, neither having been coerced or duressed into entering this Agreement.
- 1.5. **NOW THEREFORE** the Purchaser intends purchasing the Sale Equity and the Parties have decided to reduce the contents of the Agreement to writing.

2. **INTERPRETATION**

- 2.1. In this Agreement, unless inconsistent with the context, words referring to:
 - 2.1.1. one gender includes a reference to the other gender;
 - 2.1.2. the singular includes the plural and vice versa;
 - 2.1.3. natural persons include artificial persons and vice versa;
 - 2.1.4. the rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the Party responsible for the drafting of the contract, does not apply;
 - 2.1.5. Any reference to an enactment, accounting statement or opinion is to that enactment, accounting statement or opinion as at the date of signature hereof and as amended or re-enacted from time to time;
 - 2.1.6. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

- 2.1.7. 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;
- 2.1.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.1.9. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause; and
- 2.1.10. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2.2. The headings in this Agreement are for reference purposes only and shall not affect interpretation;

3. **DEFINITIONS**

3.1. The definitions set out below shall apply to all annexures to this Agreement unless such Annexure expressly indicates the contrary:

- 3.1.1. **"the Act"** means the Companies Act, 2008 (Act 71 of 2008), as amended;
- 3.1.2. **"this Agreement"** means this sale of shares agreement and all annexures hereto;
- 3.1.3. **"the Company"** means the Company as recorded in item 3 of the above Table;

- 3.1.4. **"Party"** means the Seller, the Purchaser or the Company as the case may appear from the context. Collectively "Parties" shall mean the Purchaser, the Seller and the Company collectively;
- 3.1.5. **"the Purchaser"** means the Purchaser as recorded in item 1 of the above Table;
- 3.1.6. **"the Sale Claims"** means all claims of whatsoever nature and howsoever arising which the Seller may have against the Company at the Transfer Date;
- 3.1.7. **"Sale Equity"** means the Sale Shares and the Sale Claims;
- 3.1.8. **"the Sale Shares"** [REDACTED];
- 3.1.9. **"the Seller"** means the Seller as recorded in item 2 hereto;
- 3.1.10. **"Share"** means the class, alternatively classes of shares being sold in terms of this Agreement as recorded in item 4 of the above Table hereto with no par value in the capital of the Company;
- 3.1.11. **"Shareholder"** means a holder of any Shares from time to time;
- 3.1.12. **"Shareholders Agreement"** [REDACTED];
- 3.1.13. **"the Signature Date"** means the date of signature of this Agreement by the last signing of the Parties;
- 3.1.14. **"Transfer Date"** means the date upon which the shares shall be transferred to the Purchaser as recorded in item 8 of the above Table.

4. **SALE**

- 4.1. The Seller hereby sells to the Purchaser which purchases the Sale Equity in the manner recorded in item 5 of the above Table, with effect from the Transfer Date on the terms and conditions set out in this Agreement.

4.2.

[REDACTED]

5. **CALCULATION AND PAYMENT OF THE PURCHASE PRICE**

5.1.

[REDACTED]

5.2. The purchase price shall be paid to the Seller, on the Transfer Date into the Seller's nominated bank account as recorded in item 7 of the above Table.

6. **RISK**

6.1. The risk in and the benefit of the Sale Equity shall be deemed to have passed to the Purchaser on the Transfer Date.

7. **CLOSING**

7.1. On the Transfer Date the Sale Claims shall *de facto* cede to the Purchaser without anything further;

7.2.

[REDACTED]

8. **WARRANTIES**

8.1. The Seller warrants to the Purchaser that:

8.1.1. the Seller is the sole beneficial and registered owner of the Sale Shares;

8.1.2.

[REDACTED];

8.1.3. no person or entity has any existing or will have any future right (including option or right of first refusal) to acquire any of the Sale Shares.

9. **CONFIDENTIALITY**

9.1. Without the prior written consent of the other Parties, each of the Parties will keep

confidential and will not disclose to any person:

9.1.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9.1.2. all information relating to the Company or the operations and affairs of the Parties.

9.2. The Parties agree to keep in confidence all information reasonably to be considered as confidential information, and to disclose it only to their officers, directors, employees, consultants and professional advisers who:

9.2.1. have a need to know (and then only to the extent that each such person has a need to know);

9.2.2. [REDACTED];

9.2.3. are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and

9.2.4. [REDACTED]
[REDACTED]
[REDACTED]

9.3. The obligations of the Parties in relation to the maintenance and non-disclosure of the confidential information in terms of this Agreement do not extend to information that:

9.3.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9.3.2. is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such confidential information; or

9.3.3. is required by the provisions of any law, statute or regulation, or during

any court proceedings, the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Parties prior to making such disclosure.

10. **ACCESSION TO THE PROVISIONS OF THE SHAREHOLDERS AGREEMENT (IF APPLICABLE) AND THE MEMORANDUM OF INCORPORATION**

10.1. [REDACTED]

10.2. [REDACTED]

11. **BREACH**

11.1. If any Party ("the defaulting Party") breaches any provision of this Agreement and remains in breach for 14 (fourteen) days after receipt of written notice from the aggrieved Party requiring it to rectify the breach, the aggrieved Party shall be entitled at his/her/its option (and without prejudice to any other rights that he/she/it may have at law):

11.1.1. to sue for specific performance of the defaulting Party's obligations under this Agreement; or

11.1.2. to cancel the sale by notice in writing to the defaulting Party;

11.1.3. in either event without prejudice to the aggrieved Party's right to claim damages.

11.2. A Party aggrieved by any breach of any provision of this Agreement by another Party

shall only be entitled to cancel this Agreement if such breach is a material breach of the provisions of this Agreement which goes to the root of this Agreement and the defaulting Party fails to remedy such breach during the 14 (fourteen) day period referred to in 11.1.

12. **DOMICILIUM AND NOTICES**

12.1. The Parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of this Agreement, those addresses as recorded in items 1 and 2 of the above Table.

12.2. A Party may change its *domicilium* to any other physical address or telephone or email address by written notice to the other Party to that effect. Such change of address will be effective seven days after receipt of notice of change of *domicilium*.

12.3. All notices to be given in terms of this Agreement will:

12.3.1. be given in writing;

12.3.2. be delivered by email, facsimile or sent by courier;

12.3.3. if delivered, be presumed to have been received on the date of delivery.

12.4.

[REDACTED]

12.5. Notwithstanding the above, any notice actually received by the Party to whom notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has been given in accordance with the provisions of this clause.

13. **DISPUTE RESOLUTION AND MEDIATION**

13.1.

[REDACTED]

13.2. If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified

mediator, within 10 (ten) days of such dispute being referred;

13.3. If agreement is not reached as to the appointment of such mediator within 10 (ten) days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then any Party may give written notice to the other Parties referring the dispute to arbitration in accordance with the provisions of this clause 13 ("Arbitration Notice");

13.4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.4.4. subject to the provisions of this clause 13, conducted in accordance with the Arbitration Foundation of Southern Africa (AFSA) Rules; and

13.4.5. held as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) business days of the date of the Arbitration Notice.

13.5. The arbitrator shall be if the question in issue is:

13.5.1. primarily an accounting matter an independent accountant advocate with no less than 10 (ten) years' experience agreed upon between the Parties;

13.5.2. primarily a legal matter, an independent practising senior advocate with no less than ten years' standing agreed upon between the Parties;

13.5.3. any other matter a suitably qualified independent person agreed upon between the Parties.

13.6. If the Parties cannot agree upon a particular arbitrator under the provisions of clause 13.5 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination shall be made by the President for the time being of the South African Institute of Chartered Accountants within 7 (seven) days after the Parties have so failed to agree.

13.7. The arbitrator shall determine which Party shall pay the costs of and incidental to the arbitration or, if more than 1 (one) Party is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.

13.8. [REDACTED]

13.9. The provisions of this clause 13:

13.9.1. constitute irrevocable consent by the Parties to any proceedings in terms of this clause 13 and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

13.9.2. are severable from the rest of this Agreement and shall remain in effect despite the termination, or invalidity for any reason, of this Agreement; and

13.9.3. shall not preclude any Party from obtaining interim relief on an urgent basis from any court of competent jurisdiction pending the decision of the arbitrator;

13.10. This clause shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has terminated.

14. **WHOLE AGREEMENT**

14.1. This Agreement, together with the annexures, or addendums referred to herein or therein, if applicable, constitute the entire agreement between the Parties in respect of the subject matter hereof.

15. **VARIATIONS**

15.1. 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.

16. **NON-WAIVER**

16.1. No Party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Agreement by reason of such Party's having at any time granted any extension of time for, or having shown any indulgence to another Party with reference to, any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against any other Party, unless reduced to writing and signed by both Parties.

17. **CESSION**

17.1. Notwithstanding anything contained in this Agreement, no Party shall be entitled to cede, assign or otherwise transfer his/her/its right, title and interest in and to this Agreement to any other Party.

18. **NON-REPRESENTATION**

18.1. The Parties acknowledge that in entering into and performing this Agreement they do not do so on the basis of, and do not rely on any statement or representation or warranty or understanding other than as expressly contained in this Agreement at the Signature Date.

19. **APPLICABLE LAW**

19.1. This Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

20. **COSTS**

20.1. Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

21. **SIGNATURE**

21.1. This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.

21.2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

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

Signed at _____ on the _____ day of _____ 20_____.

For and on behalf of the Seller

Name:
Capacity:
Who warrants authority

Signed at _____ on the _____ day of _____ 20_____.

For and on behalf of the Purchaser

Name:
Capacity:
Who warrants authority