

PREFERENCE SHARE SUBSCRIPTION AGREEMENT

DATED [●], 2013

between

**SENWESBEL LIMITED**  
(as issuer of certain preference shares)

and

**UNITED TOWERS PROPRIETARY LIMITED**  
(as subscriber)

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**THIS AGREEMENT** is made between:

- (1) **SENWESBEL LIMITED** (registration number 1996/017629/06), as issuer (the **Company**);
- (2) **UNITED TOWERS PROPRIETARY LIMITED**, as subscriber (the **Subscriber**).

**IT IS AGREED** as follows:

**BACKGROUND:**

- (A) The Company wishes to raise funding in the form of preference share capital for the purposes of refinancing amounts outstanding under the Term Facility Agreement (as defined below).
- (B) The Company has agreed to allot and issue to the Subscriber, who has agreed to subscribe for, the Preference Shares (as defined below) on the terms and conditions set out in this Agreement.

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

- 1.1.1 **Affiliate** has the meaning given to that term in the Preference Share Terms;
- 1.1.2 **Business Day** means a day (other than a Saturday, a Sunday or an official public holiday) on which banks are open for general business in Johannesburg;
- 1.1.3 **Closing Date** means the date on which the Subscriber issues the notice contemplated by Clause 3.1 (Conditions precedent);
- 1.1.4 **Companies Act** means the Companies Act, 2008, including all regulations promulgated under that act;
- 1.1.5 **Default** means:
  - (a) a breach by the Company of any material term of a Preference Share Document (subject to any applicable remedy period provided for in that Preference Share Document);
  - (b) a Redemption Event; or
  - (c) an event or circumstance which, with the expiry of a grace period, the giving of notice or the making of any determination or any combination of them, would be an event contemplated under Clauses (a) or (b) above;
- 1.1.6 **Facilities Letter** means an agreement between Subscriber and Senwes setting out the bank facilities to be made available by the Subscriber to Senwes and the terms and conditions applicable thereto, as amended from time to time;
- 1.1.7 **Financial Indebtedness** has the meaning given to that term in the Preference Share Terms;
- 1.1.8 **Holder** has the meaning given to that term in the Preference Share Terms;

- 1.1.9 **Holding Company** has the meaning given to that term in the Preference Share Terms;
- 1.1.10 **IFRS** means international accounting standards within the meaning of IAS Regulation (EC) No 1606/2002 of the European Parliament and of the Council of the European Union;
- 1.1.11 **Income Tax Act** means the Income Tax Act, 1962, including all regulations promulgated under that act;
- 1.1.12 **Issue Price** means an amount of R209,000,000, being the Issue Price (per Share) multiplied by the number of Preference Shares to be allotted and issued by the Company under this Agreement;
- 1.1.13 **Issue Price (per Share)** means an amount of R1,000,000 per Preference Share, being the all-inclusive price per share at which the Subscriber is to subscribe for, and the Company is to allot and issue, each Preference Share under this Agreement;
- 1.1.14 **Material Adverse Effect** has the meaning given to that term in the Preference Share Terms;
- 1.1.15 **Material Subsidiary** has the meaning given to that term in the Preference Share Terms;
- 1.1.16 **Members' Resolutions** means ordinary and special resolutions of the members of the Company, substantially in the form of the draft resolutions set out in Schedule 2 (Form of Resolutions);
- 1.1.17 **Original Financial Statements** means the audited consolidated financial statements of the Company for the year ended 30 April, 2012;
- 1.1.18 **Party** means a party to this Agreement;
- 1.1.19 **Permitted Transferee** means a person listed in Schedule 4 (Permitted Transferees);
- 1.1.20 **Preference Share Document** means:
- (a) this Agreement;
  - (b) each Security Document;
  - (c) the memorandum of incorporation of the Company (including the Preference Share Terms);
  - (d) the Members' Resolutions;
  - (e) each share certificate delivered to a Holder in respect of a Preference Share,
- and any other document designated as such by the Holders and the Company;
- 1.1.21 **Preference Shares** means 209 cumulative, redeemable preference shares of no par value in the share capital of the Company, having the rights and privileges set out in the Preference Share Terms;

- 1.1.22 **Preference Share Terms** means the special rights and privileges attaching to a Preference Share, being those special rights and privileges embodied in Schedule 3 (Preference Share Terms) (which are to be incorporated into the Company's constitutional documents before the Closing Date);
- 1.1.23 **Rand, ZAR or R** means the lawful currency, from time to time, of South Africa;
- 1.1.24 **Redemption Event** has the meaning given to that term in the Preference Share Terms;
- 1.1.25 **Repeating Representations** means, at any time, the representations and warranties which are made or deemed to be repeated under Clause 7.19 (Repetition);
- 1.1.26 **Sanctioned Country** means a country or territory which is subject to:
- (a) general trade, economic or financial sanctions embargoes imposed, administered or enforced by (i) the US government and administered by OFAC, (ii) the United Nations Security Council, (iii) the European Union or (iv) Her Majesty's Treasury of the United Kingdom; or
  - (b) general economic or financial sanctions embargoes imposed by the US government and administered by the US State Department, the US Department of Commerce or the US Department of the Treasury;
- 1.1.27 **Sanctions** means:
- (a) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (i) the US government and administered by OFAC, (ii) the United Nations Security Council, (iii) the European Union or (iv) Her Majesty's Treasury of the United Kingdom; and
  - (b) economic or financial sanctions imposed, administered or enforced from time to time by the US State Department, the US Department of Commerce or the US Department of the Treasury;
- 1.1.28 **Sanctions List** means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by (a) the US government and administered by OFAC, the US State Department, the US Department of Commerce or the US Department of the Treasury (b) the United Nations Security Council (c) the European Union or (d) Her Majesty's Treasury of the United Kingdom, each as amended, supplemented or substituted from time to time;
- 1.1.29 **Security Cession & Pledge** means the written cession and pledge, dated on or about the date this Agreement, given by Company in favour of the Holders as security for the obligations of the Company under the Preference Share Documents;
- 1.1.30 **Security Document** has the meaning given to that term in the Preference Share Terms;
- 1.1.31 **Security Interest** has the meaning given to that term in the Preference Share Terms;
- 1.1.32 **Senwes** means Senwes Limited (registration number 1997/005336/06), a company incorporated under the laws of South Africa;

- 1.1.33 **Senwes Dividend Cover Maximum Level** means the maximum level at which the Senwes Dividend Cover Ratio (as defined in the Preference Share Terms) is required to be maintained for purposes of Article 43.4.4(c) of the Preference Share Terms as adjusted from time to time pursuant to this Agreement, being 3.00 times at the Subscription Date and;
- 1.1.34 **Senwes Dividend Cover Minimum Level** means the minimum level at which the Senwes Dividend Cover Ratio (as defined in the Preference Share Terms) is required to be maintained for purposes of Article 43.4.4(c) of the Preference Share Terms as adjusted from time to time pursuant to this Agreement, being 2.00 times as at the Subscription Date;
- 1.1.35 **Senwes GBF Cover Minimum Level** means the minimum level at which the Senwes GBF Cover Ratio (as defined in the Preference Share Terms) is required to be maintained for purposes of Article 43.4.4(d) of the Preference Share Terms as adjusted from time to time pursuant to this Agreement, being 1.35 times as at the Subscription Date;
- 1.1.36 **Senwes Gearing Ratio Maximum Level** means the maximum level at which the Senwes Gearing Ratio (as defined in the Preference Share Terms) is required to be maintained for purposes of Article 43.4.4(a) of the Preference Share Terms as adjusted from time to time pursuant to this Agreement, being 1.50 times as at the Subscription Date;
- 1.1.37 **Senwes Interest Cover Minimum Level** means the maximum level at which the Senwes Interest Cover Ratio (as defined in the Preference Share Terms) is required to be maintained for purposes of Article 43.4.4(b) of the Preference Share Terms as adjusted from time to time pursuant to this Agreement, being 3.00 times as at the Subscription Date;
- 1.1.38 **Senwes Ratio Levels** means the Senwes Dividend Cover Maximum Level, the Senwes Dividend Cover Minimum Level, the Senwes GBF Cover Minimum Level, the Senwes Gearing Ratio Maximum Level and the Senwes Interest Cover Minimum Level;
- 1.1.39 **Share Cover Secured Shares** has the meaning given to that term in the Preference Share Terms;
- 1.1.40 **South Africa** means the Republic of South Africa;
- 1.1.41 **Subscription Date** means the date on which the Subscriber subscribes for the Preference Shares in accordance with Clause 4.1 (Subscription and disbursement);
- 1.1.42 **Subsidiary** has the meaning given to that term in the Preference Share Terms;
- 1.1.43 **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
- 1.1.44 **Term Facility Agreement** means the R300,000,000 term loan facility agreement, dated 29 September, 2011, between Absa Bank Limited (as lender) and the Company (as borrower).

## 1.2 Construction

1.2.1 Capitalised terms defined in the Preference Share Terms have, unless expressly defined in this Agreement, the same meaning in this Agreement.

1.2.2 In this Agreement, unless inconsistent with the context, any reference to:

- (a) one gender includes a reference to the others; the singular includes the plural and *vice versa*; and natural persons include juristic persons and vice versa;
- (b) an **amendment** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation, and **amend** will be construed accordingly;
- (c) **assets** includes businesses, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
- (d) an **authorisation** includes an authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation;
- (e) a Default being **continuing** means, in relation to Default within the meaning of Clause 1.1.5(c), that it has not been remedied or waived, and in relation to any other Default, that it has not been waived;
- (f) **constitutional documents**, in respect of a company incorporated in South Africa, means its notice of incorporation, registration certificate (and any new registration certificate), memorandum of incorporation, each notice of amendment and notice of alteration filed after the date of its memorandum of incorporation and the rules (if any) made by that company, in each case as defined in the Companies Act (which, in respect of a company incorporated before the Companies Act became effective, shall include its certificate of incorporation, certificate to commence business, memorandum and articles of incorporation, any certificate of change of name and each special resolution registered after the date on which its current memorandum and articles of incorporation were registered);
- (g) a **disposal** means a sale, transfer, cession, assignment, donation, grant, lease, licence or other alienation or disposal, whether voluntary or involuntary and whether pursuant to a single transaction or a series of transactions, and dispose will be construed accordingly;
- (h) a **guarantee** means any guarantee, bond, letter of credit, indemnity or similar assurance against financial loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person, where, in each case, that obligation is assumed in order to maintain or assist the ability of that person to meet any of its indebtedness;
- (i) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;

- (j) a Preference Share being **outstanding** at any time, means that it has been allotted and issued or transferred to a Holder, and that it remains in issue and has not been redeemed or repurchased and cancelled by the Company;
- (k) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- (l) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (m) a provision of law is a reference to that provision as extended, applied, amended or re-enacted, and includes any subordinate legislation;
- (n) a **Party** or any other person includes its successors in title, permitted assigns and permitted transferees;
- (o) a **Preference Share Document** or other document includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that Preference Share Document or other document, including any amendment providing for any increase in the amount of any financial accommodation or commitment; and
- (p) a time of day is a reference to Johannesburg time.

- 1.2.3 A reference to a **Clause** or a **Schedule** is a reference to a clause of, or a schedule to, this Agreement.
- 1.2.4 Headings of clauses and schedules are inserted for the sake of convenience only and do not in any way affect the interpretation of this Agreement.
- 1.2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect must be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is contained in the interpretation clause.
- 1.2.6 The use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.
- 1.2.7 The rule of construction that an agreement is to be interpreted against the party responsible for the drafting or preparation thereof must not be used in the interpretation of this Agreement.
- 1.2.8 Any number of days prescribed in this Agreement must be calculated by including the first and excluding the last day, unless that last day falls on a day that is not a Business Day, in which case, if the last day is a payment date, the last day will instead be the next Business Day in the same calendar month (if there is one) or



the preceding Business Day (if there is not), or, if the last day is a not a payment date, the last day will instead be the next Business Day.

1.2.9 A reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the day preceding the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:

- (a) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
- (b) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and

notwithstanding (a) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

1.2.10 Unless the contrary intention appears:

- (a) a reference to a Party will not include that party if it has ceased to be a party under this Agreement;
- (b) a word or expression used in any other Preference Share Document or in any notice given in connection with any Preference Share Document has the same meaning in that Preference Share Document or notice as in this Agreement;
- (c) if there is an inconsistency between this Agreement and another Preference Share Document (other than the Preference Share Terms), this Agreement will prevail;
- (d) any obligation of the Company under a Preference Share Document includes an obligation not to contract or agree to do something or not to do something which would breach that first obligation, unless such contract or agreement is conditional on the approval of the Holders (as required under this Agreement).

1.2.11 Any obligation of the Company under a Preference Share Document which is not a payment undertaking (including, without limitation, the undertakings given by the Company under Clause 8 (General Undertakings)), remains in force for so long as any amount remains outstanding under the Preference Share Documents or otherwise in respect of a Preference Share.

1.2.12 The expiry or termination of a Preference Share Document will not affect those of its provisions which expressly provide that they will continue in force or which of necessity must continue to apply after that expiry or termination.

## 2. PREFERENCE SHARE INVESTMENT

### 2.1 Investment commitment

Subject to the terms and conditions of this Agreement, the Subscriber hereby undertakes to invest in the Preference Shares for a maximum aggregate amount not exceeding the Issue Price.

## 2.2 **Application of proceeds**

2.2.1 The proceeds of a subscription for Preference Shares under this Agreement must be used first in repaying the amount outstanding under the Term Facility Agreement and, second, for the general corporate and working capital requirements of the Company, and for no other purpose whatsoever.

2.2.2 No Holder is bound to monitor or verify the application of any amount invested in the Company under this Agreement.

## 3. **CONDITIONS TO SUBSCRIPTION**

### 3.1 **Conditions precedent**

Unless the Subscriber has notified the Company that it has received all the documents and evidence (the **Documentary Conditions**) listed in Schedule 1 (Conditions to Subscription) in form and substance satisfactory to the Subscriber (in its absolute discretion):

3.1.1 the Subscriber shall have no obligation whatsoever to subscribe for any Preference Share or to provide any other form of credit or financial accommodation to the Company under the Preference Share Documents; and

3.1.2 the Company shall not allot or issue (nor offer to allot and issue) any Preference Share to any person.

The Subscriber must give this notification to the Company promptly once it is so satisfied.

### 3.2 **Non-completion**

If the Closing Date has not occurred by 13h00 on 31 December, 2013 (or such later date as may be agreed by the Subscriber in its absolute discretion), the Subscriber shall be entitled to cancel this Agreement and each other Preference Share Document to which it is a party by notice to the Company. The rights and obligations of the Parties under Clauses 1 (Interpretation), 11 (Payments), 12 (Calculations and Certificates), 13 (Disclosure of Information), 15 (Notices and *Domicilia*) and 16 (Miscellaneous Matters) shall not be affected by such a cancellation and shall survive any termination of the Preference Share Documents under this Clause.

### 3.3 **Further conditions to subscription**

Subject to the terms of this Agreement, the Subscriber shall be only obliged to subscribe for the Preference Shares if, on both the Closing Date and the Subscription Date, in the reasonable opinion of the Subscriber:

3.3.1 the Repeating Representations are correct in all material respects; and

3.3.2 no Default is continuing or would arise as a result of the subscription for Preference Shares.

### 3.4 **No invalidation of allotment and issue**

If the Subscriber subscribes for Preference Shares and pays to the Company the applicable Issue Price in circumstances where the conditions precedent set out in this Clause 3 (or some of them) have not been delivered or fulfilled (and have not been

waived or deferred by the Subscriber (in its absolute discretion)), the allotment and issue of those Preference Shares (and the obligation of the Company to allot and issue those shares) will not be invalidated or otherwise affected, to the fullest extent possible at law.

#### **4. SUBSCRIPTION**

##### **4.1 Subscription and disbursement**

If the conditions set out in this Agreement have been met, the Subscriber must subscribe for the Preference Shares and procure that the Issue Price is paid to or for the benefit of the Company in full on the later of (1) the first Business Day following the Closing Date, or (2) 1 November, 2013, (the **Subscription Date**). The Subscriber must pay the Subscription Price to the Company by way of direct electronic funds transfer into the following bank account:

Bank:	Absa Bank Limited
Branch	Klerksdorp
Branch code:	632005
Account number:	4051043176
Reference:	Subscription for Preference Shares

##### **4.2 Subscription by a Nominee**

The Subscriber may elect, by 1 Business Day's notice to the Company, that the Company allots and issues the Preference Shares (or some of them) to another person nominated by the Subscriber (provided that that person is an Affiliate of the Subscriber and is a South African incorporated and tax resident company), provided that the Subscriber shall be and remain jointly and severally liable with such person for the payment of the Issue Price to the Company.

#### **5. ALLOTMENT AND ISSUE**

##### **5.1 Allotment, issue and delivery of share certificates**

Immediately on receipt of the Issue Price, the Company must:

- 5.1.1 allot (as fully paid up) and issue to the Subscriber (or its nominee) all the Preference Shares in certificated form;
- 5.1.2 deliver to the Subscriber (or its nominee) one or more share certificates in respect of the Preference Shares; and
- 5.1.3 make such entries in its register of members, as are required to reflect the Subscriber (or its nominee) as the registered holder of the Preference Shares.

##### **5.2 Risk and benefit**

Subject to the terms and conditions of the Preference Share Documents, the risk in and benefit of the Preference Shares will pass to the Subscriber (and/or its nominee, as applicable) on the allotment and issue of the Preference Shares to it.

### **5.3 Costs of creation and issue**

The Company must pay and indemnify the Subscriber against any cost (including stamp duty, securities transfer tax, registration or other similar Tax payable, if any) incurred in connection with the creation, allotment or issue of the Preference Shares.

### **5.4 Failure to allot and issue**

If all the Preference Shares are not allotted and issued and the relevant share certificates not delivered to the Subscriber within 14 days of the Subscription Date, the Company shall, on first demand by the Subscriber (and without prejudice to any other rights or remedies which the Subscriber may have under any Preference Share Document or at law), immediately refund to the Subscriber the full amount of the Issue Price paid to the Company together with interest thereon, calculated in accordance with Clause 11.7 (Interest on overdue amounts) from the date on which the Issue Price was paid to the Company until (and including) the date on which the Issue Price is refunded to the Subscriber in full.

## **6. CONSTITUTIONAL DOCUMENTS AND PREFERENCE SHARE TERMS**

### **6.1 Preference Share Terms**

6.1.1 The Preference Shares shall be cumulative, redeemable preference shares subject to those special rights and privileges set out in the Preference Share Terms.

6.1.2 The Company may redeem or repurchase Preference Shares only if permitted by and consistent with the Preference Share Terms.

### **6.2 Conflicts with constitutional documents**

If there is any conflict between this Agreement and the constitutional documents of the Company (as amended pursuant to this Agreement), the following shall apply:

6.2.1 as between the Parties, this Agreement shall prevail to the fullest extent permitted by law;

6.2.2 the Company undertakes to convene an extraordinary general meeting of its members within 21 business days of becoming aware of any such conflict or such longer period as the Subscriber may reasonably agree;

6.2.3 the Company undertakes to take whatever steps may be open to it to procure that the memorandum of incorporation of the Company is amended in a manner consistent with the terms of this Agreement.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 General**

7.1.1 The Company makes the representations and warranties set out in this Clause 7 to the Subscriber. A reference in this Clause to **it** or **its** is, unless the context otherwise requires, a reference to the Company.

7.1.2 The Subscriber enters into the Preference Share Documents on the strength of and relying on the representations and warranties set out in this Clause 7, each of which is a separate representation and warranty, given without prejudice to any

other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing the Subscriber to enter into the Preference Share Documents.

## **7.2 Status**

7.2.1 It is a limited liability company, duly incorporated and validly existing under the laws of South Africa.

7.2.2 It and each of its subsidiaries has the power to own its assets and carry on its business as it is being conducted.

## **7.3 Capacity, powers and authority**

7.3.1 It has the legal capacity and power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Preference Share Documents and the transactions contemplated by the Preference Share Documents (subject, on the date of this Agreement only, to the Member's Resolutions being adopted and passed by the shareholders of the Company).

7.3.2 The Company, on and with effect from the Closing Date, will have the power to create and to allot and issue the Preference Shares to the Subscriber on the Subscription Date.

7.3.3 On and with effect from the Closing Date, the directors of the Company have the authority and will have taken all necessary steps to allot and issue the Preference Shares to the Subscriber on the Subscription Date.

7.3.4 Its obligations under the Preference Share Documents will not breach any limit binding on it (under its constitutional documents or otherwise).

## **7.4 Legal validity**

7.4.1 Each Preference Share Document is its legally binding, valid and enforceable obligation.

7.4.2 In respect of the obligation of the Company to allot and issue the Preference Shares on the Subscription Date, the representation and warranty in Clause 7.4.1 above is given on and with effect from the Closing Date.

## **7.5 Non-conflict with other obligations**

The entry into and performance of its obligations under, and the transactions contemplated by, the Preference Share Documents do not conflict with:

7.5.1 any law or regulation applicable to it;

7.5.2 its constitutional documents; or

7.5.3 any document which is binding upon it or any of its assets or constitute a default or termination event (however described) under any such document, in each case to an extent or in a manner which has a Material Adverse Effect or could result in any liability on the part of the Subscriber to any third party or require the creation of any Security Interest over any asset in favour of a third party.

## 7.6 **Authorisations**

All authorisations required by it:

- 7.6.1 in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Preference Share Documents, have been obtained or effected (as appropriate) and are in full force and effect (or, in respect of the obligations of the Company to allot and issue the Preference Shares, by the Closing Date will have been obtained or effected (as appropriate)); and
- 7.6.2 to carry on its business in the ordinary course and in all material respects as it is being conducted have been obtained or effected (as appropriate) and are in full force and effect.

## 7.7 **No default**

- 7.7.1 No Default is continuing or will result from the entry into of, or the performance of any transaction contemplated by, any Preference Share Document.
- 7.7.2 No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any other applicable condition will constitute) a default or termination event (however described) or an event resulting in an obligation to create security under any document which is binding on it or any of its assets to an extent or in a manner which has a Material Adverse Effect.

## 7.8 **Information**

- 7.8.1 All information prepared or provided by it to the Subscriber in connection with the Preference Share Documents is true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given.
- 7.8.2 No information has been given or withheld by it which, if disclosed, might result in the information supplied being untrue or misleading in any material respect.

## 7.9 **Financial statements**

Its audited financial statements most recently delivered to the Holders (which, as at the date of this Agreement, are the Original Financial Statements):

- 7.9.1 have been prepared in accordance with IFRS, consistently applied; and
- 7.9.2 give a true and a fair view of (if audited) or fairly represent (if unaudited) its financial condition (consolidated, if applicable) as at the date to which they were drawn up and the results of its operations for the relevant financial year,

except, in each case, as expressly disclosed to the contrary in those financial statements or in writing to the Subscriber before the date of this Agreement.

## 7.10 **No material adverse change**

As at the date of this Agreement, the Closing Date and the Subscription Date, there has been no material adverse change in the assets or consolidated financial condition of the Company since the latest date to which the Original Financial Statements were drawn up.

**7.11 Share capital**

7.11.1 As at the Subscription Date, the authorised capital of the Company will comprise:

- (a) 160,000,000 ordinary shares which it is proposed will be converted into no par value shares; and
- (b) 500 Preference Shares,

and the Company has not issued or agreed to issue any shares in the capital of the Company, except as contemplated by the Transaction Documents.

7.11.2 Without the approval of the Majority Holders as contemplated in Article 50.1 of the Preference Share Terms, the Company does not and, for so long as any Preference Share remains outstanding, will not have any class of preference share or other share which ranks *pari passu* with or in priority to the Preference Shares in any respect other than in respect of voting rights (including, without limitation, any unclassified shares as contemplated by section 36(1)(d) of the Companies Act).

7.11.3 The Preference Shares, when issued, will be free of any pledge, lien, hypothec or any other encumbrance whatsoever and the Subscriber (or its nominee, as applicable), subject to the provisions of this Agreement, shall become the sole registered owner thereof.

7.11.4 No person has the right to purchase, acquire, subscribe for or have allotted and issued to it any preference shares in the Company, other than as provided in Transaction Documents.

**7.12 Dividends on Preference Shares**

7.12.1 Subject to any change in applicable law, all dividends on the Preference Shares:

- (a) will not be transferred, applied or declared out of "contributed tax capital" as defined in section 1 of the Income Tax Act;
- (b) will not be a "foreign dividend" as defined in section 1 of the Income Tax Act;

7.12.2 Subject to any change in applicable law and the Holder being a South African incorporated and tax resident company, all dividends on the Preference Shares:

- (a) will constitute a "dividend" as defined in section 1 of the Income Tax Act;
- (b) will be exempt from Tax under section 10(1)(k) of the Income Tax Act; and
- (c) will not be subject to withholding tax by the Company for any reason whatsoever.

**7.13 Assets**

7.13.1 The Company is the sole beneficial owner of the Share Cover Secured Shares and other assets which are the subject matter of the Security Documents.

7.13.2 It owns or has leased or licensed to it all material assets necessary to conduct its business as it is being or will be conducted.

**7.14 Financial Indebtedness**

7.14.1 The Company has no Financial Indebtedness outstanding which is not permitted by the terms of the Preference Share Documents.

7.14.2 No Security Interest exists over the whole or any part of the assets of the Company except for those permitted under Clause 8.6 (Negative pledge).

**7.15 Legal proceedings**

7.15.1 No litigation, arbitration, expert determination, alternative dispute resolution or administrative proceedings are current or, to its knowledge, pending or threatened, which have or, if adversely determined, would have a Material Adverse Effect or result in a liability against the Company in an amount which exceeds R10,000,000, other than as disclosed to the Subscriber in writing before the date of this Agreement.

7.15.2 It has not breached any law or regulation which breach would have a Material Adverse Effect.

**7.16 Insolvency and financial distress**

7.16.1 No:

(a) corporate action, legal proceeding or other procedure or step described in Article 43.4.9 (Insolvency proceedings) of the Preference Share Terms; or

(b) creditors' process described in Article 43.4.10 (Creditors' process) of the Preference Share Terms,

has been taken or threatened in relation to it; and none of the circumstances described in Article 43.4.8 (Insolvency) of the Preference Share Terms applies to it.

7.16.2 The Company is not '*financially distressed*' (as defined in the Companies Act).

**7.17 Sanctions**

Neither the Company nor Senwes:

7.17.1 is using or will use the proceeds of the subscription for Preference Shares for the purpose of financing or making funds available directly or indirectly to any person or entity which is currently listed on a Sanctions List or currently located in a Sanctioned Country, to the extent such financing or provision of funds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions;

7.17.2 is contributing or will contribute or otherwise make available the proceeds of the subscription for Preference Shares to any other person or entity for the purpose of financing the activities of any person or entity which is currently listed on a Sanctions List or currently located (or ordinarily resident) in a Sanctioned Country, to the extent such contribution or provision of proceeds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions; or

7.17.3 to the knowledge of the Company or Senwes:



- (a) has been or is targeted under any Sanctions; or
- (b) has violated or is violating any applicable Sanctions.

## **7.18 Taxes**

- 7.18.1 It is not overdue in the filing of any Tax returns or filings relating to any material amount of Tax (except as expressly disclosed in writing to the Subscriber before the date of this Agreement), and it is not overdue in the payment of any material amount of, or in respect of, Tax.
- 7.18.2 No claims or investigations by any Tax authority are being or are reasonably likely to be made or conducted against it which are reasonably likely to result in a liability of or claim against the Company to pay any material amount of, or in respect of, Tax.
- 7.18.3 As at the date of this Agreement no stamp duty or registration duty, securities transfer tax (other than on the redemption of preference shares) or similar documentary charge or Tax is payable by the Company in respect of the Transaction Documents to which it is a party.
- 7.18.4 It is not necessary to ensure the legality, validity, effectiveness, enforceability or admissibility in evidence of a Preference Share Document that it be filed, recorded or enrolled with any court, governmental authority or agency or that it be stamped with any stamp, registration or similar transaction tax in South Africa(except for the filing of amendments to the Memorandum of Incorporation of the Company with the Companies and Intellectual Property Commission as required under section 16(7) of the Companies Act).
- 7.18.5 For Tax purposes, it is resident only in South Africa.

## **7.19 Repetition**

- 7.19.1 The representations and warranties set out in this Clause 7 are made on the date of this Agreement and on the Closing Date.
- 7.19.2 Except to the extent otherwise stated or indicated by the context, each representation and warranty is deemed to be repeated by the Company on the Subscription Date and on each Dividend Date (as defined in the Preference Share Terms).
- 7.19.3 When a representation and warranty is repeated, it is made with reference to the circumstances existing at the time of repetition.

## **8. GENERAL UNDERTAKINGS**

The Company is bound by the undertakings set out in this Clause 8 relating to it.

### **8.1 Authorisations**

The Company must promptly:

- 8.1.1 obtain, maintain, comply with the terms and do all that is reasonably necessary to maintain in full force and effect; and
- 8.1.2 supply certified copies to the Holders,

of any authorisation required under any law or regulation to enable it to perform its obligations under the Preference Share Documents and to ensure the legality, validity, enforceability or admissibility in evidence of, any Preference Share Document.

## **8.2 Compliance with laws**

8.2.1 The Company must comply in all respects with all laws to which it is subject, if failure to do so has or is reasonably likely to have a Material Adverse Effect.

8.2.2 Without limitation of the generality of Clause 8.2.1 above, in performing its obligations under the Preference Share Documents, the Company shall comply at all times with the Companies Act (including sections 4, 46 and 48 of that act), as applicable, and all laws relating to Taxation, in all respects.

## **8.3 Sanctions**

8.3.1 The Company will not (and will procure that Senwes will not) contribute or otherwise make available the proceeds of the subscription for Preference Shares, directly or indirectly, to any person or entity (whether or not related to any of them) for the purpose of financing the activities of any person or entity which is currently listed on a Sanctions List or currently located in a Sanctioned Country, to the extent such contribution or provision of proceeds would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions.

8.3.2 The Company shall (and will procure that Senwes shall) ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the subscription for Preference Shares from being used contrary to paragraph 8.3.1.

## **8.4 Assets and transaction security**

The Company must maintain full, good and proper title to all its assets which are used in respect of its business and do all things necessary (including by paying all moneys, Taxes, duties or other levies required) to maintain that title (except as expressly otherwise permitted under the Preference Share Documents).

## **8.5 Disposals**

The Company may not, either in a single transaction or in a series of transactions (whether related or not), dispose of all or any part of its assets, except:

8.5.1 shares and other securities held by it from time to time which are not Share Cover Secured Shares;

8.5.2 to discharge its obligations under the Preference Share Documents;

8.5.3 as expressly otherwise permitted under the Preference Share Documents; or

8.5.4 with the approval of the Majority Holders.

## **8.6 Negative pledge**

8.6.1 Except as provided below, the Company may not create or allow to exist any Security Interest on any of its assets.

8.6.2 The Company may not:

- (a) dispose of any of its assets on terms where it is or may be or may be required to be leased to or re-acquired or acquired by the Company or any of its Affiliates; or
- (b) dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

8.6.3           Clauses 8.6.1 and 8.6.2 above do not apply to:

- (a) any Security Interest existing over the assets of the Company in respect of the Term Loan Facility;
- (b) any Security Interest created or evidenced by the Preference Share Documents;
- (c) any lien arising by operation of law;
- (d) any Security Interest comprising a netting or set-off arrangement entered into by the Company with a bank in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (e) any netting of payments under any derivative transaction protecting against or benefiting from fluctuations in any rate or price;
- (f) any Security Interest expressly permitted under the Preference Share Documents; and
- (g) any Security Interest expressly permitted in writing by the Majority Holders (but only if the amount secured by that Security Interest is not increased above the amount of the relevant secured obligation at the time it is so permitted).

## 8.7           **Financial Indebtedness**

The Company may not incur or permit to be outstanding any Financial Indebtedness. This does not apply to any Financial Indebtedness:

- 8.7.1           incurred under the Term Facility Agreement, but only until the Subscription Date;
- 8.7.2           incurred under the Preference Share Documents;
- 8.7.3           incurred under another financing arrangement entered into with the Subscriber;
- 8.7.4           expressly permitted in writing by the Majority Holders (but only if the amount is not increased above the amount of the relevant secured obligation at the time it is so permitted).

**8.8 Merger**

The Company may not enter into any amalgamation, demerger, unbundling, merger or reconstruction, except as expressly permitted in writing by the Majority Holders, acting reasonably.

**8.9 Change of business**

The Company must ensure that no substantial change is made to the general nature of its business or that of Senwes from that carried on at the date of this Agreement, except as expressly otherwise permitted in by the Majority Holders.

**8.10 Loans out**

The Company may not be the creditor in respect of any Financial Indebtedness or provide any other form of credit to any person, except to any member of the Group up to an aggregate amount of R20,000,000 or as expressly permitted in writing by the Majority Holders.

**8.11 Third party guarantees**

The Company may not incur or allow to be outstanding any guarantee in respect of any person. This restriction does not apply to any guarantee expressly permitted in writing by the Majority Holders (but only if the amount is not increased above the permitted amount).

**8.12 Arm's length transactions**

The Company may not enter into any material transaction with any person otherwise than on arm's-length terms and for full market value. This restriction does not apply to:

8.12.1 loans provided to members of the Group provided the effect of that transaction is not to transfer value from the Company;

8.12.2 any other transaction expressly permitted in writing by the Majority Holders.

**8.13 Taxes**

The Company must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):

8.13.1 payment of those Taxes is being contested in good faith;

8.13.2 adequate reserves are being maintained for those Taxes and the costs required to contest them; and

8.13.3 failure to pay those Taxes will not have a Material Adverse Effect.

The Company may not change its residence for Tax purposes.

**8.14 Share capital**

Except with the consent of the Majority Holders, the Company may not:

8.14.1 alter any rights attaching to its authorised share capital as on the Subscription Date;

- 8.14.2 redeem, purchase, defease, retire or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so (other than a Preference Share as expressly permitted under this Agreement);
- 8.14.3 issue any shares (or any instrument convertible into shares) which by their terms are redeemable or carry any right to a return prior to the date on which all the obligations of the Company under the Preference Share Documents have been discharged in full; or
- 8.14.4 issue any shares or share capital (or any instrument convertible into shares or share capital), not authorised on the Signature Date, to any person,

or propose or approve any resolution to do so, except if the sole purpose of any such allotment and issue of shares is to redeem the Preference Shares in accordance with the Preference Share Terms.

8.15 **Payments to shareholders**

The Company may not without the express prior consent of the Majority Holders:

- 8.15.1 pay any principal or interest in respect of amounts due (whether in respect of an inter-company loan or otherwise) to or to the order of the shareholders of the Company (or any of its Affiliates);
- 8.15.2 declare, make or pay, or pay interest on any unpaid amount of, any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
- 8.15.3 repay or distribute any share premium account; or
- 8.15.4 pay any management, advisory or other fee to or to the order of the shareholders of the Company (or any of its Affiliates),

if a Default is continuing or would result from that payment, declaration or repayment.

8.16 **Amendments to documents**

Except as required or permitted under the Preference Share Documents, or as may be necessary to comply with any applicable law, for day-to-day administrative purposes, or to correct errors which do not affect the Preference Share Terms, the Company may not amend its memorandum of incorporation without the express prior consent of the Majority Holders.

8.17 **Access**

- 8.17.1 Upon reasonable notice by a Holder, the Company must allow any one or more representatives of a Holder and/or accountants or other professional advisers appointed by the Holder (at the Company's risk and expense) to have access during normal business hours to the premises, assets, books and records of the Company.
- 8.17.2 The Holders may not give notice under Clause 8.17.1 above more than twice every financial year, unless they believe that a Default is outstanding or may have occurred or may occur regarding the financial condition, business and operations of the Company or any Material Subsidiary as a Holder may reasonably request

(being information a Holder considers to be material to the ability of the Company to perform its obligations under the Preference Share Documents).

#### **8.18 Accounting Policy**

The Company shall procure that each set of financial statements delivered pursuant to the Preference Share Documents is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Holders that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Holders:

- 8.18.1 a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
- 8.18.2 sufficient information, in form and substance as may be reasonably required by the Holders, to enable them to determine whether Clauses 43.4.3 (Senwesbel financial ratios) and 43.4.4 (Senwes reference ratios) of the Preference Share Terms have been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

#### **9. COVENANTS**

The Parties agree that:

- 9.1 as at the Subscription Date, the Senwes Ratio Levels are those ratio levels set out in clauses 1.1.33 to 1.1.38 (Interpretation) of this Agreement;
- 9.2 if there is a change to any of the ratio levels agreed between the Subscriber and Senwes in terms of a subsequent Facilities Letter, the Parties shall amend this Agreement to ensure that there is a corresponding change to the applicable Senwes Ratio Level; and
- 9.3 should a Facilities Letter be terminated and not be replaced by a Facilities Letter or should a Facilities Letter be amended or replaced by a Facilities Letter where the ratios in the amended or replacement Facilities Letter do not correspond with the ratios used in the determination of the Senwes Ratio Levels, for whatever reason, the ratio levels agreed in the previous Facilities Letter shall not be amended and shall continue to apply in respect of the Senwes Ratio Levels.

#### **10. INDEMNITIES**

The Company indemnifies the Subscriber against any cost, loss or liability (other than a consequential loss or opportunity costs) which the Subscriber incurs as a direct result of:

- 10.1 the creation, allotment, issue, subscription or holding by any person of Preference Shares being or becoming unlawful, invalid, defective, void or voidable for any reason;
- 10.2 the occurrence of any Default;
- 10.3 a failure by the Company to pay any amount due under a Preference Share Document on its due date;

- 10.4 the Subscriber funding, or making arrangements to fund an investment in the Preference Shares which is not made (other than by reason of default or negligence by the Subscriber alone);
- 10.5 a payment on the redemption of Preference Shares not being made in accordance with the Preference Share Terms;
- 10.6 investigating any event which the Subscriber reasonably believes to be a Default; and
- 10.7 acting or relying on any notice, request or instruction by or on behalf of the Company which the Subscriber reasonably believes to be genuine, correct and appropriately authorised.

## **11. PAYMENTS**

### **11.1 Place**

Unless a Preference Share Document specifies that payments under that document are to be made in another manner, all payments under a Preference Share Document must be made to the relevant Party to its account at such office or bank as it may notify to the other Party for this purpose by not less than five Business Days' prior notice. Until otherwise notified by the Subscriber, its bank account details for these purposes are as follows:

Bank:	Absa Bank Limited
Branch:	Ghandi Square
Branch Number:	632-005
Account Number:	10-2271-0300
Reference:	Senwes

### **11.2 Currency of account**

Each amount payable under a Preference Share Document is payable in Rand.

### **11.3 Funds**

Payments under the Preference Share Documents by the Company must be made for value on the due date in immediately available and freely transferable funds, or at such times and in such funds as the Holders may specify to the Party concerned as being customary at the time for the settlement of transactions in Rand in Johannesburg.

### **11.4 No set-off**

All payments made by the Company under the Preference Share Documents must be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

### **11.5 Business Days**

If a payment under the Preference Share Documents is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not) or whatever day the Subscriber reasonably determines is market practice.

#### 11.6 **Due date not elsewhere specified**

If a Preference Share Document does not provide for when a particular payment is due, that payment will be due within three Business Days of demand by the Holder to which that payment must be made.

#### 11.7 **Interest on overdue amounts**

11.7.1 If, in circumstances where there are no Preference Shares outstanding, the Company fails to pay any amount payable by it under a Preference Share Document on its due date, interest will accrue on the overdue amount from the due date to (and including) the date of actual payment, at a rate determined by the Holders to be 2.00 per cent. per annum, compounded monthly in arrear, above the Dividend Rate (as defined in the Preference Share Terms).

11.7.2 Any interest accruing under this Clause 11.7 is immediately payable on demand by a Holder.

11.7.3 Interest (if unpaid) on an overdue amount will be compounded with that overdue amount at the end of each month, but will remain immediately due and payable.

### 12. **CALCULATIONS AND CERTIFICATES**

#### 12.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Preference Share Document, the entries made in the accounts maintained by a Holder are, in the absence of manifest error, *prima facie* proof of the matters to which they relate.

#### 12.2 **Certificates and determinations**

Any certification or determination by a Holder of a rate or amount or a due date under the Preference Share Documents, signed by any officer, manager or employee of that Holder (the appointment of which officer, manager or employee need not be proved), will be, in the absence of manifest error, *prima facie* proof of the matters to which it relates.

#### 12.3 **Accrual and day count convention**

Any interest or fee accruing under a Preference Share Document accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days (whether or not the year in question is a leap year) or otherwise, depending on what the Holders reasonably determine is market practice.

### 13. **SET-OFF**

The Subscriber may set off any matured obligation owed to it by the Company under a Preference Share Document against any matured obligation owed by the Subscriber to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Subscriber may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.



## 14. DISCLOSURE OF INFORMATION

- 14.1 Each Party must keep confidential and not disclose to any person any information provided to it by or on behalf of another Party in connection with its operations and affairs and those of the Preference Share Documents and the transactions contemplated by the Preference Share Documents (together, **Confidential Information**). However, a Party may disclose information:
- 14.1.1 which is or becomes publicly available, other than as a result of a breach by that Party of this Clause 14;
  - 14.1.2 is known to be in the lawful possession or control of the person to whom it is disclosed and is not subject to an obligation of confidentiality;
  - 14.1.3 in connection with any legal or arbitration proceedings and only for purposes of such proceedings;
  - 14.1.4 if required to do so under any law or regulation or the rules of any recognised stock exchange;
  - 14.1.5 to a governmental, banking, taxation or other regulatory authority and only to the extent required by such authorities;
  - 14.1.6 to its professional advisers;
  - 14.1.7 which is required to effect any registrations or filings required under a Preference Share Document; or
  - 14.1.8 with the prior consent of the other Parties.
- 14.2 A Holder may provide copies of a Preference Share Document and any information which it has acquired under or in connection with a Preference Share Document to any person with whom it may enter, or has entered, into any transfer, participation or other agreement in relation to the Preference Share Documents and/or any Preference Share, if that person has agreed with the Holder to keep that information confidential on the terms of Clause 14.1 above.
- 14.3 This Clause 14 supersedes any previous confidentiality undertaking given by the Parties in connection with the Preference Share Documents.

## 15. NOTICES AND DOMICILIA

- 15.1 **In writing**
- 15.1.1 Any communication in connection with a Preference Share Document must be in writing.
  - 15.1.2 Communications in connection with a Preference Share Document, other than a redemption notice, a notice of intended cession, delegation or transfer, a notice of Default or a notice in connection with a Redemption Event, may also be given by any form of electronic communication previously approved in writing by the Subscriber.
  - 15.1.3 Any consent, waiver or agreement required under a Preference Share Document must be given in writing.

## 15.2 Language

Any notice given in connection with a Preference Share Document must be in English.

### 15.3 Addresses

15.3.1 The Parties choose the following addresses to which notices may be given and at which documents in legal proceedings may be served (their *domicilia citandi et executandi*) in connection with any Preference Share Document:

(a) the Company:

Address: 1 Charel de Klerk Street  
Klerksdorp  
2570

Fax number: +27 (11) 464 2228

Attention: JDM Minnaar

Email Address            danie@mysenwes.co.za  
                                     dries@smitkruger.co.za

(b) the Subscriber:

Address: 15 Alice Lane  
Sandton  
2146

Fax number: +27 (11) 895 7847

Attention: Arlene Roelofse

Email Address                      arlene.roelofse@absacapital.com

15.3.2 Any Party may change its address chosen for the purposes of this Clause 15 to another address in South Africa by giving five Business Days' notice to the Holders (or, in the case of a Holder, to the Company).

15.3.3 Any notice given in connection with a Preference Share Document must be:

(a) delivered in person;

(b) sent by prepaid registered post or by fax; or

(c) may be sent by e-mail or other electronic communication, provided that the Party who receives this communication acknowledges receipt thereof,

to the address chosen by the Party concerned.

15.3.4 Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

15.3.5 This Clause will not operate so as to invalidate the giving or receipt of any notice which is actually received by the addressee other than by a method referred to above.

#### 15.4 **Effectiveness**

15.4.1 Except as provided below, any communication in connection with a Preference Share Document will be deemed to have been duly given:

- (a) if delivered in person, at the time of delivery;
- (b) if posted, 14 days after being deposited in the post, postage prepaid, in a correctly addressed envelope;
- (c) if by fax, and provided it is received in legible form, on the day of its transmission, except that any such transmission after 16h30 shall be deemed to have been received on the following day; or
- (d) if sent by e-mail or other electronic communication, and provided that the Party to whom the communication is addressed acknowledges receipt thereof, on the day of its transmission, except that any such transmission after 16h30 shall be deemed to have been received on the following day.

15.4.2 A communication given under Clause 15 but received on a day which is not a Business Day or after business hours in the place of receipt will be deemed to be given on the next Business Day.

15.4.3 A communication to a Holder will only be effective on actual receipt by it.

#### 16. **MISCELLANEOUS MATTERS**

##### 16.1 **Entire contract**

This Agreement (read together with the other Preference Share Documents) contains all the express provisions agreed on by the Parties with regard to the subject matter of the Preference Share Documents and each Party waives the right to rely on any alleged express provision not contained in the Preference Share Documents.

##### 16.2 **No representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement or another Preference Share Document, unless the representation is recorded in this Agreement or another Preference Share Document.

##### 16.3 **Rights and remedies**

The rights and remedies of a Holder under the Preference Share Documents:

- 16.3.1 are cumulative and not exclusive of its rights under the general law;
- 16.3.2 may be exercised as often as that Holder requires;
- 16.3.3 may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any right is not a waiver of that right.

##### 16.4 **Indulgences**

16.4.1 If a Holder allows any indulgence to the Company, that indulgence will not constitute a waiver by the Holder of any rights under a Preference Share

Document or prevent or adversely affect the exercise by the Holder of any existing or future right.

- 16.4.2 A Holder will not be estopped (i.e. prevented) from exercising its rights arising out of a breach by the Company of any of its obligations under a Preference Share Document, as a result of the Holder having elected or agreed on one or more previous occasions not to exercise its rights arising out of any similar preceding breach or breaches.

**16.5 Severability**

Each term of a Preference Share Document, whether forming an entire clause or only part of a clause, is divisible and severable from all the other terms (regardless of the manner in which they may be linked together or grouped grammatically). If a term of a Preference Share Document is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that will not affect or impair in any manner the legality, validity or enforceability in that jurisdiction of any other term of the Preference Share Documents, or the legality, validity or enforceability in other jurisdictions of that and all the other terms of the Preference Share Documents.

**16.6 Amendments, waivers and cancellation**

- 16.6.1 No contract varying, adding to, deleting from or cancelling a Preference Share Document will be effective unless reduced to writing and signed by or on behalf of the Parties.
- 16.6.2 The expiry or termination of a Preference Share Document will not prejudice the rights of a Holder in respect of any antecedent breach by the Company of, or non-performance under, that Preference Share Document.

**16.7 Changes to the Parties**

Subject to the requirements set out in the Preference Share Terms, the Preference Shares are transferable as follows:

- 16.7.1 A Holder may cede any of its rights and/or delegate any of its obligations (in whole or in part) under the Preference Share Documents to any person to whom it transfers any of the Preference Shares without notice to the Company.
- 16.7.2 The Company irrevocably consents to any splitting of claims which may arise as a result of a Holder exercising its rights under this Clause 16.7.
- 16.7.3 The Company may not cede any of its rights or delegate any of its obligations under a Preference Share Document, in whole or any part, or in any other manner transfer any of its rights or obligations under a Preference Share Document, without the consent of all the Holders.

**16.8 Third party rights**

Unless expressly provided to the contrary in a Preference Share Document, no provision of a Preference Share Document constitutes a stipulation for the benefit of any person (*stipulation alteri*) who is not a party to that Preference Share Document. Notwithstanding any term of any Preference Share Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Preference Share Document.

**16.9 Governing law**

This Agreement is governed by the laws of South Africa.

**16.10 Jurisdiction**

16.10.1 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa (South Gauteng High Court, Johannesburg), to settle any dispute in connection with any Preference Share Document.

16.10.2 The Parties agree that the High Court of South Africa (South Gauteng High Court, Johannesburg) is the most appropriate and convenient court to settle any such dispute in connection with a Preference Share Document. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Preference Share Document.

**16.11 Further assurances**

Each Party must perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by any applicable law or as may be necessary or desirable to implement or give effect to the Preference Share Documents and the transactions contemplated therein.

**16.12 Independent advice**

Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of this Agreement and the other Preference Share Documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all of the provisions of the Preference Share Documents and the restrictions therein contained have been negotiated as between the Parties and are part of the overall intention of the Parties in connection with the Preference Share Documents.

**16.13 Costs**

16.13.1 The Company must pay each Holder the amount of all costs and expenses (including legal fees) reasonably incurred by it, after the date of this Agreement, in connection with:

- (a) the negotiation, preparation, printing and execution of any Preference Share Document and other documents contemplated by the Preference Share Documents which are executed after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of the Company or specifically allowed by this Agreement.

16.13.2 The Company must pay to each Holder the amount of all costs and expenses (including legal fees on a scale as between attorney and own client) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Preference Share Documents.

**16.14 Counterparts**

Each Preference Share Document may be executed in any number of counterparts.

This has the same effect as if the signatures on the counterparts were on a single copy of that Preference Share Document.

**CONDITIONS TO SUBSCRIPTION**

**1. THE COMPANY**

- 1.1 A copy of the constitutional documents of the Company.
- 1.2 A copy of the legal group structure of the Group certified as true, correct and complete.
- 1.3 A copy of a resolution of the board of directors of the Company:
  - 1.3.1 approving the terms of, and the transactions contemplated by, the Preference Share Documents and resolving that it execute those Preference Share Documents;
  - 1.3.2 authorising it, for all purposes required under section 44 of the Companies Act, to provide the "*financial assistance*" that may arise as a result of its entry into the Preference Share Documents;
  - 1.3.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Preference Share Documents;
  - 1.3.4 resolving to allot and issue all the Preference Shares to the Subscriber on the terms and conditions of this Agreement.
- 1.4 Evidence to the satisfaction of the Subscriber that:
  - 1.4.1 each Members' Resolution has been duly passed by the members of the Company;
  - 1.4.2 the Member's resolutions include a special resolution duly passed by the holders of the issued shares of the Company, authorising it, for all purposes required under section 44 of the Companies Act, to provide the "*financial assistance*" that may arise as a result of its entry into the Preference Share Documents;
  - 1.4.3 in the case of each Members' Resolution which is a special resolution, the applicable notice of amendment has been filed and accepted by the Companies and Intellectual Property Commission,

in each case in the manner required by the Companies Act.
- 1.5 A specimen of the signature of each person authorised on behalf of the Company to enter into or witness the entry into of any Preference Share Document, or to sign or send any document or notice in connection with any Preference Share Document.
- 1.6 A certificate of an authorised signatory of the Company certifying that:
  - 1.6.1 entering into the Preference Share Documents, and allotting and issuing 209 Preference Shares to the Subscriber, would not cause any borrowing, guarantee, security or similar limit binding on the Company to be exceeded; and

- 1.6.2 no Default is continuing or will result from the entry into of, or the performance of any transaction contemplated by, any Preference Share Document;
- 1.6.3 each copy document specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the Closing Date.

## **2. TRANSACTION DOCUMENTS**

- 2.1 An originally signed copy of each of the following Preference Share Documents, duly entered into by the parties thereto:
  - 2.1.1 this Agreement;
  - 2.1.2 the Security Cession & Pledge.
- 2.2 A copy of all notices required to be sent, acknowledgements required to be delivered and other documents required to be executed under the Security Cession & Pledge.

## **3. LEGAL OPINIONS**

- 3.1 A legal opinion of Webber Wentzel, legal advisers to the Subscriber, addressed to the Subscriber, on the legality, validity and enforceability of the Preference Share Documents.
- 3.2 A legal opinion of DLA Cliffe Dekker Hofmeyr, legal advisers to the Company, addressed to the Subscriber, on, *inter alia*, the powers and capacity of the Company to enter into the Preference Share Documents to which it is a party.

## **4. KNOW-YOUR-CUSTOMER REQUIREMENTS**

The completion of all applicable know-your-customer or similar procedures required under the Financial Intelligence Centre Act, 2001, as required by the Subscriber in connection with the transactions contemplated by the Preference Share Documents.

## **5. OTHER DOCUMENTS AND EVIDENCE**

- 5.1 The Original Financial Statements.
- 5.2 Evidence that the VWAP Cover Ratio (as defined in the Preference Share Terms) at the Subscription Date, exceeds 3.00 times.
- 5.3 A copy of any other authorisation or other document, opinion or assurance which the Subscriber has notified the Company is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Preference Share Document or for the validity and enforceability of any Preference Share Document.



FORM OF RESOLUTIONS

**SENWESBEL LIMITED**  
Registration Number 1996/017629/06  
(the **Company**)

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**MINUTES OF A MEETING OF THE MEMBERS OF THE COMPANY  
HELD AT [●] ON [●], 2013**

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**Present:** [●];

[●] (in the chair)

**1. INTRODUCTION**

The Chairperson noted that:

- 1.1 the meeting had been convened in accordance with the memorandum of incorporation of the Company;
- 1.2 a quorum was present; and
- 1.3 the meeting could accordingly proceed to business.

**2. BACKGROUND**

The Chairperson reported that:

- 2.1 it is proposed that the Company raises preference share funding from United Towers Proprietary Limited (the **Subscriber**) in a total amount of approximately R209,000,000 by way of an issue of cumulative, redeemable preference shares;
- 2.2 to this end, the Company and the shareholders of the Company have entered into (amongst other agreements) a Preference Share Subscription Agreement (the **Preference Share Subscription Agreement**) with the Subscriber, dated on or about [●], 2013;
- 2.3 it is a condition to the Preference Share Subscription Agreement that the resolutions set out in these minutes be adopted and passed by the members of the Company and, where applicable, that those resolutions which are to be passed as special resolutions, filed with and accepted by the Companies and Intellectual Property Commission, as required by the Companies Act.

**3. RESOLUTIONS OF THE MEMBERS OF THE COMPANY**

The ordinary shareholders of the Company resolved as follows:

**3.1 Special Resolution Number 1 - Financial Assistance**

**THAT** the members of the Company resolve that any and all financial assistance to be

provided by the Company pursuant to the Preference Share Documents, be and is hereby approved for all purposes required under sections 44 of the Companies Act and that the directors of the Company be and are hereby authorised, on behalf of the Company, to enter into and to approve the terms of and the transactions contemplated by the Preference Share Documents.

### 3.2 **Special Resolution Number 2 - Creation of Preference Shares**

**THAT** the authorised shares in the Company are hereby increased to:

3.2.1 160,000,000 ordinary shares of no par value; and

3.2.2 500 redeemable preference shares of no par value,

by the creation of 500 new redeemable, preference shares of no par value (the **Preference Shares**), having the rights and privileges set out in Annexure "1" (Preference Share Terms) attached hereto.

### 3.3 **Special Resolution Number 3 - Amendment of Memorandum of Incorporation**

**THAT**, the Company's memorandum of incorporation be and is hereby amended by:

3.3.1 amending paragraph 6 (issue of Shares and Variation of Rights) to read as follows:

"6. **ISSUE OF SHARES AND VARIATION OF RIGHTS**

*6.1 The Company is authorised to issue -*

*6.1.1 160,000,000 ordinary shares with no par value. Each ordinary share shall entitle the holder thereof –*

*6.1.1.1 to exercise voting rights on all matters submitted for a decision to shareholders of the Company;*

*6.1.1.2 to exercise one vote per ordinary share held or on a show of hands to one vote in respect of all ordinary shares held;*

*6.1.1.3 to participate in distributions of any kind, including but not limited to, distributions of cash, or of a distribution in specie, as determined from time to time by the Board; and*

*6.1.1.4 to participate in the distribution of the residual value of the Company upon its dissolution.*

*6.1.2 500 redeemable preference shares of no par value Each redeemable preference shares shall have the rights and privileges set out in Schedule [•] (Preference Share Terms) of this MOI annexed hereto and marked as "A".*

3.3.2 by inserting, as new Articles 40 to 51, after the Article 39 thereof, all the provisions of Annexure "1" (Preference Share Terms) attached hereto, and by numbering those provisions correspondingly,

and that the amended memorandum of incorporation of the Company by filed with the Companies and Intellectual Property Commission as required by section 16 of the Companies Act.

**3.4 Special Resolution Number 4 - Encumbrances**

**THAT** the encumbrance of the Senwes Shares (or any rights attaching thereto) owned by the Company, pursuant to the Security Cession & Pledge, which encumbrance could result in the Company's voting rights as a holder of Senwes Shares falling below 35% of all of the voting rights exercisable in respect of the Senwes Shares is approved;

**3.5 Ordinary Resolution Number 1 - Authority to Allot and Issue Preference Shares**

**THAT**, subject to the amended memorandum of incorporation of the Company having been filed with and accepted by the Companies and Intellectual Property Commission, the authorised but unissued Preference Shares be and are hereby placed under the control of the directors of the Company to allot and issue all or any part thereof to the Subscriber(or its nominee) pursuant to the Preference Share Subscription Agreement.

**3.6 Ordinary Resolution Number 2 - General Authority to Directors**

**THAT** the board of the Company can appoint any director to be authorised, instructed and empowered to do all such things, sign all such documents and procure the doing of all such things and the signing of all such documents (including the filing of any documentation with the Companies and Intellectual Property Commission which is required to be made under the Companies Act) as may be necessary to give effect to the above resolutions.

**4. CLOSING OF MEETING**

There being no further business, the Chairman declared the meeting closed.

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**CHAIRMAN**  
**Senwesbel Limited**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## PREFERENCE SHARE TERMS

### 40. INTERPRETATION

#### 40.1 Definitions

In these Articles 40 to 51:

- 40.1.1 **Affiliate**, in relation to a person, means a Subsidiary or a Holding Company of that person or any other Subsidiary of that Holding Company;
- 40.1.2 **Arrear Dividend** means any Preference Dividend (or part thereof) which is not paid when due on a Dividend Date (as contemplated by Article 42.8 (Arrear Dividends)), for so long as it remains unpaid;
- 40.1.3 **Arrear Dividend Rate** means a rate per annum equal to 2.00 per cent above the Dividend Rate;
- 40.1.4 **Business Day** means a day (other than a Saturday, a Sunday or an official public holiday) on which banks are open for general business in Johannesburg;
- 40.1.5 **Companies Act** means the Companies Act, 2008, including all regulations promulgated under that act;
- 40.1.6 **Corporate Tax Rate** means the nominal rate of income Tax (expressed as a percentage) levied on the taxable income of companies (other than small business corporations, non-resident companies, employment companies, gold mining companies, long-term insurance companies and tax holiday companies) from time to time under the Income Tax Act;
- 40.1.7 **Dividend Date** means:
- (a) in respect of a Preference Dividend "A", each Scheduled Dividend Date and the Redemption Date of a Preference Share;
  - (b) in respect of the Preference Dividend "B", the first Scheduled Dividend Date;
  - (c) in respect of any applicable Preference Dividend "C", the Redemption Date of a Preference Share;
- 40.1.8 **Dividend Period**, in respect of a Preference Share, means:
- (a) a period of 6 consecutive months commencing on a Scheduled Dividend Date and ending on the day immediately preceding the next Scheduled Dividend Date, provided that the first such period will commence on its Issue Date and end on the day immediately preceding the first Scheduled Dividend Date and the last such period will commence on the last Scheduled Dividend Date before its Redemption Date and end on its Redemption Date (in each case, including the first and excluding the last day of those periods); and

- (b) any other period determined under these Articles by reference to which a Preference Dividend is calculated;
- 40.1.9 **Dividend Rate** means a rate per annum equal to the Dividend Rate Percentage of the Prime Rate (re-calculated and expressed as a nominal annual rate, compounded semi-annually in arrears) from time to time (subject to adjustment under Article 42.4 (Adjustments to the Dividend Rate));
- 40.1.10 **Dividend Rate Percentage** means 82.00 per cent (subject to adjustment under Article 45 (Adjustments of Amounts and Rates));
- 40.1.11 **Financial Indebtedness** means any indebtedness for or in respect of:
- (a) moneys borrowed, credit provided and debit balances at financial institutions;
  - (b) any acceptance credit or bill discounting facility (including any dematerialised equivalent);
  - (c) any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
  - (d) any suspensive sale or instalment credit transaction;
  - (e) any agreement treated as a finance or capital lease in accordance with IFRS;
  - (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - (g) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
  - (h) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
  - (i) any redeemable preference share;
  - (j) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and/or
  - (k) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above articles;
- 40.1.12 **Group** means the Company and its Subsidiaries;
- 40.1.13 **Holder** means:
- (a) the Subscriber (as original holder); or
  - (b) another person reflected (or which is entitled to be reflected), from time to time, as a registered holder of a Preference Share in the register of members of the Company;

- 40.1.14 **Holding Company** of any other person, means a company in respect of which that other person is a Subsidiary;
- 40.1.15 **IFRS** means international accounting standards within the meaning of IAS Regulation (EC) No 1606/2002 of the European Parliament and of the Council of the European Union;
- 40.1.16 **Income Tax Act** means the Income Tax Act, 1962, including all regulations promulgated under that act;
- 40.1.17 **Issue Date**, in respect of a Preference Share, means the date on which the Company allots and issues that Preference Share to a Holder;
- 40.1.18 **Issue Price**, in respect of a Preference Share, means the aggregate all-inclusive price at which the Company allots and issues that Preference Share to a Holder;
- 40.1.19 **Majority Holders** means the Holders of at least 50.00 per cent. plus 1 of the outstanding Preference Shares from time to time;
- 40.1.20 **Material Adverse Effect** means an effect which, in the opinion of the Majority Holders, is or is reasonably likely to be materially adverse to:
- (a) the assets, business, prospects or financial condition of the Company or any Material Subsidiary;
  - (b) the ability of the Company to perform its obligations under any Preference Share Document;
  - (c) the validity or enforceability of any Preference Share Document;
  - (d) any right or remedy of a Holder in respect of a Preference Share Document; or
  - (e) the validity or enforceability of, or effectiveness or ranking of any Security Interests granted or purported to be granted pursuant to, any Preference Share Document;
- 40.1.21 **Material Subsidiary** means:
- (a) Senwes; and
  - (b) any direct or indirect Subsidiary of the Company whose gross assets, Consolidated EBITDA or total revenue equal or exceed 5.00 per cent. or more of the gross assets, Consolidated EBITDA or turnover of the Group as a whole;
- and, for this purpose:
- (i) the gross assets, Consolidated EBITDA or total revenue of a Subsidiary of the Company will be determined from its financial statements (consolidated if it has Subsidiaries) which were consolidated into the latest consolidated financial statements of the Company; however, the gross assets, Consolidated EBITDA or total revenue of that Subsidiary which is eliminated in the Company's consolidated financial statements will be ignored;

- (ii) if a Subsidiary of the Company becomes a member of the Group after the date on which the latest consolidated financial statements of the Company have been prepared, the gross assets, Consolidated EBITDA or total revenue of that Subsidiary will be determined from its latest financial statements (consolidated if it has Subsidiaries);
- (iii) the gross assets, Consolidated EBITDA or total revenue of the Group will be determined from the latest consolidated financial statements of the Company delivered to the Holders under these Preference Share Terms, adjusted (where appropriate) to reflect the gross assets, Consolidated EBITDA or total revenue of any company or business subsequently acquired or disposed of; and
- (iv) the Consolidated EBITDA of a Subsidiary (or a company or business subsequently acquired or disposed of) will be determined on the same basis as "Consolidated EBITDA";

40.1.22 **Members' Resolutions** means the ordinary and special resolutions of the members of the Company, substantially in the form of the draft resolutions set out in Schedule 2 (Form of Resolutions) to the Preference Share Subscription Agreement, adopted at a general meeting of the Company on 23 August, 2013;

40.1.23 **Potential Redemption Event** means any event or circumstance which, with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any other applicable condition under these Preference Share Terms, would be a Redemption Event;

40.1.24 **Preference Dividend** means a Preference Dividend "A", a Preference Dividend "B" or a Preference Dividend "C";

40.1.25 **Preference Dividend "A"** means the cumulative, preferential cash dividend payable on a Preference Share under Article 42.1 (Preference Dividend "A" - scheduled preference dividends);

40.1.26 **Preference Dividend "B"** means the cumulative, preferential cash dividend payable on a Preference Share under Article 42.2 (Preference Dividend "B" – frontend dividend);

40.1.27 **Preference Dividend "C"** means the cumulative, preferential cash dividend payable on a Preference Share under Article 42.3 (Preference Dividend "C" – early redemption dividends);

40.1.28 **Preference Share** means a cumulative, redeemable preference share of no par value in the share capital of the Company, having the rights and privileges set out in these Preference Share Terms;

40.1.29 **Preference Share Document** means:

- (a) the Preference Share Subscription Agreement;
- (b) each Security Document;
- (c) the memorandum of incorporation of the Company;
- (d) the Preference Share Terms;

- (e) the Members' Resolutions;
- (f) each share certificate delivered to a Holder in respect of a Preference Share,

and any other document designated as such by the Holders and the Company;

40.1.30 **Preference Share Subscription Agreement** means the written agreement entitled "Preference Share Subscription Agreement" entered into or to be entered into between the Company and the Subscriber;

40.1.31 **Preference Share Terms** means the special rights and privileges attaching to each Preference Share, as set out in these Articles 40 (Interpretation) to 51 (Transfer of Preference Shares);

40.1.32 **Prime Rate** means the publicly-quoted prime overdraft rate of interest of Absa Bank Limited from time to time, being a nominal annual rate compounded monthly in arrear, as certified by any manager of Absa Capital, a division of Absa Bank Limited (whose appointment and designation need not be proved) and which certificate will be *prima facie* proof of the matters to which it relates;

40.1.33 **Rand, ZAR or R** means the lawful currency, from time to time, of South Africa;

40.1.34 **Redemption Amount**, in respect of a Preference Share, means (subject to adjustment under Article 45 (Adjustment of Amounts and Rates) an amount equal to the sum of the following:

- (a) the Issue Price of that Preference Share;
- (b) each of the following Preference Dividends which, under these Articles, ought to have been declared on that Preference Share but was not so declared by the Redemption Date, except to the extent that it has been paid or constitutes an Arrear Dividend:
  - (i) the aggregate amount of all Preference Dividends "A";
  - (ii) the Preference Dividend "B";
  - (iii) the Preference Dividend "C";

in each case, whether or not the Company has profits available for distribution or has declared that Preference Dividend (or is able to do so), and regardless of whether it is possible in law to declare or pay that Preference Dividend; and

- (c) the aggregate amount of all Arrear Dividends which remain unpaid in respect of that Preference Share;
- (d) the aggregate of all other amounts payable to a Holder in respect of that Preference Share under the Subscription Agreement;
- (e) the aggregate of all amounts which a Holder notifies to the Company as a cost, loss, charge or expenses it has or will incur as a result of the redemption of that Preference Share, to the extent only that such amount has not been included in (or in the calculation of) any amount referred to in paragraphs (b) to (d) above



as reduced pursuant to Article 43.5.6 (Implementation of a redemption) or Article 44 (Alternative Payments or Distributions to Holders);

40.1.35 **Redemption Date**, in respect of a Preference Share, means:

- (a) the Scheduled Redemption Date; or
- (b) any earlier date on which that Preference Share is required to be redeemed pursuant to these Preference Share Terms;

40.1.36 **Redemption Event** means an event specified as such in Article 43.4 (Redemption Events);

40.1.37 **Scheduled Dividend Date** means:

- (a) the date on which the first Preference Dividend "A" is payable, being 30 September, 2013; and
- (b) the last day of March and September of each calendar year;

40.1.38 **Scheduled Redemption Date** means the first Business Day falling 3 years and 1 day after the Issue Date;

40.1.39 **Security Cession & Pledge** means the written agreement entitled "Security Cession and Pledge" entered into or to be entered into between the Company and the Subscriber;

40.1.40 **Security Document** means:

- (a) the Security Cession & Pledge;
- (b) any written notice to a third person of the Security Interests established under the Security Cession & Pledge, and any written acknowledgement of that notice which is required to be delivered to a Holder under that agreement; and
- (c) any other document evidencing or creating any guarantee or security over any asset of a member of the Group to secure any obligation of the Company to the Holders under the Preference Share Documents;

40.1.41 **Security Interest** means any mortgage bond, notarial bond, pledge, security cession, lien, charge, hypothecation, assignment, deposit by way of security or any other agreement or arrangement having a similar effect (including set-off and title retention) but excluding statutory preferences;

40.1.42 **Senwes** means Senwes Limited (registration number 1997/005336/06), a company incorporated under the laws of South Africa;

40.1.43 **Senwes Facilities Letter** means the general banking facilities letter, dated 6 June, 2012, between Absa Bank Limited (acting through its Absa Corporate and Investment Banking Division) and Senwes for the provision of various general banking facilities to Senwes, as amended from time to time;

40.1.44 **South Africa** means the Republic of South Africa;

- 40.1.45 **Subscriber** means United Towers Proprietary Limited, a company incorporated under the laws of South Africa (or another person nominated by it in accordance with the Preference Share Subscription Agreement);
- 40.1.46 **Subsidiary** means a subsidiary within the meaning of section 3 of the Companies Act, and an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent of the voting capital or similar right of ownership, and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;
- 40.1.47 **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 40.2 **Financial definitions**
- 40.2.1 **Consolidated EBITDA**, for any relevant period, means the net operating income of the Group without taking any account of the following items:
- (a) any interest charges or finance charges accrued as an obligation of any member of the Group during that period, whether or not paid, deferred or capitalised during that period;
  - (b) any amount of Tax on profits, gains or income paid or payable by members of the Group and any amount of any rebate or credit in respect of Tax on profits, gains or income received or receivable by members of the Group;
  - (c) any depreciation or amortisation whatsoever, and any charge for impairment or any reversal in that period of any previous impairment charge;
  - (d) any loss against book value incurred by a member of the Group on the disposal of any asset (other than trading stock) during that period;
  - (e) any gain over book value arising in favour of a member of the Group on the disposal of any asset (other than trading stock) during that period and any gain arising on any revaluation of an asset during that period;
  - (f) the amount of profit or loss of any member of the Group which is attributable to the minority interests of a person (not being a member of the Group) who is a shareholder of that member of the Group; and
  - (g) the amount of profit of any associate entity (which is not a member of the Group) in which any member of the Group has an ownership interest, to the extent that the amount of such profit reported through the income statement exceeds the amount (net of any applicable withholding tax) received in cash by members of the Group through distributions by that entity;
- 40.2.2 **Interest** means:
- (a) interest and amounts in the nature of interest accrued;
  - (b) prepayment penalties or premiums incurred in repaying or prepaying any Financial Indebtedness;

- (c) discount fees and acceptance fees payable or deducted in respect of any Financial Indebtedness, including fees payable in respect of letters of credit and guarantees;
- (d) any net payment (or, if appropriate in the context, receipt) under any interest rate hedging agreement or instrument, taking into account any premiums payable;
- (e) any dividends on shares if those shares constitute Financial Indebtedness; and
- (f) any other payments and deductions of similar effect (including the finance cost element of finance leases),

and includes commitment and non-utilisation fees;

40.2.3 **Measurement Period** means a period of 6 calendar months ending on:

- (a) the last day of each financial half-year of the Company; and
- (b) on each financial year-end of the Company;

40.2.4 **PE Value Cover Ratio**, at any time, means the ratio between the Senwes PE Cover Amount and the Total Redemption Amount as at that time;

40.2.5 **Senwes Average Screen Price** means, on any relevant day, the volume-weighted average price of Senwes Shares for the 20 trading day period which ended at close of trade on the trading day immediately preceding that date (as displayed at [http://www.senwes.co.za/Korporatief/AandeleindieSenwesGroep/AandelePrysVolumes/ SENWES.aspx?sflang=en-ZA](http://www.senwes.co.za/Korporatief/AandeleindieSenwesGroep/AandelePrysVolumes/SENWES.aspx?sflang=en-ZA), or any replacement page approved by the Majority Holders);

40.2.6 **Senwes Consolidated Finance Costs**, in relation to any Measurement Period, means all Interest accrued during such period as an obligation of Senwes and its Subsidiaries (whether or not paid or capitalised during or deferred for payment after such period), calculated on a consolidated basis;

40.2.7 **Senwes Dividend Cover Ratio** in respect Senwes, for any Measurement Period, means the ratio between its net earnings after Tax attributable to shareholders to any distributions declared to ordinary shareholders of Senwes during that period;

40.2.8 **Senwes Dividend Cover Maximum Level** has the meaning given to that term in the Preference Share Subscription Agreement;

40.2.9 **Senwes Dividend Cover Minimum Level** has the meaning given to that term in the Preference Share Subscription Agreement;

40.2.10 **Senwes EPS** means the headline earnings per share of Senwes, from time to time, as published in respect of its unaudited results for each of its financial half-years and its audited results for each of its financial years;

40.2.11 **Senwes GBF Outstandings** means, without double counting, at any time, the aggregate of the following amounts outstanding under the Senwes Facilities Letter:

- (a) the principal amount outstanding under each overdraft facility and on-demand short term loan facility (net of any credit balances on any account of Senwes with Absa Bank Limited to the extent that such credit balance is freely available to be set off by Absa Bank Limited against liabilities owed to it by Senwes under the Senwes Facilities Letter);
- (b) the face amount of each guarantee, bond and letter of credit provided by Absa Bank Limited under the Senwes Facilities Letter; and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of Absa Bank Limited under each other type of accommodation provided under the Senwes Facilities Letter;
- (d) all accrued interest and other amounts then due and payable under the Senwes Facilities Letter,

in each case as determined by Absa Bank Limited, acting reasonably in accordance with its normal banking practice and the Senwes Facilities Letter;

- 40.2.12 **Senwes GBF Cover Ratio** at any time, means the ratio between Senwes Secured Receivables and Senwes GBF Outstandings, as at that time;
- 40.2.13 **Senwes GBF Cover Minimum Level** has the meaning given to that term in the Preference Share Subscription Agreement;
- 40.2.14 **Senwes Gearing Ratio** means, on any applicable Measurement Date, the ratio of Senwes Total Borrowings to Senwes Tangible Net Worth on that date;
- 40.2.15 **Senwes Gearing Ratio Maximum Level** has the meaning given to that term in the Preference Share Subscription Agreement;
- 40.2.16 **Senwes Interest Cover Ratio** means, on any applicable Measurement Date, the ratio of Senwes' EBITDA (calculated on the same basis as Consolidated EBITDA) to Senwes Consolidated Finance Costs for the Measurement Period ending on that date;
- 40.2.17 **Senwes Interest Cover Minimum Level** has the meaning given to that term in the Preference Share Subscription Agreement;
- 40.2.18 **Senwes PE Cover Amount**, at any time, means the amount obtained by multiplying the most recently published Senwes EPS by a price earnings multiple of 5.0 and by the number of Senwes Portfolio Shares which are Share Cover Secured Shares at that time;
- 40.2.19 **Senwes Portfolio Shares** means Senwes Shares which are held by the Company as beneficial owner;
- 40.2.20 **Senwes Secured Receivables** means at any time, the claims of Senwes against those of its debtors which are subject to security given in favour of Absa Bank Limited for the obligations of Senwes under or in connection with the Senwes Facilities Letter calculated in each case, at the value at which those debtors are reflected in the books of account of Senwes (including current receivables and arrear receivables, but excluding debtors in the process of collection) or, should the Senwes Facilities Letter in force at the date of Agreement be amended or replaced and the manner for determining the value of such claims amended,

calculated in each case in the manner set out in the amended or replacement Senwes Facilities Letter;

40.2.21 **Senwes Share** means an ordinary share in the issued share capital of Senwes;

40.2.22 **Senwes Tangible Net Worth** means at any time, in relation to Senwes, the aggregate of:

- (a) the amount paid up or credited as paid up on the issued share capital of Senwes on a consolidated basis; and
- (b) the net amount standing to the credit (or debit) of the consolidated reserves of Senwes on a consolidated basis,

based on the latest published audited consolidated balance sheet of the Senwes (the **latest balance sheet**) but adjusted by:

- (i) deducting any dividend or other distribution proposed, declared or made by Senwes (except to the extent it has been taken into account in the latest balance sheet);
- (ii) deducting any amount attributable to goodwill or any other intangible asset;
- (iii) deducting any amount attributable to an upward revaluation of assets (other than financial instruments) after the Issue Date;
- (iv) reflecting any variation in the amount of the issued share capital of Senwes after the date of the latest balance sheet (and any change in the reserves of Senwes resulting from that variation);
- (v) excluding any debit or credit to reserves caused by the fair valuing of any financial instrument;
- (vi) ignoring all assets and liabilities relating to post-employment benefits; and
- (vii) excluding any amounts debited or credited to deferred tax which relates to the revaluation of any item which is excluded from the calculation;

40.2.23 **Senwes Total Borrowings** means at any time, in relation to Senwes, the aggregate at that time of the Financial Indebtedness of Senwes on a consolidated basis, calculated at its nominal or principal amount or, if greater, the maximum amount payable on repayment or redemption of the relevant liabilities. For the purpose of this definition, Financial Indebtedness does not include the marked-to-market value of any interest rate derivative transaction (as referred to in paragraph (g) of the definition);

40.2.24 **Senwes VWAP**, on any day, means:

- (a) the Senwes Average Screen Price; or
- (b) if at any time the ordinary shares of Senwes are listed on a stock exchange operated by the JSE Limited, the volume-weighted average price per share

at which Senwes Shares traded on that exchange during the 20-day period which ended at close of trade on the previous trading day;

- 40.2.25 **Senwes VWAP Cover Amount**, at any time, means the amount obtained by multiplying the Senwes VWAP by the number of Senwes Portfolio Shares which are Share Cover Secured Shares at that time;
- 40.2.26 **Share Cover Secured Shares** means Senwes Portfolio Shares which are subject to Security Interests established in favour of the Holders under the Security Cession & Pledge (for so long as they have not been released from the operation of the Security Cession & Pledge) from time to time;
- 40.2.27 **SWB Dividend Cover Ratio** in respect the Company, for any Measurement Period, means the ratio between its net earnings after Tax attributable to shareholders to any distributions declared to ordinary shareholders of the Company during that period;
- 40.2.28 **VWAP Value Cover Ratio**, at any time, means the ratio between the Senwes VWAP Cover Amount and the Total Redemption Amount as at that time;
- 40.2.29 **Total Redemption Amount**, at any time, means the amount obtained by multiplying the then applicable Redemption Amount per Preference Share by the number of Preference Shares which remain outstanding at that time.

#### 40.3 **Construction**

- 40.3.1 In these Preference Share Terms, unless inconsistent with the context, any reference to:
- (a) one gender includes a reference to the others; the singular includes the plural and *vice versa*; and natural persons include juristic persons and vice versa;
  - (b) an **amendment** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation, and **amend** will be construed accordingly;
  - (c) a Potential Redemption Event being **continuing** means that it has not been remedied or waived, and a Redemption Event being **continuing** means that it has not been waived;
  - (d) a Preference Share being **outstanding** at any time, means that it has been allotted and issued or transferred to a Holder, and that it remains in issue and has not been redeemed or repurchased and cancelled by the Company;
  - (e) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
  - (f) any person includes its successors in title, permitted assigns and permitted transferees;
  - (g) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force

of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (h) a Preference Share being **outstanding** means that it has been allotted and issued or transferred to a Holder, that it remains in issue and has not been redeemed or repurchased and cancelled by the Company;
- (i) a **Preference Share Document** or other document includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that Preference Share Documents or other document, including any amendment providing for any increase in the amount of any financial accommodation or commitment; and
- (j) a time of day is a reference to Johannesburg time.

40.3.2 Headings of clauses and schedules are inserted for the sake of convenience only and do not in any way affect the interpretation of these Preference Share Terms.

40.3.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, effect must be given to it as if it were a substantive provision in the body of these Preference Share Terms, notwithstanding that it is contained in an interpretation provision.

40.3.4 Any number of days prescribed in these Preference Share Terms must be calculated by including the first and excluding the last day, unless that last day falls on a day that is not a Business Day, in which case, if the last day is a payment date, the last day will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not), or, if the last day is a not payment date, the last day will instead be the next Business Day.

40.3.5 A reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the day preceding the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:

- (a) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
- (b) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and

notwithstanding (a) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

## 41. GENERAL

41.1.1 Each Preference Share has all the rights and privileges and is subject to the conditions, limitations and obligations set out in these Preference Share Terms.

41.1.2 The risk in and benefit of a Preference Share shall pass to the Subscriber on the allotment and issue of that Preference Share to it.

## 42. PARTICIPATION IN PROFITS AND ASSETS

### 42.1 Preference Dividend "A" - scheduled preference dividends

42.1.1 Each Preference Share confers on the Holder thereof (registered as such on any applicable Dividend Date) the right to receive out of the profits of the Company which are available for distribution on that Dividend Date, in priority to and before any provision for, declaration or payment of any dividend or capital or other distribution on another class of share in the capital of the Company, a cumulative, preferential cash dividend (a **Preference Dividend "A"**) in an amount determined in accordance with Article 42.1.2 below.

42.1.2 The amount of the Preference Dividend "A" per Preference Share for each Dividend Period shall be calculated in accordance with the following formula:

$$A = \frac{B \times C \times [D + E]}{365}$$

where:

- A = the Preference Dividend "A" per Preference Share for that Dividend Period;
- B = the Dividend Rate;
- C = the actual number of days elapsed in that Dividend Period;
- D = an amount equal to the Redemption Amount per Preference Share on the first day of that Dividend Period;
- E = the aggregate of all amounts determined under this Article 42.1.2 for all preceding Dividend Periods, to the extent that those amounts have not been paid and, for any reason, are not included in D above.

42.1.3 A Preference Dividend "A" must be declared and paid as required under Articles 42.6 and 42.7 below.

### 42.2 Preference Dividend "B" – frontend dividend

42.2.1 Each Preference Share confers on the Holder thereof (registered as such on any applicable Dividend Date) the right to receive out of the profits of the Company which are available for distribution on that Dividend Date, in priority to and before any provision for, declaration or payment of any dividend or capital or other distribution on another class of share in the capital of the Company, a cumulative, preferential cash dividend (a **Preference Dividend "B"**) in an amount determined in accordance with Article 42.2.2 below.

42.2.2 The amount of the Preference Dividend "B" per Preference Share shall equal to 0.50 per cent of the Issue Price of that Preference Share.

42.2.3 A Preference Dividend "B" must be declared and paid as required under Articles 42.6 and 42.7 below.



## 42.3 Preference Dividend "C" – early redemption dividends

42.3.1 Each Preference Share confers on the Holder thereof (registered as such on any applicable Dividend Date) the right to receive out of the profits of the Company which are available for distribution on that Dividend Date, in priority to and before any provision for, declaration or payment of any dividend or capital or other distribution on another class of share in the capital of the Company, a cumulative, preferential cash dividend (a **Preference Dividend "C"**) in an amount determined in accordance with Article 42.3.2 below.

42.3.2 If one or more Preference Shares are to be redeemed under Article 43.1 (Voluntary redemption) on a date earlier than the Scheduled Redemption Date the Company shall pay to the Holders of those shares a Preference Dividend "C" in an amount calculated in accordance with the following formula:

$$A = B \times C$$

where:

- A = the Preference Dividend "C" per Preference Share;
- B = the aggregate Redemption Amount (on the relevant Redemption Date) of a Preference Share which is to be so redeemed;
- C = the percentage rate applicable on the relevant Redemption Date, as set out in the table below:

Redemption Date		Applicable Percentage
(a)	Before the first anniversary of the Issue Date:	1.50 per cent
(b)	On or after the first anniversary of the Issue Date, but prior to the second anniversary thereof:	1.00 per cent
(c)	On or after the second anniversary of the Issue Date, but prior to the third anniversary thereof:	0.50 per cent

42.3.3 Notwithstanding Article 42.3.2 above, Preference Dividend "C" is not payable should the Redemption Amount be paid from:

- (a) the internally generated operating cash flows of a member of the Group: (A) whether or not converted to a dividend; and (B) including, an internally generated operating cash flow pursuant to a disposal of shares which the Company is entitled to make under these Preference Share Terms; or
- (b) the proceeds of an issue by the Company directly to bona fide third party equity investors of ordinary shares in the share capital of the Company (including by way of a general or specific issue of shares) which rank *pari passu* with the other ordinary shares of the Company in all respects and are not redeemable or by their terms convertible into shares that are redeemable or subject to an arrangement where any member of the Group may be required to acquire those shares,

42.3.4 In this article, the **internally generated operating cash flows** of a member of the Group shall exclude the proceeds of any finance raised or shares issued by a member of the Group to a bank or financial institution.

42.3.5 A Preference Dividend "C" must be declared and paid as required under Articles 42.6 and 42.7 below.

42.3.6 For the avoidance of doubt, no Preference Dividend "C" is payable pursuant to a redemption under Article 45.4 (Redemption in relation to a single Holder following a variation).

#### 42.4 **Adjustments to the Dividend Rate**

##### 42.4.1 **default rate**

Notwithstanding anything to the contrary in these Articles, if:

- (a) a Preference Dividend which ought to be declared on a Dividend Date is not declared on that Dividend Date to the full extent of all the profits of the Company which are available for distribution on that date;
- (b) a Preference Dividend which ought to be paid on a Dividend Date is not paid in full on that Dividend Date (whether declared or not);
- (c) in respect of any Preference Share which is required to be redeemed, the Redemption Amount is not paid in full on its Redemption Date;
- (d) the Company fails to pay any other amount which is payable under the Preference Share Documents on its due date;
- (e) any other Redemption Event is continuing,

then, with effect from the date on which that Preference Dividend, Redemption Amount or other amount ought to have been declared and/or paid (as applicable), for so long as that default continues and until that Preference Dividend, Redemption Amount or other amount is declared and/or paid in full (as applicable), the Dividend Rate shall be the Arrear Dividend Rate.

##### 42.4.2 **other adjustments**

The Dividend Rate shall be recalculated whenever so required under Article 45 (Adjustment of Amounts and Rates) following the occurrence of an Adjustment Event (as defined in that Article).

#### 42.5 **Calculation and accrual of Preference Dividends**

42.5.1 Except as expressly otherwise required by applicable law:

- (a) a Preference Dividend shall accrue to the Holder of a Preference Share in full on its applicable Dividend Date, provided only that the Company is lawfully able to declare and pay that Preference Dividend on that date;
- (b) no further action by the directors or the members of the Company will be required for a Preference Dividend to accrue to a Holder.

- 42.5.2 A Preference Dividend "A" must be calculated as if it accrues on a day-to-day basis during the Dividend Period to which it relates.
- 42.6 **Obligation to declare Preference Dividends**
- 42.6.1 Subject to any applicable law and Article 42.6.2 below, each outstanding Preference Dividend to which the Holders are entitled under these Preference Share Terms from time to time must be declared in full on its applicable Dividend Date, as follows:
- (a) on each Scheduled Dividend Date the Company shall declare a Preference Dividend "A" for the Dividend Period then ending;
  - (b) on each Redemption Date before the Scheduled Redemption Date, the Company shall declare in full each Preference Dividend "A", Preference Dividend "B" and Preference Dividend "C" to which the Holders are entitled on that Dividend Date.
- 42.6.2 If, at any time, the profits of the Company which are available for distribution on a Dividend Date fall short of the aggregate amount of all Preference Dividends which ought to be declared on that date:
- (a) the Company must, to the fullest extent of all its profits which are then available for distribution, apply those profits to declare Preference Dividends on that date; and
  - (b) to the extent only of that shortfall, the Company will not be required to declare a Preference Dividend which ought to be declared on that date,
- but whenever the profits of the Company which are available for distribution on the next or any subsequent Dividend Date exceed the amount of the Preference Dividends which ought to be declared on that date, the Company must immediately apply those surplus profits, to the full extent thereof, to declare a Preference Dividend (if any) which it ought to have declared on an earlier Dividend Date but which it failed to declare as a result of a shortfall in profits available for distribution on that earlier date.
- 42.6.3 The profits of the Company which are available for distribution on a Dividend Date, must be applied to declare Preference Dividends in the following order of priority:
- first** any Preference Dividend "B" and Preference Dividend "C" which is required to be declared on that date;
  - second** any Preference Dividend "A" which is required to be declared on that date; and
  - third** any Preference Dividend which ought to have been declared on an earlier Dividend Date, but which the Company failed to declare (in the same order or priority).
- 42.6.4 If, whenever a Preference Share is redeemed or repurchased and the relevant share certificate is surrendered to the Company or its nominee, it fails to pay the Redemption Amount in full, the Company will remain liable to declare all Preference Dividends on that Preference Share and, until the date on which the balance of the Redemption Amount is paid in full, those Preference Dividends will

be calculated and accrue without interruption to the person who was the Holder of that Preference Share immediately before that redemption or repurchase, as if that redemption or repurchase had not occurred.

**42.7 Payment of Preference Dividends**

42.7.1 Each Preference Dividend must be paid in full on the Dividend Date on which it is declared.

42.7.2 Any partial payment in respect of accrued Preference Dividends will be applied to discharge unpaid Preference Dividends in the order of priority set out in Article 42.6.3 (Obligation to declare Preference Dividends) and, thereafter, Arrear Dividends.

**42.8 Arrear Dividends**

42.8.1 If, on a Dividend Date, the Company fails to pay a Preference Dividend in full, that Preference Dividend, to the extent that it is not paid, will be an Arrear Dividend, whether or not the Company has profits available for distribution or has declared that Preference Dividend (or is able to do so), and regardless of whether or not it is possible in law to declare or pay that Preference Dividend.

42.8.2 An Arrear Dividend shall cease to be an Arrear Dividend for purposes of the Preference Share Documents as soon as it has been paid (either by way of Preference Dividends or as part of a Redemption Amount) to the extent of that payment.

**42.9 Dividends cumulative**

Each Preference Dividend is a cumulative preference dividend which, to the extent that it is not paid on a Dividend Date (whether or not it is declared or required to be paid on that date), will accumulate and remain payable in full under these Preference Share Terms.

**42.10 Winding-up and return of capital**

Each Preference Share, on a winding-up or any return of capital by the Company, confers on the Holder thereof (registered as such on the relevant date), in priority to and before any provision for, or payment of, any distribution on another class of share in the capital of the Company which does not rank *pari passu* with the Preference Shares, the right to receive in full out of the assets of the Company, pro rata with the Holders of all other Preference Shares which are then outstanding, an amount equal to the Redemption Amount.

**42.11 No further participation**

Except as provided in this Article 42 (Participation in Profits and Assets), a Preference Share does not confer on its Holder any right to participate in the profits or in any distribution of the assets or capital of the Company.

**43. REDEMPTION OF PREFERENCE SHARES**

**43.1 Voluntary redemption**

43.1.1 Subject to the Companies Act, the Company may, by 14 Business Days' prior notice to the Holders (or such shorter period as the Majority Holders may agree),

redeem some or all of the outstanding Preference Shares at the applicable Redemption Amount.

43.1.2 A notice of redemption is revocable and must specify the date or dates on which the proposed redemption is to be made, the number of Preference Shares to be redeemed and applicable Redemption Amount.

43.1.3 A redemption under this Article 43.1 must be of a minimum number of 10 Preference Shares and an integral multiple of 1, or, if the number of Preference Shares which remain outstanding at the relevant time is less than 10, of all those Preference Shares.

43.1.4 In the case of partial redemption:

- (a) if there is more than one Holder, the Company must redeem a pro rata number of the Preference Shares of each Holder;
- (b) the rights and privileges attaching to those Preference Shares which remain outstanding after that redemption will remain unaltered.

43.1.5 Notwithstanding the other provisions of this Article 43.1, the Company shall not redeem any Preference Shares pursuant to a refinancing unless it redeems all the Preference Shares that are then outstanding. For the purposes hereof, a **refinancing** means an unscheduled redemption of Preference Shares and payment of amounts outstanding under the Preference Share Documents which is funded, directly or indirectly, by way of Financial Indebtedness incurred or share capital raised by a member of the Group.

#### 43.2 **Mandatory redemption on the Scheduled Redemption Date**

On the Scheduled Redemption Date, the Company shall redeem all Preference Shares which remain outstanding on that date, in full, at the applicable Redemption Amount.

#### 43.3 **Mandatory redemption on default**

43.3.1 If a Redemption Event is continuing, the Majority Holders may deliver to the Company a notice (a **Redemption Event Notice**) requiring it to:

- (a) promptly remedy the relevant Redemption Event; and/or
- (b) immediately apply all amounts which are lawfully available for distribution to the shareholders of the Company (ignoring restrictions on dividends or other distributions contained in any other part of the memorandum of incorporation of the Company, if any) to pay any Arrear Dividend,

in each case within a period stipulated in that notice.

43.3.2 If the Company fails to comply with a Redemption Event Notice, the Majority Holders may (without prejudice to any other rights or remedies which a Holder may have under any Preference Share Document or at law), by 5 Business Days' notice (an **Early Redemption Notice**) to the Company, require the Company to redeem some or all of the Preference Shares in full, at the applicable Redemption Amount.

43.3.3 Notwithstanding the occurrence of a Redemption Event, the Company will not be obliged to redeem any Preference Share pursuant to this Article 43.4, before the

date on which the Majority Holders deliver to the Company an Early Redemption Notice.

43.3.4 Any notice given under this Article will take effect in accordance with its terms.

#### 43.4 **Redemption Events**

Each of the events or circumstances set out in this Article 43.4 is a **Redemption Event**.

##### 43.4.1 **Non-payment**

The Company, for any reason, fails to pay:

- (a) a Preference Dividend in full on the relevant Dividend Date;
- (b) the Redemption Amount in respect of a Preference Share in full on its Redemption Date;
- (c) any other amount payable by it in respect of a Preference Share on the due date in the manner required by these Articles;
- (d) any other amount payable by it to the Holder under the Preference Share Documents on the due date,

whether or not the Company has profits available for distribution or, in the case of a Preference Dividend, has declared that dividend (or is able to do so), and regardless of whether or not it is possible in law for the Company to declare a dividend or pay that amount, unless:

- (i) that failure to pay is caused by technical or administrative error; and
- (ii) payment is made in full within three Business Days of the due date.

##### 43.4.2 **Failure to declare dividends or to redeem shares**

- (a) The Company, for any reason, fails to declare a Preference Dividend which it ought to declare on a Dividend Date to the full extent of the profits of the Company which are available for distribution on that date.
- (b) The Company fails to redeem a Preference Share on the applicable Redemption Date.
- (c) The board of the Company, for any reason, fails to make the acknowledgement contemplated by section 46(1)(b) of the Companies Act in the manner required by that section when required to do so for the purposes of a '*distribution*' (as defined in the Companies Act).

##### 43.4.3 **Senwesbel financial ratios**

- (a) The SWB Dividend Cover Ratio, in respect of any Measurement Period, falls below a ratio of 1.30 times.
- (b) The VWAP Cover Ratio, at any time:
  - (i) falls below a ratio of 2.50 times, unless the VWAP Cover Ratio is restored to a ratio of 3.00 times within 10 Business Day of the earlier

of a Holder giving notice to the Company requiring it to do so and the Company becoming aware of thereof;

(ii) falls below a ratio of 2.30 times.

(c) The PE Cover Ratio, at any time, falls below a ratio of 2.00 times, unless the PE Cover Ratio is restored to the specified level within 10 Business Day of the earlier of a Holder giving notice to the Company requiring it to do so and the Company becoming aware of thereof.

#### 43.4.4

##### **Senwes reference ratios**

(a) The Senwes Gearing Ratio, in respect of any Measurement Period, exceeds a ratio equal to the Senwes Gearing Ratio Maximum Level.

(b) The Senwes Interest Cover Ratio, in respect of any Measurement Period, falls below a ratio equal to the Senwes Interest Cover Minimum Level.

(c) The Senwes Dividend Cover Ratio, at any time, falls below a ratio equal to the Senwes Interest Cover Minimum Level or, at any time, exceeds a ratio equal to the Senwes Interest Cover Maximum Level.

(d) The Senwes GBF Cover Ratio, at any time, falls below a ratio equal to the Senwes GBF Cover Minimum Level, unless the Senwes Facilities Letter has been terminated and not replaced.

#### 43.4.5

##### **Breach of other obligations**

The Company does not comply with:

- (a) a term of these Preference Share Terms;
- (b) clauses 7 (Representations and Warranties) or 8 (General Undertakings) of the Preference Share Subscription Agreement;
- (c) any other material term of the Preference Share Documents (other than any term referred to in Articles 43.4.1 (Non-payment), 43.4.2 (Failure to declare dividends or to redeem shares), 43.4.3 (Senwesbel financial ratios) or 43.4.4 (Senwes reference ratios)),

unless:

- (i) that non-compliance is capable of remedy; and
- (ii) is remedied within 14 days of the earlier of a Holder giving notice of the breach to the Company and the Company becoming aware of the non-compliance.

#### 43.4.6

##### **Misrepresentation**

A representation or warranty made or repeated by the Company to the Holder in any Preference Share Document or in any document delivered by or on behalf of the Company under any Preference Share Document is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation or breach of warranty:

- (a) are capable of remedy; and
- (b) are remedied within 14 Business Days of the earlier of a Holder giving notice and the Company becoming aware of the misrepresentation or breach of warranty.

#### 43.4.7

##### **Cross-default**

- (a) Any of the following occurs in respect of the Company or any Material Subsidiary:
  - (i) any of its Financial Indebtedness is not paid when due, after the expiry of any originally applicable grace period;
  - (ii) any of its Financial Indebtedness is declared to be or otherwise becomes due and payable before its specified maturity, is placed on demand or is capable of being declared by or on behalf of a creditor to be prematurely due and payable or of being placed on demand, in each case, as a result of an event of default (howsoever described);
  - (iii) a commitment for, or underwriting of, any Financial Indebtedness is cancelled or suspended by a creditor as a result of an event of default (howsoever described); or
  - (iv) any of its creditors becomes entitled to foreclose on any security interest given to secure its Financial Indebtedness over any asset of the Company or any Material Subsidiary,

unless the aggregate amount of Financial Indebtedness falling within all or any of Articles 43.4.7(i) to (iv) above is less than R5,000,000.

- (b) An event of default, howsoever described, occurs under the Senwes Facilities Letter (including, without limitation, an event which is a "Wanprestasiegebeurtenis" as defined in clause 10 (Wanprestasie) of the Senwes Facilities Letter).

#### 43.4.8

##### **Insolvency**

Any of the following occurs in respect of the Company or any Material Subsidiary:

- (a) it is, or is deemed for the purposes of any applicable law to be, insolvent or unable to pay its debts as they fall due;
- (b) it admits its insolvency or its inability to pay its debts as they fall due;
- (c) it suspends making payments on its debts generally or announces an intention to do so;
- (d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling, restructuring or compromise of any of its indebtedness;
- (e) the value of its assets is less than its liabilities, taking into account contingent and prospective liabilities (and the claims of the Holders under the Preference Share Documents);



- (f) it is "*financially distressed*" (as defined in the Companies Act);
- (g) a moratorium is declared, instituted or takes effect in respect of any of its indebtedness (in which event the ending of the moratorium will not remedy any Redemption Event caused by that moratorium).

#### 43.4.9

#### **Insolvency proceedings**

Any of the following occurs in respect of the Company or any Material Subsidiary:

- (a) any step (including an application to court, proposal or convening of a meeting) is taken with a view to a moratorium, compromise, composition or similar arrangement with any of its creditors;
- (b) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to bring an application for or to file documents with a court or any registrar for its winding-up, dissolution or commencement of business rescue proceedings, or for the seeking of relief under any applicable bankruptcy, insolvency, company or similar law, or any such resolution is passed;
- (c) any person brings an application or files documents with a court or any registrar for its winding-up, dissolution or commencement of business rescue proceedings or seeking of relief under any applicable bankruptcy, insolvency, company or similar law;
- (d) any order (whether a provisional or final order) for its winding-up, dissolution, commencement of business rescue proceedings or reorganisation (by way of a scheme of arrangement or otherwise) is made or other relief is granted under any applicable bankruptcy, insolvency, company or similar law;
- (e) any liquidator, business rescue practitioner, trustee in bankruptcy, administrator or similar officer is appointed in respect of it or any of its assets;
- (f) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, business rescue practitioner, trustee in bankruptcy, administrator or similar officer in respect of it or any of its assets; or
- (g) any Security Interest is enforced over any of its assets;

except that no Redemption Event will occur under this Article 43.4.9 in the case of:

- (i) any step or procedure which is part of a reorganisation of the Company or any Material Subsidiary, implemented with the prior approval of the Majority Holders;
- (ii) pursuant to an application for the winding-up or the commencement of business rescue proceedings of the Company or a Material Subsidiary if (A) the Majority Holders are satisfied that the application is frivolous or vexatious and is contested in good faith and with due process and diligence; and (B) that application is discharged or dismissed within 21 days.

#### 43.4.10

##### **Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any asset or assets of the Company or any Material Subsidiary. No Redemption Event will occur under this Article if:

- (a) the asset or assets are not subject to any Security Interest under the Security Documents and the aggregate value of that asset or those assets is less than R5,000,000; or

that attachment, sequestration, distress, execution or analogous event is being contested in good faith and with due diligence and is discharged within 14 days.

#### 43.4.11

##### **Cessation of business**

The Company or any Material Subsidiary suspends, ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business, or to change the nature of its business from that undertaken at the Issue Date, except that no Redemption Event will occur under this Article 43.4.11:

- (a) in the case of any step or procedure which is part of a reorganisation of a Material Subsidiary (other than Senwes),
  - (i) in solvent circumstances;
  - (ii) where all assets of that Material Subsidiary remain within the Group; and
  - (iii) where the Majority Holders are satisfied that Security Interest is not adversely affected, or.
- (b) with the express prior consent of the Majority Holders.

#### 43.4.12

##### **Removal from Register of Companies**

The Company or any Material Subsidiary is removed from the register of companies maintained by Companies and Intellectual Property Commission.

#### 43.4.13

##### **Change of control**

- (a) Without the express prior approval of the Majority Holders:
  - (i) any person (or group of persons acting in concert) gains control of the Company or Senwes;
  - (ii) the Company ceases to be the beneficial owner, directly or indirectly, of 50.00 per cent plus one share of the issued ordinary share capital of Senwes;
  - (iii) there is a sale of all or substantially all of the assets of the Company, Senwes or the Group as a whole, whether in a single transaction or a series of related transactions to which the provisions of section 112 of the Companies Act would apply (and whether or not any member of the Group it is entitled to disregard the provisions of that section).
- (b) For the purposes of this Article 43.4.13:

- (c) **acting in concert** has the meaning given to it in section 117 of the Companies Act; and
- (d) **control** means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

#### 43.4.14 **Preference Share Documents**

- (a) It is or becomes unlawful for the Company to perform any of its obligations under the Preference Share Documents.
- (b) Any Preference Share Document is not effective in accordance with its terms or is alleged by the Company or a member of the Group to be ineffective in accordance with its terms for any reason.
- (c) A Security Document does not create the Security Interests, priorities or ranking it purports to create.
- (d) The Company repudiates a Preference Share Document or evidences an intention to repudiate such a Preference Share Document.

#### 43.4.15 **Legal proceedings**

Any one or more judgments or orders are made against the Company and/or a Material Subsidiary, involving an aggregate liability (not paid or fully covered by insurance) which is greater than R10,000,000, unless all those judgements and orders are vacated, discharged or stayed pending appeal within 14 days of their being made, except in relation to legal proceedings disclosed in writing before the signature date.

#### 43.4.16 **Holder illegality**

It is or becomes unlawful, for any reason, for a Holder to hold a Preference Share, to fund or maintain its investment in Preference Shares or to claim, recover or receive all or part of a Preference Dividend, a Redemption Amount or any other amount to which it is or would otherwise be entitled in respect of a Preference Share or under the Preference Share Documents.

#### 43.4.17 **Material adverse change**

Any event or series of events (whether related or not) occurs which, in the opinion of the Majority Holders (acting reasonably) has or is reasonably likely to have a Material Adverse Effect.

#### 43.4.18 **Expropriation**

- (a) The authority or ability of the Company or any Material Subsidiary to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person.
- (b) By the authority of any governmental, regulatory or other authority:
  - (i) the management of the Company or any Material Subsidiary is wholly or substantially replaced; or

- (ii) all or a majority of the shares of the Company or any Material Subsidiary or the whole or any part of its assets or revenues are seized, expropriated or compulsory acquired.

**43.4.19 Modification of rights**

Any step (including a notice, proposal or convening of a meeting) is taken with a view to modifying or altering the rights and privileges attaching to the Preference Shares, without the consent of the Majority Holders as required under these Articles.

**43.4.20 Exercise of appraisal rights**

Any shareholder of the Company (other than all the Holders) takes any step to demand a payment under section 164 (Dissenting shareholders appraisal rights) of the Companies Act unless the aggregate amount of the payment demanded is less than R10,000,000.

**43.4.21 Audit qualification**

The auditors of the Company or any Material Subsidiary qualify their report on any audited financial statements of that person for a financial period ended after the Issue Date on the grounds that the information supplied to them or to which they had access was inadequate or unreliable, or on the grounds that they are unable to report on those financial statements on a going concern basis, or otherwise in terms or as to issues which in the opinion of the Majority Holders (acting reasonably) are material in the context of the Preference Share Documents and the transactions contemplated by them.

**43.5 Implementation of a redemption**

43.5.1 If a Preference Share is to be redeemed under these Articles, the Company, subject to the Companies Act, must implement that redemption as detailed in this Article.

43.5.2 Before a Preference Share is redeemed and the Redemption Amount is paid, as a condition to such redemption, the Company shall declare and pay all Preference Dividends (including Arrear Dividends, if any) on that Preference Share which have not been declared or paid before.

43.5.3 The Company must redeem a Preference Share by paying the full Redemption Amount in cash to the Holder thereof on the applicable Redemption Date.

43.5.4 Against the unconditional receipt in full of the applicable Redemption Amount, a Holder must surrender to the Company the share certificate for the Preference Share concerned (or, if that share certificate has been lost or destroyed, proof of that loss or destruction and such indemnities as the Company may reasonably require), in order that the certificate may be cancelled.

43.5.5 Subject to these Preference Share Terms, the Company may redeem a Preference Share in any manner permissible at law.

43.5.6 Notwithstanding the requirements of this Article above, if the Company is required or elects to redeem a Preference Share under these Articles, it may, by notice to the Holders, pay to the Holders, by way of a return of capital on each Preference

Share, an amount up to the Issue Price of that Preference Share minus R1,000, provided that:

- (a) the Company has complied with all applicable provisions of the Companies Act and is otherwise lawfully able to do so;
- (b) such a payment will be subject to Article 45.2.1 (Taxation of dividend income or other amounts);
- (c) each Preference Share in respect of which such a payment is made, is redeemed in full, at the same time, in accordance with the provisions of this Article above by paying the applicable Holder, in cash, on the Redemption Date, an amount equal to the difference between the Redemption Amount of that Preference Share and the amount paid to the Holder by way of the return of capital contemplated above.

The Redemption Amount must be reduced by the amount of any payment made under this Article 43.5.6 (unless it is reduced for that payment under another provision of these Preference Share Terms).

#### 44. ALTERNATIVE PAYMENTS OR DISTRIBUTIONS TO HOLDERS

- 44.1 Subject to section 46 of the Companies Act, if at any time when a Preference Dividend or Redemption Amount ought to be declared and/or paid (as applicable) under these Articles, the Company does not have sufficient profits available for distribution or reserves to declare and pay that Preference Dividend or Redemption Amount, it must, on first demand by any Holder, pay to each Holder an amount equal to that Preference Dividend or Redemption Amount in any manner in which the Company may do so at law.
- 44.2 This Article 44 will not be construed as:
  - 44.2.1 imposing an obligation on the Company to borrow funds or to realise any of its assets; or
  - 44.2.2 in any way restricting a Holder's rights under any Preference Share Document.
- 44.3 The Redemption Amount must be reduced by the amount of any payment made under this Article 44 (unless it is reduced for that payment under another provision of these Preference Share Terms).

#### 45. ADJUSTMENT OF AMOUNTS AND RATES

##### 45.1 Definitions

For the purposes of this Article 45:

- 45.1.1 **Adjustment Event** means any event or circumstance contemplated by Articles 45.2 (Specific variations for current Tax Risk) and 45.3 (Increased Costs following a Change of Law) giving rise to a right to have amounts payable to a Holder adjusted under those Articles;
- 45.1.2 **Basel III Framework** means:
  - (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more

resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any other guidance, standards or directives published by the Basel Committee on Banking Supervision relating to "Basel III";

45.1.3 **Change of Law** means:

- (a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation;
- (b) compliance with any aspect of the Basel III Framework (including any national regulation which implements any aspect of the Basel III Framework) made before or after the Issue Date; or
- (c) compliance with any other law or regulation made after the Issue Date,

including, without limitation, any such law or regulation (including a Basel Directive) concerning capital adequacy requirements, prudential limits, liquid asset holding requirements, special deposit requirements, reserve assets requirements and Taxes;

45.1.4 **Increased Cost** means:

- (a) an additional or increased cost;
- (b) a reduction of an amount due and payable under any Preference Share Document; or
- (c) a reduction in the net after-tax rate of return on the Preference Shares or on a Holder (or its Affiliate's) overall capital,

which is incurred or suffered by a Holder or any of its Affiliates, but only to the extent attributable to the Holder having entered into any Preference Share Document or having subscribed for or acquired any Preference Share, or the Holder or any of its Affiliates (directly or indirectly) funding the investment of the Holder in Preference Shares, or the Holder performing its obligations under any Preference Share Document.

45.2 **Specific variations for current Tax risk**

45.2.1 **Taxation of dividend income or other amounts**

If, at any time, any Tax is or becomes payable on any Preference Dividend or other amount received or receivable (or any amount deemed to be received or receivable) in respect a Preference Share, whether before or after the redemption of that Preference Share, the Preference Dividend or other amount shall be

increased by an amount calculated in accordance with the following formula, such that the relevant Holder receives the same net financial after-tax return it would have received, had such Tax not been payable:

$$A = \left[ \frac{B}{1 - T} \right] - B$$

where:

- $A$  = the additional amount by which the Preference Dividend or other amount is to be increased;
- $B$  = the amount of the Preference Dividend or other amount before the Adjustment Event;
- $T$  = the rate of income tax at which that Preference Dividend or other amount is taxed in the hands of the Holder.

No adjustment will be made under this Article in respect of a Preference Share if the Adjustment Event occurs as a direct result of the Holder of that Preference Share having entered into contractual arrangements in respect of its Preference Shares, not contemplated by the Preference Share Documents, with any member of the Group or another person.

#### 45.2.2

#### **Changes in the Corporate Tax Rate**

If, at any time, there is an increase or a decrease in the Corporate Tax Rate, the Dividend Rate Percentage will be increased or decreased (as applicable) in accordance with the following formula:

$$nDRP = oDRP \times \left[ \frac{1 - nCTR}{1 - oCTR} \right]$$

where:

- $nDRP$  = the new Dividend Rate Percentage to be determined, expressed as a percentage;
- $oDRP$  = the Dividend Rate Percentage applicable immediately prior to the occurrence of the relevant Adjustment Event, expressed as a percentage;
- $nCTR$  = the new Corporate Tax Rate applicable pursuant to the relevant Adjustment Event;
- $oCTR$  = the Corporate Tax Rate applicable immediately prior to the occurrence of the relevant Adjustment Event.

If a new Dividend Rate Percentage is determined under this Article 45.2.2, it shall be applied retrospectively to re-calculate all Preference Dividends that are required to be paid in respect of the then current and any preceding Dividend Period and which, for any reason, have not been declared and paid to a Holder under these Preference Share Terms. Notwithstanding this Article, the Dividend Rate Percentage shall not be decreased:

- (a) if a Redemption Event or a Potential Redemption Event is continuing;
- (b) unless the Company has delivered to all the Holders a demand requiring a decrease of the Dividend Rate Percentage,

Should the demand contemplated in clause 45.2.2(b) above not be delivered to the Holders within 60 days from the day on which the relevant Adjustment Event took effect, the new Dividend Rate Percentage shall not be applied to re-calculate the Preference Dividends that were required to be paid prior to the date the demand was delivered to the Holders, but the new Dividend Rate Percentage shall be applied to calculate the Preference Dividends that are required to be paid after that date.

#### **45.3 Increased Costs following a Change of Law**

If a Holder (or any of its Affiliates) incurs or suffers any Increased Costs as a result of a Change of Law, the amounts payable by the Company to that Holder in respect of a Preference Share shall be increased by an amount which, after making that adjustment, leaves that Holder (or the relevant Affiliate, as applicable) in the same net after-tax position it would have been, had that Adjustment Event not occurred.

#### **45.4 Redemption in relation to a single Holder following a variation**

45.4.1 If, following an Adjustment Event, the Company receives notice of an increase in the Dividend Rate, the Dividend Rate Percentage or the amount of a Preference Dividend in relation to a particular Holder, it may, for a period of one month from the date of that notice (and provided no Redemption Event is then continuing), by 10 days prior notice to the relevant Holder, redeem any or all of the outstanding Preference Shares held by that Holder at the applicable Redemption Amount (as adjusted under this Article 45).

45.4.2 A notice of redemption under this Article 45.4 is irrevocable and must specify the date or dates on which the proposed redemption is to be effected, the affected Preference Shares and the Redemption Amount payable.

#### **45.5 General**

45.5.1 Any adjustment required to be made under this Article 45 shall be made as follows:

- (a) if the Adjustment Event occurs before all the Preference Shares of an affected Holder are redeemed, as:
  - (i) an increase or a decrease in the amount of the Preference Dividends payable on the outstanding Preference Shares of that Holder from time to time; or
  - (ii) a variation in the Dividend Rate Percentage;
- (b) if, when an Adjustment Event occurs or when the effect of an Adjustment Event becomes apparent, there are no Preference Shares outstanding, as an adjustment to the Redemption Amount which shall be payable by the Company to the affected Holder on demand as a premium on the Redemption Amount (notwithstanding the date on the Redemption Amount was paid by the Company, subject to the provisions of Article 45.5.8 below).



- 45.5.2 An adjustment required under this Article 45 shall be made with effect from the date on which an Adjustment Event takes effect (whether or not the Company elects to redeem the applicable Preference Shares under Article 45.4 above or otherwise).
- 45.5.3 Without double counting, if any additional amount which becomes payable pursuant to this Article 45 is subject to Tax, the amounts payable by the Company to an affected Holder shall be increased by an amount which, after making that adjustment, leaves that Holder in the same net after-tax position it would have been if no such Tax were payable.
- 45.5.4 The Company need not make any additional payment under this Article 45 to a Holder, to the extent that an Adjustment Event occurs as a result of the Holder or any of its Affiliates wilfully failing to comply with any law or regulation or its gross negligence.
- 45.5.5 An Adjustment Event does not affect or alter the rights and privileges attaching to a Preference Share.
- 45.5.6 The Company hereby indemnifies each Holder and agrees to hold it harmless against the effects of any Adjustment Event which applies to that Holder but becomes apparent or otherwise known to a Holder only at a time when it no longer holds any Preference Share (including in circumstances where none of the Preference Shares previously held by it remains outstanding). The amount payable by the Company under this indemnity shall be the amount required to ensure that the Holder receives the same net financial after-tax return it would have received, had such Adjustment Event not occurred (including such amount as may be necessary to fully compensate the Holder for the loss of any credits in respect of a dividend tax) that would have accrued to or otherwise benefitted the Holder if the amount payable under this Article were to be discharged by way of a dividend payment on a Preference Share (or an increase of amounts payable as Preference Dividends assuming the Holder were still a holder of an outstanding Preference Share) on the date on which the indemnity payment becomes due. An amount payable under this Article shall be paid on demand.
- 45.5.7 The provisions of this Article 45 shall apply regardless of the actual Tax circumstances of a Holder. Accordingly, if any event or circumstance arises which, but for the fact that a Holder has the benefit of an assessed or assessable Tax loss or a credit (other than a credit which arises as a result of an amount declared or paid to the Holder in respect of a Preference Share) in respect of any other Tax, would constitute an Adjustment Event, that event or circumstance shall nevertheless be an Adjustment Event. Any such assessed or assessable Tax loss or Tax credit shall be disregarded in determining the amount of any adjustment required under this Article 45 and the Holder will not be deprived of the benefit of this Article 45 (which shall apply as if that assessed or assessable Tax loss or Tax credit did not exist and the Holder was liable to pay any resulting Tax).
- 45.5.8 The rights and obligations of the Company and the Holder under this Article 45 shall survive any redemption of a Preference Share or other termination of a Preference Share Document and will terminate on the earlier of the following dates:

- (a) the date falling 3 years after the date on which the Holder is finally assessed for Tax in respect of the last fiscal year during which an amount accrues to the Holder under these Preference Share Terms;
- (b) the date falling 5 years after the date on which the last Preference Share is redeemed; or
- (c) 5 years after a person ceases to be a Holder;

## **46. PAYMENTS**

### **46.1 Place**

All payments by the Company to a Holder under these Preference Share Terms must be made to the account of that Holder at such office or bank in South Africa as it may notify to the Company for this purpose by not less than five Business Days' prior notice.

### **46.2 Currency of account**

Each amount payable under these Preference Share Terms is payable in Rand.

### **46.3 Funds**

Payments to a Holder under these Preference Share Terms must be made for value on the due date in immediately available and freely transferable funds.

### **46.4 No set-off by the Company**

All payments made by the Company under these Preference Share Terms must be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

### **46.5 Business Days**

If a payment under these Preference Share Terms is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

### **46.6 Due date not elsewhere specified**

If these Articles do not provide for when a particular payment by the Company is due, that payment will be due within three Business Days of demand by a Holder.

## **47. CALCULATIONS AND CERTIFICATES**

### **47.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Preference Share Document, the entries made in the accounts maintained by a Holder are *prima facie* proof of the matters to which they relate.

### **47.2 Certificates and determinations**

Any certification or determination by a Holder of a rate or amount or a due date in respect of a Preference Share or otherwise under the Preference Share Documents (including the rate or amount of any adjustment under Article 45 (Adjustment of

Amounts and Rates), signed by any officer, manager or employee of the Holder (the appointment of which officer, manager or employee need not be proved), in the absence of manifest error, will be *prima facie* proof of the matters to which it relates.

#### 47.3 **Accrual and day count convention**

Any Preference Dividend in respect of a Preference Share or interest which accrues under a Preference Share Document, must be calculated as if it accrues from day to day and on the basis of the actual number of days elapsed and a year of 365 days (whether or not the year in question is a leap year).

### 48. **MEETINGS AND VOTING**

#### 48.1 **Right to attend general meetings and vote**

A Holder must be given notice of every general meeting and adjourned general meeting of the Company and is entitled to be present at those meetings, but may vote a Preference Share (in person by representative or by proxy) only if (subject to any regulatory authorisation which may be required), on the date of that meeting, one or more of the following circumstances continue (and for so long as it continues):

48.1.1 there are Arrear Dividends outstanding;

48.1.2 a Redemption Amount is overdue and remains unpaid; or

48.1.3 a person other than a Holder proposes a resolution of the Company (other than a resolution contemplated by Article 48.3 (Right to call general meetings)) which affects the rights or privileges attaching to the Preference Shares or the rights of a Holder that arise from the subscription for and/or holding of Preference Shares, including a resolution:

- (a) to wind-up, liquidate or dissolve the Company, or to have it placed under judicial management (whether provisionally or finally), or to pursue a moratorium or a composition or similar arrangement with any of its creditors; or
- (b) to create any shares in the Company (or any instrument convertible into shares) which rank in priority to or *pari passu* with the Preference Shares in respect of rights to dividends or a return of capital (including, without limitation, any unclassified shares as contemplated by section 36(1)(d) of the Companies Act).

#### 48.2 **Loading of votes when Holders may vote**

At every general meeting or adjourned general meeting of the Company at which a Holder is present and entitled to vote on a particular matter, the provisions of these Articles relating to the general meetings of ordinary members will apply *mutatis mutandis*, except that:

48.2.1 a quorum at any such meeting will be a person or persons holding or representing by proxy at least one quarter of the Preference Shares which are then outstanding;

48.2.2 for the purposes of the resolutions on which the Holders is entitled to vote, the Preference Shares, collectively, will have so many votes in respect of those matters as may be necessary to pass a special resolution by the members of the

Company (and those votes will be divided amongst the Holders according to the proportions in which they hold the Preference Shares);

48.2.3 for the purposes of the resolutions on which the Holders is entitled to vote, all resolutions put to the meeting shall be voted by way of a poll; and

48.2.4 no resolution on that matter will be carried unless the Majority Holders have voted in favour of that resolution.

#### 48.3 **Right to call general meetings**

If, at any time, a Holder would be entitled to vote its Preference Shares under Article 48.1 (Right to attend general meetings and vote) at a general meeting of the Company, if one were to be held, any Holder may, by notice to the Company, require the Company to call a general meeting of its members (or any class of them) to consider any of those matters on which Holders are entitled to vote, including a resolution to declare a Preference Dividend when required under these Articles or otherwise requiring the Company to comply with its obligations to Holders. Notwithstanding any other provision of these Articles, a resolution adopted at such a meeting will be binding on and must be given effect to by the Company and the directors of the Company.

#### 48.4 **Class meetings**

The provisions of these Articles relating to general meetings of the ordinary shareholders apply *mutatis mutandis* to a separate class meeting of Holders, except that a quorum at a class meeting of Holders will be one or more Holders who hold or represent by proxy at least one quarter of the Preference Shares. However, if at an adjourned class meeting a quorum is not present, the provisions of these Articles relating to adjourned general meetings of ordinary shareholders apply.

#### 48.5 **Consents and approvals**

Unless expressly otherwise provided in these Preference Share Terms, whenever the consent or approval of the Holders is required by these Articles, a valid consent or approval will only be given if:

48.5.1 it is given by the Majority Holders; or

48.5.2 it is sanctioned by a resolution passed at a separate class meeting of the Holders in the same manner, *mutatis mutandis*, as a special resolution of the ordinary shareholders of the Company.

### 49. **INFORMATION UNDERTAKINGS**

#### 49.1 **Financial statements**

The Company must supply to a Holder:

49.1.1 as soon as they are available, but in any event within 120 days of the last day of each of its financial years:

(a) its audited annual financial statements for that financial year;

(b) the audited consolidated annual financial statements of the Group for that financial year.

- 49.1.2 as soon as they are available, but in any event within 60 days of the last day of each of its financial half-years:
- (a) its interim financial statements for that financial half-year; and
  - (b) the consolidated interim financial statements of the Group for that financial year.

#### 49.2 **Requirements as to financial statements**

The Company must ensure that each set of financial statements supplied to a Holder:

- 49.2.1 gives (if audited) a true and fair view of, or (if unaudited) fairly represents, the financial condition (consolidated or otherwise) of the relevant person as at the date to which those financial statements were drawn up;
- 49.2.2 comprise at least a balance sheet, profit and loss account and cashflow statement for the financial period then ended; and
- 49.2.3 is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of its financial statements for the preceding financial year.

#### 49.3 **Information: miscellaneous**

The Company must supply to a Holder:

- 49.3.1 copies of all documents despatched by the Company or Senwes to its shareholders (or any class of them) or to all its creditors generally or any class of them at the same time as they are despatched;
- 49.3.2 within 14 days of becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company or any Material Subsidiary and which have or might, if adversely determined, have a Material Adverse Effect;
- 49.3.3 within 14 days of request, an up to date copy of its shareholders' register; and
- 49.3.4 as soon as reasonably possible and in any event within 14 days of request, such further information regarding the financial condition, business and operations of the Company or any Material Subsidiary as a Holder may reasonably request (being information a Holder considers to be material to the ability of the Company to perform its obligations under the Preference Share Documents).

#### 49.4 **Notification of Redemption Events**

- 49.4.1 The Company must notify each Holder of a Redemption Event and a Potential Redemption Event (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 49.4.2 Promptly on request by a Holder, the Company must supply to the Holders a certificate, signed by two of its directors or senior officers on its behalf, certifying that no Redemption Event or Potential Redemption Event is continuing or, if such an event is continuing, specifying that event and the steps, if any, being taken to remedy it.

49.5       **Notices**

49.5.1           Any communication in connection with a Preference Share must be in writing.

49.5.2           Any consent, waiver or agreement required in respect of a Preference Share must be given in writing.

50.   **OTHER UNDERTAKINGS**

50.1       **No modification of rights and privileges**

Without the approval of Majority Holders, as required under Article 48.5 (Consents and approvals):

50.1.1           the terms of the Preference Shares may not be modified;

50.1.2           no shares in the capital of the Company ranking in priority to or pari passu with the Preference Shares, in respect of rights to dividends or a return of capital, may be created or issued (including, without limitation, any unclassified shares as contemplated by section 36(1)(d) of the Companies Act); and

50.1.3           no resolution of the Company to dispose of the whole, or substantially the whole, of the undertaking of the Company or Senwes, or the whole or the greater part of its assets may be put to the vote.

50.2       **Action by ordinary shareholders**

Notwithstanding any other provision of these Articles, but subject to all applicable requirements of the Companies Act, the ordinary shareholders of the Company must pass all resolutions and approve all actions of the directors of the Company which may be required, from time to time, for the payment of Preference Dividends and Redemption Amounts.

51.   **TRANSFER OF PREFERENCE SHARES**

51.1           Subject to Article 51.2 below, a Holder may at any time transfer some or all of its Preference Shares and/or cede and delegate any of its rights and obligations under the Preference Share Documents to any other person (the **New Holder**).

51.2           The consent of the Company is required for a transfer of Preference Shares and a cession and/or delegation of a Holder's rights and obligations under the Preference Share Documents, unless:

51.2.1           the New Holder is an Affiliate of the Holder or a Redemption Event or a Potential Redemption Event is continuing; or

51.2.2           the New Holder a Permitted Transferee (as defined in the Preference Share Subscription Agreement).

The consent of the Company must not be unreasonably withheld or delayed (it being recorded that the Company shall be entitled to withhold its consent, if such a Holder proposes to transfer a Preference Share to any person who carries on business in competition with the Company or has a material direct interest (for its own account) in any person which carries on a business in competition with the Company). The Company will be deemed to have given its consent five Business Days after the

Company is given notice of the request, unless it is expressly refused by the Company within that time.

51.3 If:

51.3.1 a Holder transfers a Preference Share and/or cedes any of its rights and/or delegates any of its obligations under a Preference Share Document; and

51.3.2 as a result of that transfer, cession and/or delegation and circumstances existing on the date on which it occurs, an Adjustment Event or an increase in the Redemption Amount occurs which (but for this Article) would result in an increase in the Dividend Rate, the amount of a Preference Dividend or a Redemption Amount,

then the Company need only pay that Dividend or Redemption Amount to the same extent that it would have been obliged to if the person to whom the Preference Share is transferred were the Subscriber. This Article does not apply to an Adjustment Event arising after such transfer and not as a direct result of the transfer.

**PERMITTED TRANSFEREES**

1. The Standard Bank of South Africa Limited
2. Nedbank Limited
3. FirstRand Bank Limited
4. Old Mutual Specialised Finance Proprietary Limited
5. Santam Capital Markets Limited
6. Liberty Group Limited
7. Stanlib Asset Management Limited
8. Momentum Group Limited



## SIGNATURE PAGE

### THE COMPANY

\_\_\_\_\_  
For and on behalf of:

**Senwesbel Limited**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)

\_\_\_\_\_  
For and on behalf of:

**Senwesbel Limited**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)

### THE SUBSCRIBER

\_\_\_\_\_  
For and on behalf of:

**United Towers Proprietary Limited**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)

\_\_\_\_\_  
For and on behalf of:

**United Towers Proprietary Limited**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)