

## **The NEPI Share Purchase Scheme**

adopted by

### **NEPI plc**

(Incorporated and registered in the Isle of man with registered number 001211V)  
(Incorporated as an external company with limited liability under the laws of South Africa  
Registration number 2009/000025/10)  
("NEPI" or the "company")

Approved by a resolution passed by shareholders at a general meeting of the company held at 2<sup>nd</sup> Floor Anglo International House, Lord Street, Douglas, Isle of Man on 2 May 2013 and covenanted by NEPI plc and Dewald Lambertus Joubert and Desmond De Beer as first trustees.

## 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. 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 unincorporate) and the state 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. “**auditors**” means the auditors for the time being of the company;
  - 1.2.2. “**capitalisation issue**” means the issue of shares on a capitalisation of the company’s profits and/or reserves;
  - 1.2.3. “**capitalisation share**” means a fully paid share allotted, in a capitalisation issue, in respect of a scheme share during the time that the share to which it is linked in terms of clause 22 is a scheme share;
  - 1.2.4. “**directors**” means the board of directors for the time being of the company acting either itself or through any committee thereof to or upon whom the powers of the directors in respect of this scheme are delegated or are conferred;
  - 1.2.5. “**discretion**” means a sole, absolute and unfettered discretion;
  - 1.2.6. “**group**” means the company and its subsidiaries;
  - 1.2.7. “**immediate relations**” means, in relation to a beneficiary, a person who is:
    - 1.2.7.1. that beneficiary’s spouse;
    - 1.2.7.2. a descendant (including an adopted child) of that beneficiary;
  - 1.2.8. “**Internalisation**” means the internalisation by the company of its investment advisor, NEPI Investment Management Limited pursuant to a Sale-Purchase agreement dated 21 June 2010;

- 1.2.9. “**issued shares**” means all shares issued by the company including scheme shares and capitalisation shares and rights issue shares linked thereto;
- 1.2.10. “**JSE**” means the securities exchange of that name operated by the JSE Limited in terms of a licence issued under the Securities Services Act, 2004;
- 1.2.11. “**NEPI incentive scheme**” means the existing “NEPI investment advisor incentive scheme”, which has been in place since before the company’s listing on the AIM market of the London Stock Exchange and the salient features of which are set out in the Pre-Listing Statement issued on 8 April 2009 in connection with the company’s listing on the JSE;
- 1.2.12. “**offer**” means an offer made under the scheme to an offeree to either purchase shares from the trust or to subscribe for shares in the company;
- 1.2.13. “**offer date**” means the date on which an offer to an offeree, in terms of the scheme, is made to him;
- 1.2.14. “**offeree**” or “**participant**” means an employee nominated in terms of the provisions of the scheme to receive an offer;
- 1.2.15. “**purchase price**” means the price per share contained in the offer to the offeree being equal to the weighted average sales price per share over the 30 (thirty) business days immediately preceding the offer date less 5 (five) percent;
- 1.2.16. “**record date**” means the close of business on the day the register of the company will be closed to determine entitlement to participate in a rights or capitalisation issue, as the case may be;
- 1.2.17. “**reserved share**” means a scheme share which a beneficiary has subscribed for or purchased from the trust whilst –
- 1.2.17.1. the purchase price therefor remains outstanding; and/or;
- 1.2.17.2. it is subject to the restrictions contained in clauses 8.6 and/or 17.2;
- 1.2.18. “**retired employee**” means any former employee who is a beneficiary on his retirement and has retired at or after the normal retirement age (as laid down in the company’s pension fund regulations from time to time or failing that as determined by the company) or, with the approval of the directors, prior to the normal retirement age;

- 1.2.19. “**rights issue**” means the offer of any securities of the company or of any other body corporate to all shareholders of the company *pro rata* to their holdings at the record date;
- 1.2.20. “**rights issue shares**” means, in relation to scheme shares, in the case of a rights issue, those shares offered in terms of such rights issue by virtue of being a holder of scheme shares;
- 1.2.21. “**scheme**” means the scheme set out in this deed, as may be amended from time to time in terms of clause 27;
- 1.2.22. “**scheme allocation**” means, subject to the provisions of clause 16.1.2, the aggregate number of shares which can be offered for subscription or purchase under this scheme, being 15 000 000 (fifteen million) shares less the number of shares issued in terms of the NEPI incentive scheme and in respect of which the purchase price remains outstanding as at the date of implementation of this scheme, being 5,100,790 shares;
- 1.2.23. “**scheme share**” means subject to the provisions of clause 17, any share acquired by the trustees or the rights to which are acquired by the trustees (either by way of subscription or purchase) in terms of the scheme;
- 1.2.24. “**secretary**” means the secretary of the company for the time being;
- 1.2.25. “**share**” means a share in the share capital of the company;
- 1.2.26. “**share debt**” means at any relevant time in respect of a tranche of shares purchased or subscribed for pursuant to an offer, the original purchase price at which such shares were purchased or subscribed for, and any amount in respect of tax, if any, lent to a beneficiary pursuant to clause 13.7 and any other amount lent to a beneficiary, in each case together with any interest accrued thereon, which is outstanding from time to time;
- 1.2.27. “**statutes**” means any statute affecting the company, the scheme and the performance of the functions and duties by trustees;
- 1.2.28. “**subsidiary**” means a company which is a subsidiary of the company;
- 1.2.29. “**trust**” means the NEPI Share Purchase Trust constituted in terms of this deed;
- 1.2.30. “**trustees**” means the trustees holding office as such in terms of this deed;
- 1.2.31. “**unreserved share**” means a scheme share which is not a reserved share;
- 1.2.32. “**year**” means the company’s financial year;

- 1.3. any reference in this agreement to “date of signature hereof” shall be read as meaning a reference to the date of the last signature of this deed;
- 1.4. 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;
- 1.5. 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 deed;
- 1.6. when any number of days is prescribed in this deed, 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;
- 1.7. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.8. expressions defined in this deed shall bear the same meanings in schedules or annexures to this deed which do not themselves contain their own definitions;
- 1.9. where any term is defined within the context of any particular clause in this deed, 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 deed, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10. the expiration or termination of this deed shall not affect such of the provisions of this deed 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;
- 1.11. the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the deed, shall not apply;
- 1.12. any reference in this agreement to a party shall, 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.

## **2. PURPOSE**

The purpose of the scheme is to:

- 2.1. align the interests of NEPI’s employees, executive directors and suitable candidates with those of the shareholders of the company;

- 2.2. facilitate the winding down of the NEPI incentive scheme by making offers to participants for the purchase of shares from the trust or the subscription for shares in the company in the stead of the NEPI incentive scheme.

## **PART II – CONSTITUTION OF THE TRUST**

### **3. CREATION AND ADMINISTRATION OF THE TRUST**

- 3.1. The NEPI Share Purchase Trust is hereby constituted, which trust shall be administered for the purposes and in the manner as set out herein.
- 3.2. The directors shall, subject to the provisions of this deed, be entitled to establish such rules and regulations as they deem necessary for the proper administration of the scheme and the trust and to make such determinations and interpretations and to take such steps in connection therewith as they deem necessary or desirable.
- 3.3. All rules and regulations made in terms of clause 3.2 shall be in writing and shall become operative when a copy thereof is received by the trustees.
- 3.4. The directors may delegate or confer on the basis set forth in the statutes, some or all of the powers exercisable by them in terms of this deed to a committee of directors on such terms and for such period as they deem fit, provided that they may revoke any appointment and vary the terms of any delegation or conferral.

### **4. APPOINTMENT OF TRUSTEES**

- 4.1. Dewald Lambertus Joubert and Desmond De Beer are hereby appointed to be the first trustees of the trust and they do, by their signatures hereto, accept such appointment.
- 4.2. There shall, at all times, be a minimum of 2 (two) and a maximum of 4 (four) trustees of the trust.
- 4.3. To the extent required in terms of the Listings Requirements of the JSE and/or such other exchange on which the shares are listed from time to time –
- 4.3.1. executive directors of the company shall not be appointed as trustees of the trust;
- 4.3.2. non-executive directors of the company may be appointed as trustees of the trust, provided they do not benefit from the scheme; and
- 4.3.3. the trustees shall not be participants under the scheme.

### **5. CESSATION OF OFFICE OF TRUSTEES**

- 5.1. Each trustee for the time being and each successor shall remain in office until such trustee ceases to hold office in terms of clause 5.2.
- 5.2. The office of trustee shall become vacant upon –

- 5.2.1. the trustee having been liquidated or wound-up or, in the case of an individual, the trustee's estate having been sequestrated; or
  - 5.2.2. the trustee having –
    - 5.2.2.1. become incapacitated in law to hold the office of trustee; or
    - 5.2.2.2. been removed from office at any time upon the directors giving 1 (one) calendar month's notice in writing to such trustee; or
  - 5.2.3. any trustee who is a director of the company, having ceased for any reason whatsoever to be a director; or
  - 5.2.4. the trustee having resigned at any time on giving 1 (one) calendar month's notice in writing to the company, provided that the directors may, at the request of a trustee, waive the full period of notice.
- 5.3. If at any time the number of trustees shall fall below 2 (two), then the remaining trustee shall, as soon as practicable, assume some other person or persons to act with him so as to bring the number up to 2 (two) and if he fails to do so within 60 (sixty) days, the company's auditors shall make the necessary appointment or appointments.
- 5.4. The trustees shall have the powers of assumption and co-option.

## **6. SUCCESSION**

- 6.1. Upon any trustee or trustees succeeding to office as such, he or they shall, in their representative capacity, *ipso facto* become vested with the assets and liabilities of the trust and in every way, with immediate effect, take the place of and assume the powers and duties of the trustee or trustees whom he or they will have succeeded.
- 6.2. The directors will immediately appoint another trustee (who may be a non-executive director of the company but who shall not be eligible to be a beneficiary in terms hereof) to succeed a trustee who has ceased to hold office in terms of clause 5.2, alternatively, the trustee or trustees shall assume another trustee in terms of clause 5.3.

## **7. POWERS OF TRUSTEES**

- 7.1. The trustees shall, in addition to such other powers as may be conferred upon them by law or elsewhere in this deed (whether express or implied), have the following powers -
  - 7.1.1. to acquire for purposes of the scheme, shares either by original subscription or purchase through the market or otherwise, and upon such terms as they in their discretion may deem fit;
  - 7.1.2. subject to authority having been conferred upon them by the resolution of the directors of the company –

- 7.1.2.1. to invest the surplus moneys of the trust in such investments, on such terms and in such manner as they in their discretion may determine;
- 7.1.2.2. to realise any such investment and to reinvest the proceeds in the manner aforesaid;
- 7.1.3. to borrow or raise moneys from the company and/or any other person for the purposes of the scheme, on such terms as they in their discretion may deem fit, which shall include, without limitation, the right to pledge or otherwise encumber any of the scheme shares for the purposes of securing such borrowings or raising of moneys. If the trust borrows monies from any third party and the lender becomes entitled at any time to acquire any of the scheme shares which may be onward pledged by the trust to the lender as security for the loan by the lender to the trust, in terms of the pledge, the company undertakes to the trust that it will lend the trust the necessary funds in order to enable the trust to acquire any such scheme shares;
- 7.1.4. instead of acting personally to employ, as far as may reasonably be necessary, and to pay, any legal adviser or any other person to transact any business or do any act of whatsoever nature required to be done pursuant to this deed, including the receipt and payment of money, provided that any reasonable payment made in terms hereof shall be refunded to the trustees by the trust and that a trustee, being a legal adviser or other person engaged in any profession and any company or partnership of which he is a director or shareholder, may be so employed to act and shall be entitled to charge and be paid by the trust all reasonable professional charges for any business or act done by him or his firm in pursuance of this deed;
- 7.1.5. to take and act upon any expert or professional advice;
- 7.1.6. to delegate to any person the performance of all or any acts or the exercise of all or any discretions which they are entitled to perform or exercise under this deed;
- 7.1.7. subject to the statutes, to open and operate accounts of all descriptions with registered banks;
- 7.1.8. to draw, accept, make or endorse cheques, bills of exchange or promissory notes for and on behalf of the trust;
- 7.1.9. to exercise all rights conferred by shares and other assets of the trust, including voting rights, rights of conversion, rights to take up further allotments (by way of capitalisation or rights issues) of shares and the

like, as they in their discretion may deem fit, but subject to the rules and policies of any securities exchange on which the company's securities may be listed from time to time including the provisions of the Listings Requirements of the JSE;

- 7.1.10. subject to authority having been conferred upon them by the resolution of the directors of the company, to make loans to any person, whether interest bearing or otherwise or whether secured or unsecured, for any purpose considered by the trustees to be in the interests of the trust and/or the beneficiaries;
  - 7.1.11. to cancel a sale of scheme shares which have been purchased (and are thus reserved shares) by a beneficiary arising from the acceptance of an offer, as contemplated in this deed;
  - 7.1.12. to exercise such further rights, powers and authorities as may from time to time be conferred upon them by the resolution of the directors of the company.
- 7.2. Without prejudice to anything aforesaid, the trustees shall have –
- 7.2.1. full capacity to contract on behalf of the trust, subject always to such limitations, if any, as may be imposed by this deed, provided that they will under no circumstances be personally liable on any such contract, subject to the statutes;
  - 7.2.2. *locus standi in judicio* and be capable of bringing, defending, opposing, withdrawing, settling and/or otherwise acting in connection with any proceedings whatsoever in or before any court, or in any arbitration, or before any other forum, provided that all costs reasonably incurred by them in that regard shall be for the account of the trust.

## **8. DUTIES OF TRUSTEES**

The trustees, in addition to any other duty imposed by this deed, whether express or implied, shall –

- 8.1. make offers to offerees as directed in terms of clause 13, but always subject to the provisions of the statutes;
- 8.2. procure that all scheme shares in existence and any capitalisation shares linked thereto remain registered in the names of the trustees and ensure that they remain so registered until an offeree has, in respect of such shares, accepted an offer, subject to clause 16.2.2.1.2, at which time such shares shall, subject to the provisions of clause 8.6 below -

- 8.2.1. be registered into the name of the relevant beneficiary, provided that, in respect of any shares against which there is a restriction on disposal or dealing in terms of this trust deed, they shall be retained in the possession of the trustees irrespective of the fact that the purchase price has been paid in full, until the beneficiary is entitled to dispose of such shares in terms of clause 17.2;
- 8.2.2. after on-sale by the beneficiary to a trust established primarily for the benefit of the relevant beneficiary or his immediate relations or to any private company or close corporation, or the shares of which are or the entire interest in which is, and continues to be held or beneficially owned by the relevant beneficiary or his immediate relations, whether prior to or after registration into the name of such beneficiary and subject to clause 16.2.2.1.2, be registered into the name of the trustees *nomine officii*, of such trust or such private company or close corporation, provided that –
- 8.2.2.1. any such trust, company or close corporation agrees in writing to be bound by the provisions of this trust deed (other than the payment of the share debt, for which the beneficiary will remain liable) as though it were the beneficiary, *mutatis mutandis*; and
- 8.2.2.2. the relevant beneficiary concerned furnishes a suretyship or guarantee, in favour of the trustees, to the satisfaction of the trustees for the obligations of the trust, private company or close corporation concerned; and
- 8.2.2.3. for so long as the relevant beneficiary is prohibited from selling the reserved shares which are on-sold to the trust, company or close corporation as aforesaid, the beneficiaries of such trust may not change and the control of such company and close corporation may not change and, if there is a breach of the provisions of this clause 8.2.2.3, the trustees may cancel the sale of such reserved shares to the said beneficiary;
- 8.3. procure that all circulars, letters and other documents issued to shareholders of the company in any rights issue or capitalisation issue are issued to beneficiaries as well;
- 8.4. immediately prior to the release of shares to a beneficiary in terms of clause 17.2 and on receipt of a written instruction from the beneficiary concerned, sell such number of shares on the open market as is required to settle the remaining share debt in respect of such shares, if any, provided that if the proceeds from the sale as aforesaid will or are likely to realise insufficient proceeds to settle the quantum of the share debt, the

Trustees shall be entitled to refuse to effect the sale unless the beneficiary provides to the Trustees security for the payment of the difference between the share debt and the amount anticipated to be realised;

- 8.5. cause to be released to a beneficiary upon his complying in full with his obligations in terms of any sale, the reserved shares and all capitalisation shares linked thereto, subject to:
  - 8.5.1. the provisions of clauses 8.2 and 8.4 above and 17.2 below;
  - 8.5.2. the trustees entering into suitable arrangements with the company for the recovery by the company of any amounts of tax payable by the beneficiary upon such release; and
  - 8.5.3. any other relevant provisions of this deed;
- 8.6. ensure that, for so long as the share debt in respect thereof has not been discharged in full, all reserved and capitalisation shares linked thereto, in respect of which an offer has been accepted and which have been registered in the name of a beneficiary or his nominee in terms of clause 8.2.2, are pledged to the trustees by way of security for the payment of the full share debt payable by such beneficiary in respect thereof, the form of such pledge to be determined by the trustees, or otherwise held by the trustees until released in terms of clause 17.2;
- 8.7. cause proper records and books of account to be kept of the business and affairs of the trust and their administration thereof, which records and books shall be in the custody of the secretary on behalf of the trustees;
- 8.8. keep separate accounts in respect of –
  - 8.8.1. all monies lent and advanced by the company and all shares acquired pursuant to such loans;
  - 8.8.2. all monies lent and advanced by any subsidiary and all shares acquired pursuant to such loans;
  - 8.8.3. all monies lent and advanced by any person other than the company or any of its subsidiaries and all shares acquired pursuant to such loans;
  - 8.8.4. all sales of or subscription for shares in terms of the scheme;
- 8.9. keep separate accounts in respect of each beneficiary, which shall reflect –
  - 8.9.1. the number of scheme and capitalisation shares pledged to the trust for his account;
  - 8.9.2. the liability of such beneficiary in respect thereof;
  - 8.9.3. all payments made in respect thereof;

- 8.10. ensure that the records and books of account referred to above are at all times available for inspection by any director or other authorised representative of the company;
- 8.11. cause to be prepared and audited, as soon as possible after the end of each financial year of the trust (which shall coincide with that of the company) –
  - 8.11.1. a balance sheet and income statement;
  - 8.11.2. such further accounts, if any, of the trust as the trustees in their discretion may deem fit;
  - 8.11.3. as soon as possible after the completion of the balance sheet and accounts referred to above, deliver to the company 3 (three) copies thereof duly signed by the trustees.

## **9. PRIVILEGES OF TRUSTEES**

A trustee shall not –

- 9.1. be obliged to furnish any security to any officer or official for the performance of his duties in terms hereof whether in terms of the statutes or otherwise;
- 9.2. be disqualified from –
  - 9.2.1. acting as adviser, agent, broker or legal adviser to or contracting with the trust;
  - 9.2.2. obtaining any remuneration in respect of his services in any capacity referred to in clause 9.2.1;

but no trustee while acting as such, may be or become a beneficiary.

## **10. REMUNERATION OF TRUSTEES**

- 10.1. The trustees may receive for their services as trustees such remuneration as may from time to time be resolved by an independent quorum of the directors.
- 10.2. The trustees shall be entitled to be reimbursed from the trust for all expenses incurred by them in and about the execution of their duties as trustees including, if for any reason they are at any time required to furnish security, the costs from time to time for furnishing security.

## **11. INDEMNITY**

Subject to the statutes –

- 11.1. the trustees shall not be liable for any loss sustained in the trust or by any beneficiary from whatsoever cause arising, save and except any loss sustained as a result of the wilful dishonesty of the trustees, either collectively or individually;

- 11.2. no trustee shall be liable for any act of dishonesty or other misconduct committed by any other trustee unless he knowingly allowed it or was an accessory thereto;
- 11.3. the trust indemnifies the trustees and every legal adviser, agent or other person appointed by the trustees hereunder against all actions, proceedings, costs, liabilities, claims, expenses and demands in respect of any matter or thing done or omitted to be done in any way in the execution of their offices as trustees, otherwise than in respect of claims for which in terms of the statutes the trustees cannot be indemnified;
- 11.4. if the trustees bona fide make any payment to any person whom they assume to be entitled thereto under the terms of this deed and it is subsequently found that the recipient was not entitled thereto hereunder, the trustees shall nevertheless not be responsible for the moneys so paid.

## **12. TERMINATION OF TRUST**

- 12.1. The trust shall terminate as soon as all of the following events have taken place –
  - 12.1.1. it ceases to hold any scheme shares and the directors resolve that the trust shall terminate; and
  - 12.1.2. it has received payment in full of all amounts owed to it by the beneficiaries which are recoverable; and
  - 12.1.3. if applicable, when the trustees have discharged all their obligations to the beneficiaries; and
  - 12.1.4. it has repaid any amounts owing to any third parties other than the company and its subsidiaries.
- 12.2. Subject to authority having been conferred upon them by a resolution of the directors of the company and subject to the provisions of the Act, upon termination, the trustees shall realise the assets of the trust, wind up the affairs of the trust and pay over to the company any surplus (after discharging liabilities) remaining in the trust. Furthermore, even during the administration of the trust, subject to clause 7.1.2, all surplus funds (after discharging liabilities) held by the trust from time to time shall be paid over to the company.
- 12.3. Any such surplus may be applied by the company in such manner and at such times as the directors shall determine in their discretion.
- 12.4. Should the amount paid by the trustees to the company in terms of clause 12.2 fall short of the full indebtedness of the trust to the company, the trustees shall be relieved of all liability for such shortfall, which shall constitute a loss to be borne by the company and/or its subsidiaries.

## **PART III – COVENANTS BY COMPANY**

### 13. OFFER OF SHARES

- 13.1. The directors may from time to time offer shares to the trustees (and simultaneously instruct and authorise the trustees in writing to offer such shares to employees named in the offer) in respect of such number of shares as do not exceed the scheme allocation.
- 13.2. Such shares shall be offered for subscription or purchase in terms of an offer at the purchase price. The directors may, in terms hereof grant authority to the trustees to make offers, not only in respect of new shares to be allotted by the company but also in respect of shares which are acquired by the trust from whatsoever source.
- 13.3. The instruction and authority referred to in clause 13.1 (which shall be in the form of a written direction) shall be accompanied by a certified copy of the resolution referred to in clause 15.2 and the trustees shall forthwith offer the shares referred to in such resolution, in terms of clause 16, to the offerees named or referred to in such resolution.
- 13.4. The trustees shall be bound to accept an offer referred to in clause 13.1 to the extent to which they receive valid acceptances from the offerees referred to in clause 13.3 with effect from the offer date.
- 13.5. Those shares referred to in clause 13.1 shall be allotted and issued or acquired subject to the provisions of this deed and each such allotment shall, without limiting the generality of the foregoing, be upon the following terms, namely that –
  - 13.5.1. (whether they are issued to the trustees directly or acquired by them after their issue) they may be disposed of by the trustees only as directed in terms of clause 15, unless subject to the statutes, otherwise directed by the directors;
  - 13.5.2. (whether they are issued to the trustees directly or are acquired by them subsequently) they will constitute scheme shares;
  - 13.5.3. the full purchase price due to the trustees by a beneficiary on account of his accepting an offer where credit is given shall be paid as provided in clause 19 on accepting an offer and, where credit is not given, shall be paid in cash on acceptance of the offer, provided that in those cases where the provisions of clause 16.2.2.1.2 apply there shall be compliance with those provisions;
  - 13.5.4. vis-à-vis a beneficiary, while they are reserved shares, such shares and any capitalisation shares linked thereto which are the subject of an offer which has been accepted shall participate in full, subject to the provisions of 16.2.2.1.2, in all rights and capitalisation issues and in the dividends declared from time to time by the company.

- 13.6. Whenever the trustees acquire any shares for purposes of the scheme other than in terms of clauses 13.1 to 13.4, the company shall treat such acquisition as if it were in terms thereof and the provisions of clause 13.5 will thereupon apply to all shares so acquired.
- 13.7. The trustees shall on the written direction of the directors, to the extent specified in such written direction, extend to an offeree credit to enable such beneficiary to purchase and/or subscribe for shares of the company to be held by such employee as owner and the terms of credit shall be as reflected in clause 19.1, the provisions of which shall apply *mutatis mutandis*. Such credit may be repaid at any time by the employee but not later than 10 (ten) years from the making of the loan.

#### **14. FINANCIAL ASSISTANCE**

- 14.1. Upon every issue or acquisition of shares in terms of clause 13 and whenever the trustees propose to acquire any other shares for purposes of the scheme or to make a loan to a beneficiary as contemplated herein, an amount equal to the total consideration payable on account of those shares shall be lent and advanced to the trustees in terms of the further provisions hereof, as and when they become obliged to pay the consideration except to the extent that the trustees have funds available for that purpose.
- 14.2. Save to the extent that the trustees borrow funds from any person other than the company and/or subsidiary, the person to lend and advance moneys to the trustees in terms of the above shall be –
- 14.2.1. the company, insofar as those shares are to be offered to employees of the company; or
- 14.2.2. a subsidiary of the company, insofar as those shares are to be offered to employees of that subsidiary.
- 14.3. The company and/or one or more companies in the group nominated by it from time to time shall, subject to the prior approval of its directors, lend and advance to the trustees, as and when required by them, money for the proper execution of their duties as such, including, without derogating from the generality of the foregoing –
- 14.3.1. for payment of any disbursements and expenditure incurred by them in their capacity as trustees; and
- 14.3.2. for payment of amounts due in terms of clause 10; and
- 14.3.3. for payment of any amount in respect of which they have been indemnified in terms of clause 11; and
- 14.3.4. for loans to a beneficiary to effect payment of tax; and

- 14.3.5. subject to the statutes, for loans to beneficiaries to follow their rights under rights issues; and
  - 14.3.6. any amount contemplated in clause 7.1.3.
- 14.4. All loans to the trustees in terms of clause 14.3 shall bear interest for the relevant period in an amount identical to the cost to the company from time to time of providing the relevant loan/s, and shall be repaid from amounts received by the trustees in terms of clause 19 which are surplus, after discharging all liabilities then due, to its requirements for the ensuing period of 6 (six) months, the first of which shall commence on the day succeeding the first financial year end of the trust.

#### **PART IV – PARTICIPATION BY EMPLOYEES**

##### **15. ELIGIBILITY**

- 15.1. Employees shall be eligible to and shall participate in the scheme only if and to the extent that offers are made to and are accepted by them.
- 15.2. The directors, in their sole discretion, but subject to the provisions of the statutes and of the provisions of this deed including clauses 13.1 and 16.1 may from time to time by resolution direct the trustees to offer unreserved shares and grant credit to offerees named or referred to therein.
- 15.3. Every resolution in terms of clause 15.2 shall specify –
  - 15.3.1. the name of the offeree;
  - 15.3.2. the number of unreserved shares offered;
  - 15.3.3. the price payable in respect of such shares;
  - 15.3.4. the offer date;
  - 15.3.5. the initial amount in cash, if any, as determined by the directors to accompany acceptance of the offer;
  - 15.3.6. whether or not credit is to be granted on the acceptance of the offer and if so, to what extent;
  - 15.3.7. the initial rate of interest, if any, which will apply;
  - 15.3.8. the time period within which an offer shall be accepted which shall be no later than 90 (ninety) days after it is actually made or granted;
  - 15.3.9. any other relevant terms and conditions.

## 16. OFFERS

### 16.1.

16.1.1. The aggregate maximum number of scheme shares in respect whereof any one offeree shall be entitled to accept an offer pursuant to the NEPI incentive scheme and this scheme shall not exceed 3 000 000 (three million) shares, provided that this maximum shall not apply in the event that any reduction in the company's issued ordinary share capital results in any offeree having accepted an offer in excess of such maximum.

16.1.2. For the purposes of determining the aggregate maximum number of scheme shares in respect whereof an offeree is entitled to accept an offer in terms of clause 16.1.1 above, the following shares issued by the NEPI incentivescheme pursuant to the Internalisation shall not be taken into account:

16.1.2.1. 2 266 012 shares issued to Slabbert Family Limited (Martin Slabbert being the participant under the scheme);

16.1.2.2. 377 669 shares issued to Focus CEE Investments Limited (the participant under the scheme being Victor Semionov);

16.1.2.3. 188 834 shares issued to CEMZ Holdings Limited (Alexandru Morar being the participant under the scheme).

16.1.3. The limit in clause 16.1.1 shall be adjusted in such manner as the auditors certify to be in their opinion fair and reasonable as a result of –

16.1.3.1. the sub-division or consolidation of ordinary shares; or

16.1.3.2. the issue of additional ordinary shares whether by way of a capitalisation of the company's profits and/or reserves (including the share premium account and the capital redemption reserve fund), or a rights issue.

### 16.2. An offer –

16.2.1. shall be made at the purchase price;

16.2.2. shall, save as set out in clause 16.2.3, be governed by the provisions of this deed and shall, in the case of an offer (other than where the circumstances envisaged in clause 16.2.2.1.2) apply), where the directors have resolved that credit be granted, be subject to clause 18 and the following provisions, namely, that until the full share debt has been paid to the trustees –

16.2.2.1.

- 16.2.2.1.1. those shares and all capitalisation shares linked thereto shall be registered as provided in clause 8.2, but, subject to clause 16.2.2.1.2, ownership in such shares and capitalisation shares and dividend capitalisation shares linked thereto shall vest in the relevant beneficiary;
- 16.2.2.1.2. if a beneficiary so stipulates, by written notice to the trustees, delivery shall only take place against payment of the full share debt and on such delivery, ownership in such shares and all capitalisation shares (including dividend capitalisation shares) linked thereto in respect of which an offer has been accepted, together with the voting rights and all other rights, including the right to participate in any rights issues and capitalisation issues and to receive dividends, which attach to such shares, shall vest in the relevant beneficiary, subject however to the provisions of clause 17.2;
- 16.2.2.2. those shares and all capitalisation shares linked thereto may not be sold or otherwise disposed of or transferred (other than to the trustees or private company or close corporation in the manner and on the basis as is expressly provided in clause 8.2.2 and clause 18), or, subject to the provisions of clause 8.6, in any way be mortgaged, pledged or otherwise encumbered, unless the trustees in their sole discretion consent thereto in writing;
- 16.2.2.3. the shares may be re-acquired in terms of clause 20;
- 16.2.2.4. the voting rights attaching to all shares sold to offerees in terms of this scheme shall at all times after registration in the name of the beneficiaries, vest in the beneficiaries;
- 16.2.3. where clause 16.2.2.1.2 applies, the provisions of clauses 16.2.2.1.1, 16.2.2.2, 16.2.2.3, 16.2.2.4 and 19.1 shall not apply;
- 16.2.4. shall be personal to and only capable of being accepted by the offeree to whom it is addressed (or subject to the provisions of the statutes, by the executor of the deceased estate of the beneficiary concerned or the legal representative of the beneficiary), it being recorded, however, that without affecting the provisions hereof, as between the beneficiary and

any trust, private company or close corporation contemplated by clause 8.2.2 an offer may be assigned to such trust or private company or close corporation, as the case may be, subject to the provisions of clause 8.2.2.1 and clause 8.2.2.2. For the avoidance of doubt it is recorded that the assignment by a beneficiary to any such trust, private company or close corporation may take place before the offer is accepted;

16.2.5. shall be accepted by notice in writing in such form as the directors may stipulate and delivered to the secretary within the time period specified in the resolution;

16.2.6. may be accepted in full in respect of any offer.

16.3. Each acceptance of an offer shall specify an address for purposes of clause 30.

16.4. Notwithstanding anything to the contrary herein the risk in and benefits attaching to the reserved shares will pass to the beneficiary on the acceptance of an offer subject to the provisions of clause 16.2.2.1.2.

## **17. RIGHTS ATTACHING TO RESERVED AND CAPITALISATION SHARES**

Upon a beneficiary paying the purchase price of the reserved shares in full pursuant to the acceptance of an offer –

17.1. such shares and any capitalisation shares linked thereto shall thereupon rank *paripassu* in all respects with the issued shares and subject to clause 17.2 any burdens attaching to any such shares in terms of this deed shall cease to operate;

17.2. save as may expressly be provided to the contrary herein, the secretary shall forthwith against payment of transfer duty, if any, payable thereon release such shares from the pledge provided for in clause 8.6 or other retention in terms of this clause 17.2, only as follows, as to:

17.2.1. 20% (twenty per cent) of each tranche on or after the first anniversary as from the offer date;

17.2.2. 40% (forty per cent) of each tranche on or after the second anniversary of the offer date;

17.2.3. 60% (sixty per cent) of each tranche on or after the third anniversary of the offer date;

17.2.4. 80% (eighty per cent) of each tranche on or after the fourth anniversary of the offer date;

17.2.5. 100% (one hundred per cent) of each tranche on or after the fifth anniversary of the offer date,

to the beneficiary entitled thereto, it being recorded that the aforementioned release periods will apply on a cumulative basis and will apply even if the share debt in respect of the scheme shares has been paid in full.

## **18. OBLIGATIONS OF BENEFICIARY VIS-À-VIS TRUSTEES**

Every beneficiary shall, in addition to and without prejudice to any obligation imposed elsewhere in this deed, whether express or implied –

- 18.1. ensure that payment of the purchase price owing in respect of any scheme shares is punctually made on due date;
- 18.2. at all times strictly observe the provisions of this deed.

## **19. PAYMENT OF PURCHASE PRICE**

### *19.1. Interest and distributions*

- 19.1.1. The outstanding balance due on the purchase price of any reserved share where credit is given shall, while the balance due remains unpaid, bear interest from time to time at a rate per annum equal to the average cost of debt funding of the company and its subsidiaries from time to time.
- 19.1.2. The accrued amount of such interest from time to time shall, subject to the provisions of clauses 19.1.3 and 19.1.4, be payable on the 7<sup>th</sup> (seventh) business day following the date on which distributions on the shares are paid and the trustees are hereby empowered to apply the distributions (subject to clauses 19.1.3 and 19.1.4) towards payment of such interest. In this regard the beneficiary, by his acceptance of the offer where credit has been extended, shall be deemed to have authorised the trustees to retain and utilise any distributions on the beneficiary's reserved shares for the purpose of discharging any or all of his sharedebt from time to time.
- 19.1.3. If the interest payable by a beneficiary to the trustees in respect of the outstanding balance of the purchase price of such beneficiary's reserved shares exceeds in respect of any financial year the distribution, if any, payable to such beneficiary on his reserved shares in respect of that financial year, then such excess need not be paid by such beneficiary but shall instead be added to, and deemed to form part of the oldest outstanding balance of the share debt payable by such beneficiary in respect of his reserved shares. If a beneficiary becomes liable for any income tax by reason of the official rate of interest prescribed in terms of legislation which taxes benefits received by or accruing to employees exceeding the rate of interest, if any, charged to him, the trustees may, acting on the instructions of the directors, lend the beneficiary an amount equal to that income tax (as determined by them) and the amount so lent

shall be deemed to form part of the outstanding balance of the purchase price payable by the beneficiary for his reserved shares.

- 19.1.4. If, however, the distributions payable to a beneficiary on his reserved shares in respect of any financial year less the taxation payable thereon by such beneficiary after allowing for the deduction of the relevant interest and any deemed interest, exceed the interest payable by such beneficiary on the outstanding balance of the purchase price of such reserved shares in respect of such financial year, then such excess shall, as soon as it has been determined, be paid towards the reduction of the oldest outstanding balance of the share debt in respect of such beneficiary's reserved shares .

19.2. *Prepayment of outstanding balance*

Subject to the provisions of clause 20 which provides for the trustees, in certain circumstances, to repurchase scheme shares, a beneficiary shall be entitled to pay the outstanding balance of the share debt before the due date of payment thereof. In the event of a beneficiary anticipating the date for the repayment of the outstanding balance of the purchase price, the beneficiary shall be liable for any fixed rate cancellation fees or expenses incurred by the trust which are occasioned by the early repayment of the outstanding balance.

19.3. *Death*

If a beneficiary ceases to be an employee by reason of death then, in respect of those of the beneficiary's reserved shares which have not been paid for on the date of death ("**the termination date**") or, if paid for, have not been released from the provisions of clause 8.6 and/or clause 17.2 on the termination date, the following provisions shall apply -

- 19.3.1. the share debt outstanding in respect of such shares shall become payable within 24 (twenty-four) months after the termination date; and
- 19.3.2. as soon as the share debt has been paid in full, all restrictions against transactions in respect of those shares shall immediately cease to be of any further force or effect.

19.4. *Retirement or Disability*

If a beneficiary ceases to be an employee by reason of serious incapacity, serious disability or retirement then, in respect of those of the beneficiary's reserved shares which have not been paid for as at the date of such cessation of employment (the "**termination date**") or, if paid for, have not been released from the provisions of clause 8.6 and/or clause 17.2 on the termination date, the following provisions shall apply -

19.4.1. the share debt outstanding in respect of such shares shall become payable within 24 (twenty-four) months after the termination date; and

19.4.2. as soon as the share debt has been paid in full, all restrictions against transactions in respect of those shares shall immediately cease to be of any further force or effect.

19.5. *Dismissal or resignation*

If a beneficiary ceases to be an employee by reason of such employee's resignation or the dismissal of such employee on grounds of misconduct, poor performance or proven dishonest or fraudulent conduct (whether such cessation occurs as a result of notice given to or by him or otherwise or where he resigns to avoid dismissal on grounds of misconduct, poor performance or proven dishonest or fraudulent conduct), then, on the date of such cessation (the "**termination date**") the following provisions shall apply in respect of those of the beneficiary's reserved shares which have not been paid for on the termination date or, if paid for, have not been released from the provisions of clause 8.6 and/or clause 17.2 on the termination date -

19.5.1. in respect of such of those reserved shares which, but for their being encumbered as contemplated in clause 8.6, would be entitled to be released pursuant to the provisions of clause 17.2:

19.5.1.1. the share debt outstanding in respect of such shares, shall become payable within 30 (thirty) days after the termination date; and

19.5.1.2. as soon as such share debt has been paid on time and in full, together with the payment of all transfer duty payable in respect of the transfer such shares (if any), all restrictions against transactions in respect of those shares shall immediately cease to be of any further force or effect;

19.5.2. as regards any other of those reserved shares (being shares subject to retention in accordance with the provisions of clause 17.2), the share debt in respect of those shares shall be deemed not to have been paid by the due date and the provisions of clause 20 shall apply *mutatis mutandis* as if specifically incorporated herein.

19.6. *Other Reasons for Cessation of Employment*

If a beneficiary ceases to be an employee by reason of circumstances other than those set out in clauses 19.3, 19.4 and 19.5 above, then the provisions of clause 19.3 above shall apply *mutatis mutandis* and for this purpose the termination date shall be deemed to be the date on which the beneficiary ceases to be an employee.

19.7. *Right to demand payment after 10 (ten) years*

Subject to clause 19.8, the trustees shall have the right and shall be obliged to demand payment of the share debt outstanding in respect of any scheme shares then outstanding, at any time after the expiration of 10 (ten) years from the relevant offer date it being recorded that all monies received by the trust on account of the purchase price and interest thereon, whether in terms hereof or otherwise, shall be appropriated towards specific shares.

19.8. *Procedure after reserved shares fully paid*

At any time after a beneficiary has paid the share debt and all interest thereon of shares which prior to such payment were reserved shares, such scheme shares shall, subject to the provisions of clause 17.2 and the beneficiary entering into suitable arrangements with the trustees and/or the company to allow the trustees to fulfil their obligations referred to in clause 8.5.2 above, be released to the beneficiary or his nominee.

19.9. The trustees may reach alternative arrangements with beneficiaries or the relevant executor or legal representative in the case of cessation of employment pursuant to the provisions of clauses 19.3, 19.4, 19.5 or 19.6.

## 20. CANCELLATION OF SALE

20.1. If any amount in respect of the share debt of any reserved shares becomes payable by virtue of the provisions of clause 19 and if any such amount is not paid by the due date thereof, then the trustees shall be entitled, by resolution to that effect, to cancel that sale, in whole or in part, in terms of which those reserved shares were acquired by that beneficiary and, thereupon –

20.1.1. that beneficiary shall cease to have any interest in the shares in respect of which the balance of the share debt was due to be paid and in all capitalisation shares linked thereto (or in respect of those of such shares in respect of which that sale is so cancelled);

20.1.2. those reserved shares shall once again become unreserved shares and any capitalisation shares shall cease to be linked thereto and shall thereupon become unreserved shares;

20.1.3. the beneficiary concerned shall be liable to the trust for damages suffered in consequence thereof;

20.1.4. the trustees must repay to the beneficiary all or any part of the purchase price that such beneficiary has already paid up in respect of such shares less any costs, expenses or damages of whatsoever nature that might have been or will be incurred by the company and/or the trust as a consequence of such failure to pay the share debt and subsequent cancellation of the sale of those shares.

- 20.2. Should the beneficiary fail and/or refuse to comply with his obligations, the trustees shall be empowered to authorise and direct (and the beneficiary, by accepting an offer of scheme shares, similarly authorises irrevocably and *in rem suam*) the secretary to do all such things necessary and sign all or any documents on behalf of that beneficiary necessary to give effect to the provisions of this trust deed, but without prejudice to any other rights which the trustees may enjoy under this trust deed or the common law.

## **21. RIGHTS ISSUES**

- 21.1. Each beneficiary shall be entitled to participate in any rights issue in accordance with the terms thereof (which participation for the avoidance of doubt shall include the entitlement of the beneficiary to sell any letter of allocation arising therefrom for the beneficiary's benefit provided that the net proceeds, if any, of such sale shall be applied to reduce the purchase price owing in respect of the reserved shares of the beneficiary, if any) to the extent of those reserved shares and all capitalisation shares linked thereto in respect of which an offer was accepted, other than where the circumstances envisaged in clause 16.2.2.1.2 apply, as if those shares were ordinary but not reserved shares and the share debt in respect of those shares had, as at the record date, already been paid in full, and shall not be subject to the restrictions and provisions of this deed.
- 21.2. The trustees may, acting on the instructions of the directors and subject to the statutes, lend to a beneficiary monies to enable the beneficiary to follow his rights under a rights issue and the amount so lent shall be deemed to form part of the outstanding balance of the share debt payable by the beneficiary for his reserved shares.
- 21.3. In the case of a beneficiary who has ceased to be in the employ of the company the extent of such beneficiary's participation (if any) in any rights issue shall be determined by the trustees.
- 21.4. If a beneficiary elects not to participate in any rights issue, any letter of allocation arising therefrom may, if the trustees so decide, be sold for the beneficiary's benefit and the net proceeds, if any, of such sale shall be applied to reduce the purchase price owing in respect of the reserved shares of the beneficiary.

## **22. CAPITALISATION ISSUES**

- 22.1. Subject to the provisions of clause 22.2, every beneficiary to the extent of those reserved shares and all capitalisation shares linked thereto in respect of which an offer has been accepted, other than in circumstances referred to in clause 16.2.2.1.2 shall participate in any capitalisation issue in respect of all reserved shares and all capitalisation shares linked thereto, as if the share debt of those reserved shares was, at the record date, already paid in full.
- 22.2. No beneficiary shall be entitled to renounce his rights to any capitalisation shares, or dispose thereof in any other way (save that the beneficiary and/or the trustees shall be entitled to sell any capitalisation share for the sole purpose of applying the net proceeds

of such sale to reduce the purchase price owing in respect of the reserved shares of the beneficiary) and all such shares –

- 22.2.1. shall be allotted and issued subject to the restrictions and provisions of this deed; and
- 22.2.2. shall, for so long as the share debt of the reserved shares in respect of which they are issued is not paid in full, be linked to those shares and shall *mutatis mutandis* be subject in all respects to the same restrictions and provisions as are attached to the reserved shares.
- 22.3. If, on the record date of a capitalisation issue, the trustees hold any unreserved shares, they shall, for purposes of the scheme participate in such capitalisation issue in respect of the unreserved shares and any capitalisation shares accruing to the trust shall, upon allotment, become scheme shares.
- 22.4. Without prejudice to anything contained in this clause 22, the scheme allocation shall be adjusted to take account of any capitalisation issue in such manner as the auditors (acting as experts and not as arbitrators) certify as being fair and reasonable in the circumstances. If any determination is manifestly unjust, but the court exercises its general power, if any, to correct such determination, the parties shall be bound thereby.
- 22.5. For the avoidance of doubt, all capitalisation shares issued in respect of reserved shares shall, on issue, be deemed to be reserved shares “purchased” by the beneficiary and accordingly shall be pledged to the trustees in accordance with the provisions of clause 8.6 and shall be subject to the release provisions stipulated in clause 17.2, together with those shares to which they are linked.

## **PART V – GENERAL**

### **23. APPLICABILITY OF PROVISIONS TO CORPORATE OFFEREE**

If and to the extent that an offer under the scheme has been assigned to a trust or private company or close corporation as contemplated in clause 8.2.2 then if the offeree is a trust or company or close corporation as contemplated in clause 8.2.2 above, those provisions of the scheme which makes reference to or which are triggered by the death, incapacity, retirement, resignation, dismissal or other cessation of employment of the offeree shall be read contextually with reference to the assignor employee.

### **24. ADJUSTMENTS ON REORGANISATION OF COMPANY OR SHARE CAPITAL**

[14.1(g)]

- 24.1. If the company, at any time before the purchase price owing on any scheme shares has been paid in full –
  - 24.1.1. is put into liquidation for the purpose of reorganisation; or
  - 24.1.2. is a party to a scheme of arrangement affecting the structure of its share capital; or

- 24.1.3. ceases to retain a nominal value for its shares; or
- 24.1.4. reduces its capital or redeems any of its shares; or
- 24.1.5. makes a distribution, whether by way of the declaration of a distribution or by way of a disposal at less than fair value, of a capital asset of the company; or
- 24.1.6. splits or consolidates its shares; or
- 24.1.7. is a party to a reorganisation,

the trustees shall, if they are requested to do so by the directors, be entitled to effect such adjustments to the purchase price in respect of those shares and/or the number of scheme shares as the auditors, acting as experts and not as arbitrators, certify as being fair and reasonable in the circumstances and subject (where necessary) to the sanction of the court. If any determination is manifestly unjust, but the court exercises its general power, if any, to correct such determination, the parties shall be bound thereby.

- 24.2. If the company is placed in liquidation otherwise than in terms of clause 24.1.1 –
  - 24.2.1. the full amount owing by each participant shall forthwith become due and payable, provided that the trustees may, if so instructed by the directors, release a participant from any balance owing by him to the trust;
  - 24.2.2. save as provided in clause 24.2.1 and save for any rights to claim any payment which the trust may then have against the company, this scheme shall *ipso facto* lapse as from the date of liquidation.

For the purposes hereof “**date of liquidation**” shall mean the date upon which any application (whether provisional or final) for the liquidation of the company is lodged at the relevant court.

## 25. TAKEOVER OF COMPANY OR BUSINESSES

- 25.1. Should an offer be made to the shareholders of the company or a scheme of arrangement between the company and its shareholders (or any class of them) be proposed, by virtue of which control of the company would pass to another person or company, the directors will use their best endeavours to procure, insofar as they are able, that the same or a similar offer be made or scheme of arrangement proposed, as the case may be, to all beneficiaries in respect of all reserved shares and all capitalisation shares and rights issue shares linked thereto and the beneficiary shall, subject to payment of the purchase price (together with any interest and other costs thereon) to the trustees in full, be entitled to transfer of those shares pursuant to such offer.
- 25.2. Should control of the company pass to another person or company as a result of a takeover or reconstruction or amalgamation or scheme of arrangement which makes

provision for beneficiaries in respect of whom offers have been made and accepted, to receive shares issued by such other person or in such other company on terms, in the opinion of the auditors (such opinion being given by them as experts and not as arbitrators and whose decision shall be final and binding), not less favourable than those on which those beneficiaries are entitled to scheme and capitalisation shares, they shall be obliged to accept such shares in such other company on such terms; provided that if any such determination of the auditors is manifestly unjust, but the court exercises its general power, if any, to correct such determination, the parties shall be bound thereby.

- 25.3. Should control of the company pass to another person or company as a result of a takeover or reconstruction or amalgamation or scheme of arrangement which does not provide for the substitution of offers for sale of new shares in the acquiring company for those shares offered by the company as at the relevant date of such offer or scheme of arrangement or, where such takeover or reconstruction or amalgamation or scheme of arrangement makes provision for beneficiaries to receive shares issued by such other person or in such other company on terms, in the opinion of the auditors (such opinion being given by them as experts and not as arbitrators and whose decision shall be final and binding), which place a beneficiary in a worse position than that in which he is under this scheme, any beneficiary shall, notwithstanding anything to the contrary contained in this deed, be entitled to accept all offers made to him under this scheme and to implement any sale resulting from any offer made to him within 7 (seven) days of the date upon which he is notified of the transaction and –
- 25.3.1. each beneficiary shall be obliged and entitled to dispose of all shares owned by him on the terms and conditions of the scheme of arrangement, disposal or offer and to the extent necessary irrevocably authorises the trustees to sign any transfer declaration or other document which may require signature in order to implement any such disposal;
- 25.3.2. to the extent that any offer is not accepted or any sale is not implemented upon the expiry of the said period of 7 (seven) days the offer shall lapse or the sale shall be cancelled.
- 25.4. Notwithstanding anything to the contrary herein contained, no term shall be implied to prevent the company from disposing of any of its subsidiaries or losing control thereof, or any of the company or the subsidiaries from disposing of their businesses at any time and each beneficiary waives any claims he may have as a result thereof. In such event any loan to an employee or the purchase price outstanding in respect of any reserved shares may become repayable within such period as the directors may determine in their sole discretion which shall not be within less than 60 (sixty) days of such disposal or loss of control nor more than 240 (two hundred and forty) days after such disposal or loss of control.

## **26. COSTS**

- 26.1. The costs of the preparation of this deed and all matters incidental thereto and all costs incurred by the trustees in the execution and administration of the trust shall be borne by the company.
- 26.2. Any profit or income tax realised by or accruing to the trustees, whether as a consequence of the sale of scheme shares or otherwise, shall, except as otherwise provided in terms of this deed, accrue for the benefit of the company.

## **27. AMENDMENTS TO THIS DEED**

- 27.1. This deed may be amended from time to time by the directors and the trustees, but –
- 27.1.1. the terms or conditions of allotment of any scheme or capitalisation shares or of any offer may not be altered without such consent on the part of the beneficiaries concerned (treated as a separate class);
  - 27.1.2. no amendment in respect of the following matters shall operate unless such amendment has received the approval of the company in general meeting –
    - 27.1.2.1. the persons who may become participants under the scheme;
    - 27.1.2.2. the voting, distribution, transfer and other rights (including those arising on the liquidation of the company) attaching to scheme shares;
    - 27.1.2.3. the total number of the securities which may be utilised for purposes of the scheme;
    - 27.1.2.4. a fixed maximum entitlement for any one participant;
    - 27.1.2.5. the basis for determining the purchase or subscription price of scheme shares which shall be a fixed mechanism for all beneficiaries under the scheme;
    - 27.1.2.6. the amount, if any, payable on application or acceptance;
    - 27.1.2.7. the period in which payments, or loans to provide the same, may be paid or after which payments or loans to provide the same, must be paid;
    - 27.1.2.8. the terms of any loan; and
    - 27.1.2.9. the procedure to be adopted on termination of employment or retirement of a participant.
- 27.2. Notwithstanding the provisions of clause 27.1, if it should become necessary or desirable by reason of the enactment of any new Act or regulation at any time after the

signing of this trust deed, to amend the provisions of this trust deed so as to preserve the substance of the provisions contained in this trust deed but to amend the form so as to achieve the objectives embodied in this trust deed in the best manner having regard to such new legislation and without prejudice to the beneficiaries concerned, then the directors and trustees may amend this trust deed accordingly.

## **28. DISCLOSURE BY COMPANY IN ANNUAL FINANCIAL STATEMENTS**

The company shall disclose in its annual financial statements –

- 28.1. the number of shares reserved for the scheme remaining unissued on the last day of each financial year;
- 28.2. the number of shares sold by the trust to beneficiaries, which shares are still subject to the terms of the trust;
- 28.3. the number of shares sold by the trust to beneficiaries during each financial year;
- 28.4. the number of shares available for sale by the trustees to proposed participants;
- 28.5. such other disclosures as may be required in terms of the rules of the JSE and such other securities exchange on which the company's shares are listed from time to time.

## **29. DISPUTES**

Any dispute arising under or in respect of this scheme shall be referred to the decision of the auditors, acting as experts and not as arbitrators, whose decision thereon shall be final and binding on the parties to the dispute. The party to bear the costs payable in respect of any such dispute shall be as determined by the auditors. If any determination is manifestly unjust, but the court exercises its general power, if any, to correct such determination, the parties shall be bound thereby.

## **30. DOMICILIUM CITANDI ET EXECUTANDI**

- 30.1. The parties choose as their *domiciliacitandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:
  - 30.1.1. the company and the trustees: the registered office of the company from time to time
  - 30.1.2. the beneficiary: the address chosen when he accepts the offer.
- 30.2. 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 or e-mail.
- 30.3. Any party may by notice to any other party change the physical address chosen as its *domiciliumcitandi et executandi vis-à-vis* that party to another physical address where

postal delivery occurs or its postal address or its telefax number or e-mail address, provided that the change shall become effective *vis-à-vis* that addressee on the 10<sup>th</sup> (tenth) business day from the receipt of the notice by the addressee.

30.4. Any notice to a party –

30.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domiciliumcitandi et executandi* to which post is delivered shall be deemed to have been received on the 10<sup>th</sup> (tenth) business day after posting (unless the contrary is proved);

30.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domiciliumcitandi et executandi* shall be deemed to have been received on the day of delivery; or

30.4.3. sent by telefax to its chosen telefax number stipulated in clause 30.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or

30.4.4. sent by e-mail to its chosen e-mail address stipulated in clause 30.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

30.5. 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 *domiciliumcitandi et executandi*.

## **31. ISSUE OF SHARES TO ANY PARTY**

None of the beneficiaries (nor their representatives nor their successors-in-title) shall have any action of whatsoever nature (including an action based on an alleged oppression or fraud on minority shareholders) arising from any issue of shares to any party by the company from time to time, provided that such issue was in accordance with all applicable laws and regulations, including the Listings Requirements of the JSE and/or any other securities exchange on which the shares of the company may be listed from time to time.

## **32. DISTRIBUTION POLICY**

The decision as to whether or not any distributions are to be declared and paid to shareholders of the company, and the amount of any distributions which may be declared and paid by the company, shall (subject to the company's articles of association) vest in the directors of the company in their absolute discretion.

### 33. PAYMENTS OF AMOUNTS BY TRUSTEE TO DEPENDANTS OF BENEFICIARIES

If the estate of any beneficiary is sequestrated, then should any amount become payable at any time thereafter by the trustee to such beneficiary, the trustee shall be entitled to pay such amount to any dependent (as determined by the trustee in the exercise of its absolute discretion) of such beneficiary and such payment shall constitute a complete discharge of the obligation of the trustee to such beneficiary.

SIGNED by the parties on the following dates and at the following places respectively:

DATE	PLACE	SIGNATURE
_____	_____	_____ <b>For: NEPI plc</b> <b>Victor Semionov</b>
_____	_____	_____ <b>As Trustee:</b> <b>Dewald Lambertus Joubert</b>
_____	_____	_____ <b>As Trustee:</b> <b>Desmond De Beer</b>

## TABLE OF CONTENTS

Clause No.	Description	Page
1.	INTERPRETATION AND PRELIMINARY .....	2
2.	PURPOSE.....	5
PART II – CONSTITUTION OF THE TRUST .....		6
3.	CREATION AND ADMINISTRATION OF THE TRUST .....	6
4.	APPOINTMENT OF TRUSTEES .....	6
5.	CESSATION OF OFFICE OF TRUSTEES.....	6
6.	SUCCESSION.....	7
7.	POWERS OF TRUSTEES .....	7
8.	DUTIES OF TRUSTEES .....	9
9.	PRIVILEGES OF TRUSTEES.....	12
10.	REMUNERATION OF TRUSTEES .....	12
11.	INDEMNITY.....	12
12.	TERMINATION OF TRUST.....	13
PART III – COVENANTS BY COMPANY.....		13
13.	OFFER OF SHARES .....	14
14.	FINANCIAL ASSISTANCE.....	15
PART IV – PARTICIPATION BY EMPLOYEES .....		16
15.	ELIGIBILITY.....	16
16.	OFFERS.....	17
17.	RIGHTS ATTACHING TO RESERVED AND CAPITALISATION SHARES .....	19
18.	OBLIGATIONS OF BENEFICIARY VIS-À-VIS TRUSTEES.....	20
19.	PAYMENT OF PURCHASE PRICE.....	20
20.	CANCELLATION OF SALE .....	23
21.	RIGHTS ISSUES .....	24
22.	CAPITALISATION ISSUES .....	24
PART V – GENERAL.....		25
23.	APPLICABILITY OF PROVISIONS TO CORPORATE OFFEREE.....	25
24.	ADJUSTMENTS ON REORGANISATION OF COMPANY OR SHARE CAPITAL .....	25
25.	TAKEOVER OF COMPANY OR BUSINESSES.....	26
26.	COSTS.....	28
27.	AMENDMENTS TO THIS DEED .....	28
28.	DISCLOSURE BY COMPANY IN ANNUAL FINANCIAL STATEMENTS.....	29
29.	DISPUTES.....	29

30.	DOMICILIUM CITANDI ET EXECUTANDI .....	29
31.	ISSUE OF SHARES TO ANY PARTY .....	30
32.	DISTRIBUTION POLICY .....	30
33.	PAYMENTS OF AMOUNTS BY TRUSTEE TO DEPENDANTS OF BENEFICIARIES .....	31