

**Companies and Intellectual Property Commission**

**Republic of South Africa**

**Memorandum of Incorporation**

**of**

**Assore Limited**

**(Registration Number 1950/037394/06)**

which is a profit company and a public company as contemplated in the Companies Act, 2008, and is referred to in the rest of this MOI as "**the Company**".

## Table of Contents

	<b>Page No</b>
1. Interpretation.....	5
2. Incorporation and nature of the Company .....	9
2.1 Incorporation.....	9
2.2 Powers of the Company.....	9
2.3 Amendment and alteration of this MOI.....	9
2.4 Company Rules .....	11
2.5 Listing on other stock exchanges.....	11
3. Securities.....	11
3.1 Classes and numbers of Securities.....	11
3.2 Rights attaching to all classes of Securities .....	12
3.3 Rights attaching to the Ordinary Shares.....	12
3.4 Rights attaching to the Preference Shares.....	13
3.5 Listings Requirements .....	14
3.6 Capitalisation Shares .....	14
4. Securities Register.....	14
4.7 Certificated Securities .....	15
4.8 Uncertificated Securities .....	17
5. Provisions as regards issues of Securities, convertible Securities and Options.....	17
5.1 Listings Requirements .....	17
5.2 Restrictions on the power of the Board to issue Securities.....	17
5.3 Shareholders' rights of pre-emption on issue of Equity Securities .....	18
6. Transfer of Securities.....	18
6.1 Establishment of Transfer Offices .....	18
6.2 Proper instrument of Transfer and location of instrument of transfer .....	19
6.3 Authorities to sign instruments of transfer .....	20
6.4 Legal Representatives .....	20
7. Transmission of Securities .....	20
8. No forfeiture of Securities.....	21
9. Financial Assistance in relation to the subscription of any Option or Securities, or for the purchase of any Securities.....	21
10. The acquisition by the Company of Securities in the Company or its holding company .....	22
11. No liens.....	22

12.	Commission .....	22
13.	Proxies.....	22
13.1	Requirement to deliver Proxy Forms to the Company .....	22
13.2	Proxy Forms .....	22
13.3	Revocation of Proxy, death or incapacity .....	23
13.4	Holders of dematerialised Shares .....	23
13.5	Position of Securities Holders as regards proxies .....	23
14.	Record date for exercise of Shareholder rights .....	23
15.	Shareholders' meetings .....	24
15.1	Chairperson of Shareholders' meetings .....	24
15.2	Right to call meeting .....	24
15.3	Requirement to hold meetings .....	25
15.4	Round robin resolutions of Shareholders .....	25
15.5	Location of Shareholders' meetings .....	25
15.6	Quorum for Shareholders' meetings.....	25
15.7	Notice of Shareholders' meetings .....	26
15.8	Shareholders' resolutions.....	27
15.9	Ratification of <i>ultra vires</i> acts .....	27
15.10	Votes of Shareholders .....	28
15.11	Application of provisions to all Securities Holders .....	28
16.	Directors and officers .....	28
16.1	Composition of the Board.....	28
16.2	Appointment of Directors .....	29
16.3	No life Directorships or Directorships for indefinite periods .....	32
16.4	Rotation of non-executive Directors .....	32
16.5	Appointment of the chairperson of the Board and lead independent non-executive Director .....	33
16.6	Round robin resolutions of the Board.....	33
16.7	Directors' meetings .....	33
16.8	Directors' remuneration.....	34
16.9	Directors' expenses .....	34
16.10	Committees of the Board .....	34
16.11	Borrowing powers .....	35
17.	Distributions to Shareholders .....	35
17.1	Payment policy .....	35
17.2	Payments to holders of Securities.....	36

18. Annual financial statements .....	36
19. Indemnity .....	37

## Part I - Interpretation and preliminary, incorporation and nature of the Company

### 1. Interpretation

The headings of the articles in this MOI 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 MOI nor any article hereof or paragraph of any schedule hereto. 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 unincorporated) 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 "**Board**" means the board of directors of the Company, from time to time;

1.2.2 "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the Republic;

1.2.3 "**Central Securities Depository**" means a central securities depository as defined in section 1 of the Companies Act;

1.2.4 "**Certificated Security**" means a Security in the Company that is evidenced by means of a certificate issued in terms of sections 49(1) and (2) of the Companies Act;

1.2.5 "**Companies Act**" means the Companies Act, 2008;

1.2.6 "**Company Rules**" means rules which may be made by a board of directors of a company as regards governance matters not dealt with in the Companies Act or in the relevant company's memorandum of incorporation, as contemplated in section 15(3) to (5A) of the Companies Act;

- 1.2.7 "Director" means a director of the Company, and where the context so provides, an alternate director elected in respect of such Director;
- 1.2.8 "Equity Securities" shall have the meaning ascribed thereto in the Listings Requirements;
- 1.2.9 "Financial Assistance" shall have the meaning as defined in section 44 of the Companies Act;
- 1.2.10 "Financial Markets Act" means the Financial Markets Act, 2012;
- 1.2.11 "JSE" means the JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic under registration number 2005/022939/06, licensed as an exchange under the Financial Markets Act, 2012;
- 1.2.12 "Legal Representative" means any person who has submitted the necessary proof of his or her appointment as:
- 1.2.12.1 an executor or administrator of the estate of a deceased Securities Holder or the trustee, curator or guardian of a Securities Holder whose estate has been sequestrated or who is otherwise under a legal disability; or
- 1.2.12.2 the liquidator or business rescue practitioner of any Securities Holder which is a body corporate in the course of being wound up or under business rescue proceedings; or
- 1.2.12.3 the judicial manager of any Securities Holder which is a company under judicial management; or
- 1.2.12.4 any person duly appointed by a competent authority to represent or act for any Securities Holder;
- 1.2.13 "Listings Requirements" means the listings requirements of the JSE, as amended from time to time;
- 1.2.14 "this MOI" means this memorandum of incorporation of the Company and any schedules hereto, as amended from time to time;
- 1.2.15 "Options" means options for the issue or subscription of any Securities;

- 1.2.16            "**Ordinary Shareholder**" means a person reflected, from time to time, in the Securities Register or the Uncertificated Securities Register as holding Ordinary Shares;
- 1.2.17            "**Ordinary Shares**" means Shares with a par value of R0.005 (half a cent) each in the Company which have been designated as such;
- 1.2.18            "**Participant**" shall have the meaning as defined in section 1 of the Companies Act;
- 1.2.19            "**Preference Shareholder**" means a person reflected, from time to time, in the Securities Register or the Uncertificated Securities Register as holding Preference Shares;
- 1.2.20            "**Preference Shares**" means the variable rate cumulative redeemable no par value preference Shares in the Company which have been designated as such;
- 1.2.21            "**Prescribed Officer**" shall have the meaning as defined in the Companies Act, as read with the Regulations;
- 1.2.22            "**Proxy**" means a person appointed in accordance with the provisions of this MOI to represent a Securities Holder at any meeting or any adjournment thereof;
- 1.2.23            "**Proxy Form**" means a written instrument complying with the provisions of the Companies Act appointing a person to represent a Securities Holder at any specified meeting or any adjournment thereof;
- 1.2.24            "**Regulations**" means the regulations promulgated from time to time under the Companies Act;
- 1.2.25            "**Republic**" means the Republic of South Africa;
- 1.2.26            "**Securities**" shall have the meaning as defined in the Companies Act, from time to time and shall include Equity Securities;
- 1.2.27            "**Securities Holder**" means the registered holder of any Securities in the Company;
- 1.2.28            "**Securities Register**" means the register of Securities established or maintained by the Company in terms of section 50(1) of the Companies Act;

- 1.2.29            "**Shareholder**" means the registered holder of Shares in the Company, from time to time;
- 1.2.30            "**Shares**" means any shares of whatever designation and with whatever rights, privileges and limitations, as set out in this MOI;
- 1.2.31            "**Transfer Office**" means the transfer office of the Company as contemplated in paragraph 3.51 of the Listings Requirements;
- 1.2.32            "**Uncertificated Securities Register**" shall have the meaning as defined in the Companies Act, from time to time; and
- 1.2.33            "**Uncertificated Security**" shall have the meaning as defined in the Companies Act, from time to time;
- 1.3                the schedules attached to this MOI form part of the MOI;
- 1.4                where any term is defined within the context of any particular article in this MOI, the term so defined, unless it is clear from the article in question that the term so defined has limited application to the relevant article, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation article;
- 1.5                when any number of days is prescribed in this MOI, 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 Business Day;
- 1.6                where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7                the expiration or termination of this MOI shall not affect such of the provisions of this MOI 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 articles themselves do not expressly provide for this;
- 1.8                any reference in this MOI to the Company or any one or more Securities Holders, as the case may be, shall if the Company or any one or more Securities Holders, as the case may be, is put under business rescue, liquidated or sequestrated, be applicable also to and binding upon the Company's or the relevant Securities



Holders', as the case may be, business rescue practitioner, liquidator or trustee, as the case may be; and

1.9 any reference to a statute shall be a reference to such statute as at the date of the adoption of this MOI by the Company and as amended from time to time thereafter.

## **2. Incorporation and nature of the Company**

### **2.1 Incorporation**

2.1.1 The Company was an existing company as contemplated under the Companies Act, 1973 and therefore continues to exist as a company as if it had been incorporated and registered in terms of the Companies Act, with the same name and registration number previously assigned to it.

2.1.2 The Company has been constituted in terms of section 19(1)(c) of the Companies Act in accordance with and governed by:

2.1.2.1 the unalterable provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii) of the Companies Act);

2.1.2.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii) of the Companies Act); and

2.1.2.3 the provisions of this MOI (subject to and in accordance with section 15(2) of the Companies Act).

### **2.2 Powers of the Company**

The Company is subject to such restrictions, limitations or qualifications, as contemplated in this MOI and in the Listings Requirements.

### **2.3 Amendment and alteration of this MOI**

2.3.1 As required pursuant to the Listings Requirements, this MOI, including without limitation the rights, privileges and limitations applying to any Securities, whether issued or not, may not be altered or amended in any manner whatsoever, unless:

2.3.1.1 if the amendment or alteration relates to the variation of any preferences, rights, limitation and/or any other terms of Securities attaching to any class of Securities already in issue, a special resolution has been passed by the holders of the Securities in that class at a separate meeting of such Securities Holders, approving the amendment or alteration, prior to the special resolution for the amendment or alteration being proposed to or voted on by Ordinary Shareholders;

2.3.1.2 in the circumstances contemplated in article 2.3.1.1, the holders of the relevant Securities shall in addition be allowed to vote at the general meeting or annual general meeting of the holders of the Ordinary Shares at which the amendment or alteration is proposed, provided that:

2.3.1.2.1 their votes shall not carry any special rights or privileges and they shall be entitled to one vote for each Share that they hold; and

2.3.1.2.2 their total voting right at such general meeting or annual general meeting may under no circumstances exceed 24.99% (twenty four point nine nine per cent) of the aggregate voting rights of all Shareholders at such meeting; and

2.3.1.3 such alteration or amendment has been approved by a special resolution passed by Ordinary Shareholders,

provided that, if the amendment or alteration is ordered by a court in terms of sections 16(1)(a) and 16(4) of the Companies Act, the approvals in articles 2.3.1.1, 2.3.1.2 and 2.3.1.3 shall not be required.

2.3.2 An amendment or alteration to this MOI shall include, but not be limited to:

2.3.2.1 the creation of any class of Securities;

2.3.2.2 the alteration of the Company's Share capital;

2.3.2.3 the variation of any preferences, rights, limitation and other share terms attaching to any class of Securities;

2.3.2.4 the determination of the preferences, rights, limitations or other terms of a class of Shares contemplated in section 36(1)(d) of the Companies Act;

- 2.3.2.5 the conversion of one class of Securities into one or more other classes;
- 2.3.2.6 the increase or decrease of the number of Securities;
- 2.3.2.7 the consolidation of Securities;
- 2.3.2.8 the sub-division of Securities;
- 2.3.2.9 the change of the name of the Company;
- 2.3.2.10 conversion of Securities from par value to no par value; and/or
- 2.3.2.11 the classification of any unclassified Shares that have been authorised as contemplated in section 36(1)(c) of the Companies Act but are not issued.

## 2.4 **Company Rules**

The Board shall not have the power to make, amend or repeal Company Rules.

## 2.5 **Listing on other stock exchanges**

The Company may seek listings on such other stock exchanges in addition to the JSE, as a secondary and/or dual listing, as the Directors may consider appropriate from time to time.

## **Part II - Securities, Securities Register, certificates, restrictions on the powers of the Board as regards Securities, pre-emptive rights and transfers and corporate actions under the Listings Requirements**

### 3. **Securities**

#### 3.1 **Classes and numbers of Securities**

The Company is authorised to issue up to the maximum number of each of the classes of Securities as set out in article 3.1.1, subject to the preferences, rights, limitations and other terms associated with each such class, as set out in article 3.2.

##### 3.1.1 **Numbers and designations of authorised Securities**

- 3.1.1.1 200 000 000 (two hundred million) Ordinary Shares; and
- 3.1.1.2 23 100 (twenty three thousand, one hundred) Preference Shares.

### 3.2 **Rights attaching to all classes of Securities**

The following rights, privileges and limitations attach to the different classes of Securities:

#### 3.2.1 **Variation of preferences, rights, and limitations**

The preferences, rights, limitations and other terms of any class of Shares of the Company must not be varied, and no resolution may be proposed to Shareholders for rights to include such variation, in response to any ascertainable "external fact or facts" as provided for in section 37(6) and (7) of the Companies Act.

#### 3.2.2 ***Pari passu***

3.2.2.1 All the listed Securities in each class rank *pari passu* in respect of all rights. The phrase "Securities in each class rank *pari passu*" shall have the meaning ascribed thereto in paragraph 3.29 of the Listings Requirements or any amending paragraph in the Listings Requirements.

3.2.2.2 For as long as there are cumulative or non-cumulative preference shares in issue by the Company and listed on the JSE, no further Securities ranking in priority to, or *pari passu* with, such preference shares, of any class, shall be created without a special resolution passed at a separate general meeting of such preference Shareholders.

### 3.3 **Rights attaching to the Ordinary Shares**

The following rights are applicable to the Ordinary Shares in the Company:

3.3.1 every holder of an Ordinary Share shall have one vote in respect of each Ordinary Share held and shall be entitled to vote at every general meeting or annual general meeting of the Company, whether in person or by Proxy;

3.3.2 the right to be entered in the Securities Register or the Uncertificated Securities Register, as the case may be;

3.3.3 the right to receive any distribution by the Company, if and when declared on the Ordinary Shares, to be made in proportion to the number of Ordinary Shares held by each Ordinary Shareholder;

- 3.3.4 if the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be distributed among the Ordinary Shareholders in proportion to the number of Ordinary Shares held by each of them, provided that the provisions of this article shall be subject to the rights of the holders of Securities issued upon special conditions;
- 3.3.5 in a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution of the Company, be paid to the Ordinary Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Ordinary Shareholders, and the liquidation of the Company may be closed and the Company dissolved; and
- 3.3.6 any other rights attaching to the Ordinary Share in terms of the Companies Act or any other law.

#### 3.4 **Rights attaching to the Preference Shares**

- 3.4.1 The preferences, rights, limitations and other terms of the Preference Shares are as set out in Schedule 1.
- 3.4.2 In addition to the provisions of Schedule 1, the following terms are applicable to the Preference Shares:
- 3.4.2.1 the Preference Shares shall only entitle the holders of the same to vote on a resolution which is proposed at any general meeting or any annual general meeting:
- 3.4.2.1.1 directly affecting the rights of each of the Preference Shares or the interests of the holders of the Preference Shares; or
- 3.4.2.1.2 for the winding up of the Company or the reduction of its capital; or
- 3.4.2.1.3 for so long as any Preference Dividend or any Redemption Price (as such terms are defined in Schedule ) remains in arrear and unpaid (commencing on the date upon which any such arrear or payment default has arisen);

and in that event the provisions of article 2.3.1.2 shall apply *mutatis mutandis*; and

3.4.2.2 the holders of the Preference Shares shall be entitled to attend at general meetings of the Company, but shall only be entitled to vote subject to the limitations set out in article 2.3.1.2 and this article 3.4.2.

### 3.5 **Listings Requirements**

No alteration of Share capital, authorised Securities or rights attaching to any class/es of Shares may be made without complying with the Listings Requirements.

### 3.6 **Capitalisation Shares**

3.6.1 The Board has the power to approve by resolution the issuing of any authorised Shares as capitalisation Shares, to issue Shares of one class as capitalisation Shares in respect of Shares of another class, and to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share, as set out in section 47 of the Companies Act, subject to the Listings Requirements.

3.6.2 Subject to section 47(2) of the Companies Act, the Directors shall be entitled to grant to the Shareholders the right to receive scrip dividends *in lieu* of cash dividends or a cash dividend *in lieu* of capitalisation or bonus Shares, subject to the Listings Requirements.

## 4. **Securities Register**

4.1 Any person who is entitled to have his/her/its name entered into the Securities Register of the Company or the records to be administered and maintained by a Participant or Central Securities Depository as the Company's Uncertificated Securities Register, shall provide to the Company or the Participant or Central Securities Depository, as the case may be, all the information relating to that person which is required to be included in the Securities Register or Uncertificated Securities Register, as the case may be, in terms of the Companies Act read with the Regulations and the rules of the Central Securities Depository in respect of Uncertificated Securities, including the name, registration number or identity number, whichever is applicable, business address, residential address, postal address and available e-mail address of that person.

- 4.2 Any person contemplated in article 4.1, may by written notice to the Company or the Participant or Central Securities Depository, as the case may be, change the business address, residential address, postal address and available e-mail address of that person, provided that the change shall become effective *vis-à-vis* that person on the 30<sup>th</sup> (thirtieth) calendar day from the receipt of the notice by the Company or the Participant or Central Securities Depository, as the case may be.
- 4.3 If a Security of the Company is registered in the name of a person who is not the holder of the beneficial interest in all of the Securities in the Company held by that person, that registered holder of the Security must make the disclosures contemplated in section 56(3) read with section 56(4) of the Companies Act to the Company.
- 4.4 In the case of any Security registered in the names of 2 (two) or more persons as joint holders, the person first-named in the Securities Register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such Security and to the related certificate of title, subject to the provisions of Companies Act.
- 4.5 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first-named of 2 (two) or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such Security, subject to the provisions of the Companies Act.
- 4.6 Except as ordered by a court of competent jurisdiction or as required by the Companies Act and/or any other law, the Company shall be entitled to treat the registered holder of any Share as the absolute owner thereof, so that no person shall be recognised by the Company as holding any Share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as by this MOI or by law otherwise provided) any other right in respect of any Share except an absolute right to the entirety thereof in the registered holder.
- 4.7 **Certificated Securities**
- 4.7.1 The certificates of title to any Securities of the Company shall be issued under the authority of the Directors when authorised thereto by the Directors, in such

manner and form as the Directors may from time to time prescribe, but subject at all times to the Companies Act.

- 4.7.2 Such certificates shall bear the autographic signatures of at least 2 (two) persons authorised by the Board. The Directors may by resolution determine either generally or in any particular case or cases that the signatures of authorised persons (or any of them) may be signatures other than autographic signatures so long as every such certificate which the Directors have determined shall be signed in such manner shall first have been approved for signature by all or any persons as may be acceptable to any stock exchanges upon which the Securities of the Company are listed or quoted.
- 4.7.3 For the purposes of this article 4.7 only, the expression "**sign**" or "**signature**" shall not include names impressed with a rubber or other kind of stamp.
- 4.7.4 Every person to whom Securities are issued and whose name is entered in the Securities Register shall be entitled to 1 (one) certificate for all the Securities in any class registered in its/his/her name, or if the Directors so resolve, to several certificates, each for a part of such Securities, provided that in the case of a Security held jointly by several persons, the Company shall not be bound to issue more than 1 (one) certificate therefor and delivery of a certificate for a Security to 1 (one) of several joint Securities Holders shall be sufficient delivery to all.
- 4.7.5 Subject to the provisions of the Companies Act, certificates shall be issued under the authority of the Directors gratis in accordance with the Companies Act.
- 4.7.6 In the case of a Securities Holder who has transferred a part of his or her holding of Securities of any class, he or she shall be entitled to receive a certificate free of charge for the balance of his or her holding. Provided that notwithstanding anything herein contained or implied to the contrary where Securities are registered in the names of 2 (two) or more persons they shall be treated as 1 (one) Securities Holder for the purposes of this article.
- 4.7.7 If a certificate evidencing Securities is defaced, lost or destroyed, it may be replaced on such terms (if any) as to evidence and indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same, as the



Directors may think fit and, in the case of defacement, on delivery of the old certificate to the Company.

- 4.7.8 The certificate evidencing Securities registered in the names of 2 (two) or more persons shall be delivered to the person first named in the Securities Register in respect thereof, or to his or her authorised agent, and in case of the legal incapacity of any 1 (one) or more of the joint registered holders of any Securities, the survivor then first named in the Securities Register shall be the only person recognised by the Company as being entitled to such certificate, or any new certificate which may be issued in place thereof, provided always that the Company shall not be bound to register more than 4 (four) persons as the holders of any Security.

#### 4.8 **Uncertificated Securities**

A holder of Uncertificated Securities shall not be entitled to certificates and the Company shall not issue certificates evidencing or purporting to evidence title to Uncertificated Securities of the Company, unless the holder gives the Participant notice that such holder wishes to withdraw its Uncertificated Securities and to obtain a certificate in respect of all or part of that holder's Uncertificated Securities maintained by the Participant in terms of the Companies Act and the Financial Markets Act.

### 5. **Provisions as regards issues of Securities, convertible Securities and Options**

#### 5.1 **Listings Requirements**

No Securities, convertible Securities granted or issued for cash or Options may be issued by the Company unless such issues comply with the Listings Requirements.

#### 5.2 **Restrictions on the power of the Board to issue Securities**

- 5.2.1 The power of the Board in terms of sections 36(2)(b) and 36(3) are hereby excluded.

- 5.2.2 The power of the Board:

- 5.2.2.1 in terms of section 40(5) of the Companies Act to issue Shares for consideration in the form of an instrument such that the value of the consideration cannot be realised by the Company until a date after the

time the Shares are to be issued, or in the form of an agreement for future services, future benefits or future payment;

5.2.2.2 to determine the terms of a trust agreement as regards consideration contemplated in article 5.2.2.1,

shall be subject to the provisions of the Companies Act and the Listings Requirements, provided that Securities for which a listing is sought must be fully paid up and freely transferable, it being recorded that the JSE will not list Securities which are not fully paid for upon listing, notwithstanding the provisions of section 40(5) of the Companies Act.

### 5.3 **Shareholders' rights of pre-emption on issue of Equity Securities**

5.3.1 Notwithstanding anything to the contrary in this MOI, unissued Equity Securities shall be offered to existing holders of Equity Securities, *pro rata* to their holding of the Equity Securities, unless such Equity Securities are to be issued for an acquisition of assets.

5.3.2 Notwithstanding the foregoing, the Ordinary Shareholders in a general meeting may authorise the Directors to issue unissued Securities and/or grant Options to subscribe for unissued Securities as the Directors in their discretion think fit, provided that such corporate action(s) has/have been approved by the JSE and are subject to the Listings Requirements.

5.3.3 Subject to the provisions of the Listings Requirements, the offer contemplated in article 5.3.1 shall be made by notice specifying the number of Equity Securities offered, and limiting a time within which such offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom such offer is made that he or she declines to accept the Shares offered, the Directors may subject to this MOI, dispose of such Equity Securities in such manner as they think beneficial to the Company.

## 6. **Transfer of Securities**

### 6.1 **Establishment of Transfer Offices**

Transfer Offices shall be maintained at such place or places, whether in the Republic or elsewhere, as the Directors may from time to time prescribe.

## 6.2 **Proper instrument of Transfer and location of instrument of transfer**

6.2.1 Subject to the provisions of the law for the time being in force relating to duty upon the estates of deceased persons or to any other statutory restrictions on transfer and to the provisions of this MOI, any Securities Holder may transfer all or any of his or her Securities, but every transfer must be in writing in the usual common form or in such other form as the Directors may approve and must be left at the Transfer Office where the register of transfers relating to the Security comprised therein is for the time being kept or at such other place as the Directors may prescribe, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Securities to be transferred and such other evidence (if any) as the Directors or other person in charge of such register may require to prove the title or capacity of the intending transferor or transferee.

6.2.2 The instrument of transfer of Security shall be signed by the transferor and the transferee, unless the signature of the transferee is not required:

6.2.2.1 by any law from time to time in force in the Republic; or

6.2.2.2 where the Directors decide at their discretion to dispense therewith in such case or cases as they may deem fit.

6.2.3 The transferor shall be deemed to remain the holder of the Security transferred until the name of the transferee is entered in the Securities Register in respect thereof. All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide; but any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who deposited it.

6.2.4 The Directors may decline to recognise any instrument of transfer unless:

6.2.4.1 the instrument of transfer is accompanied by the certificate of the Securities to which it relates, or such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and

6.2.4.2 the instrument of transfer is in respect of only 1 (one) class of Security; and

6.2.4.3 the Securities Transfer Tax payable thereon, if any, in terms of the Securities Transfer Tax Act, 2007 has been paid (as shall be duly evidenced by a receipt in the proper form).

6.2.5 If the Directors refuse to register a transfer they shall within 30 (thirty) days after the date on which the instrument of transfer was lodged, send to the transferor and transferee notice of the refusal.

6.2.6 Subject to the Companies Act and the Listings Requirements, nothing contained in this MOI shall preclude the Company from recognising a renunciation of the allotment of any Security by the allottee in favour of some other person.

### 6.3 **Authorities to sign instruments of transfer**

All authorities to sign transfer deeds granted by holders of Securities for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its Transfer Offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's Transfer Offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company as being in order before the giving and lodging of such notice.

### 6.4 **Legal Representatives**

A Legal Representative shall, subject to the provisions of article 4.4, be the only person recognised by the Company as a Securities Holder or having any title to a Security registered in the name of the Securities Holder whom he or she represents, but nothing herein shall release the estate of a deceased joint Securities Holder from any liability in respect of any Security jointly held by him or her.

## 7. **Transmission of Securities**

The following provisions relating to the transmission of Securities apply:

- 7.1 subject to section 51(6)(b) of the Companies Act and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any Legal Representative recognised by the Company in terms of article 6.4 as having any title to any Securities (and also the legal guardian of any Securities Holder who is a minor and any person who obtains title to any Securities by operation of law in any other manner) may, upon producing such evidence as the secretary of the Company deems sufficient as to the capacity in which he or she claims to act under this article or as to his or her title to any Securities, and subject to the transfer provisions in this MOI, transfer such Securities to himself or herself or to any other person;
- 7.2 a person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a registered holder of Securities who is deceased or the estate of a holder of Securities whose estate has been sequestered or who is otherwise under a disability or of his or her appointment as the liquidator of any body corporate which is a holder of Securities, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a holder of Securities; and
- 7.3 fully paid Securities shall be fully transferable, provided that the Directors may decline to register any proposed transfer of Securities if the transfer is to a minor or to a person of unsound mind.

**8. No forfeiture of Securities**

Nothing contained in this MOI shall be construed as requiring any Securities registered in the name of a deceased or insolvent Securities Holder to be forfeited if the executor or similar officer in respect of the estate of such Securities Holder fails to register such Securities in his or her own name, or in the name of such Securities Holder's heir(s) or legatees, as the case may be, when called upon by the Directors to do so.

**9. Financial Assistance in relation to the subscription of any Option or Securities, or for the purchase of any Securities**

The Board may authorise the Company to provide Financial Assistance in relation to the subscription of any Option or Securities, or for the purchase of any Securities, of the Company or of a related company or inter-related company, as set out in section 44 of the Companies Act, subject to compliance with the provisions of the Listings Requirements. For purposes of this article 8, the terms "**related**" and "**inter-related**" shall bear the meaning as contemplated in section 2 of the Companies Act.

**10. The acquisition by the Company of Securities in the Company or its holding company**

The Board may authorise the acquisition by the Company of its own Securities, as contemplated by section 48(2) read with section 46(1)(a)(ii) of the Companies Act, subject to compliance with the provisions of the Listings Requirements.

**11. No liens**

Fully paid up Securities shall not be subject to any lien in favour of the Company, it being recorded that, for the purposes of this article, no pledge or cession in security (or any similar agreement) entered into between a Securities Holder and the Company in respect of any Securities held by that Securities Holder shall be regarded as a lien.

**12. Commission**

The Company may not pay a commission exceeding 10% (ten per cent) of the total subscription price to be paid for any Securities, to any person in consideration for such person's subscription or agreeing to subscribe, whether absolutely or conditionally, for such Securities.

**Part III - Proxies and record date**

**13. Proxies**

**13.1 Requirement to deliver Proxy Forms to the Company**

13.1.1 The requirement that a Shareholder must deliver to the Company a copy of the instrument appointing a Proxy before that Proxy may exercise the Shareholder's rights at a Shareholders' meeting, as set out in section 58(3)(c) of the Companies Act is amended to the extent set out in article 13.1.2.

13.1.2 Proxy Forms shall be deposited at the transfer secretaries of the Company not less than 48 (forty-eight) hours before the person named in such instrument purports to vote in respect thereof or such longer or shorter period as may be determined by the chairperson of the relevant meeting at which the vote is to be exercised.

**13.2 Proxy Forms**

Shareholders shall use the form as provided in notices to Shareholders, from time to time.

### 13.3 **Revocation of Proxy, death or incapacity**

A vote given in accordance with the terms of any Proxy Form shall be valid notwithstanding the previous legal incapacity of the principal or revocation of the Proxy Form or the transfer of the Share in respect of which the vote is given, unless an intimation in writing of such legal incapacity or transfer shall have been received by the Company (at the office at which such power or instrument is registered) not less than forty-eight hours before commencement of the meeting or the taking of the poll at which the instrument of proxy is used.

### 13.4 **Holders of dematerialised Shares**

The holders of dematerialised Shares who do not own Shares in "own-name" dematerialised form and who wish to attend a Shareholders' meeting, or to vote by way of a Proxy, must contact their central securities depository participant ("**CSDP**"), broker or nominee, which shall provide such Shareholders with the necessary letter of representation to attend the Shareholders' meeting or to be represented thereat by a Proxy. This must be done in terms of the agreement between the Shareholder concerned and its/his/her CSDP, broker or nominee.

### 13.5 **Position of Securities Holders as regards proxies**

The provisions of the Companies Act, as read with this MOI, as regards proxies, shall apply *mutatis mutandis* to all Securities Holders.

## 14. **Record date for exercise of Shareholder rights**

14.1 Notwithstanding anything to the contrary in section 59 of the Companies Act and/or this MOI, while the Shares of the Company are listed on the JSE, the record date for all transactions falling within the scope of the application of the Listings Requirements shall be determined in accordance with the Listings Requirements.

14.2 Should the Listings Requirements not provide a manner for determining the record date in a specific instance, or should the Shares of the Company no longer be listed on the JSE, the Board may in terms of section 59(1) of the Companies Act set a record date for the purpose of determining Shareholder rights.

14.3 The provisions of the Companies Act and the Listings Requirements, as read with this MOI, as regards the record date, shall apply *mutatis mutandis* as regards

Securities Holders, meetings of Securities Holders and all matters referred to in section 59 of the Companies Act.

#### **Part IV - Meetings and resolutions**

##### **15. Shareholders' meetings**

###### **15.1 Chairperson of Shareholders' meetings**

15.1.1 The chairperson or, failing him or her, a deputy chairperson of the Directors (or if more than one of them is present and willing to act, the most senior of them) shall be the chairperson of each general meeting. If the Company does not have a chairperson or deputy chairperson of the Board at that time or neither the chairperson nor deputy chairperson of the Board is present within 15 (fifteen) minutes after the time appointed for the holding of that general meeting, or both the chairperson and deputy chairperson are present but are unwilling to act, or either the chairperson or deputy chairperson is present and is unwilling to act, then the Directors who are at that general meeting shall choose 1 (one) of their number to be its chairperson or, if no Directors are present at that meeting or if all the Directors who are present at that meeting refuse to act as its chairperson, then the Shareholders who are present shall choose 1 (one) of their number to be the chairperson of that meeting.

15.1.2 The Chairman of a meeting may appoint any firm or persons to act as scrutineers for the purpose of checking Proxy Forms deposited for use and for counting the votes at such meeting and he or she may thereafter act on a certificate given by any such scrutineers without requiring production at the meeting of the Proxy forms or him/herself counting the votes.

###### **15.2 Right to call meeting**

15.2.1 The Board may, in terms of section 61(1) of the Companies Act, call a Shareholders' meeting at any time.

15.2.2 If at any time there shall not be within the Republic sufficient Directors capable of acting to form a quorum, any Director or Ordinary Shareholders of the Company holding in aggregate 10% (ten per cent) of the total voting rights may convene a general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the Directors.



15.2.3 The Company authorises the secretary of the Company to call a Shareholders' meeting for the purposes of section 61(11) of the Companies Act.

15.2.4 The Company is not restricted from calling any meeting of Shareholders for purposes of adhering to the Listings Requirements.

### 15.3 **Requirement to hold meetings**

The Company is required to hold Shareholders' meetings, in addition to those specifically required by the Companies Act, for purposes of adhering to the Listing Requirements.

### 15.4 **Round robin resolutions of Shareholders**

Notwithstanding any provision to the contrary in this MOI or the Companies Act, all Shareholder meetings that are called for in terms of the Listings Requirements, including without limitation, the calling of a Shareholders' meeting to appoint a Director(s) or for Directors to retire, must be held in person and may not be held by means of a written resolution as contemplated in section 60 of the Companies Act.

### 15.5 **Location of Shareholders' meetings**

The authority of the Board to determine the location of any Shareholders' meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Companies Act is not amended by this MOI.

### 15.6 **Quorum for Shareholders' meetings**

15.6.1 The quorum at a general meeting must be at least 3 (three) Shareholders and Shareholders holding at least 25% (twenty five per cent) of the voting rights which may be exercised at the relevant meeting.

15.6.2 The time period of 1 (one) hour in section 64(4) of the Companies Act is amended such that, if within 15 (fifteen) minutes after the appointed time for a meeting to begin:

15.6.2.1 the requisite quorum for such meeting is not present, the meeting shall be postponed without motion, vote or further deliberation for 1 (one) week (or if the day to which the meeting is postponed is not a Business Day, to the next Business Day thereafter); or

15.6.2.2 the requisite quorum for consideration of a particular matter to begin is not present:

15.6.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

15.6.2.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote (or if the day to which the meeting is postponed is not a Business Day, to the next Business Day thereafter).

15.6.3 Should any meeting of the Shareholders of the Company which has been constituted as quorate in terms of article 15.6.1 cease to be quorate at any time during such meeting due to the departure of any Shareholder/s, then such meeting shall be adjourned as soon as the meeting ceases to be quorate without any matters being further considered or voted upon.

15.6.4 If, at the time appointed in terms of this article 15.6 for a postponed meeting to begin or for an adjourned meeting to resume, the requirements of article 15.6.1 have not been satisfied, the Shareholders present in person or by proxy at such postponed or adjourned meeting will be deemed to constitute a quorum.

15.6.5 Should any meeting of the Shareholders be postponed or adjourned as contemplated under this article 15.6, such postponement or adjournment (as the case may be) shall, to the extent required under the Listings Requirements, be announced to Shareholders on the securities news service of the JSE, which announcement shall state:

15.6.5.1 the reason for the postponement or adjournment (as the case may be);

15.6.5.2 the date and venue of the postponed or adjourned meeting; and

15.6.5.3 that the Shareholders present in person or by proxy at the postponed or adjourned meeting will be deemed to constitute a quorum.

## 15.7 **Notice of Shareholders' meetings**

15.7.1 The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders who have elected to receive such

notices is the minimum number of days as contemplated in the Companies Act for the passing of ordinary and special resolutions. The notice periods referred to in this article are not applicable where the Company adheres to section 62(2A) of the Companies Act.

15.7.2 Notices of general and annual general meetings must be delivered to each Shareholder entitled to vote at such meeting and who has elected to receive such documents.

15.7.3 For as long as the Shares of the Company remain listed on the JSE, notices of Shareholders' meetings must be:

15.7.3.1 sent to the JSE at the same time as such notices are sent to the Shareholders; and

15.7.3.2 announced through the official news service of the JSE, namely SENS.

## 15.8 **Shareholders' resolutions**

15.8.1 For an ordinary resolution to be adopted, it must be supported by more than 50% (fifty per cent) of the voting rights exercised on the resolution by all holders of Equity Securities entitled to vote at and present or represented by Proxy at the general meeting or annual general meeting convened to approve such ordinary resolution, as provided in section 65(7) of the Companies Act.

15.8.2 For a special resolution to be adopted, it must be supported by the holders of at least 75% (seventy five per cent) of the voting rights exercised on the resolution by all Equity Securities holders entitled to vote at and present or represented by Proxy at the general meeting or annual general meeting convened to approve such special resolution, as provided in section 65(9) of the Companies Act, subject to the Listings Requirements.

## 15.9 **Ratification of *ultra vires* acts**

The proposal of any resolution to Shareholders in terms of sections 20(2) and 20(6) of the Companies Act shall be prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the Listings Requirements or this MOI; unless otherwise agreed with the JSE.

## 15.10 **Votes of Shareholders**

15.10.1 Subject to the provisions of the Companies Act, the Listings Requirements and this MOI, all questions, matters and resolutions arising or submitted to any general meeting shall be decided on a poll. In the case of an equality of votes, the chairperson shall not have a casting vote in addition to the vote or votes he or she may be entitled to as a Shareholder.

15.10.2 A poll shall be taken in such manner and at such place and time as the chairperson of the meeting directs and either immediately or after an interval or adjournment (not exceeding 7 (seven) days).

15.10.3 Any objection to the admissibility of a vote shall be raised before the result of the relevant poll is announced. That objection shall be determined by the chairperson of the relevant general meeting and his or her decision thereon may not be challenged.

15.10.4 In the case of joint holders of a Share, the vote of the senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register or, in the case of persons entitled to a Share by transmission, the order in which their names were given in the notice to the Company of the fact of the transmission.

## 15.11 **Application of provisions to all Securities Holders**

The provisions of the Companies Act, as read with this MOI and the Listings Requirements, as regards Shareholders' meetings and resolutions, shall apply *mutatis mutandis* to meetings of Securities Holders.

## **Part V - Directors and officers**

### **16. Directors and officers**

#### **16.1 Composition of the Board**

The Board shall comprise not less than the minimum number of Directors required in terms of the Companies Act but always subject to the minimum number of Directors required in terms of the Listings Requirements, being 4 (four) Directors as at the date of the adoption of this MOI.

## 16.2 **Appointment of Directors**

### 16.2.1 **Election by Shareholders**

Subject to article 16.2.5, all of the Directors and their alternates, if any, must be elected by Shareholders entitled to exercise voting rights at any general meeting or annual general meeting (provided that such meeting may not be conducted in terms of section 60 of the Companies Act), as contemplated in the Listings Requirements, and Shareholders shall have the right to nominate any person for election as aforesaid.

### 16.2.2 **Alternate Directors**

16.2.2.1 At least 50% (fifty per cent) of any alternate Directors must be elected by holders of the Company's Securities entitled to exercise voting rights, as contemplated in section 68 of the Companies Act read with section 66(4)(b) of the Companies Act.

16.2.2.2 Subject to article 16.2.2.1, only the executive Directors are entitled to nominate alternate Directors for election in terms of article 16.2 to act in their stead during their absence or inability to act as executive Directors.

16.2.2.3 Each alternate Director is entitled to act as a Director in the absence of the executive Director for whom he or she is an alternate.

16.2.2.4 On such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors. A person may be appointed as alternate to more than 1 (one) executive Director. Where a person is alternate to more than 1 (one) executive Director or where an alternate Director is a Director, he or she shall have a separate vote, on behalf of each executive Director he or she is representing as an alternate Director, in addition to his or her own vote, if any.

16.2.2.5 The alternate Directors, whilst acting in the place of executive Directors, shall exercise and discharge all the duties and functions of the executive Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he or she were a Director, would cause him or her to cease to hold office or if the executive Director who appointed him or her ceases to be a Director, or gives

notice to the secretary of the Company that the alternate Director representing him or her shall have ceased to do so.

### 16.2.3 **Eligibility or qualification criteria for Directors**

In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, without limiting the rights of Shareholders and Directors to remove a Director under certain circumstances under the Companies Act, a Director or Prescribed Officer shall not be entitled to remain serving as a Director or a Prescribed Officer of the Company if:

- 16.2.3.1 he or she is employed with the Company in terms of any contract of employment, and such employment contract is terminated for cause (for the purposes of this article 16.2.3.1, termination "*for cause*" in respect of any Director who is also an employee of the Company, shall include (but shall not be limited to) cessation of employment by virtue of dismissal for misconduct of any nature whatsoever; a breach of any term/s of any employment agreement, arrangement or undertaking or of any fiduciary duty or duty of care and skill owed to the Company by such employee, or any other, similar wilful or negligent act or omission on the part of such person, but shall not include cessation of employment for any reason in respect of which no fault may be attributed to such person, including retirement, resignation in good faith, dismissal for operational requirements or any other, similar ground);
- 16.2.3.2 he or she becomes insolvent or assigns his or her estate for the benefit of his or her creditors, suspends payments generally, or compounds with his or her creditors, or files a petition for the surrender of his or her estate;
- 16.2.3.3 he or she becomes of unsound mind;
- 16.2.3.4 he or she is requested in writing by all his or her co-directors to resign;
- 16.2.3.5 he or she resigns his or her office by notice in writing to the Company; and/or
- 16.2.3.6 he or she absents himself or herself from meetings of Directors for 6 (six) consecutive months without the leave of the other Directors other than on the business of the Company, and they resolve that his or her

office shall be vacated, provided that this provision shall not apply to a Director who is represented by an alternate who does not so absent himself or herself and provided that the Directors shall have the power to grant to any Director not resident in the Republic leave of absence for any, or an indefinite, period.

**16.2.4 Employment of executive Directors in other capacities**

An executive Director may be employed in any other capacity in the Company or as a Director or employee of a company controlled by, or itself a subsidiary of the Company, in which event the appointment and remuneration of such executive Director in respect of such other office must be determined by a disinterested quorum of Directors. Non-executive Directors shall not be entitled to be employed in any capacity as contemplated in this article.

**16.2.5 Board's authority to fill a casual vacancy**

16.2.5.1 The appointment of any person by the Board to fill a casual vacancy or as an addition to the Board must be confirmed by Shareholders at the next annual general meeting of the Company, failing which the appointed person must vacate his or her office.

16.2.5.2 The Company in general meeting may fill the vacated offices by electing a like number of persons to be Directors, and may fill other vacancies.

**16.2.6 Appointment of additional Directors to constitute prescribed minimum**

Should the number of Directors fall below the minimum number provided for in article 16.1, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date on which the number of Directors fall below the prescribed minimum, fill the vacancies or call a general meeting for the purpose of filling the vacancies. The failure by the Company to have the minimum number of Directors provided for in article 16.1 of this MOI during the 3 (three) month period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company during such period. After the expiry of the 3 (three) month period, the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of the Company.

### 16.3 **No life Directorships or Directorships for indefinite periods**

Life Directorship and Directorships for an indefinite period shall not be allowed in the Company.

### 16.4 **Rotation of non-executive Directors**

16.4.1 At the annual general meeting (provided that such meeting is not conducted in terms of section 60 of the Companies Act) held in each year 1/3 (one-third) of the non-executive Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) of the non-executive Directors, shall retire from office.

16.4.2 The non-executive Directors to retire in terms of article 16.4.1 shall be those who have been longest in office since their last election provided that:

16.4.2.1 if more than one of them were elected non-executive Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;

16.4.2.2 if at any annual general meeting any non-executive Director will have held office for 3 (three) years since his or her election, he or she shall also retire at such annual general meeting;

16.4.2.3 the length of time a non-executive Director has been in office shall, subject to the provisions of article 16.4.2.2, be reckoned from the date of his or her last election, appointment as a non-executive Director, or the date upon he or she was deemed re-elected;

16.4.2.4 if a non-executive Director is required to retire at any general meeting then he or she shall continue to be a non-executive Director until the close or adjournment of the meeting; and

16.4.2.5 a retiring non-executive Director may be re-elected, provided that they are eligible for re-election, and the Board, through the nomination committee, should recommend eligibility, taking into account past performance and contribution made, provided that the re-election of any such non-executive Director may not be conducted in terms of section 60 of the Companies Act.



16.4.3 No person other than a non-executive Director retiring at the meeting shall, unless recommended by the Directors for election, be eligible for election to the office of non-executive Director at any general meeting unless, not more than 14 (fourteen) clear days but at least 7 (seven) clear days before the day appointed for the meeting, there shall have been delivered to the Transfer Office notice in writing by some Shareholder duly qualified to be present and vote at the meeting for which such notice is given, of the intention of such Shareholder to propose such person for election and also notice in writing signed by the person to be proposed of his or her willingness to be elected.

16.4.4 A person appointed in terms of articles 16.2.5 and 16.2.6 shall hold office only until the next annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining the Directors who are to retire by rotation at such meeting.

16.5 **Appointment of the chairperson of the Board and lead independent non-executive Director**

16.5.1 The Directors may elect a chairperson and deputy chairperson of the Board and determine the period for which they are to hold office.

16.5.2 In the event that the chairperson of the Board is not an independent non-executive Director, the Board shall identify and appoint an independent non-executive Director as the lead independent non-executive Director.

16.6 **Round robin resolutions of the Board**

A decision that could be voted on at a meeting of the Board may, instead be adopted by written consent of [a majority] of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made on that resolution).

16.7 **Directors' meetings**

16.7.1 The Directors may meet, adjourn, and otherwise regulate their meetings as they think fit.

16.7.2 Notice of meetings of the Directors shall be given to all Directors and alternate Directors at their addresses as advised in writing to the secretary from time to time.

16.7.3 **Quorum for Board meetings**

2 (two) Directors or their alternates, present at the commencement of and throughout a meeting of Directors or any adjournment of a meeting of Directors shall be a quorum of that meeting or for any adjournment thereof.

16.7.4 **Tied votes**

Questions arising at any meeting of Directors shall be decided by a majority of votes, and in case of an equality of votes, the chairperson shall not have a second or casting vote.

16.8 **Directors' remuneration**

The authority of the Company to pay remuneration to the Company's Directors for their services as Directors of the Company, in accordance with a special resolution approved by the Company's Shareholders within the previous two years, as set out in the Companies Act is not amended.

16.9 **Directors' expenses**

The Directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company and in attending meetings of the Board or committees thereof, and if any Director is required by the Company to perform any services in addition to his or her services as a Director, or to reside abroad, or shall be specifically occupied about the Company's business, such Director shall be entitled to receive such remuneration as is determined by a disinterested quorum of Directors, which remuneration may be in addition to or in substitution for any other remuneration payable.

16.10 **Committees of the Board**

16.10.1 **Authority of the Board to appoint committees of Directors and to delegate to any such committee any of the authority of the Board**

16.10.1.1 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set

out in section 72(1) of the Companies Act, and to include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act is amended to the extent set out below:

16.10.1.1.1 any delegation by the Board of its authority to a committee may be wholly or partially withdrawn by the Board at any time; and

16.10.1.1.2 the meetings and proceedings of any committee consisting of 2 (two) or more members, shall be governed by the provisions herein contained for regulating the meetings and proceedings of Directors so far as the same are applicable thereto and are not superseded by any regulations made or imposed by the Directors.

## 16.11 **Borrowing powers**

16.11.1 From time to time the Directors may borrow or raise for the purposes of the Company such sums as they deem fit.

16.11.2 The Directors may raise or secure the payment or repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by mortgage bond.

16.11.3 The granting of special privileges to holders of debt instruments, as defined in section 43(1) of the Companies Act, such as attending and voting at general meetings and the appointment of Directors, is prohibited.

## **Part VI - Financial matters**

### **17. Distributions to Shareholders**

#### **17.1 Payment policy**

17.1.1 The Directors shall have the power to make any distribution, subject to section 46 of the Companies Act, and the Listings Requirements as applicable, and in accordance with the rights of Shareholders to or in respect of distributions as set out in this MOI.

17.1.2 Dividends are to be payable to Shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later.

17.1.3 All dividends, interest or other moneys payable to the registered holder of Shares will be paid by electronic funds transfer to be received into the bank account nominated for this purpose by the relevant Shareholder (or otherwise as the Directors may from time to time determine). Each Shareholder shall bear the responsibility of ensuring that the Company is provided with the correct banking details in writing in this regard within a commercially reasonable period of time before any such payment is due.

17.1.4 The Company shall not be responsible or in any way liable for any error or loss in transmission of any payments made to any such Shareholder in circumstances where the Company was provided with incorrect banking details or where such banking details were not notified to the Company in writing and/or within a commercially reasonable period of time before the date of any such payment.

17.1.5 Any dividend or other money payable on or in respect of a Security:

17.1.5.1 which is unclaimed, may be retained by the Company and may be invested or used as the Directors may deem fit for the benefit of the Company until claimed by the Securities Holder concerned provided that any monies due to the Shareholders must be held in trust by the Company indefinitely, but subject to the laws of prescription, which, as at the date of the adoption of this MOI, provide for a period of 3 (three) years from the date on which such monies became due, further subject to the relevant provisions of the Prescription Act, 1969; and

17.1.5.2 shall not bear interest against the Company.

## 17.2 **Payments to holders of Securities**

Payments to the holders of Securities must be made in accordance with the provisions of the Listings Requirements and capital shall not be repaid on the basis that it may be called up again.

## 18. **Annual financial statements**

18.1 A copy of the annual financial statements must be distributed to the Shareholders by no less than 15 (fifteen) Business Days prior to the annual general meeting or in accordance with any other applicable provisions under the Listings Requirements.

18.2 The annual financial statements of the Company must comply with the Companies Act and the relevant provisions of the Listings Requirements.

**19. Indemnity**

19.1 The authority of the Company to advance expenses to a Director, or to indemnify a Director, and to purchase insurance to protect the Company, or a Director, shall be as contemplated in the Companies Act.

19.2 Article 19.1, read with section 78 of the Companies Act, shall apply *mutatis mutandis* to the secretary of the Company, Prescribed Officers, and employees of the Company as if such persons were Directors for the purposes of section 78, to the extent permitted in terms of the Companies Act and the Listings Requirements.

## Schedule 1

### Rights and privileges attaching to the Preference Shares

#### 1. DEFINITIONS

1.1 In these terms and conditions, unless inconsistent with or otherwise indicated by the context:

1.1.1 "**Acceptable Bank**" means:

1.1.1.1 any one or more of SBSA, Nedbank Limited, Absa Bank Limited, FirstRand Bank Limited and Investec Bank Limited;

1.1.1.2 a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations, of zaAA or higher by Standard & Poor's Rating Service, AA(zaf) or higher by Fitch Ratings Ltd or Aa2.za or higher by Moody's Investor Services Limited, or a comparable rating from an internationally recognised credit rating agency; or

1.1.1.3 any other bank or financial institution approved by the Facility Agent;

1.1.2 "**Act**" means the Companies Act, No. 71 of 2008;

1.1.3 "**acting as an expert and not as an arbitrator**" means, in the context of any person or persons ("**the Expert**") determining any matter or dispute in terms of this Agreement or any of the Exhibits hereto, the Expert doing so on the following basis:

1.1.3.1 the Expert shall investigate the matter or dispute in an impartial manner as he, in his sole discretion, considers appropriate;

1.1.3.2 the Expert shall call on all parties who have a direct interest in the dispute or matter in question, to make written representations in regard thereto, and the Expert shall be entitled to consult with all or any of the parties with a direct interest in the dispute or matter, or with any other person and to take advice from any person;

1.1.3.3 the Expert shall also call on all parties who have a direct interest in the dispute or matter in question, to make oral representations in regard

thereto (at each such party's own election, provided that the Expert shall be obliged to duly consider any such oral representations made); provided that all parties who have a direct interest in the dispute or matter and any person from whom the Expert has taken advice as contemplated in clause 1.1.3.2, shall be entitled to be present at the time that any such oral representations are made and any such party shall be entitled to further respond thereto by further oral representations;

1.1.3.4 the determination of the Expert shall in the absence of manifest error, be final and binding on the parties to the dispute or matter in question; and

1.1.3.5 the costs and charges of the Expert shall be borne by that party to the dispute or matter which, in the sole discretion of the Expert, is the appropriate party to bear such charges, provided that the Expert shall be entitled to direct that the costs and charges be borne by all or certain of the parties to the dispute or matter, in such ratios as the Expert may determine;

1.1.4 "**Adjusted Dividend Rate**" means the Dividend Rate after it has been adjusted in terms of clause 3;

1.1.5 "**Adjustment Event**" shall bear the meaning assigned to such term in clause 3.3.1;

1.1.6 "**Adjustment Notice**" shall bear the meaning assigned to such term in clause 4.1;

1.1.7 "**Aggregate Redemption Quantum**" means on any date, in relation to a specified number of Preference Shares in issue, the aggregate quantum of all: (i) Preference Dividends (howsoever described), (ii) Redemption Price, and (iii) all other amounts howsoever named or described required to be paid by the Company to the Holders under the Subscription Agreement and these Preference Share Terms, if all such Preference Shares were to be redeemed on such date and without considering whether or not the provisions of section 46 of the Act will or can be lawfully complied with for the purpose of achieving such redemption;

1.1.8 "**Aggregate Subscription Price**" means the aggregate subscription price in relation to all of the Relevant Preference Shares, as recorded in the

Subscription Notice, which aggregate subscription price may never exceed R2,850,000,000.00 (two billion eight hundred and fifty million Rand);

- 1.1.9            "**Applicable Laws**" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency or Authority having the force of law in any relevant jurisdiction, and include in particular, but without limitation, the Tax Act;
- 1.1.10          "**Arrear Dividends**" shall bear the meaning assigned to such term in clause 2.3;
- 1.1.11          "**Assmang**" means Assmang Limited, registration number 1935/007343/06, a public company registered and incorporated with limited liability according to the company laws of the Republic of South Africa;
- 1.1.12          "**Authority**" means any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any stated owned or controlled authority which principally performs governmental functions;
- 1.1.13          "**Bank**" means any person who is licensed to undertake the business of a Bank in terms of the Banks Act, 1990;
- 1.1.14          "**Basel II**" means "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing as at the Signature Date ("**the Basel II Standards**"), or any Applicable Law which implements the Basel II Standards in that form, or any interpretation or administration thereof;
- 1.1.15          "**Basel III**" means the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in December 2010 in the form existing as at the Signature Date ("**the Basel III Standards**"), or any Applicable Law which implements the Basel III Standards in that form, or any interpretation or administration thereof;
- 1.1.16          "**Basic Calculation Formula**" means the formula contained in clause 2.2.1;



- 1.1.17            **"Business Day"** means any day (other than a Saturday, Sunday or an official public holiday in South Africa within the meaning of the Public Holidays Act, 1994), on which Banks generally are open for business in Johannesburg;
- 1.1.18            **"Calculation Date"** means 5 October and 5 April of each year;
- 1.1.19            **"Calendar Month"** means each month of the Gregorian calendar;
- 1.1.20            **"Cash"** means, at any time, cash denominated in South African Rand, credited to an account in the name of the Company with an Acceptable Bank and to which the Company is alone beneficially entitled, and for so long as:
- 1.1.20.1           that cash is repayable within 30 (thirty) days after the relevant date of calculation;
- 1.1.20.2           repayment of that cash is not contingent on the prior discharge of any other indebtedness owing by or to any other person whatsoever, or on the satisfaction of any other condition;
- 1.1.20.3           there is no security over that cash;
- 1.1.20.4           the cash is freely and except as mentioned in clause 1.1.20.1 above immediately available to be applied in redemption of the Relevant Preference Shares;
- 1.1.21            **"Cash Equivalents"** means, at any time:
- 1.1.21.1           certificates of deposit maturing within 1 (one) month after the relevant date of calculation and issued by an Acceptable Bank;
- 1.1.21.2           any investment in marketable debt obligations issued or guaranteed by the government of the Republic of South Africa;
- 1.1.21.3           commercial paper not convertible or exchangeable to any other security:
- 1.1.21.3.1           for which a recognised trading market exists;
- 1.1.21.3.2           issued by an issuer incorporated in the Republic of South Africa;
- 1.1.21.3.3           which matures within 30 (thirty) days; and
- 1.1.21.3.4           which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1

or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

1.1.21.4 any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P 1 or higher by Moody's Investor Services Limited, (ii) which invest substantially all their assets in securities of the types described in clauses 1.1.21.3.1 to 1.1.21.3.4 (both clauses inclusive) above and (iii) can be turned into cash on not more than 30 (thirty) days' notice; or

1.1.21.5 any other debt security approved by the Facility Agent,

in each case, denominated in South African Rand and to which Assore is alone beneficially entitled at that time, and which is not subject to any security;

1.1.22 "**Change in Law**" means any:

1.1.22.1 implementation, introduction, abolition, withdrawal or variation of (1) any Applicable Laws, published practice, concession or official directive, or (2) any ruling, request, notice, announcement, guidance or direction by any government entity (whether or not having the force of law, but if not having the force of law, is generally applied); or

1.1.22.2 change in any interpretation, or the introduction or making of any new or further interpretation in respect of any of the above,

which comes into effect after the Signature Date;

1.1.23 "**Companies Act**" means the Companies Act, No. 71 of 2008;

1.1.24 "**Company**" means Assore Limited, registration number 1950/037394/06, a public company registered and incorporated with limited liability according to the company laws of South Africa, whose shares are listed on the JSE Limited;

1.1.25 "**Corporate Tax Rate**" means the rate (as at the date of signature of the Subscription Agreement by the parties thereto being, 28% (twenty eight *per*

*centum*)) at which the normal Tax (as envisaged in section 5 of the Tax Act) is levied on Banks generally;

1.1.26 "**Dividend Cycle**" means a dividend cycle as defined in section 64B of the Tax Act;

1.1.27 "**Dividend Payment Date**" means the last day of each Dividend Period or, if such last day is not a Business Day, the immediately preceding Business Day;

1.1.28 "**Dividend Period**" means each period which commences on the day after a Calculation Date and which ends on the next Calculation Date (or, if earlier, on the Redemption Date) provided that:

1.1.28.1 the first Dividend Period in respect of each Preference Share shall commence on its Issue Date and shall end on the first Calculation Date which occurs after that Issue Date; and

1.1.28.2 the last Dividend Period in respect of any particular Preference Share shall (1) commence on the day after the last Calculation Date which occurs prior to its Redemption Date, and (2) end on that Redemption Date;

1.1.29 "**Dividend Rate**" means, subject to adjustment in accordance with clause 3, 75% (seventy five *per centum*);

1.1.30 "**Dividend Rate Adjustment Formula**" means the formula below, which formula will be used for determining an Adjusted Dividend Rate in accordance with clause 3:

$$r = \frac{f(1-s)}{(1+s)}$$

in which formula:

$r =$  the amended Dividend Rate;

$f =$  114.58% on the Issue Date, or such adjusted rate as has been amended through a Regulatory Change Event per clause 3.1; provided that if the Dividend Rate has been adjusted as a result of the occurrence of any Regulatory Change Event after the Signature Date but before the

occurrence of any event contemplated in clauses 3.2, 3.3 and/or 3.5, the percentage represented by the symbol "*r*" shall first be recalculated using the value of "*r*", "*t*" and "*s*" after the occurrence of the prior Regulatory Change Event;

*t* = the Corporate Tax Rate or amended Corporate Tax Rate (expressed as a percentage) applicable to a Holder in respect of the year of assessment in which the formula is applied; and

*s* = the STC Rate or amended STC Rate (expressed as a percentage) applicable to a Holder in respect of that Holder's Dividend Cycle during which the relevant Preference Dividend is declared;

- 1.1.31 "**Dividends Tax**" means on its introduction, the withholding Tax on dividends imposed under Part VIII of Chapter II of the Tax Act (such introduction being expected to occur on 1 April 2012);
- 1.1.32 "**Early Redemption Preference Dividends**" means the preference dividends required to be declared and paid in the circumstances contemplated in clauses 8.1.1, 8.1.2 and/or 8.1.3 of these Preference Share Terms;
- 1.1.33 "**Encumbrance**" means any reservation of ownership or title, mortgage, pledge, lien, cession, lease, assignment, hypothecation, set-off arrangement or security interest, or any other agreement or arrangement having the effect or intention of conferring security and "Encumber" and "Encumbered" shall bear corresponding meanings;
- 1.1.34 "**Facility Agent**" means the entity or person appointed by the Holders in terms of the provisions of the Subscription Agreement to fulfil the role of Facility Agent;
- 1.1.35 "**Facility Outstandings**" shall bear the meaning assigned to such term in the Subscription Agreement;
- 1.1.36 "**Fair Market Value**" means the market value of the relevant assets (including rights) whose value is required to be determined for any purpose under these Preference Share terms, and agreed to in writing between the Facility Agent and the Company, and failing such agreement within 3 (three) Business Days

of either party requiring the other to agree in writing, determined by (i) the auditors of the Company, provided that such auditors are one of KPMG, Deloitte, Ernst & Young Inc and PWC or (ii) should the Company's auditors not be one of the firms named in (i), then the auditors of the Subscriber, in either instance such auditors acting as an expert and not as an arbitrator;

- 1.1.37            **"Final Redemption Date"** means the date on which:
- 1.1.37.1            all of the Preference Shares in issue have been redeemed by the Company; and
- 1.1.37.2            pursuant to such redemptions, the Holders have received payment in full in relation to all such Preference Shares of: (i) all Preference Dividends (howsoever described) required to be declared and paid on such Preference Shares, (ii) the aggregate Redemption Price thereof (including any payment required to be made by the Company in the circumstances contemplated in clause 3 of these Preference Share Terms during the period commencing on the Issue Date and terminating on the date on which all of the Preference Shares in issue have been redeemed by the Company (both days included)), and (iii) all and any other amounts which become payable to the Holders under the Subscription Agreement and/or these Preference Share Terms and/or the other Funding Agreements during the period commencing on the Issue Date and terminating on the date on which all of the Preference Shares in issue have been redeemed by the Company (both days included);
- 1.1.38            **"Finance Parties"** means the Holders and the Facility Agent;
- 1.1.39            **"Financial Covenants"** shall bear the meaning assigned to such term in the Subscription Agreement;
- 1.1.40            **"First Period"** means each day between the first anniversary of the Issue Date and the second anniversary of the Issue Date (both days included);
- 1.1.41            **"Flow of Funds Agreement"** shall bear the meaning assigned to such term in the Subscription Agreement;
- 1.1.42            **"Funding Agreements"** means the Subscription Agreement, these Preference Share Terms, the Subscription Notice and the Flow of Funds Agreement;

- 1.1.43           **"Holder Affiliate"** means any subsidiary, holding company or fund manager of a Holder;
- 1.1.44           **"Holders"** means in the first instance the Subscriber, and includes any other person who at any time acquires any Relevant Preference Shares in accordance with the provisions of the Subscription Agreement;
- 1.1.45           **"Insolvency Event"** means, in relation to a Relevant Party, any of the following events or circumstances:
- 1.1.45.1           a binding order or binding declaration is made, or a meeting of the directors or shareholders of that Relevant Party is convened, to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, sequestration, winding-up, judicial management, dissolution or reorganisation (and whether provisional or final) (by way of voluntary arrangement, scheme of arrangement or otherwise) of that Relevant Party, or of its estate, provided that an application made at the instance of a person or persons other than the directors or shareholders of that Relevant Party, for an order or declaration pertaining to the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up or judicial management of that Relevant Party, shall, provided it is being contested in good faith and with all due diligence by that Relevant Party, and provided further that same is discharged or dismissed within 30 (thirty) days of having been commenced (whether by service and issue or otherwise), shall not constitute an Insolvency Event;
- 1.1.45.2           a Relevant Party files any resolution or makes any application (or such application is made by any other person), in each instance directly or indirectly in relation to any business rescue proceedings involving that Relevant Party and/or any order is made by any court in relation to any business rescue proceedings involving that Relevant Party. For the purposes of this clause, the term "business rescue" shall have a meaning which is the same as or analogous to the meaning attributed to such term in section 128(1)(b) of the Companies Act, provided that an application made at the instance of a person or persons other than the directors or shareholders of that Relevant Party, directly or indirectly in relation to any business rescue proceedings involving that Relevant Party, shall, provided it is being contested in good faith and with all due

diligence by that Relevant Party, and provided further that same is discharged or dismissed within 30 (thirty) days of having been commenced (whether by service and issue or otherwise), shall not constitute an Insolvency Event;

1.1.45.3 a Relevant Party is unable (or admits inability) or is deemed to be unable in terms of the Companies Act to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

1.1.45.4 a Relevant Party takes any proceeding or other step, with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due), or proposes to take any such step;

1.1.45.5 any receiver, administrative receiver, judicial receiver, judicial manager, administrator, compulsory manager, judicial custodian, curator, trustee in bankruptcy, liquidator, or the like is appointed in respect of a Relevant Party or any part of its assets, or that Relevant Party requests any such appointment in respect of itself;

1.1.45.6 a Relevant Party commits any act which, if such act was committed by an individual, would constitute an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936, or any equivalent legislation in any jurisdiction to which such person is subject;

1.1.46 "**Issue Date**" means, in relation to a Preference Share, the date of issue of such Preference Share by the Company to the Subscriber in accordance with the provisions of the Subscription Agreement;

1.1.47 "**Material Adverse Change**" means a change which has or will have a material adverse effect on:

1.1.47.1 the business, operations, financial condition, or prospects, of either Relevant Party and which consequently adversely affects the ability of

- the Company to perform any of its obligations under any Funding Agreement to which it is party; and/or
- 1.1.47.2 the validity or enforceability of any Funding Agreement; and/or
- 1.1.47.3 the rights or remedies of any Finance Party under any Funding Agreement to which it is a party;
- 1.1.48 "**Permitted Investments**" means Cash and Cash Equivalents;
- 1.1.49 "**Permitted Investments Quantum**" means at any time during the Relevant Periods, the aggregate value of Permitted Investments at such time;
- 1.1.50 "**Person**" means:
- 1.1.50.1 any natural person;
- 1.1.50.2 any company or close corporation incorporated in accordance with any Applicable Laws in any jurisdiction; and
- 1.1.50.3 any trust or partnership formed in accordance with, and governed by, any Applicable Laws in any jurisdiction;
- 1.1.51 "**Preference Dividends**" means, in respect of each Preference Share, the applicable Scheduled Dividends and includes any applicable Arrear Dividends and Early Redemption Preference Dividends;
- 1.1.52 "**Preference Share**" means a cumulative redeemable preference share in the issued share capital of the Company;
- 1.1.53 "**Preference Share Terms**" means the rights and privileges recorded in this appendix, which will attach to each Preference Share respectively;
- 1.1.54 "**Prime Rate**" means the publicly quoted basic rate of interest per annum at which SBSA lends on overdraft, compounded monthly in arrears and calculated on a 365 day year factor, irrespective of whether the year is a leap year or not. A certificate signed by any manager or divisional director of such bank, whose qualification and authority need not be proved, setting out the Prime Rate shall constitute prima facie proof of the rate in question;
- 1.1.55 "**Redemption Date**" means, in relation to a Preference Share, the date on which the Company elects or is required to redeem that Preference Share in



terms of these Preference Share Terms, by paying its Redemption Price to its Holder (provided that the Company has declared and paid all the Preference Dividends in respect of that Preference Share prior to such redemption);

1.1.56 "**Redemption Price**" means, in relation to a Preference Share, an amount equal to the Subscription Price of such Preference Share;

1.1.57 "**Refinancing**" means the discharge of any amounts required to be paid by the Company to the Holders on, as a condition of or in relation to the redemption of Preference Shares under the Subscription Agreement, utilising funding made available directly or indirectly to the Company by a third party, but specifically excluding funding available to the Company from cash flow generated by the Company in the ordinary course of its business activities;

1.1.58 "**Regulatory Change Event**" means, in relation to any Holder or Holder Affiliate which is a Bank or a financial institution (a "Regulated Financial Institution") duly registered as such with any statutory or monetary authority -

1.1.58.1 any Change in Law, or any new or change in directive or requirement set by an Authority in South Africa with which Banks or Regulated Financial Institutions in South Africa are generally required to comply with, or a change in the interpretation of any Applicable Laws due to a directive set by any other Authority in South Africa which Banks or Regulated Financial Institutions in South Africa are generally required to comply with; and/or

1.1.58.2 any change in the requirements or directives set by an Authority which Banks or Regulated Financial Institutions are generally required to comply with, to pay additional Taxes or other amounts whatsoever or to maintain special deposits or reserve assets after the Signature Date; and/or

1.1.58.3 any compliance by a Holder with any additional reserve cash ratio, special deposit or liquidity requirements (including without limitation, any compliance with the requirements of Basel II and/or Basel III (as then applied by such Holder) or their respective successors) set by an Authority which Banks or Regulated Financial Institutions are generally required to comply with; and/or

- 1.1.58.4 any change in banking practice which Banks or Regulated Financial Institutions are generally required to comply with; and/or
- 1.1.59 "**Relevant Parties**" means the Company and Assmang;
- 1.1.60 "**Relevant Periods**" means the First Period, the Second Period and the Third Period;
- 1.1.61 "**Relevant Preference Shares**" means such number of Preference Shares as have an Aggregate Subscription Price equal to the Facility Outstandings as at the Issue Date, which Preference Shares shall be subscribed for by the Subscriber and allotted and issued to the Subscriber by the Company, in terms of the provisions of the Subscription Agreement;
- 1.1.62 "**Return**" means, in relation to any Holder (and where applicable, any Holder Affiliate), the net after Tax return which it derives out of any Preference Shares held, or previously held, by it;
- 1.1.63 "**SBSA**" means The Standard Bank of South Africa Limited, registration number 1962/000738/06, a public company registered and incorporated with limited liability according to the company laws of the Republic of South Africa, acting through its Corporate and Investment Banking Division;
- 1.1.64 "**Scheduled Dividend**" means, for each Preference Share and in respect of each Dividend Period, the dividend calculated in accordance with the Basic Calculation Formula;
- 1.1.65 "**Scheduled Redemption Dates**" means the dates recorded in clause 7.1.1;
- 1.1.66 "**Second Period**" means each day between the first day succeeding the second anniversary of the Issue Date and the third anniversary of the Issue Date (both days included);
- 1.1.67 "**Signature Date**" means the date on which the Subscription Agreement is signed by the party thereto signing last in time;
- 1.1.68 "**South Africa**" means the Republic of South Africa;
- 1.1.69 "**STC**" means for so long as same is levied under the Tax Act, Secondary Tax on Companies levied in terms of the Tax Act;

- 1.1.70 "STC Credit" means in relation to any Preference Dividend which the Company declares in respect of any Preference Share, the amount which the Holder of that Preference Share is entitled to deduct pursuant to section 64B(3) of the Tax Act, from the dividends declared by it in order to determine the "net amount" in terms of section 64B(2) of the Tax Act on which STC is levied on such dividends payable;
- 1.1.71 "STC Rate" means the rate at which STC is levied (as at the date of signature of the Subscription Agreement by the parties thereto, being 10% (ten *per centum*));
- 1.1.72 "Subscriber" means SBSA, and includes its lawful successors and assigns under the Subscription Agreement;
- 1.1.73 "Subscription Agreement" means an agreement to be concluded between the Company and the Subscriber in terms of which the Company will issue the Relevant Preference Shares to the Subscriber (and the Subscriber will subscribe for the Relevant Preference Shares);
- 1.1.74 "Subscription Notice" shall bear the meaning assigned to such term in the Subscription Agreement;
- 1.1.75 "Subscription Price" means the subscription price of a single Preference Share, being R100,000.00 (one hundred thousand Rand);
- 1.1.76 "Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature, levied in accordance with any Applicable Law and includes, without limitation -
- 1.1.76.1 the normal tax imposed under the Tax Act;
- 1.1.76.2 STC and Dividends Tax (upon same being introduced); and
- 1.1.76.3 any additional tax, penalties and/or interest levied on any such tax, levy, impost, duty or other charge or withholding;
- 1.1.77 "Tax Act" means the Income Tax Act, 1962;
- 1.1.78 "Tax Rate Change" means any change in any Applicable Law which has the effect that:
- 1.1.78.1 the Corporate Tax Rate is amended;

- 1.1.78.2 the STC Rate is amended; or
- 1.1.78.3 STC is abolished;
- 1.1.79 "**Third Period**" means each day between the first day succeeding the third anniversary of the Issue Date and the Final Redemption Date (both days included);
- 1.1.80 "**Treasury Transaction**" means any currency or interest purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement;
- 1.1.81 "**Trigger Event**" means the events recorded hereunder, and a Trigger Event will irrevocably be deemed to have occurred on the happening of any such event:
- 1.1.81.1 if on any date during any Relevant Period ("the Relevant Day"), the Permitted Investments Quantum is less than that required in respect of that Relevant Period in terms of the undertaking recorded in clause 5.4 of the Subscription Agreement ("the Required Permitted Investment Quantum"), and prior to the Relevant Day, Preference Shares in issue having an aggregate Subscription Price equal to the difference between the actual Permitted Investments Quantum on the Relevant Day and the Required Permitted Investment Quantum, have not been redeemed by the Company, utilising the realisation proceeds of Permitted Investments for the purpose of effecting payment to the Holders, of the aggregate Redemption Price payable on such redemption, and the Permitted Investments Quantum is not thereafter increased to that required in respect of that Relevant Period within 2 (two) Business Days of the Relevant Day; and/or
- 1.1.81.2 if the Company fails to declare and/or pay any Preference Dividend in full on any Dividend Payment Date or other date, on which same is required to be declared and/or paid in terms of these Preference Share Terms, irrespective of the reason for such failure, and does not remedy such failure within 1 (one) Business Day from date of receipt of written notice from the Facility Agent demanding such remedy; and/or

- 1.1.81.3 if any indebtedness of the Company in excess of R100,000,000.00 (one hundred million Rand) (i) is not paid when due nor within any originally applicable grace period, and/or (ii) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described); and/or
- 1.1.81.4 if the Company fails to redeem any Unredeemed Preference Share on the Redemption Date applicable thereto and/or fails to effect payment to the Holder thereof of the Redemption Price and all other amounts payable on redemption of such Unredeemed Preference Share, in full, irrespective of the reason for such failure, and does not remedy such failure within 1 (one) Business Day from date of receipt of written notice from the Facility Agent demanding such remedy; and/or
- 1.1.81.5 without derogating from the provisions of clause 1.1.81.2, if the Company fails to pay any amount required to be paid by it to the Holders in terms of the Subscription Agreement and/or these Preference Share Terms, on the relevant date for such payment, irrespective of the reason for such failure and does not remedy such failure within 1 (one) Business Day from date of receipt of written notice from the Facility Agent demanding such remedy; and/or
- 1.1.81.6 if any Insolvency Event occurs in relation to either Relevant Party; and/or
- 1.1.81.7 if the Company ceases to conduct the business conducted by it as at the Issue Date; and/or
- 1.1.81.8 if the Company repudiates any of these Preference Share Terms or evidences an intention to repudiate any of these Preference Share Terms; and/or
- 1.1.81.9 if any of the assets of the Company having an aggregate Fair Market Value of R100,000,000.00 (one hundred million Rand) or more are subjected to judicial attachment, and the Company, fails to procure the release of such assets from attachment within 30 (thirty) Business Days of such attachment, except that if the Company, provides evidence on an ongoing basis to the reasonable satisfaction of the Facility Agent that steps have been initiated within 21 (twenty one) Business Days of such

attachment to appeal, review or rescind the attachment order and to procure the suspension of the attachment and that such steps are being expeditiously pursued, the period of 30 (thirty) Business Days shall run from the date the attachment order becomes final, or the attempt to procure suspension of the attachment fails; and/or

- 1.1.81.10 if a court judgment or arbitration award in an amount of R100,000,000.00 (one hundred million Rand) or more, is given or made against the Company, which is not satisfied within 30 (thirty) Business Days of it coming to the notice of the Company, except that if the Company, provides evidence on an ongoing basis to the reasonable satisfaction of the Facility Agent that steps have been initiated within 21 (twenty one) Business Days of such court judgment or arbitration award to appeal, review or rescind same and that such steps are being expeditiously pursued, the period of 30 (thirty) Business Days shall run from the date the court judgment or arbitration award becomes final, or the attempt to appeal, review or rescind same fails; and/or
- 1.1.81.11 if the Company fails to comply with any Financial Covenant at any time on which same is tested in terms of the Subscription Agreement; and/or
- 1.1.81.12 if the Company breaches any obligation assumed by it, or any warranty, representation or undertaking given by it, in terms of any Funding Agreement to which it is a party (other than a breach which has been specifically referred to in any of the other sub-clauses to clause 1.1.81), in any manner whatsoever and such breach is not remedied within 20 (twenty) Business Days from date of receipt by the Company, of written notice from the Facility Agent, demanding such remedy; and/or
- 1.1.81.13 if any Material Adverse Change occurs; and/or
- 1.1.81.14 if the Company repudiates any Funding Agreement to which it is a party; and/or
- 1.1.81.15 if at any time, it is or becomes, unlawful for the Company to perform or comply with all or any of its obligations under any Funding Agreement to which it is a party, or any such obligations are not, or cease to be, legal, valid, and/or enforceable unless such unlawfulness, illegality, invalidity and/or unenforceability (i) are capable of remedy, and (ii) is remedied

within 10 (ten) Business Days of the earlier of the Facility Agent giving notice thereof to the Company and the Company becoming aware thereof; and/or

1.1.81.16 if the Company, at any time, without the prior written consent of the Facility Agent, ceases to hold at least 50% (fifty per cent) of all the issued ordinary shares in the share capital of Assmang; and/or

1.1.81.17 if the Company at any time, without the prior written consent of the Facility Agent, Encumbers any of the ordinary shares in the issued share capital of Assmang held by it; and/or

1.1.81.18 if the Company at any time, without the prior written consent of the Facility Agent, ceases to have the right to manage Assmang, either alone or jointly with any one or more other persons; and/or

1.1.81.19 any seizure, expropriation or nationalisation occurs, by or on behalf of any governmental, regulatory or other Authority, of the whole or the greater part of the Company's business or assets; and/or

1.1.81.20 the auditors of the Company adversely and materially qualify their report in any audited consolidated financial statements of the Company for any period which ends after the Signature Date;

1.1.82 "**Unredeemed Preference Share**" means on any day, an issued Preference Share which has not been redeemed;

1.1.83 "**Voluntary Redemption**" means the redemption of Unredeemed Preference Shares by the Company at its election under the provisions of clause 7.2.

## 2. **DIVIDENDS**

### 2.1 **Entitlement**

2.1.1 Each Holder shall be entitled, in respect of each Unredeemed Preference Share held by it, to the Preference Dividends calculated in accordance with the provisions of this clause 2.

2.1.2 All Preference Dividends shall be cumulative.

2.1.3 The Preference Dividends shall be declared and paid to the Facility Agent on behalf of the Holders, in priority to the declaration and/or payment of dividends in respect of any other classes of shares in the Company's share capital.

2.1.4 Notwithstanding anything to the contrary, the aggregate Scheduled Dividend which shall be declared and paid by the Company in respect of the first Dividend Period (the "**First Scheduled Dividend**") shall be reduced by an aggregate amount of R30 727 256.00 (the "**Reduction Amount**"); provided that, should such First Scheduled Dividend be less than the aggregate Reduction Amount, then:

2.1.4.1 no Scheduled Dividend shall be required to be declared and paid by the Company in respect of such first Dividend Period; and

2.1.4.2 the aggregate Scheduled Dividend which shall be declared and paid by the Company in respect of the second Dividend Period shall be reduced by an aggregate amount equal to the difference between the Reduction Amount and the First Scheduled Dividend.

2.1.5 All Preference Dividends on any Unredeemed Preference Share held by a Holder, which have not been declared and paid on the scheduled date for such declaration and payment in terms of these Preference Share Terms shall (without derogating from the provisions of clauses 1.1.81 and 7.3, and furthermore without prejudice to such Holder's rights arising from the Company's failure to so declare and pay such Preference Dividends on such scheduled date), be declared and paid prior to the redemption of such Unredeemed Preference Share.

## 2.2 **Scheduled Dividends**

2.2.1 For each Dividend Period, each Holder shall be entitled to a Scheduled Dividend which shall, subject to the provisions of clauses 2.1.4 and 2.3, be calculated in accordance with the following formula:

$$a = b \times c \times d \times e$$

in which formula:

$a =$  the Scheduled Dividend for the applicable Dividend Period;

$b =$  the Subscription Price of that Preference Share;



- $c =$  the weighted average Dividend Rate over the Dividend Period;
- $d =$  the weighted average Prime Rate over the Dividend Period; and
- $e =$  the number of days in the applicable Dividend Period divided by 365 (three hundred and sixty five).

2.2.2 The Company shall declare and shall pay the Scheduled Dividend on all the Preference Shares in respect of each Dividend Period on the Dividend Payment Date and shall on the day of such declaration and payment, deliver to the Facility Agent on behalf of the Holders, a copy of the resolution passed by the Company resolving to declare and pay such Scheduled Dividend, to each Holder respectively.

### 2.3 **Arrear Dividends**

If the Company does not declare and pay the Scheduled Dividends for any Dividend Period on the applicable Dividend Payment Date or the Company declares the Scheduled Dividends for any Dividend Period but fails to pay those Scheduled Dividends in full on the applicable Dividend Payment Date ("Arrear Dividends"), the Arrear Dividends for each subsequent Dividend Period (a "Later Period") during which the Arrear Dividends (or a portion of the Arrear Dividends) remain outstanding shall be increased by the amount calculated in accordance with the following formula:

$$a = b \times ((c \times d) + 2\%) \times e$$

in which formula:

- $a =$  the increase in the Arrear Dividends for the applicable Later Period;
- $b =$  the Arrear Dividends (or the portion thereof which remains outstanding), which shall be compounded monthly in arrears;
- $c =$  the weighted average Dividend Rate over the Dividend Period during which the Arrear Dividends remains unpaid;
- $d =$  the weighted average Prime Rate over the Dividend Period during which the Arrear Dividend remains unpaid;
- $e =$  *the* number of days which commences on the first day of the Later Period, and ends on the day on which the Arrear Dividends (or the

outstanding portion thereof) are declared (if not previously declared) and paid divided by 365 (three hundred and sixty five).

## 2.4 **Payment**

All Scheduled Dividends and Arrear Dividends shall be paid by the Company to the Facility Agent on behalf of the Holders, on the scheduled date for payment of same in terms of these Preference Share Terms.

## 3. **ADJUSTMENTS AND GROSS UP**

### 3.1 **Regulatory Change Event**

If a Regulatory Change Event occurs and if any Holder's Return decreases or increases, as the case may be, as a result of the occurrence of that Regulatory Change Event (excluding any such decrease pursuant to the occurrence of such Regulatory Change Event, which arises solely by reason of any wilful default or gross negligence on the part of such Holder, to comply with Applicable Law):

- 3.1.1 the Dividend Rate shall be increased or decreased, as the case may be, in respect of the Preference Shares held by that Holder, to such a rate as is necessary to restore that Holder's Return to that which it would have been had the applicable Regulatory Change Event not occurred;
- 3.1.2 the aforesaid increase or decrease will be effected by that Holder calculating an amended Dividend Rate using the Dividend Rate Adjustment Formula, in which formula "f" will be increased or decreased respectively (and such amended "f" will be used for all future calculations until a further Regulatory Change Event occurs at which point "f" shall again be amended accordingly) to take account of the decrease or increase in that Holder's Return, as brought about by the applicable Regulatory Change Event; and
- 3.1.3 the aforesaid increase or decrease in the Dividend Rate shall take effect from the date on which the applicable Regulatory Change Event affects that Holder's Return.

In this clause, each reference to "Holder" will include a reference to "Holder Affiliate".

### 3.2 **Tax Rate Change**

If a Tax Rate Change occurs in relation to any Holder:

3.2.1 the Dividend Rate shall be adjusted by calculating an Adjusted Dividend Rate using the Dividend Rate Adjustment Formula, in which formula "t" and/or "s" in the formula (as may be applicable) will be adjusted to take account of the Tax Rate Change. If STC is abolished "s" shall be zero; and

3.2.2 the aforesaid adjustment in the Dividend Rate shall be deemed to have taken effect:

3.2.2.1 in the case of an STC Rate change or the abolishment of STC from the later of (i) the Issue Date and (ii) the day following the Dividend Payment Date immediately preceding the date on which the STC Rate changed or the date on which STC was abolished (if any) ; and

3.2.2.2 in the case of a Corporate Tax Rate change from the first day of that Holder's tax year during which the change has effect, or if any Preference Dividend has been declared during that tax year but preceding the date of the announcement of the change in the Corporate Tax Rate, the day following the date of such declaration.

### 3.3 **Disallowance of expenditure deduction**

3.3.1 An Adjustment Event shall occur if:

3.3.1.1 as a consequence of holding the Preference Shares, any deduction for Tax purposes of expenditure incurred by a Holder, and to which that Holder would otherwise have been entitled but for holding the Preference Shares and which expenditure was not incurred directly in connection with the transactions contemplated by this Agreement, is disallowed pursuant to any assessment or reassessment of the tax position of that Holder, which increases or decreases the Return to the Holder in respect of the Preference Shares held by it; and/or

3.3.1.2 there is any Change in Law which:

3.3.1.2.1 will result in any expenditure that will actually be incurred as a consequence of the Holder holding the Preference Shares being prohibited from being claimed as a deduction for Tax purposes

(provided such expenditure would otherwise have qualified for deduction by the Holder and which expenditure will not be incurred directly in connection with the transactions contemplated by this Agreement), and which will, as a result increase or decrease the Return to the Holder in respect of the Preference Shares held by it; or

3.3.1.2.2 deems expenditure to be incurred for Tax purposes, resulting in an increased tax charge, as a consequence of the Holder holding the Preference Shares, which will increase or decrease the Return to the Holder in respect of the Preference Shares held by it;

3.3.2 If an Adjustment Event occurs, the relevant Holder shall calculate an additional amount and/or a revised Dividend Rate, in a manner that results in that Holder achieving the same Return in respect of the Preference Shares held by it as it would have achieved had the relevant Adjustment Event not occurred; provided that, where such Adjustment Event does not solely relate to the holding of Preference Shares, but rather to a number of preference shares ("the Affected Preference Shares"), such amount when expressed as a percentage of the total expenditure so disallowed shall not exceed the proportion (expressed as a percentage) which the Preference Shares held by that Holder bear to the Affected Preference Shares held by that Holder, as determined by that Holder acting reasonably. The date from which the revised Dividend Rate will have effect and be applied, shall be the date from which such Adjustment Event is able to be determined.

3.3.3 The Holder undertakes that its investment in the Preference Shares will be derived from funds raised by the issue of share capital by such Holder and that such derivation of funds can be demonstrated to the South African Revenue Service. To the extent that such Holder does not, in fact, utilise such funds to subscribe for the Preference Shares, other than pursuant to a Change in Law which permits the use of such funds, such Holder will not be entitled to recover any amount in respect of the disallowed expenditure which results from such fact. Any claim by a Holder against the Company under this clause 3.3.3, shall be limited to an amount calculated by applying the tax rate applicable to the disallowed expenditure, to the total Preference Dividends accrued to such Holder in respect of the Preference Shares held by it.

### 3.4 **STC Credit**

If, for any reason whatsoever, any Holder is not entitled to a full STC Credit in respect of any Preference Dividends which were declared to that Holder and the Dividend Rate had not been adjusted as a result of the occurrence of such circumstances under clause 3.2, the Company shall pay to that Holder an amount determined as follows:

$$a = (b \times c)/(1-t)$$

in which formula:

a = the additional amount;

b = the amount of the Preference Dividend (or relevant portion thereof) that does not carry the full STC Credit

c = the STC Rate applicable during the dividend cycle of that Holder in which the above Preference Dividend(s) accrued to that Holder (expressed as a percentage); and

t = the Corporate Tax Rate applicable to the additional amount,

provided that should the additional amount constitute a dividend as defined in section 1 of the Tax Act and be exempt from Tax in the hands of that Holder, t shall be deemed to be 0. For the avoidance of doubt, should STC be abolished, then this clause 3.4 shall cease to be of force and effect in relation to Preference Dividends declared to the relevant Holder subsequent to the date of such abolition.

### 3.5 **Tax on Preference Dividend or Redemption Price**

3.5.1 If any Preference Dividend or any Redemption Price that accrues to any Holder is subject to, has been subject to or will be subject to Tax in the hands of that Holder, the Company shall within 5 (five) Business Days after receipt of demand by that Holder, pay to that Holder an amount determined as follows:

$$a = (b \times c) / (1 - d)$$

*in which formula:*

a = the additional amount payable;

*b = the aggregate amount of all Preference Dividends and Redemption Prices which have been, is or will be subject to Tax in the hands of that Holder;*

*c = the tax rate(s) at which the amounts in "b" have been or will be subject to tax;*

*d = the Corporate Tax Rate applicable to that Holder in the year in which the additional amount accrues to that Holder, provided that "d" will be zero where the additional amount is paid as a dividend (as defined in terms of section 1 of the Tax Act) and such dividend is exempt in the hands of such Holder.*

3.5.2 Where any Preference Dividend has been subject to Tax and as a consequence all future Preference Dividends declared shall also be subject to Tax, the Dividend Rate shall be adjusted in accordance with the Dividend Rate Adjustment Formula on the basis that "t" shall be zero.

### 3.6 **No adjustment in excess of the Return**

In the event that in any circumstances contemplated in this clause 3, a Holder has been fully compensated by the Company under a particular sub-clause of this clause 3 in respect of such Holder's Return, such Holder may not invoke the provisions of another sub-clause of this clause 3 in the same circumstances, in order to recover from the Company amounts in excess of such Holder's Return.

## 4. **NOTICES OF ADJUSTMENTS**

If the Dividend Rate is to be adjusted in any of the circumstances stipulated in terms of clause 3:

4.1 each Holder shall, as soon as may be reasonably possible after it comes to that Holder's notice that the Dividend Rate must be adjusted, deliver written notice (an "**Adjustment Notice**") to the Facility Agent, who shall in turn and as soon as reasonably possible after receiving same, deliver such Adjustment Notice to the Company, in which that Holder sets out (1) the facts and/or circumstances which have given rise to the applicable adjustment of the Dividend Rate or payment of the relevant additional amount, and (2) the Dividend Rate prior to its adjustment and the Dividend Rate subsequent to its adjustment, and (3) full particulars of the manner in

which the Holder has calculated the Adjusted Dividend Rate, or additional amount payable, and (4) the date on which the Adjusted Dividend Rate took effect or the additional amount is payable;

4.2 subject to clauses 4.3 and 4.4, the Company shall effect payment of any additional amount payable, on the due date thereof, as recorded in the Adjustment Notice;

4.3 the Company shall be entitled to object to the Adjustment Notice by delivering written notice of objection to the Facility Agent on behalf of that Holder within 5 (five) Business Days after receipt of the Adjustment Notice, failing which the Adjustment Notice (including, without limitation, the Adjusted Dividend Rate or additional amount payable as set out therein) shall be final and binding;

4.4 if the Company timeously disputes that Holder's Adjustment Notice, such dispute shall in the absence of resolution of same by the parties thereto within a period of 30 (thirty) Business Days from the date on which the Company's dispute notice was received by the Facility Agent, be referred by that Holder and the Company, or either of them, to an independent auditor who shall be a partner of one of the four largest auditing firms in South Africa; and

4.5 the auditor contemplated in clause 4.4 shall either be nominated by agreement between the Company and such Holder, or failing such agreement, shall be nominated by the president for the time being of the Institute of Chartered Accountants (or the successor in title or function of such body) whose nomination shall be final and binding on that Holder and the Company and who in arriving at his determination of the Adjusted Dividend Rate or additional amount payable, shall act as an expert and not as an arbitrator.

## **5. COMPANY'S ADDITIONAL RIGHTS ARISING FROM OCCURRENCE OF ADJUSTMENT EVENT**

5.1 Should an Adjustment Event occur as a consequence of a Holder receiving an assessment notice and pursuant thereto the Facility Agent on behalf of that Holder delivers an Adjustment Notice to the Company, then subject to and after payment by the Company to the Facility Agent on behalf of the relevant Holder, of all amounts required to be paid to that Holder in terms of such Adjustment Notice, the Company and the Facility Agent on behalf of that Holder shall consult forthwith as to whether to object or take any other steps to contest the relevant Adjustment Event and/or its consequences. Should the Company require that Holder to object and/or take any

other steps to contest the relevant Adjustment Event and/or its consequences, any costs, charges, fees and/or expenses relating to such objection and/or other steps, shall be for the sole account of the Company, which shall indemnify that Holder in respect thereof on demand. It is specifically recorded that no objection shall be made or other steps taken to contest the relevant Adjustment Event and/or its consequences unless that Holder, in its sole discretion, has agreed in writing that same should be undertaken and has been given reasonable security for the costs, charges, fees and/or expenses so to be incurred (in the event that the Company wishes that Holder to object and/or take any other steps).

- 5.2 Notwithstanding the provisions of clause 5.1, should the Company wish that Holder to so object or take any other steps to contest the relevant Adjustment Event and/or its consequences, but the Facility Agent on behalf of the relevant Holder does not wish to do so, the Company may require that each of the Company and the Facility Agent on behalf of that Holder respectively brief one Senior Counsel each with appropriate experience and expertise to consider and opine on the prospects of success of an objection or whatever other steps the Company may wish to take. Should either or both of the Senior Counsel be of the opinion that there are no reasonable prospects of success, the Company will not take the matter further. Should both Senior Counsel however be of the opinion that there are reasonable prospects of success and the Facility Agent on behalf of that Holder still does not wish to object or take other steps, that Holder shall forthwith pay to the Company the amounts paid by the Company to the Facility Agent on behalf of that Holder and referred to in clause 5.1, together with interest thereon at the Prime Rate from and including the date of receipt of such payment by the Facility Agent on behalf of that Holder, to but excluding the date of repayment thereof to the Company, and any adjustment of the Dividend Rate in terms of clause 3.3 arising solely by reason of the relevant Adjustment Event, shall not become effective.

## 6. **POST REDEMPTION OBLIGATIONS AND SURVIVAL OF RIGHTS**

Each Holder's rights in terms of the provisions of clause 3 shall endure until the earlier of ("**the Rights Termination Date**"):

- 6.1 the third anniversary of the date on which such Holder has been finally assessed in respect of the year of assessment corresponding to the year in which the last of the Preference Shares held by such Holder have been redeemed, and all amounts required to be paid on or in relation to such redemption in terms of the Subscription Agreement and these Preference Share Terms (including without limitation



Preference Dividends, Redemption Prices and interest), have been paid in full. For the purposes of this clause, the term "finally assessed", shall include without limitation the final conclusion of any re-opening of any assessment in respect of any year during which such Preference Shares were in issue and any year in which any such Preference Shares were redeemed, whether pursuant to any available review or appeal process, or otherwise; and

6.2 the fifth anniversary of the date on which the last of the Preference Shares held by such Holder have been redeemed and all amounts required to be paid on such redemption in terms of the Subscription Agreement and these Preference Share Terms (including without limitation Preference Dividends, Redemption Prices and interest), have been paid in full

## 7. REDEMPTION

### 7.1 Scheduled Redemption

7.1.1 The Company shall redeem the Unredeemed Preference Shares as follows:

7.1.1.1 on the first Business Day succeeding the 3<sup>rd</sup> (third) anniversary of the Issue Date, the Company shall redeem such number of Unredeemed Preference Shares as immediately after such redemption, will result in no more than 40% (forty *percent*) of all the Preference Shares issued on the Issue Date remaining in issue;

7.1.1.2 on the first Business Day succeeding the 4<sup>th</sup> (fourth) anniversary of the Issue Date, the Company shall redeem such number of Unredeemed Preference Shares as immediately after such redemption, will result in no more than 20% (twenty *percent*) of all the Preference Shares issued on the Issue Date remaining in issue; and

7.1.1.3 on the first Business Day succeeding the 5<sup>th</sup> (fifth) anniversary of the Issue Date, the Company shall redeem all Unredeemed Preference Shares as at such date.

7.1.2 The Company shall, to the extent to which it has not yet done so, declare and pay all the Preference Dividends in respect of each Preference Share immediately prior to the redemption of the Preference Share.

## 7.2 **Voluntary Redemption**

The Company shall at any time be entitled to voluntarily redeem all or any of the Unredeemed Preference Shares. If the Company elects to redeem any Preference Shares voluntarily:

7.2.1 the Company shall deliver written notice (a "**Voluntary Redemption Notice**") to the Facility Agent, such notice to set out (1) the number of the Unredeemed Preference Shares (the "**Early Redemption Shares**") which the Company has elected to redeem, and (2) the date (the "**Proposed Redemption Date**") on which the Company will redeem the Early Redemption Shares, such date to be no later than 15 (fifteen) Business Days after the date on which the Company delivers its Voluntary Redemption Notice;

7.2.2 a Voluntary Redemption Notice shall be revocable and, after the delivery of a Voluntary Redemption Notice, the Company shall be entitled but not obliged to redeem the applicable Early Redemption Shares on the applicable Proposed Redemption Date.

## 7.3 **Compulsory Early Redemption**

7.3.1 If a Trigger Event occurs:

7.3.1.1 the Facility Agent shall be entitled, but not obliged, to give written notice to the Company in which the Facility Agent requires the Company to remedy that Trigger Event within a period of 2 (two) Business Days; and

7.3.1.2 if the Company does not remedy that Trigger Event within the aforesaid 2 (two) Business Day period the Facility Agent shall be entitled (but not obliged) to deliver written notice (an "Early Redemption Notice") to the Company in which the Facility Agent requires the Company to redeem the Preference Shares on a date (the "Early Redemption Date") set out in the Early Redemption Notice, the Early Redemption Date to be no sooner than 1 (one) Business Day after the date on which the Facility Agent delivers the Early Redemption Notice to the Company.

7.3.2 If the Facility Agent delivers an Early Redemption Notice to the Company, the Company shall (without derogating from the Company's obligations under the provisions of clause 7.4), on the Early Redemption Date set out in the Early Redemption Notice:

7.3.2.1 declare and pay all the outstanding Preference Dividends in respect of the Unredeemed Preference Shares; and

7.3.2.2 redeem all the Unredeemed Preference Shares.

#### 7.4 **Procedure for Redemption**

7.4.1 The Company shall redeem each Unredeemed Preference Share by paying its Redemption Price to the Facility Agent on behalf of the Holder thereof, into the bank account referred to in clause 12.

7.4.2 Against payment of the Redemption Price of any Unredeemed Preference Share in terms of clause 7.4.1, the applicable Holder shall, provided that all the Preference Dividends required to be paid in terms of these Preference Share Terms in respect of that Unredeemed Preference Share have been declared and paid, surrender its share certificates in respect of that Unredeemed Preference Share to the Company.

7.4.3 Should the Company for any reason, fail to pay the Redemption Price required to be paid in respect of the redemption of any Preference Share on the Redemption Date of such Preference Share, then without prejudice to such other rights which may accrue to the Holder holding same consequent upon such failure, there shall be declared and paid to the Facility Agent on behalf of such Holder, interest on such Redemption Price, calculated in accordance with the following formula:

$$a = b \times (c + 2\%) \times d$$

in which formula:

*a* = the interest on the Redemption Price so payable;

*b* = the Redemption Price (or the portion thereof which remains unpaid);

*c* = the weighted average Prime Rate over the period during which the Redemption Price (or the relevant portion thereof) remains unpaid;

*d* = *the* number of days which commence on the Redemption Date on which such Redemption Price was required to be paid, and ends on the day on which the interest on such Redemption Price (or the

outstanding portion thereof) is paid, divided by 365 (three hundred and sixty five).

7.4.4 Such interest shall be payable on demand and be compounded monthly in arrears.

## 8. CONSEQUENCES OF A REFINANCING

8.1 Subject to clause 8.2, in the event that any Unredeemed Preference Share is to be voluntarily redeemed at the instance of the Company in accordance with the provisions of clause 7.2, and any portion of the Redemption Price payable by the Company to the Holder on or in relation to such redemption, is to be funded by the Company utilising the proceeds of a Refinancing, then if such redemption is to occur :

8.1.1 at any time prior to the first anniversary of the Issue Date, in addition to the other amounts required to be paid by the Company to the Holder of such Unredeemed Preference Share in terms of the Subscription Agreement and/or these Preference Share Terms on or pursuant to such redemption, the Company shall be obliged on the Redemption Date of such Unredeemed Preference Share and immediately prior to such redemption, to declare and pay to the Facility Agent on behalf of that Holder, an additional dividend, in an amount equal to 3% (three percent) of the quantum of such Refinancing; and/or

8.1.2 at any time on or subsequent to the first anniversary of the Issue Date but prior to the second anniversary of the Issue Date, in addition to the other amounts required to be paid by the Company to the Holder of such Unredeemed Preference Share in terms of the Subscription Agreement and/or these Preference Share Terms on or pursuant to such redemption, the Company shall be obliged on the Redemption Date of such Unredeemed Preference Share and immediately prior to such redemption, to declare and pay to the Facility Agent on behalf of that Holder, an additional dividend, in an amount equal to 2% (two percent) of the quantum of such Refinancing; and/or

8.1.3 at any time on or subsequent to the second anniversary of the Issue Date but prior to the third anniversary of the Issue Date, in addition to the other amounts required to be paid by the Company to the Holder of such Unredeemed Preference Share in terms of the Subscription Agreement and/or

these Preference Share Terms on or pursuant to such redemption, the Company shall be obliged on the Redemption Date of such Unredeemed Preference Share, to declare and pay to the Facility Agent on behalf of that Holder, an additional dividend, in an amount equal to 1% (one percent) of the quantum of such Refinancing.

- 8.2 In the event that all (and not some only) of the Unredeemed Preference Shares are to be voluntarily redeemed at the instance of the Company in accordance with the provisions of clause 7.2 pursuant to the Dividend Rate having increased (or will increase) or an additional amount becoming (or will become) payable by the Company to the Holder as a result of the application of any of the sub-clauses of clause 3, and any portion of the Redemption Price payable by the Company to the Holder on or in relation to such redemption, is to be funded by the Company utilising the proceeds of a Refinancing, then no additional dividend as contemplated under clauses 8.1.1, 8.1.2 or 8.1.3 shall be payable by the Company to the Holder if (i) the Company has, on not less than 15 Business Days' notice, advised such Holder of the material terms of such Refinancing and (ii) has offered such Holder a right to match all *bona fide* offers received by the Company from external funders in respect of such Refinancing. For the avoidance of doubt, the provisions of this clause 8.2 shall not apply in respect of any circumstances where the Dividend Rate has increased (or will increase) or an additional amount is (or will be) required to be paid by the Company solely as a result of STC being abolished.

## 9. PREFERENCE ON WINDING UP

Each Preference Share shall confer on the Holder thereof, the right on a deregistration, winding up or judicial management of the Company (whether provisional or final) in priority to any payment in respect of any other class of shares in the capital of the Company then issued, to receive a return equal to the sum of the Subscription Price on such Preference Share, plus all Scheduled Dividends notionally accrued up to the date of such deregistration, winding-up or judicial management, plus all Arrear Dividends, plus all Early Redemption Preference Dividends (if any).

## 10. OTHER ENTITLEMENTS

Save as otherwise set out in the Preference Share Terms, the Preference Shares shall not entitle a Holder holding same, to any participation in the profits or assets of the Company or, on a deregistration or winding up, in any of the surplus assets of the Company.

## 11. VOTING AND MEETINGS

- 11.1 Each Holder shall be entitled to receive notice of and to attend at every meeting (whether special or general) of the Company, but shall not be entitled to vote at any such meeting by virtue only of its holding of the Preference Shares:
- 11.1.1 unless any Preference Dividend or any Redemption Price remains in arrear and unpaid; or
- 11.1.2 except in regard to any resolution proposed which directly or indirectly affects any of the rights attaching to any of the Preference Shares or the interests of the Holders, including a resolution for the winding up or deregistration of the Company or for the reduction of its capital.
- 11.2 All notices to be given to a Holder shall be sent to such Holder, at such Holder's address recorded in the Subscription Agreement or any other address provided in writing by such Holder to the Company in accordance with the provisions of the Subscription Agreement.
- 11.3 At any meeting of the Company at which a Holder is entitled to vote, the voting rights attaching to a single ordinary share in the share capital of the Company as recorded in the Company's memorandum of incorporation shall apply *mutatis mutandis* to each Preference Share.
- 11.4 No resolution relating to any matter contemplated in clause 11.1.2 shall be passed at any meeting of the Company, unless each Holder shall have voted in favour of such resolution.

## 12. PAYMENTS

The Preference Dividends, the Redemption Price, and all other amounts required to be paid to a Holder in terms of the Preference Share Terms and/or the Subscription Agreement, shall be paid to the Facility Agent on behalf of such Holder, by way of deposit, into the bank account conducted by the Facility Agent on behalf of the Holders with SBSA, under the name Corporate Banking Disbursement No. 2 Account, account number 009705384, branch code 00020500, or such other bank account as may be nominated by the Facility Agent from time to time, on not less than 5 (five) Business Days prior written notice to the Company.

### 13. GENERAL

- 13.1 No shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or *pari passu* with the Preference Shares shall be created or issued without the prior written consent of the Facility Agent on behalf of the Holders.
- 13.2 A certificate delivered by the Facility Agent on behalf of a Holder to the Company, reflecting the amount owing by the Company to that Holder, will be *prima facie* proof of the amount owing. The appointment of the director, divisional director, manager or employee of the Facility Agent providing such certification, shall not be required to be proved.