

## 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>, 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.