



IN PARTNERSHIP WITH



## **CLASS INVESTOR SHARES SUBSCRIPTION AGREEMENT**

(INVESTOR SHARE CLASS NO: \_\_\_\_\_ )

*entered into between the Parties identified on the next page, being a Private Placement to subscribe for the Class Investor Shares in Futureneers Capital (Pty) Ltd, a registered Section 12J Venture Capital Company and Registered Financial Services Provider.*

## 1. PARTIES TO THIS AGREEMENT

The Parties to this Agreement are as follows:

- 1.1 **“Investor”** mean the taxpayer subscribing for the Class \_\_\_\_ Investor Shares in the VCC (the **“Class Investor Shares”**) and to be issued the Section 12J Tax Certificates - being the person or entity identified below:

Name:	
ID / Registration number:	
If entity, represented by:	
Registered Address: - Line 1 - Line 2 - City - Code	
E-mail:	

- 1.2 **“VCC”** or **“Company”** means Futureneers Capital (Pty) Ltd (entity registration number: 2016/123152/07), with registered address: Workshop 17, corner Louws and Tabak Streets, Paarl, 7646, and e-mail: deon@futureneers.co. The Company is a registered Venture Capital Company in accordance with Section 12J (VCC Registration number VCC-0043) and registered Financial Services Provider (FSP number: 46996). The Class \_\_\_\_ Investor shares are managed in partnership with Destinata Consult, as disclosed in the PPM.
- 1.3 **“Management Company”** means Futureneers (Pty) Ltd (entity registration number: 2016/136388/07), with registered address: Workshop 17, corner Louws and Tabak Streets, Paarl, 7646 and e-mail: jaco@futureneers.co, or such other entities nominated from time to time to fulfil its roles and responsibilities described herein (“the nominees”). It is specifically recorded that the Management Company shall, during the term of this Agreement, at any time, be able to cede or transfer its rights and obligations in terms hereof (the “Management Rights”) to a nominee company, which nominee shall, on acceptance of such nomination, assume all the rights, obligations and terms attached to the Management Rights, effective from the date of accepting the nomination.
- 1.4 **“Destinata Consult”** means Destinata Consult (Pty) Ltd (entity registration number: 2020/820223/07), with registered address: Block 7 Fairways, Niblick Way, Somerset West, 7129 and email [johannes@desitnataholdings.com](mailto:johannes@desitnataholdings.com)

## 2. DEFINITIONS AND INTERPRETATIONS

For ease of reference all defined terms have been capitalised in this Agreement. For example, using and capitalising the term “Agreement” implies that such term is defined under the Definitions and Interpretations section included in Part B to this Agreement.

## 3. INTRODUCTION AND WHOLE AGREEMENT

3.1 **WHEREAS** the VCC wishes to raise capital by to fund the Class Investment Portfolio selected by the Investor and identified below:

Class Investment Portfolio:	De Waterkant Hospitality S12J Investment Opportunity
Description:	A “standalone” (“DWH”) Section 12J sub-fund that focuses on hospitality units in the De Waterkant area of Cape Town, managed by Destinata Consult as disclosed by the PPM.

3.2 **AND WHEREAS**, the Investor wishes to subscribe for the Class Investor Shares enabling him/her/it to:

3.2.1 share in the future Economic Benefits to be derived from the above Class Investment Portfolio; and

3.2.2 benefit from the tax incentives offered through an investment in the Company, being a registered Venture Capital Company (“**VCC**”) in accordance with Section 12J of the Income Tax Act.

3.3 **NOW AND THEREFORE**, the Parties enter into this Agreement at the terms and conditions described herein, comprising two parts and annexures, as follows:

3.3.1 Part A: Share Subscription and Signatories: and

3.3.2 Part B: General Legal Terms (including definitions, interpretations and **warranties**); and

(together being the whole “**Agreement**”).

# PART A: SHARE SUBSCRIPTION AND SIGNATORIES

## 4. SUBSCRIPTION FOR INVESTOR SHARES

- 4.1 The Investor hereby subscribes for the Class Investor Shares and the VCC hereby issues such shares to the Investor as follows:

	Current Tax Year	Subsequent Tax year
Number of shares:		
Price per share:		
Subscription Price:		

The Subscription Price payable in terms of clause 4.1 above, is payable by the Investor in Cash or Cash equivalents by way of electronic bank transfer into the bank account in the name of the VCC as below:

**Name of Account:** Futureneers Capital

**Bank and branch:** Mercantile Bank, Cape Town branch (branch ref. no: 450105)

**Account number:** 1050689011

**Payment reference:** Investor name

*Investors are advised to obtain a separate bank confirmation letter from the VCC and compare banking details per the letter with banking details above before making any direct transfers.*

Acknowledged by Investor \_\_\_\_\_

### Effective Date

- 4.2 This Agreement will commence on the Effective Date and will continue in force and effect while the Investor remains a Shareholders of the VCC.
- 4.3 The Effective Date shall be the date of payment of the Subscription Price in terms of clause 4.1 above, provided that should the Subscription Price be paid in multiple tranches, Class Investor Shares will only be subscribed for and issued on a pro-rata basis, with different Effective Dates applying to each payment tranche. From the Effective Date/(s) all rights of ownership, obligations and corresponding risk, benefit and liability related to the Class Investor Shares issued and subscribed for shall pass to the Investor, while as close as reasonably possible thereafter:
- 4.3.1 the VCC shall issue the Class Investor Shares to the Investor, deliver such share certificates and update the securities register accordingly; and
  - 4.3.2 the VCC shall issue the Management Shares as described herein; and
  - 4.3.3 the VCC shall deliver the Section 12J Tax Certificates to the Investor.

### Participation Rights

- 4.4 The Investor confirms he/she/it has reviewed the MOI and PPM made available in electronic format to him/her/it and understands the manner in which the VCC issues

various classes of Investor Shares. In accordance, and in line with the provisions of the MOI, the Participation Rights related to the Class Investor Shares are recorded as follows:

- 4.4.1 the Class Investor Shares' Economic Rights are limited to only share in the VCC's Economic Benefits to be derived from the Class Investment Portfolio selected (after payment of the Management Remuneration in terms of clause 7 below) and no other assets or investments made or to be made by the VCC; and
  - 4.4.2 each Class Investor Share shall have one vote per share, provided that each such share issued shall entitle its holder to vote on any proposal to amend the preferences, rights and limitations specifically associated with that class of Investor Share, which proposal shall require to be approved by a Class Special Resolution.
- 4.5 The Class Investor Shareholders irrevocably and unconditionally waive any and all pre-emptive rights they may have in accordance with the MOI, the Act, or otherwise, to subscribe for any Management Shares or any other Shares (including Class Investor Shares) to be offered for subscription by the VCC subsequent to the Signature Date.

## 5. UTILISATION OF CAPITAL RAISED

- 5.1 The VCC is mandated to manage and utilise cash raised from the subscription for the Class Investor Shares as follows (collectively referred to as the Class Investment Portfolio):
- 5.1.1 Payment of the Management Dividends and Costs in terms of clause 7 below; and
  - 5.1.2 Fund the subscription for shares in Qualifying Companies in accordance with Section 12J of the Income Tax Act (the "**Corresponding Investee Companies**"). All investments in Corresponding Investee Companies shall be identified and approved by the Class Investment Committee and form part of the Class Investment Portfolio; and
  - 5.1.3 Until investments in Qualifying Companies are made in terms of clause 5.1.2 above, or should any surplus Cash or Cash Equivalents be available, the VCC may make investments into Money Market and Related Products and Loans, with the earnings of such investments accruing to the benefit of the Class Investor Shareholders as described herein.

## 6. CLASS INVESTMENT COMMITTEE

- 6.1 The Investor hereby authorises the Class Investment Committee to oversee, govern and approve all decisions related to the Class Investor Shares and Class Investment Portfolio and, should it be required at any time during the term of this Agreement, renegotiate and restructure any Management Dividends and Costs, provided that such revised terms shall not be more onerous to the Investors than the terms described in clause 7 below and further provided that any matter amending the rights of the Class Investor Shares, shall require to be approved by way of Class Special Resolution.
- 6.2 The Investor furthermore nominates, approves and votes in favour of the Board of Directors nominating, approving and appointing the members to the Class Investment Committee in accordance with the provisions of the MOI.

## 7. MANAGEMENT DIVIDENDS AND COSTS

7.1 The manner in which the Management Company participate in Distributions are summarised by the table below and further described in this clause 7:

<b>When payable?</b>	<b>% Payable:</b>
Upfront (once-off):	5%
Annual:	2%
Performance-based:	Refer comments made per PPM and clause 7.3 below.

### **Upfront and Annually**

7.2 For every 1 Class Investor Share subscribed for, the VCC shall issue 1 (one) Management A Share and \_\_\_\_ Management B Shares to the Management Company at 1c per share, with Participation Rights as follows:

7.2.1 The Management A Shares shall not have any Voting Rights, but shall have the Economic Rights to receive:

7.2.1.1 a once-off Upfront Management Dividend calculated at the percentage disclosed in the table in clause 7.1 above multiplied by the Subscription Price, due and payable on receipt of the Subscription Price; and

7.2.1.2 an Annual Management Dividend calculated at the percentage disclosed in the fees table in clause 7.1 above, multiplied by the Subscription Price and furthermore adjusted every 12 months for inflation using CPI. The Annual Management Dividends for the first year shall be payable in advance on receipt of the Subscription Price and calculated on a pro-rata basis up to the end of the Current Tax Year, and, shall continue to be payable in advance on an annual basis thereafter, calculated at the beginning of each Subsequent Tax Year; and

7.2.2 The Management B Shares shall have no Economic Rights, but shall have 1 (one) vote per share, provided such holders of shares will not be allowed to vote in respect of any matter proposing to revise the rights of the Class Investor Shareholders.

### **Performance Linked**

7.3 Please note that Destinata Consult shall be issued Performance Shares by the VCC's Qualifying Companies as described in the PPM. The Performance Shares shall have a right to share in 31% of the Distributions by the Qualifying Companies after achieving a minimum 8% per annum Distribution to the Class Investor Shareholders, after the payment of the Annual Management Dividends in terms of 7.2.1.2. above.

**Share Compliance Costs**

- 7.4 As explained in the PPM, all management and operational costs of the VCC (including salaries of directors) are payable by the Management Company and not borne as costs by the VCC or the Investors.
- 7.5 Although the VCC does not incur any operational expenses, it will incur certain limited ongoing compliance costs such as annual audit fees, professional indemnity insurance and FSCA annual fees ("the Shared Compliance Costs"). The Shared Compliance Costs will be allocated on a pro-rata and annual basis to the various classes of Investor Shares calculated on the subscription value of each class of share in relation to the total capital raised by the VCC, provided that such costs will only be recovered and payable from the Economic Benefits accruing or payable to such Class Investor Shareholders.

**8. SOURCES OF INCOME AND FINANCIAL ADVICE**

**Source of Income**

- 8.1 In accordance with the FAIS Act, Section 12J Investors are required to declare the source of funds used for their investments. The Investor therefore declares the source of funding his/her/its Subscription Price as follows:

Source of Funding: (Example: Loan, salary, business, sale of asset, interest income, dividend income)	
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**Record of advice**

- 8.2 The Investor acknowledges that the Company is a registered VCC and regulated in terms of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (the FAIS Act") and that this Agreement will serve as record of all financial, tax, investment and other advice (if any), provided by the VCC and Related Parties:
- 8.3 The Investor therefore records and acknowledges that he/she/it:
  - 8.3.1 were only provided with information related to the VCC and the proposed Investment Portfolio, which did not include a detailed financial analysis of their financial position and personal suitability of the selected investment product. Accordingly, the VCC and Related Parties have not provided any Financial Advice to the Investors; and
  - 8.3.2 have met and discussed the investment with a Key Individual of the VCC or if they have not had such discussion and hereby waive such right by signing this agreement;
  - 8.3.3 were advised to obtain external legal, tax and investment advice before subscribing for the Class Investor Shares; and
  - 8.3.4 understands that any Section 12J Tax Benefits received from subscribing for the Investor Shares may be recouped and repayable to SARS, should he/she/it sell or dispose of the Investor Shares within 5 (five) years of the Effective Date;
  - 8.3.5 understands the VCC has not and does not guarantee nor warrant that the Class Investor Shareholders will qualify for a tax deduction under section 12J of the

Income Tax Act and acknowledges that he/she/it is solely responsible for complying with all obligations imposed on it by any applicable law, including but not limited to the completing and filing of tax returns or other documentation that may be required by the SARS or any other governmental or regulatory body from time to time;

- 8.3.6 understands that the Investor Shares of the VCC are not listed and are therefore not easily tradable and has been informed that an investment in the VCC is of a long-term nature and should material short-term liquidity be required, investment is not advised;
- 8.3.7 understands that investment returns cannot be guaranteed and that any financial forecasts presented in the PPM, sales presentations, or otherwise, are estimates only, may not be achieved, and are ultimately dependent on external factors and market conditions outside of the VCC and its Related Parties' control; and
- 8.3.8 understands the risks associated with investments in Section 12J Venture Capital Companies, including, but not limited to:
  - 8.3.8.1 those risks specifically recorded in the PPM; and
  - 8.3.8.2 those risks and warranties recorded in Part B of this Agreement dealing with the manner in which potential future non-compliance to Section 12J of the Income Tax or other legislative requirements (should they arise), be dealt with to ensure compliance, and should the Investment and Shareholding Structure require to be amended, how the restructuring will be executed in a fair and reasonable manner; and
  - 8.3.8.3 the adherence to the various compliance requirements set out by SARS for registered VCC's as summarised in the external guide for Venture Capital Companies published from time to time on <http://www.sars.gov.za>; and
- 8.3.9 that the Management Company (or its nominees), may pay sales, referral and other fees to agents and/or external parties for successfully securing an investment, which fees will not result in additional costs to the Investor, but be paid directly by the Management Company to such recipients of the payments.

*The above record of advice is hereby specifically acknowledged and accepted by the  
Investor*

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## SIGNATURES PAGE

We hereby agree to:

1. the terms of the entire Agreement, comprising Part A, Part B (following hereafter) and all or any annexures which may be attached hereto from time to time; and
2. we further agree that this Agreement may be signed electronically and in counter-parts, with each duly signed counterpart being a formally agreed and completely signed copy of the original Agreement:

<b>Investor Name:</b>		
If Entity, represented by:		
Signature:		
Date and Place:		Per electronic IP Address

<b>VCC Name:</b>	Futureneers Capital (Pty) Ltd	
Represented by:		
Signature:		
Date and Place:		Per electronic IP Address

<b>Management Company Name:</b>	Futureneers (Pty) Ltd	
Represented by:		
Signature:		
Date and Place:		Per electronic IP Address

<b>Destinata Consult:</b>	Destinata Consult (Pty) Ltd	
Represented by:	Johannes Cornelius Maree	
Signature:		
Date and Place:		Per electronic IP Address

## PART B: GENERAL LEGAL TERMS

### 9. DEFINITIONS AND INTERPRETATIONS

The headings of the clauses in this Agreement are for 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 of this Agreement. Unless a contrary intention clearly appears:

- 9.1 words imparting any gender includes all others, while the singular includes the plural and *vice versa* and natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 9.2 the following terms have the meanings assigned to them in this clause 9.2 and cognate expressions shall have corresponding meanings, namely:
  - 9.2.1 "**Act or Companies Act**" means the Companies Act, 71 of 2008;
  - 9.2.2 "**Agreement**" means this agreement and all annexures and schedules to this agreement, including, but not limited to Parts A and B. This Agreement may also from time to time be referred to as the Class Investor Shares Subscription Agreement, or Class Subscription Agreement;
  - 9.2.3 "**Cash**" means payment by way of physical cash or electronic transfer into a bank account;
  - 9.2.4 "**Cash Equivalents**" mean any form of payment which is not a cash payment, but has a value similar to that of cash payment;
  - 9.2.5 "**Class Investment Portfolio**" means the various investments funded by way of the issue of the Class Investor Shares, and any future returns generated from such capital, including, but not limited to the Corresponding Investee Companies, Money Market and Related Products and Loans, minus any taxes payable (if applicable), minus any Management Dividends and Costs payable in terms of Part A of this Agreement;
  - 9.2.6 "**CPI**" means the consumer price index, being the official measure of inflation in South Africa;
  - 9.2.7 "**Class Subscription Agreements**" mean the various subscription agreements for issuing the different classes of Investor Shares in accordance with the MOI. This agreement will be the Class Subscription Agreement for the Class Investor Shares identified in Part A hereof;
  - 9.2.8 "**Class Investor Shares**" mean the ordinary no par value ordinary shares authorised by the MOI subscribed for by the Investors in terms of this Agreement as further identified and described in Part A hereto. The Class Investor Shares will have the rights described in the MOI and this Agreement;
  - 9.2.9 "**Class Investor Shareholder/(s)**" mean the Investor, together with all other parties previously subscribed for or in future subscribing for further Class Investor Shares;
  - 9.2.10 "**Class Investment Committee**" means the Investment Committee established specifically in relation to the Class Investor Shares identified in Part A hereto, and having the rights and privileges as per the MOI and further provided for in this Agreement. In case of a conflict between the MOI and this Agreement, the terms herein shall super cede those of the MOI;;
  - 9.2.11 "**Class Special Resolution**" means a resolution passed by the holders of at least 75% (seventy five percent) of the Voting Rights within the Share class affected by such a resolution as required by the MOI. The Management B Shareholders

normally shall have no voting rights in respect of a decision requiring a Class Special Resolution;

- 9.2.12 **"Corresponding Investee Company"** means the qualifying companies invested in by the VCC utilising the capital raised from the Class Investor Shareholders, which investments are to be made in accordance with Section 12J of the Income Tax Act;
- 9.2.13 **"Current Tax Year"** in respect of the Investor means the current tax year ending 28 February of the next calendar year, or if the Investor is a legal entity, the Legal entity's tax year. It should be noted that where the term Current Tax Year are used in respect of payment of Management Dividends and Costs, it shall refer to the next calendar year ending 28 February, while where the agreement refers to the Current tax year of an Investor it shall relate specifically to the actual tax year end of the Investor;
- 9.2.14 **"Company"** means the party identified in part A of this Agreement, and may also be referred to as the **"VCC"** or the Section 12J Venture Capital Company;
- 9.2.15 **"Day or Business Day"** means any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa. Any reference to days per this agreement shall be a Business Day, unless specified otherwise;
- 9.2.16 **"Distribution"** shall bear the meaning described to it in the Companies Act, furthermore provided that it shall include a dividend in Cash and / or a dividend in Cash Equivalents and any repayment of capital or payments in respect of the buy-back or disposal of Class Investor Shares and any other Economic Right or economic benefit attached to or to be derived from the Class Investor Shares;
- 9.2.17 **"Economic Rights"** mean the right to the Economic Benefits as described herein;
- 9.2.18 **"Economic Benefits"** mean any Distributions, returns or financial benefits received or receivable by the VCC from the Class Investment Portfolio, or by the Class Investor Shareholder from the VCC (as the case may be). In addition Economic Benefits shall also include any proceeds received by Class Investor Shareholders from selling, exiting or liquidating their Class Investor Shares in the VCC. For the sake of clarity it is recorded that Economic Benefits will include, but is not limited to:
- 9.2.18.1 Distributions in Cash, Cash Equivalents or specie; an
- 9.2.18.2 repayment (by dividends, or otherwise) of the total capital invested; and
- 9.2.18.3 proceeds on the sale, or transfer or liquidation of an investment in an Investee Company, whether received in Cash, Cash Equivalents or specie;
- 9.2.18.4 proceeds received or receivable by the Class Investor Shareholders when selling, exiting, liquidating, or transferring Class Investor Shares, whether received in Cash, Cash Equivalents or specie; and
- 9.2.18.5 any other benefit which carries a monetary value received or receivable to the benefit of the VCC from its investment in Investee Company/(ies), and ultimately the Class Investor Shareholder;
- 9.2.19 **"Exit"** means the exit, sale, liquidation or unbundling action taken to dispose of Class Investor Shares in the VCC or dispose of investments by the VCC in Corresponding Investee Companies (whichever the case may be). For the purpose of this agreement Exit shall also mean the transfer of ownership of shares between parties;
- 9.2.20 **"FICA"** means information and documentation to be provided to the VCC by the Investor in accordance with the Financial Intelligence Centre Act;
- 9.2.21 **"Financial Advice"** means financial advice as defined by the Financial Advisory and Intermediary Services Act;

- 9.2.22 **"Investment and Shareholding Structure"** means the VCC's investment and shareholdings structure, in accordance with its MOI and further described in this document and the PPM, which structure includes the use of classes of Investor Shares to link specific classes of Investor Shareholders to specific Corresponding Investee Companies as described herein;
- 9.2.23 **"Investee Company"** means an entity to be invested in by the VCC in accordance with its MOI. For the purpose of this Agreement, the Investee Company shall refer to the Corresponding Investee Company identified in Part A of this Agreement, which Corresponding Investee Company forms part of the Investment Portfolio;
- 9.2.24 **"Investor Shares"** means the various classes ("1" (one) to "100" (one hundred)) of ordinary no par value shares in the capital of the VCC with each class allowing the holders of such Investor Shares in that class, after paying the Management Remuneration described herein, to the exclusive Economic Benefits received or receivable by the VCC from the Class Investment Portfolio of such class, and having Voting Rights at 1 (one) vote per share and such further rights and privileges set out in the MOI and this Agreement. The specific class of Investor Shares to which this Agreement relates are identified in part A hereto;
- 9.2.25 **"Key Individual"** means a key individual/(s) of the VCC as defined in the Financial Advisory and Intermediary Services Act No. 37 of 2002;
- 9.2.26 **"Management Company "** means the party identified in Part A of this Agreement, or such other persons or entities nominated from time to time by the Management Company. It is specifically recorded that the Management Company shall, at any time, during the term of this Agreement, be able to transfer and/or cede any rights and obligations in terms of this Agreement to a specified nominee company;
- 9.2.27 **"Management Shares"** mean the Management A and Management B Shares, both being a class of ordinary no par value share in the capital of the VCC with Participation Rights as described by the MOI and Part A of this agreement. For the purpose of this Agreement, the holders of the Management Shares will be the Management Company or its nominees from time to time;
- 9.2.28 **"Management Dividends and Costs"** means any Distributions, dividends or other benefits accruing to the Benefit of the Management Company in terms of this Agreement. For the purpose of this Agreement, Management Dividends and Costs shall include any Financial Benefits to be derived from the Performance Shares;
- 9.2.29 **"Management Dividends"** means any Distributions payable to the holders of the Management Shares as described herein;
- 9.2.30 **"Money Market Related Products and Loans"** mean call accounts held at banks, or money market investments, or investment loans, or preference shares, provided that such products and loans shall provide the VCC with targeted fixed income returns similar to or above that of a call account held at a South African Bank;
- 9.2.31 **"MOI"** means the latest memorandum of incorporation of the VCC. By signing this agreement the Investor acknowledges reading the MOI;
- 9.2.32 **"Participation Rights"** mean all the rights and privileges related to a class of share, including Economic Rights as well as Voting Rights;
- 9.2.33 **"Parties"** means the parties to this Agreement, identified in Part A of this Agreement;
- 9.2.34 **"Performance Shares"** means shares in the Corresponding Investee Companies to be issued to Destinata Consult as described herein;
- 9.2.35 **PPM"** means the non-binding document titled Private Placement Memorandum together with the annexures thereto given to potential investors, normally in

electronic format, or available online, of the VCC in partnership with Destinata Consult from time to time for informational purposes only. By signing this agreement the Investor acknowledges reading the PPM.

- 9.2.36 "**Private Placement**" means the process whereby selected individuals or entities are invited to invest in the VCC by way of subscribing for a specific class of Investor Shares. The Private Placement shall not be an offer to the public to subscribe for shares;
- 9.2.37 "**Qualifying Company**" means a Qualifying Company as defined by the Income Tax Act;
- 9.2.38 "**SARS**" means the South African Revenue Services;
- 9.2.39 "**Section 12J**" means Section 12J of the Income Tax Act 58 of 1962 as at the Effective Date and as may be amended by SARS from time to time;
- 9.2.40 "**Section 12J Tax Certificate**" means the certificate to be issued by the VCC to the Investor enabling the Investor to claim its investment as a deduction for Income Tax purposes in accordance with Section 12J of the Income Tax Act;
- 9.2.41 "**Shareholder(s)**" means any person who from time to time, owns any issued Shares in the VCC, including any Successor-in-Title of such person;
- 9.2.42 "**Shares**" means the shares in the issued share capital of the VCC, having the rights and privileges set out in the MOI, including, but not limited to the holders of any class of Investor Shares, Management Shares and any other class or type of share to be issued by the VCC in future;
- 9.2.43 "**Signature Date**" means the date on which the Party that is last to sign this Agreement, does so;
- 9.2.44 "**Special Resolution**" means a decision voted upon by the Shareholders of the Company and approved by at least a 75% (seventy five percent) majority vote with each Shareholder having one vote per share;
- 9.2.45 "**Subscription Price**" means the total amount to be paid for subscribing for the Class Investor Shares (whether in Cash or Cash Equivalents) as described in Part A of this Agreement;
- 9.2.46 "**Successor-in-Title**" means the successor-in-title of a Shareholder, as the acquirer of any part of the Shares from a Shareholder;
- 9.2.47 "**Super Profits**" mean potential future Distributions generated by the subscription for shares in the Corresponding Investee Companies by the over and above the Targeted Minimum Investor Returns. The Super profits shall be divided between the Investors and the Management Company as described in Part A hereto;
- 9.2.48 "**Subsequent Tax year**" means the tax year following the Current Tax Year;
- 9.2.49 "**Tax**" means all taxes, charges, duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable arising out of the foregoing, imposed, levied, collected, withheld or assessed by a governmental authority, together with any penalties, fines or interest relating thereto;
- 9.2.50 "**Targeted Minimum Investor Returns**" means the minimum targeted returns to be distributed exclusively to the Investors before the Performance Shares will have Economic Rights as described in Part A hereto.;
- 9.2.51 "**Voting Rights**" means the right to vote on a matter to be decided by Shareholders and "**Votes**" shall refer to the number of votes exercisable on that resolution relative to other Voting Shareholders;
- 9.2.52 "**VCC and Related Parties**" means the Company, its Management Company (and its nominees appointed in terms hereof), or any of their affiliates, directors, employees, agents, FSCA Representatives, or such entities nominated to act on behalf of the VCC and/or the Management Company;

- 9.3 any reference to a particular section in any legislation is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in any legislation, provided that if as a result of such amendment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 9.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in clause 9.2, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 9.5 when any number of days is prescribed in this Agreement, the method for calculation shall be to exclude the first day and include the last day;
- 9.6 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 9.7 if 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 the term has not been defined in Part B clause 9.2 above;
- 9.8 provisions of this Agreement may survive the expiration or termination of this Agreement if that is expressly provided for or if such survival is necessary to achieve the Parties' express intention;
- 9.9 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 9.10 any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 9.11 the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word(s); and
- 9.12 any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

## 10. WARRANTIES BY THE VCC

- 10.1 As at the Signature Date, the VCC warrants the following:
  - 10.1.1 **Encumbrances:** The VCC will not be subject to any hire purchase agreement, lease, pledge, mortgage, lien, notarial bond or agreement which entails a future commitment for the VCC, encumbrance or the like.;
  - 10.1.2 **Liabilities:** The VCC has no liabilities of any nature whatsoever or howsoever arising, whether actual or contingent, other than day to day payables arising from time to time to execute its core objective;
  - 10.1.3 **Qualifications:** No Auditor or Independent Reviewer has at any time provided a report concerning any material irregularity in relation to the VCC;
  - 10.1.4 **Judgements:** The VCC is not in default under or with respect to any judgment, order, award, interdict or other similar pronouncement of any court or administrative authority which has jurisdiction over that VCC;

- 10.1.5 **Solvency:** The VCC is solvent and liquid as described by section 4 of the Companies Act.
- 10.2 The Investor has entered into this Agreement on the strength of the Warranties given to it by the Company in this Agreement and on the basis that such Warranties will be correct as at the Effective Date, and the various dates specified in the Warranties.
- 10.3 All the Warranties given in terms of this Agreement shall be deemed to be material.
- 10.4 The Investor shall be entitled to all the remedies available to it at law and provided in this Agreement in respect of a breach of Warranty.
- 10.5 Save for these Warranties, the Company gives no other Warranties and makes no representations in respect of the Class Investor Shares, the VCC and its Investment and Shareholding Structure or the Corresponding Investee Company investment.

## 11. WARRANTEES BY THE INVESTOR

*The warranties per this Part B, clause 11, has been included to ensure that the VCC shall at all times be able to comply to the requirements of Section 12J of the Income Tax Act, and should it not be compliant, these clauses shall enable the VCC to take appropriate action to rectify the no- compliant matter.*

*The warrantees are specifically acknowledged by the Investor \_\_\_\_\_*

### **Section 12J and potential future tax amendments**

- 11.1 As part of this Agreement, the Investor (being part of the Class Investor Shareholders) make use of the VCC's existing Investment and Shareholding Structure in accordance with current enacted Tax and other legislation.
- 11.2 The Investor acknowledges and agrees that when he/she/it elected to subscribe for the Class Investor Shares, he/she/it was aware and agreed that the VCC:
- 11.2.1 may be subject to future amendments in Tax and other legislation (including, but not limited to changes to the regulatory framework applicable to the VCC or Venture Capital Companies under Section 12J, or other applicable legislation, or differences in the interpretation of applicable laws and regulations, promulgated laws, regulations, advisory and practice notes or industry recommendations, which may impact its existing Investment and Shareholding Structure and even lead to non-compliance and the need to amend the VCC's existing Investment and Shareholding Structure; and
- 11.2.2 subject to the consultative process described in clause 11.2.3 below, the VCC reserves the right to alter its Investment and Shareholding Structure to comply with the relevant and applicable laws and regulations referred to in Part B clause 11.2.1 above or to avoid the imposing of tax and other penalties, which amendments to the Investment and Shareholding Structure, may include, but are not limited to:
- 11.2.2.1 amending its MOI (should it be required); and/or
- 11.2.2.2 amending the terms of this Agreement (should it be required); and/or
- 11.2.2.3 unbundling or Exiting any subscriptions of shareholders for Class Investor Shares (should it be required); and/or
- 11.2.2.4 unbundling or Exiting the investment in the Corresponding Investee Company and subsequently Distributing such investment as a dividend in specie to the Class Investor Shareholders (should it be required), and

- 11.2.3 should any amendments to the VCC's Investment and Shareholding Structure be required, as per clause 11.2.2 above, the VCC shall (and at its own expense), implement the following consultative process:
- 11.2.3.1 consult with its Investors (being the Class Investor Shareholders) to find and agree within 40 (forty) Days and by way of 51% (fifty one percent) majority vote, an appropriate solution or action to implement; or
  - 11.2.3.2 should the parties not agree on an appropriate action to follow, the VCC will obtain a legal and/or tax opinion from a recognised and registered Accounting, Audit or Legal Firm ("the Independent Opinion") to recommend and substantiate the most appropriate action to be taken to resolve the matter at hand; and
  - 11.2.3.3 after obtaining the Independent Opinion, inform all of its Class Investor Shareholders in writing of such proposed amendments to be made; and
  - 11.2.3.4 the Class Investor Shareholders shall have 10 (ten) Days to respond to such proposed amendments and have the opportunity to consult with the VCC to agree on an alternative action to be taken (should it be required); and
  - 11.2.3.5 should the parties still not agree on an alternative approach (after following the above process), the VCC shall implement the recommendations as per the Independent Opinion which no party shall be allowed to dispute, and which suggested implementation solution shall be final and executed by the VCC.

#### **Other**

The Investor (being the Class Investor Shareholder) warrants and confirms that he/she/it:

- 11.3 understands that he/she/it shall not at any time pass on any documents or any materials or information received by them which relate to the VCC or to the Investor Shares to any third party without the prior written consent of the VCC;
- 11.4 if it is not a natural person,
  - (i) has the power and authority to subscribe for and hold the Class Investor Shares and to execute, deliver and comply with the terms of the documents required to be executed and delivered by it in connection with this subscription and its obligations thereunder and to consummate the transactions contemplated thereby and
  - (ii) the persons signing this Agreement on behalf of the Class Investor Shareholders have been duly authorized to execute and deliver this Agreement and such other documents required to be executed and delivered by the Class Investor Shareholders in connection with this Agreement;
- 11.5 has obtained, complied with and observed all consents required to be obtained and all legal requirements necessary to be complied with or observed in order for this Agreement and the issuance of the Investor Shares to be lawful and valid under the applicable law of any jurisdiction to which the Investor is subject;
- 11.6 understands that the VCC is not a registered collective investment scheme under the Collective Investment Scheme Control Act, 2002, and nothing in this Agreement, the PPM or the MOI should be construed as constituting an offering to members of the public an opportunity to invest in a collective investment scheme in South Africa.
- 11.7 The VCC has entered into this Agreement on the strength of the acknowledgements and warranties given to it by the Class Investor Shareholders in this Agreement and on the basis that such Warranties will be correct as at the Signature Date, and the various dates specified in the Warranties. All the Warranties given in terms of this



Agreement shall be deemed to be material. The VCC shall be entitled to all the remedies available to it at law and provided in this Agreement in respect of a breach of Warranty.

### Limitation of Liability

- 11.8 Any of the events contemplated in this Part B clause 11, shall be deemed as events outside of the VCC and Related Parties control and:
- 11.8.1 the VCC and Related Parties shall not be liable to any Shareholders (including the Class Investor Shareholders) for any special, incidental, indirect or consequential damages, or lost revenue, lost profits, loss of anticipated tax and other savings and wasted expenditure and fees; and
- 11.8.2 The Class Investor Shareholders therefore holds the VCC and Related Parties harmless and further indemnifies the VCC and Related Parties against all loss (including loss of reputation or goodwill), damage, costs (including attorney and own client costs, collection charges and costs of any appeals), interest and expenses which the Class Investor Shareholders may, or be likely to, sustain as a result of any claim (contingent or otherwise) arising out of, in connection with or relating to a breach of the Warranties or losses arising from the investment in the Class Investor Shares, including waiving any claims against the VCC and Related Parties arising from the investment in the Class Investor Shares, provided that such foregoing limitation of liability shall **not** apply to any liability arising out of or in connection with fraudulent misrepresentation and liability in accordance with any terms which cannot be excluded under applicable law;

## 12. ADDRESS FOR SERVICE

- 12.1 The Class Investor Shareholders and all other Parties to this Agreement choose as their respective addresses for service for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses (including email address) described in Part A of this Agreement.
- 12.2 Any notice to any Party may only be done as follows:
- 12.2.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen in this Agreement. Such notice shall be deemed to have been received if signed by a responsible recipient and the date of notice shall be deemed the day of delivery; or
- 12.2.2 sent by email to its chosen email address stipulated in this Agreement. Such notice shall only be deemed to have been received if recipient acknowledges receipt of email in which case the date of the notice shall be deemed the date of acknowledgement of receipt of the email.
- 12.3 Any Party may by notice to any other Party, change the physical address chosen as its address for service to another physical address or its email address, provided that the change shall become effective on the 7<sup>th</sup> (seventh) Business Day from the receipt and acknowledgement of the change by the addressee.

## 13. FORCE MAJEURE

- 13.1 Except for the obligation to pay monies due and owing, no Party shall be liable for any delay or failure in performance due to events outside of the defaulting Party's reasonable control, including actions of governmental entities (including changes in legislation and interpretations of tax legislation and furthermore including the potential corrective measurements to be taken to correct the VCC Investment and Shareholding Structure or the potential inability of the VCC to meet the SARS set VCC

compliance requirements at the end of the 36 (thirty six month) period as described in clause 11 above.

#### 14. GOOD FAITH

The Parties shall in their dealings with each other display good faith.

#### 15. BREACH

If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 15 (fifteen) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled to any other remedy available to it at law or under this Agreement.

#### 16. ARBITRATION

- 16.1 Other than in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:
- 16.1.1 the interpretation of;
  - 16.1.2 the carrying into effect of;
  - 16.1.3 any of the Parties' rights and obligations arising from;
  - 16.1.4 the termination or purported termination of or arising from the termination of; or
  - 16.1.5 the rectification or proposed rectification of,
- this Agreement, or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.
- 16.2 That arbitration shall be held:
- 16.2.1 with only the Parties and their representatives present;
  - 16.2.2 at a neutral address in Cape Town.
- 16.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 16.4 The arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 16.5 The arbitrator shall be an impartial admitted attorney whether practising or non-practising of not less than 10 (ten) years standing appointed by the Parties or, failing agreement by the Parties within 14 (fourteen) days after the arbitration has been demanded, at the request of any of the Parties shall be nominated by the President for the time being (or his nominee) of the Cape Law Society (or its successor body in the Western Cape), following which the Parties shall immediately appoint such person as the arbitrator. If that person fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 16.6 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 16.7 The arbitrator shall be obliged to give his award in writing fully supported by reasons.

- 16.8 The provisions of this clause 16 are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 16.9 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on the due date and/or fails to appear at the arbitration.
- 16.10 The arbitrator's award shall be final and binding on the Parties.
- 16.11 The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing shall be borne by the Parties in equal shares and shall be recoverable, as costs in the cause under the provisions of any award. The Parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the Parties in equal shares, upon receipt of invoices.

## 17. WHOLE AGREEMENT AND GENERAL

- 17.1 This Agreement, including the main agreement and all annexures to it, constitutes the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any other discussions, agreements and/or understandings regarding the subject matter of this Agreement.
- 17.2 No amendment or consensual cancellation of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Parties granting such extension, waiver or relaxation).
- 17.3 Any provision of this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.
- 17.4 This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.
- 17.5 No part of this Agreement shall constitute a stipulation in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute such a stipulation.