

**Memorandum of Incorporation for a Public Company**

## TABLE OF CONTENTS

1.	INTERPRETATION.....	4
2	CALCULATION OF BUSINESS DAYS.....	6
3	PUBLIC COMPANY.....	7
4	POWERS AND CAPACITY OF THE COMPANY.....	7
5	RULES.....	7
6	AMENDMENTS TO THE MOI.....	7
7	AUTHORISED SECURITIES, ALLOTMENT AND ISSUE AND FINANCIAL ASSISTANCE.....	8
8	REDEMPTION OF SECURITIES.....	10
9	AUTHORITY TO ISSUE SECURITIES.....	10
10	PRE-EMPTION ON ISSUE OF EQUITY SECURITIES.....	12
11	OTHER ISSUES OF SHARES.....	12
12	ODD-Lot OFFERS.....	13
13	ACQUISITION BY THE COMPANY, OR SUBSIDIARIES OF THE COMPANY, OF SHARES.....	13
14	CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER.....	13
15	VOTING OF SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER.....	14
16	LISTINGS ON OTHER STOCK EXCHANGES.....	14
17	COMMISSION.....	15
18	TRANSFER OF SECURITIES.....	15
19	TRANSMISSION OF SECURITIES BY OPERATION OF LAW.....	16
20	ACCOUNTING RECORDS AND FINANCIAL STATEMENTS.....	16
21	AUDIT COMMITTEE AND AUDITOR.....	18
22	SHAREHOLDERS' MEETINGS.....	18
23	RECORD DATE.....	23
24	NUMBER OF DIRECTORS, ELECTION OF DIRECTORS, ALTERNATE DIRECTORS AND CASUAL VACANCIES.....	23
25	CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR.....	25

26	REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES .....	26
27	FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES .....	27
28	GENERAL POWERS AND DUTIES OF DIRECTORS.....	27
29	BOARD COMMITTEES .....	28
30	PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES .....	28
31	PROCEEDINGS OF DIRECTORS .....	29
32	APPOINTMENT OF COMPANY SECRETARY.....	30
33	DISTRIBUTIONS .....	30
34	CAPITALISATION.....	32
35	LOSS OF DOCUMENTS .....	33
36	NOTICES AND ELECTRONIC MEETINGS .....	33
37	INDEMNITY .....	35
38	RATIFICATION OF ULTRA VIRES ACTS.....	35
39	LIEN OVER SECURITIES .....	35

## PREAMBLE

The Company is governed by –

- a) the unalterable provisions of the Companies Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this MOI in relation to such unalterable provisions;
- b) the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this MOI; and
- c) the other provisions of this MOI.

## 1. INTERPRETATION

In this MOI -

- 1.1 words that are defined in the Companies Act but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act, as such definitions in the Companies Act are amended from time. For ease of reading, such terms defined in the Companies Act are written in this MOI with their first letter as a capital letter;
- 1.2 unless the context otherwise requires –
  - 1.2.1 **"Charter"** means any charter or terms of reference approved by the Board, as amended by the Board from time to time, relating to the powers, duties, functions and/or operations of any committee of the Board and/or any statutory committee of the Company. For the sake of clarity, it is recorded that a Charter shall not constitute Rules;
  - 1.2.2 **"Companies Act"** means the Companies Act, 2008;
  - 1.2.3 **"Company"** means MMI Holdings Limited or by whatever other name it may be known from time to time;
  - 1.2.4 **"Deliver"** means to deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 36 (*Notices and Electronic Meetings*) and the Companies Act;
  - 1.2.5 **"Effective Date"** means the date on which the Companies Act came into operation, namely 1 May 2011;
  - 1.2.6 **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Holder;

- 1.2.7 "Holders" means registered holders of Securities;
- 1.2.8 **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act, which shall apply not only to Directors and Alternate Directors but also to members of Board committees and members of audit committees and Prescribed Officers and the secretary of the Company;
- 1.2.9 **"JSE"** means the exchange operated by JSE Limited (Registration No. 2005/022939/06) (or any other name by which it may be known in the future) or its successor body;
- 1.2.10 **"King Code"** means the King Code of Governance for South Africa 2009, issued by the Institute of Directors in Southern Africa;
- 1.2.11 **"Listings Requirements"** means the listings requirements of the JSE, as amended or replaced from time to time;
- 1.2.12 **"MOI"** means this Memorandum of Incorporation;
- 1.2.13 **"Odd-lot"** means a total holding by a single Holder of less than 100 (one hundred) Securities, or subject to the Listings Requirements, such greater or lesser number of Securities determined by the Directors at the relevant time;
- 1.2.14 **"Odd-lot Offer"** means an offer to Holders in terms of which those Holders holding Odd-lots may elect to:
- 1.2.14.1 sell their Odd-lot; or
- 1.2.14.2 retain their Odd-lot;
- 1.2.15 **"Participant"** means a depository institution accepted by a Central Securities Depository as a participant in terms of the Securities Services Act;
- 1.2.16 **"Present"** bears the same meaning as "present at a meeting" as defined in section 1;
- 1.2.17 **"Regulations"** means regulations published from time to time pursuant to the Companies Act;
- 1.2.18 **"Round Robin Resolution"** means a resolution of Directors passed other than at a meeting of Directors as contemplated in section 74 of the Companies Act;
- 1.2.19 **"Securities Services Act"** means the Securities Services Act, 2004;
- 1.2.20 **"SENS"** means the Securities Exchange News Service of the JSE, or such other automated system of disseminating information as is maintained by the JSE from time to time;
- 1.2.21 **"Uncertificated Securities"** means securities as defined in the Securities Services Act which are by virtue of the Companies Act transferable without a written instrument and are not evidenced by a certificate;
- 1.2.22 **"Writing"** includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3 references to Holders represented by proxy shall include Holders entitled to vote who are represented by an agent appointed under a general or special power of attorney;

- 1.4 references to Holders entitled to vote when Present at a meeting or acting in person shall include Juristic Persons represented by duly authorised representative/s or acting in the manner prescribed in the Companies Act, including Juristic Persons represented by proxy;
- 1.5 all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6 references to any statute or regulation shall be references to that statute as modified, amended or substituted from time to time;
- 1.7 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing Persons shall include created entities (corporate or not);
- 1.9 if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.10 save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.11 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## 2 CALCULATION OF BUSINESS DAYS

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated in terms of section 5(3).

### 3 PUBLIC COMPANY

The Company is a Public Company.

### 4 POWERS AND CAPACITY OF THE COMPANY

- 4.1 The Company has all the powers and capacity of an Individual.
- 4.2 No Special Resolution may be put to Holders to ratify any action by the Company or the Directors that is inconsistent with any limit, restriction or qualification regarding the purposes, powers or activities of the Company, or the authority of the Directors to perform an act on behalf of the Company, if that action was contrary to the Listings Requirements, unless agreed with the JSE.
- 4.3 Notwithstanding the omission from this MOI of any provision to any particular effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.
- 4.4 The following corporate actions shall be undertaken in accordance with the Listings Requirements and clause 7.2
- 4.4.1. issues of Securities (including options) for cash;
  - 4.4.2. repurchases of Securities;
  - 4.4.3. alterations of authorised Securities and rights attaching to classes of Securities.

### 5 RULES

The Board shall not make, amend or repeal any Rules as contemplated by section 15(3) of the Companies Act.

### 6 AMENDMENTS TO THE MOI

- 6.1 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do in terms of section 17(1), all other amendments of the MOI shall be effected in accordance with section 16(1) and section 16(4) of the Companies Act and the Listings Requirements and a Special Resolution passed by the Holders of the ordinary Shares.

- 6.2 For the avoidance of doubt, amendments to the MOI shall include, without limitation:
- 6.2.1 the creation of any class of Shares;
  - 6.2.2 the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
  - 6.2.3 the conversion of one class of Shares into one or more other classes;
  - 6.2.4 an increase in the number of authorised Securities of a class;
  - 6.2.5 a consolidation of Securities;
  - 6.2.6 a sub-division of Securities; and/or
  - 6.2.7 the change of name of the Company.

## 7 AUTHORISED SECURITIES, ALLOTMENT AND ISSUE AND FINANCIAL ASSISTANCE

- 7.1 The Company is authorised to issue the following maximum numbers and classes of Shares (which maximum numbers of Shares which may be issued includes Shares already in issue by the Company at any time) –
- 7.1.1 2 000 000 000 (two thousand million) ordinary Shares with a par value of 0.0001 cent (one ten thousandth of one cent) each, each of which shall entitle the holder thereof to 1 (one) Voting Right in respect of every matter that may be decided by voting (subject, where applicable, to the rights attaching to any Shares referred to in clause 7.1.2, 7.1.3 and 7.1.4) and shall entitle the holder thereof to vote at every general meeting and annual general meeting of the Company, whether in person or by proxy, shall have all rights attached to ordinary Shares except to the extent of the rights attached to any other Shares in issue by the Company which do not rank *pari passu* with the ordinary Shares in that respect, and shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation. Votes shall be counted in accordance with the provisions of clause 22.22;
  - 7.1.2 76 000 000 (seventy six million) A1 variable rate cumulative convertible redeemable preference shares with a par value of 0.0001 cent (one ten thousandth of one cent) each, having the rights set forth in Schedule A;
  - 7.1.3 13 000 000 (thirteen million) A2 variable rate cumulative convertible redeemable preference shares with a par value of 0.0001 cent (one ten thousandth of one cent) each, having the rights set forth in Schedule B; and
  - 7.1.4 40 000 000 (forty million) A3 fixed coupon cumulative convertible redeemable preference shares with a par value of 0.0001 cent (one ten thousandth of one cent) each, having the rights set forth in Schedule C.



- 7.2 Subject, where relevant, to clause 4.4, the Board shall have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights, preferences, limitations or other terms associated with any class of Shares) as contemplated in s36(2)(b) or 36(3) of the Companies Act or to Convert ordinary Shares into redeemable preference Shares or to Convert Securities of any one class into Securities of any other class, whether issued or not and any such amendment shall require approval by way of Special Resolution and, if relevant, compliance with clause 7.4.
- 7.3 To the extent that the Company immediately before the Effective Date had authorised but unissued par value Shares in its capital of a class of which there are issued Shares, the unissued Shares of that class may be issued at par or at a premium or at a discount but subject to the Listings Requirements.
- 7.4 All Securities of a class shall rank *pari passu* in all respects.
- 7.5 No rights, privileges or conditions for the time being attached to any class of Securities of the Company nor any interests of that class of Securities may (unless otherwise provided by the terms of issue of the Securities of that class), whether or not the Company is being wound up, be varied, nor may any variations be made to the rights, privileges or conditions of any class of Securities, unless the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that class has been obtained (provided that an amendment by written consent as aforesaid shall be valid only if permitted in terms of the Listings Requirements or with the consent of the JSE, for so long as any securities of the Company are listed on the JSE's lists), or a Special Resolution has been passed by the Holders of that class of Securities at a separate meeting of the Holders of that class. The provisions of this MOI relating to Shareholders' Meetings shall mutatis mutandis apply to any such separate meeting except that –
- 7.5.1 the necessary quorum to begin the meeting and consider the matter shall be sufficient Person/s Present and entitled to vote Securities of that class holding in aggregate at least 25% (twenty five per cent) of all the Voting Rights that are entitled to be exercised on the matter, provided that the meeting may not begin unless, in addition, if there are more than 3 (three) Securities Holders who Hold Securities of that class, at least 3 (three) Securities Holders entitled to vote are Present;
- 7.5.2 for so long as the Securities of the Company are listed on the JSE's lists, once a quorum has been established, all the Securities Holders of that class constituting a quorum must be Present to hear the matter; and
- 7.5.3 if a quorum is not Present, the meeting shall be adjourned to the 5th (fifth) Business Day thereafter and if, at any such adjourned meeting of such Holders, the required quorum

contemplated in clause 7.5.1 is not Present, those Persons entitled to vote who are Present shall be the requisite quorum.

- 7.6 For as long as Securities of the Company are listed on the JSE, no Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) unless permitted by the JSE.
- 7.7 Notwithstanding any implication to the contrary in this MOI, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or any options over Securities or those of a Related or Inter-Related company without complying with section 44(3) of the Companies Act.

## 8 REDEMPTION OF SECURITIES

Any redemption of Securities issued at any time by the Company shall be effected in compliance with the terms of such Securities (including those referred to in clause 7.1.2), the Listings Requirements and (except in the case of those Shares referred to in clause 7.1.2) section 48 of the Companies Act.

## 9 AUTHORITY TO ISSUE SECURITIES

- 9.1 Except as may be permitted by (and in those circumstances, in compliance with) the Listings Requirements from time to time, the Board shall not have the power to issue authorised Securities (other than as contemplated in clause 9.7 or clause 10 (*Pre-emption on Issue of Securities*) or clause 11 (*Other Issues of Shares*)) without the prior approval contemplated in clause 9.2 (where required in terms of clause 9.2) and with the approval of the JSE (where such approval is required in terms of the Listings Requirements from time to time).
- 9.2 As regards the issue of –
- 9.2.1 Shares, other Securities convertible into Shares, options over Shares or Securities or a grant of any other rights exercisable for Securities in the circumstances contemplated in sections 41(1) and (3) of the Companies Act, the Directors shall not have the power to allot or issue same without the prior approval of a Special Resolution unless, in the circumstances contemplated by section 41(1) of the Companies Act, section 41(2) of the Companies Act applies;

- 9.2.2 other equity Securities not referred to in clause 9.2.1, and other equity Securities including options in respect thereof, the Directors shall not have the power to allot or issue same or grant options over same without the prior approval of an Ordinary Resolution of the Shareholders, provided that such issue has been approved by the JSE.
- 9.3 No special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3).
- 9.4 If the issue of any debt instrument, according to its terms, will or may result in the allotment or issue of Shares or substitution or conversion of the debt instrument for Shares of the Company, the provisions of clause 9.2.1 and/or clause 11 (*Other Issues of Shares*) shall apply at the time of issuing the debt instrument.
- 9.5 Any such approval contemplated above in this clause 9 (*Authority to Issue Securities*) may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any such Securities contemplated in clauses 9.1, 9.2 and 9.4 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities contemplated in clauses 9.2 and 9.4. Such authority shall endure for the period provided in the Ordinary Resolution or Special Resolution in question but may be revoked by Ordinary Resolution (if initially approved by Ordinary Resolution) or Special Resolution (if initially approved by Special Resolution), as the case may be, at any time.
- 9.6 Notwithstanding anything to the contrary contained in this MOI, the Company may exclude from any rights offer any Holder or category of Holders:
- 9.6.1 in accordance with section 9 9(7) and with the approval of the JSE (to the extent necessary); or
- 9.6.2 if the Company is precluded by any law or regulatory requirement (including but not limited to anti-money laundering legislation) from extending such rights offer to such Holder or category of Holders.
- 9.7 The Board may issue capitalisation Shares or offer any qualifying Holder of Shares an election to instead receive a cash payment in lieu of awarding a capitalisation Share in accordance with section 47.
- 9.8 No Shares of a class which is listed may be issued other than as fully paid.

## 10 PRE-EMPTION ON ISSUE OF EQUITY SECURITIES

- 10.1 Equity Securities of a particular class in the Company which are authorised but unissued and which are intended to be issued for cash shall, be offered to the existing Holders of that class of equity Securities by way of a rights offer *pro rata* to the Voting Power of the Voting Rights of that Shareholder's Voting Rights of that class of equity Securities immediately before the offer was made (with a reasonable time allowed to subscribe and in compliance with the JSE Listings Requirements), unless –
- 10.1.1 the approvals contemplated in clause 9.1 or clause 11 (*Other Issues of Shares*) have been obtained;
  - 10.1.2 a capitalisation issue, an issue for an acquisition of assets (including another company) or an issue for the purposes of an Amalgamation or Merger, is to be undertaken;
  - 10.1.3 the equity Securities are to be issued in terms of option or conversion rights which have been approved as required in terms of this MOI;
  - 10.1.4 the equity Securities are to be issued to an approved share incentive scheme.
- 10.2 In respect of fractional entitlements that arise, all allocations of securities will be treated in line with the provisions of the JSE Listings Requirements, as amended from time to time.
- 10.3 After the expiration of the time within which an offer contemplated in clause 10.1 may be accepted, or on the receipt of an intimation from the Person to whom the offer is made that he declines to accept the equity Securities so offered, the Directors may, subject to the foregoing provisions of this clause 10 (*Pre-emption on Issue of Equity Securities*), issue such equity Securities in such manner as they think most beneficial to the Company.

## 11 OTHER ISSUES OF SHARES

In addition to the issue of Shares or other Securities as specifically contemplated in clause 9 (*Authority to Issue Securities*) and 10 (*Pre-emption on Issue of Equity Securities*), the Board may issue Shares and any other Securities, provided that same is permissible in terms of and is done in compliance with the JSE Listings Requirements from time to time.

## 12 ODD-LOT OFFERS

- 12.1 The Company may make Odd-lot Offers to the Securities Holders holding Odd-lots, provided that the Company complies with clause 13 (*“Acquisition by the Company or Subsidiaries of the Company of Shares”*) and, to the extent which may be relevant to such Odd-lot Offer, clause 9 (*“Authority to Issue Securities”*).
- 12.2 Any Odd-lot Offer may provide that if the Holders holding any Odd-lot do not make an alternative election, then such Holder will by default be deemed to have elected to sell his Odd-lot holding to the Company and the Securities shall be acquired by the Company in accordance with the Odd-lot Offer, provided that the specific Odd-lot Offer has been approved by Shareholders in general meeting.

## 13 ACQUISITION BY THE COMPANY, OR SUBSIDIARIES OF THE COMPANY, OF SHARES

The Company may acquire its own Shares and Subsidiaries of the Company may acquire Shares in the Company subject to compliance with section 48 of the Companies Act and the Listings Requirements.

## 14 CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER

- 14.1 The Securities issued by the Company may either be certificated (that is evidenced by a certificate) or uncertificated in which case the Company must not issue certificates evidencing or purporting to evidence title to those uncertificated Securities. When any new Securities are to be issued by the Company, the subscriber shall, subject to the Companies Act, be entitled to elect whether all or part of the Securities offered to him shall be in certificated or uncertificated form. Each original certificate issued to a Holder in certificated form shall be issued without charge, but for every subsequent certificate issued in respect of the same Securities to the same Holder, the Directors shall be entitled, as they may deem fit, to require a charge in settlement of the reasonable costs included in such issue.
- 14.2 The Company shall convert or cause to be converted its share register into a Securities Register with effect from the Effective Date which shall reflect the information which is required to be reflected in the Securities Register in terms of the Companies Act and shall be maintained in accordance with the prescribed standards.

- 14.3 Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe save that they must comply with the requirements of the Companies Act.
- 14.4 Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in his name, or to several certificates, each for a part of such Securities.
- 14.5 A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 14.6 If a certificate for Securities or share warrant to bearer is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate or share warrant to bearer to the Company.
- 14.7 If the Company issues Securities which are not listed on the lists maintained by the JSE or any other exchange on which the Company's Securities may be listed, the certificates for those Securities must be stamped as "unlisted securities" and may only be released by the Company with the Written permission of the JSE.

## **15 VOTING OF SECURITIES BEING HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER**

The Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy form from the Holder notwithstanding any agreement, between the Holder and the holder of the Beneficial Interest, permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder.

## **16 LISTINGS ON OTHER STOCK EXCHANGES**

- 16.1 The Company may seek listings on such stock exchanges as the Directors may consider appropriate from time to time.
- 16.2 For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE, if the listing on the JSE is the primary listing and if the Company is obliged to obtain the approval of

the JSE in regard to any matter, it shall be obliged also to obtain the consent at the same time of any other stock exchanges on which it is listed.

## 17 COMMISSION

The Company may pay commission not exceeding 10% (ten per cent) of the subscription price at which Securities of the Company are issued to any Person, in consideration of him subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities or of him procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities.

## 18 TRANSFER OF SECURITIES

- 18.1 There is no restriction on the transfer of Securities.
- 18.2 The transfer of any certificated Security shall be implemented in accordance with the then common form of transfer. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Securities.
- 18.3 All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in Writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.
- 18.4 The Company shall, insofar as concerns its Securities Register, comply with the Companies Act regarding the transfer of Securities.
- 18.5 The certificated Securities Register (but not any sub-registers) may, upon notice being given by advertisement in the South African Government Gazette and a newspaper circulating in the district in

which the office of the Company is situate, and, in the case of any branch register, be closed during such time as the Directors think fit, not exceeding in the whole 60 (sixty) days in each year.

## 19 TRANSMISSION OF SECURITIES BY OPERATION OF LAW

19.1 Subject to the laws relating to securities transfer tax upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability –

- 19.1.1 the parent or guardian or curator of any Holder who is a minor;
- 19.1.2 the trustee of an insolvent Holder;
- 19.1.3 the liquidator of a body corporate;
- 19.1.4 the tutor or curator of a Holder under disability;
- 19.1.5 the executor or administrator of the estate of a deceased Holder; or
- 19.1.6 any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Directors, have the right either -

- 19.1.7 to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the Holder of the Securities registered in the name of the Holder concerned; or
  - 19.1.8 himself to be registered (in such capacity) as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the Holder.
- 19.2 Securities registered in the name of a deceased or insolvent Holder shall not be forfeited should the executor fail to register such Securities in its own name or in the name of the heir(s) or legatees when called upon by the Directors to do so.

## 20 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

20.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.



- 20.2 The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and, for as long as any of the Company's Securities are listed on the JSE's lists, the Listings Requirements, and shall have its annual Financial Statements audited. In addition, the annual Financial Statements shall reflect the –
- 20.2.1 Beneficial Interests of the Directors and major Shareholders;  
20.2.2 status of any Securities issued by the Company which are not listed on the lists maintained by the JSE.
- 20.3 A copy of the annual Financial Statements must be distributed to shareholders at least 15 (fifteen) Business Days before the date of the Annual General Meeting at which they will be considered.
- 20.4 The Directors shall from time to time, but subject to and in accordance with the provisions of the Act, the Listings Requirements and the King Code, determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the regulations published under the Companies Act, the documents which the Holders and holders of Beneficial Interests are entitled to inspect and take copies of in terms of the Companies Act (being those documents to which Shareholders and holders of Beneficial Interests are entitled under the Companies Act), shall be open to inspection by Holders and holders of Beneficial Interests, not being Directors.
- 20.5 Apart from the Holders and holders of Beneficial Interests, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register as permitted in terms of the Companies Act) unless expressly authorised by the Directors or by Ordinary Resolution.
- 20.6 The Company shall notify the Holders and the holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder or holder of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Holder or holder of Beneficial Interests free of charge.
- 20.7 To the extent permitted by the Companies Act and the Listing Requirements, where the Company is required to provide a Person with the annual Financial Statements of the Company, it shall be sufficient to provide a summarised version of such annual Financial Statements, provided that the notification also includes instructions as to how the Person may obtain the complete version of such annual Financial Statements.

## 21 AUDIT COMMITTEE AND AUDITOR

- 21.1 The Company shall appoint an Auditor and an Audit Committee in accordance with the provisions of the Companies Act and shall comply with the provisions of the Act in relation to such auditor and Audit Committee.
- 21.2 There are no general qualifications prescribed by the Company for a Person to serve as a member of the audit committee in addition to the requirements of the Companies Act.

## 22 SHAREHOLDERS' MEETINGS

- 22.1 The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the business which is required in terms of the Companies Act and the Listings Requirements to be transacted at an Annual General Meeting.
- 22.2 The Company shall, as may be determined by the Board from time to time, hold a Shareholders' Meeting in order to consider one or more resolutions.
- 22.3 Other than in circumstances permissible in terms of the Listings Requirements, neither the Board nor any other Person shall permit resolution/s of Shareholders that could be voted on at a Shareholders' Meeting (other than at the Annual General Meeting) to be proposed by way of round robin resolution of Shareholders in terms of section 60 of the Companies Act.
- 22.4 The Company must hold a Shareholders' Meeting at any time that the Board is required by the Companies Act or this MOI to refer a matter to Shareholders or to Holders entitled to vote for decision or whenever required to fill a vacancy on the Board other than a vacancy filled in accordance with clause 24.9.
- 22.5 The Board or, if the Company has no Directors, any single Holder entitled to vote, may, whenever the Board, such Shareholder/s or Holder, as the case may be, thinks fit, or is required in terms of the Listings Requirements, convene a Shareholders' Meeting.
- 22.6 Every Shareholders' Meeting shall be held at a location determined by the Board from time to time.

- 22.7 The Holder of any Securities which are in certificated form and thus not subject to the rules of Strate as the Central Securities Depository in which any Person has a Beneficial Interest must deliver to each such Person –
- 22.7.1 a notice of any Shareholders' Meeting 2 (two) Business Days after receiving such a notice from the Company; and
- 22.7.2 a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11).
- 22.8 All Shareholders' Meetings shall be called on at least 15 (fifteen) Business Days' notice Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice and to the JSE. A notice of all Shareholders' Meetings shall also be made available simultaneously on SENS.
- 22.9 A Shareholders' Meeting may proceed notwithstanding a Material defect in the giving of the notice, only if the requirements of the Act and the Listings Requirements, to the extent applicable, are complied with.
- 22.10 Business may be transacted at any Shareholders' Meeting only while a quorum is Present.
- 22.11 The quorum necessary for the commencement of a Shareholders' Meeting shall be such quorum as is required in terms of the Companies Act and the Listings Requirements, namely:
- 22.11.1 sufficient Persons Present to Exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting Rights that are entitled to be Exercised in respect of at least one matter to be decided at the Shareholders' Meeting,
- 22.11.2 provided that the Shareholders' Meeting may not begin unless, in addition, at least 3 (three) Persons entitled to vote are Present.
- 22.12 A matter to be decided at the Shareholders' Meeting may not begin to be considered and there shall not be a quorum in respect of that matter unless those who fulfilled the quorum requirements of clause 22.11, continue to be Present. If a resolution is proposed to meet the Listings Requirements or other requirements of the JSE, notwithstanding that the Holders of Securities not listed on the lists maintained by the JSE shall be entitled to be counted in the quorum for that Shareholders' Meeting as a matter of law, they shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained and accordingly whether or not the requisite majority has approved the matter.
- 22.13 If within 30 (thirty) minutes from the time appointed for the Shareholders' Meeting to commence, a quorum is not Present or if the quorum requirements in clause 22.12 cannot be achieved for any one or

more matters, the Shareholders' Meeting shall be postponed, without motion, vote or further notice, subject to clause 22.14, for 1 (one) week to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Shareholders' Meeting a quorum is not Present within 30 (thirty) minutes from the time appointed for the Shareholders' Meeting then, the Person/s entitled to vote who are Present shall be deemed to be the requisite quorum.

22.14 No further notice is required to be Delivered by the Company of a Shareholders' Meeting that is postponed or adjourned, unless the location or time for the Shareholders' Meeting is different from –

22.14.1 the location or time of the postponed or adjourned Shareholders' Meeting; or

22.14.2 a location or time announced at the time of adjournment, in the case of an adjourned Shareholders' Meeting.

22.15 The chairperson, if any, of the Board shall preside as chairperson at every Shareholders' Meeting. If there is no such chairperson, or if at any Shareholders' Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders' Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director present at the Shareholders' Meeting, or if no Director be present at the Shareholders' Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders' Meeting.

22.16 At any Shareholders' Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by the chairperson or otherwise in accordance with the Companies Act and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders' Meeting or adjourned Shareholders' Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders' Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders' Meeting, whose decision shall be final and conclusive.

22.17 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the Shareholders' Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders' Meeting, shall be deemed to be the resolution of the Shareholders' Meeting at which the poll is demanded.

- 22.18 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders' Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 22.19 A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Shareholders' Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 22.20 Any Person entitled to a Share in terms of clause 19 (*Transmission of Securities by Operation of Law*) may vote at any Shareholders' Meeting in respect thereof in the same manner as if he were the Holder of that Security, provided that (except where the Directors have previously accepted his right to vote in respect of that Security) at least 24 (twenty four) hours before the time of holding the Shareholders' Meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to Exercise the right referred to in clause 19 (*Transmission of Securities by Operation of Law*).
- 22.21 Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI or the Listings Requirements, shall be adopted only with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall be adopted only with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution. For so long as any of the Company's Securities are listed on the JSE, if any of the Listings Requirements require an ordinary resolution to be passed with a higher percentage than that specified above for an Ordinary Resolution, the Company shall not implement such resolution unless the Company has obtained the support of the applicable higher percentage prescribed in terms of the Listings Requirements.
- 22.22 Subject to any restrictions attaching to any class or classes of Securities which are not ordinary Shares (as no voting restrictions shall be permitted as regards ordinary Shares and no special rights or privileges shall attach to other Securities), on a show of hands a Person entitled to vote Present at the meeting shall have only 1 (one) vote, irrespective of the number of Voting Rights that Person would otherwise be entitled to Exercise. A proxy shall irrespective of the number of holders of Securities entitled to vote he represents, have only 1 (one) vote on a show of hands. On a poll, every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question and, in particular, on a poll, each ordinary Share entitles the Holder to one vote. If a resolution is proposed to meet the Listing Requirements, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to vote thereon as a matter of law, their votes shall not be taken into account for the purposes of

determining whether or not the Listing Requirements have been attained and accordingly whether or not the requisite majority has approved the matter.

- 22.23 The total Voting Rights of the Holders of all Securities, other than ordinary Shares and any special shares created for the purposes of Black Economic Empowerment, may never be more than 24.99% (twenty four comma nine nine per cent) of the total Voting Rights of all Persons entitled to vote at such a meeting.
- 22.24 In the case of joint Holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.
- 22.25 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company immediately prior to the Shareholders' Meeting, before the proxy Exercises any rights of the Holder entitled to vote at the Shareholders' Meeting.
- 22.26 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the Holder entitled to vote at a Shareholders' Meeting or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders' Meeting or adjourned Shareholders' Meeting at which the proxy is used.
- 22.27 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form, provided it is in Writing. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 22.28 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy form appointing the proxy indicates otherwise.
- 22.29 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will –

- 22.29.1 be regarded as being Present for the purpose of determining whether sufficient Shareholders are Present to constitute a quorum; and
- 22.29.2 for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have Exercised a vote in respect thereof.
- 22.30 Any minutes of a meeting, or a resolution, signed by the chairperson of the Shareholders' Meeting, or by the chairperson of the next Shareholders' Meeting, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 22.31 Any extract from such minutes or extract from any resolution in writing, if signed by the chairperson of the meeting or by the company secretary, or by any duly authorised Person acting in the place of the company secretary, shall be receivable as evidence of the matters stated in such minutes or resolution.

## 23 RECORD DATE

- 23.1 The Board shall determine each Record Date in accordance with the applicable rules of the Central Securities Depository and the Listings Requirements and, where required, publish same.
- 23.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter shall be as determined in terms of the Companies Act or, if applicable, the Listings Requirements.

## 24 NUMBER OF DIRECTORS, ELECTION OF DIRECTORS, ALTERNATE DIRECTORS AND CASUAL VACANCIES

- 24.1 The minimum number of Directors shall be four and the maximum twenty-five. Subject to clause 24.10, any failure by the Company at any time to have the minimum number of Directors does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 24.2 At the Annual General Meeting held in each year, 1/3 (one-third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the chief executive officer or executive financial director (as these offices are contemplated in the Listings Requirements, if applicable), managing director, joint managing director and/or to any other executive office for a fixed period and his contract provides that he is not subject to retirement during that fixed period.

- 24.2.1 The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election;
- 24.2.2 As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot;

Provided that notwithstanding anything herein contained, save for the further provisions below if at the date of any Annual General Meeting, any Director will have –

- 24.2.3 held office for a period of three years since his last election or appointment; or
- 24.2.4 reached 70 (seventy) years of age since the previous Annual General Meeting, unless the Board resolves otherwise,

he shall retire at such Annual General Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto; provided further that if any Director who is required to so retire has been appointed as the chief executive officer or executive financial director (as these offices are contemplated in the Listings Requirements, if applicable), or managing director, joint managing director and/or to any other executive office for a fixed period as the case may be, and his contract of employment provides that he is not subject to retirement during that fixed period, such executive Director shall not be subject to retirement by rotation until such fixed period shall have expired through effluxion of time, unless he shall ceased to be a director in terms of any of the provisions of section 70(1)(b) of the Companies Act, before that date.

- 24.3 A retiring Director shall act as a Director throughout the Meeting at which he retires. The length of time a Director has been in office shall be computed from the date of his last election. Retiring Directors shall be eligible for re-election, unless they have reached the retirement age detailed in clause 24.2.4.
- 24.4 Each of the Directors and the Alternate Directors, other than a Director contemplated in clause 24.9, subject always to the provisions in clause 24.2 shall be elected (which, in the case of a vacancy arising, shall take place at the next Annual General Meeting), in accordance with the provisions of the Companies Act to serve for a maximum term of 3 (three) years as a Director or Alternate Director. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing him during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 24.5 There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act. The Board, with the assistance of the nominations committee, must make recommendations to the Holders regarding the eligibility of Persons nominated for election as Directors, taking into account their past performance and contribution, if applicable.



- 24.6 No Director shall be entitled to appoint any Person as an Alternate Director to himself without the prior approval of the Board, but the Board shall be entitled to appoint Alternate Directors provided that they do not constitute more than 50% (fifty percent) of all Alternate Directors in office.
- 24.7 In any election of Directors and Alternate Directors, the election is to be conducted according to the provisions set out in the Companies Act.
- 24.8 No Person shall be elected as a Director or Alternate Director, if he is Ineligible or Disqualified and any such election shall be a nullity.
- 24.9 For purposes of section 66(4)(a)(i) of the Companies Act, any vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, if any, but the Individual so appointed shall cease to hold office at the termination of the first Shareholders' Meeting to be held after the appointment of such Individual as a Director unless he is elected at such Shareholders' Meeting.
- 24.10 If the number of Directors falls below the minimum number fixed by or pursuant to this MOI, the continuing Directors (or sole continuing Director) must, as soon as possible and, in any event, not later than 3 (three) months from the date that the number of Directors falls below the minimum, fill the vacancies or call a Shareholders' Meeting for the purpose of filling the vacancies. After the expiry of the aforesaid 3 (three) month period, the continuing Directors or Director may act only for the purpose of summoning a Shareholders' Meeting or filling vacancies.

## 25 CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR

A Director or Alternate Director shall immediately cease to hold office as such –

- 25.1 if he becomes Ineligible or Disqualified in terms of the Companies Act; or
- 25.2 when he resigns by Written notice to the Company; or
- 25.3 if the Board determines that he has become incapacitated to the extent that the Person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or

- 25.4 if he is removed by Ordinary Resolution; or
- 25.5 if he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or
- 25.6 if he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 25.7 for as long as the Securities of the Company are listed on the JSE Exchange, if he becomes ineligible in terms of the Listings Requirements or is declared ineligible by the JSE; or
- 25.8 at the end of the first Annual General Meeting held after he attains the age of 70 (seventy) years, unless the Board resolves otherwise; or
- 25.9 if he is otherwise removed in accordance with the provisions of this MOI or the Companies Act.

## **26 REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

- 26.1 The Directors or Alternate Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or Alternate Directors or members of Board committees as may have been determined from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors and Alternate Directors shall be entitled to all reasonable expenses properly and necessarily incurred by them in travelling (including hotels) to and from meetings of the Directors and Holders, and the members of the Board committees shall be entitled to all reasonable expenses properly and necessarily incurred by them in travelling (including hotels) to and from meetings of the members of the Board committees, as determined by a disinterested quorum of Directors. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) to any executive Directors.
- 26.2 A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a major Subsidiary of, the Company and in that event, his appointment and remuneration in respect of such other office shall be determined by a disinterested quorum of Directors.

## 27 FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES

- 27.1 The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) are not limited in any manner by this MOI.
- 27.2 If the Board adopts a resolution as contemplated in section 45(2) of the Companies Act regarding financial assistance to the Directors / Prescribed Officers and others contemplated in that section, the Company shall comply with the provisions of section 45 of the Companies Act.

## 28 GENERAL POWERS AND DUTIES OF DIRECTORS

- 28.1 The business and affairs of the Company must be managed by or under the direction of its Board, which has the authority to exercise all the powers and perform any of the functions of the Company.
- 28.2 The Board must appoint a chief executive officer and an executive financial Director (as such offices are contemplated in the Listings Requirements, if applicable subject always to the provisions in clause 24.2). The Board may from time to time appoint one or more of the Directors to the office of managing Director or executive Director (provided always that the number of Directors so appointed by the Board as chief executive officer, executive financial Director, managing Director, joint managing Directors and/or the holders of any other executive office, including a chairperson who holds an executive office but not a chairperson who is a non-executive Director, shall at all times be less than  $\frac{1}{2}$  (one-half) of the number of Directors in office) for such period and at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms as they may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office.
- 28.3 The Board may from time to time entrust to and confer upon a chief executive officer or executive financial director (as such offices are contemplated in the Listings Requirements, if applicable), or managing Director or executive Director for the time being such of the powers vested in the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A chief executive officer or executive financial director (as such offices are contemplated in the Listings Requirements, if applicable) or managing Director or executive Director appointed pursuant to the provisions hereof shall

not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause.

## 29 BOARD COMMITTEES

- 29.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board, in accordance with the Act, the Listings Requirements and any applicable Charter. The Directors must appoint a remuneration committee, a risk committee, a nominations committee and a social and ethics committee for so long as required by the Companies Act and/or the Listings Requirements. The members appointed to such committees of the Board shall be appointed in terms of and in compliance with the provisions of the Act and the Listings Requirements. A Director may be appointed to more than one Board committee.
- 29.2 There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act and the Listings Requirements, provided that a Person shall comply with such qualifications or requirements as may be stipulated in the relevant Charter in order to serve as a member of a Board committee.
- 29.3 Subject to the provisions of its Charter, if any, any committees of the Board may consult with or receive advice from any Person.
- 29.4 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.
- 29.5 The composition of such committees, a brief description of their mandates, and the number of meetings held and other relevant information must be disclosed in the annual report of the Company.

## 30 PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES

- 30.1 The Directors, Prescribed Officers and members of Board committees shall comply with the provisions of the Companies Act with regard to the disclosure of personal financial interests.

- 30.2 If a Director or a Related Person in respect of such Director has a Personal Financial Interest and if, in the reasonable view of the other non conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

### 31 PROCEEDINGS OF DIRECTORS

- 31.1 The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice, which may include telephone, telefax or Electronic communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 31.2 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 31.3 Unless otherwise resolved at any time and from time to time by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated.
- 31.4 The quorum for a Directors' meeting is a majority of the Directors then in office (but not counting Alternate Directors for this purpose).
- 31.5 The Directors may elect a chairperson, deputy chairperson and/or any vice chairperson/s of their meetings and, subject to clause 28.2, may determine the period for which each of them is to hold office; but if no such chairperson, deputy chairperson and/or any vice chairperson/s is elected, or if at any meeting none of the chairperson, deputy chairperson or vice chairperson/s is present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.
- 31.6 In the case of a tied vote, the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on shall fail.
- 31.7 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided. Such a resolution shall be inserted in the minute book, may consist of several documents and shall be deemed to have been passed on the date on which

it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution).

## 32 APPOINTMENT OF COMPANY SECRETARY

- 32.1 The Directors must appoint the company secretary from time to time, who complies with the requirements of the Companies Act.
- 32.2 The company secretary may resign from office by giving the Company such notice as is required in terms of the Companies Act.

## 33 DISTRIBUTIONS

- 33.1 The Company, in compliance with the Companies Act and the Listings Requirements –
- 33.1.1 may make Distributions from time to time, provided that –
- 33.1.1.1 any such Distribution:
- 33.1.1.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 33.1.1.1.2 has been declared, having been authorised by the Board in accordance with the Companies Act, by resolution of the Board (except a distribution which results in Shareholders holding Shares in an unlisted entity, which shall require the prior sanction of an Ordinary Resolution);
- 33.1.1.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test set out in section 4 of the Companies Act immediately after completing the proposed Distribution; and
- 33.1.1.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test in the Companies Act and reasonably concluded that the Company will satisfy the solvency and liquidity test immediately after completing the proposed Distribution.
- 33.1.2 must, before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 33.1.1,

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 33.1.1.3, failing which it must again comply with clauses 33.1.1.1.2, 33.1.1.2 and 33.1.1.3. Dividends and other Distributions shall be paid to Holders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, or other Distribution, whichever is

the later. Any dividend or other Distribution may be paid by electronic funds transfer or by cheque payable to the order the Holder entitled thereto, or (in the case of joint Holders) of that Holder whose name stands first on the register in respect of the joint holding. Every such cheque shall (unless otherwise directed) be sent by post to the last registered address of the Holder entitled thereto, and the receipt of the Person whose name appears in the Securities Register, or in the case of joint Holders, of any one of such Holders, or of his or their agent duly appointed in writing, shall be a good discharge to the Company for all dividends or other Distributions. Every such cheque shall be sent at the risk of the Person entitled to the money represented thereby.

- 33.2 No Distribution may be made if it is a Distribution of capital and an obligation is imposed that the Company is entitled to require the capital to be subscribed to the Company again.
- 33.3 No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 33.1.1.1 shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.
- 33.4 Subject to clause 33.5, all unclaimed dividends or other Distributions as contemplated in this clause 33 shall be held in trust by the Company until claimed, without the payment of interest, provided that any dividend or other Distribution remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable, may be forfeited by resolution of the Directors for the benefit of the Company.
- 33.5 The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions or any other amounts payable to Holders in their capacity as such, to any one of the Company's bankers from time to time.
- 33.6 The Board shall be entitled to determine that Distributions to Holders of ordinary Shares are paid in new ordinary Shares from time to time, provided that the terms thereof contain an election for qualifying Holders of Shares to receive a cash distribution and the provisions of section 47(2) of the Companies Act shall apply with the necessary changes for the context.
- 33.7 The Directors may resolve that any Distribution or other payment made to all or any Securities Holders whose registered addresses are outside the Republic or who have given written instructions requesting payment at addresses outside the Republic, shall (subject to any exchange control regulations in force at that time) be paid in such other currency or currencies as may be stipulated by the Directors. The Directors may also stipulate the date (hereinafter referred to as the "Currency Conversion Date") upon which, and a provisional rate of exchange at which, the currency of South Africa shall be converted into such other currency or currencies, provided that the currency conversion shall be within a period of 30

(thirty) days prior to the date of payment. If, in the opinion of the Directors, there is no material difference between the rate(s) of exchange ruling on the Currency Conversion Date and the provisional rate(s) of exchange stipulated by the Directors, then the currency of South Africa shall be converted at such provisional rate(s). If, in the opinion of the Directors, there is a material difference between the aforementioned rates, then the currency of South Africa shall be converted into such other currency or currencies at the rate(s) of exchange ruling on the Currency Conversion Date, or at a rate or rates of exchange which, in the opinion of the Directors, is/are not materially different. Any subsequent rise or fall of rate(s) of exchange determined as above shall be disregarded.

- 33.8 Subject to the provisions of this MOI, the Act and for as long as the Securities of the Company are listed on the JSE Exchange, the Listings Requirements, to the extent applicable, the Company may, from time to time, in any manner as may be prescribed or permitted by law, reduce its issued share capital, stated capital, any share premium account and any capital redemption reserve fund and, in particular, without derogating from the generality of the power hereby conferred, may cancel any paid-up share capital which has been lost or is not represented by available assets or may pay off any paid-up share capital which is in excess of the requirements of the Company.

## 34 CAPITALISATION

- 34.1 The Company in Shareholders' Meeting on recommendation of the Directors, or the Directors, may, without limitation to its powers, at any time and from time to time, subject to the fulfilment of the requirements in section 47 of the Companies Act and the Listings Requirements, pass a resolution to capitalise any amounts or funds including –
- 34.1.1 any sum forming part of the undivided profits standing to the credit of the Company's reserve fund;
  - 34.1.2 any sum in the hands of the Company and available for distribution as a dividend and not required for payment or provision of dividends on preference Shares;
  - 34.1.3 any sum carried to reserve as a result of a sale or revaluation of the assets of the Company or part thereof; or
  - 34.1.4 any sum received by way of premium on the issue of any shares or debentures of the Company;

provided that the Board shall require Shareholder approval by Ordinary Resolution for any capitalisation issue where Shareholders are not entitled to participate in the capitalisation in proportion to their shareholding in the Company.



### 35 LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation **eiusdem generis**) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

### 36 NOTICES AND ELECTRONIC MEETINGS

- 36.1 The Company may give notices, documents, records or statements by personal delivery to Holders or holders of Beneficial Interests or by sending them prepaid through the post or by transmitting them by telegram, telex or fax or by Electronic Communication to such Person's last known address. The Company must give notice of any Shareholders' Meeting or other meeting of Holders of Securities in the aforesaid manner to each Person entitled to vote at such meeting, other than proxies and Persons entitled to vote at such Meeting who have elected not to receive such notice. The Company must give notice of availability of a document, record or statement to the Holder or holder of Beneficial Interests either to his last known delivery address or last known Electronic Address.
- 36.2 Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –
- 36.2.1 authorises the Company to use Electronic Communication to Deliver notices, documents, records or statements or notices of availability of the foregoing to him; and
- 36.2.2 confirms that same can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.
- 36.3 A Holder or Person entitled to Securities (or his executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.

- 36.4 If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be Delivered to the Person named first in the Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 36.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days, with Business Days being calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
- 36.6 The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders' Meeting or otherwise.
- 36.7 As regards signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the names of the Holder sending it in the body of the Electronic Communication.
- 36.8 At the same time that the annual Financial Statements are sent to Holders in terms of this MOI –
- 36.8.1 if required by the JSE, so many copies of the said documents as are required shall be forwarded to the JSE; and
- 36.8.2 if required by the Namibian Stock Exchange, so many copies of the said documents as are required shall be forwarded to the Namibian Stock Exchange.
- 36.9 A Shareholders' Meeting or a Directors' meeting may be conducted entirely by Electronic Communication, and provision may be made for participation in a Shareholders' Meeting or Directors' meeting by Electronic Communication so long as the Electronic Communication employed complies with the requirements of the Companies Act.

### 37 INDEMNITY

- 37.1 For the purposes of this clause 37 (*Indemnity*), "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board and a member of the audit committee.
- 37.2 The Company may indemnify a Director in accordance with the provisions of the Companies Act and may purchase insurance to this effect to the extent permitted by the Companies Act.
- 37.3 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

### 38 RATIFICATION OF ULTRA VIRES ACTS

The Board shall not propose any resolution to Holders in terms of section 20(2) or 20(6) of the Companies Act for the ratification of any matter as contemplated in terms of section 20(2) or 20(6) of the Companies Act, as the case may be.

### 39 LIEN OVER SECURITIES

The Company shall not have any lien over any Securities issued by it, unless permitted to do so by the JSE.

## SCHEDULE A

### 1. PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS OF THE "A1" PREFERENCE SHARES

Notwithstanding anything to the contrary in the clauses, the following terms and conditions shall attach to the variable rate convertible cumulative redeemable "A1" preference shares of 0,0001 cent (zero comma zero zero zero one cent) each in the issued share capital of the Company.

#### 1.1 Interpretation

For the purposes of this Schedule A, unless the context clearly indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings:

- 1.1.1 **"A1" Met Prefs** the variable rate convertible cumulative redeemable preference shares in the share capital of the Company with a par value of 0,0001 cent;
- 1.1.2 **"A1" Met Preference Dividend** means the preferential cash dividend payable to the Holders of "A1" Met Prefs in accordance with clause 1.2 below;
- 1.1.3 **"A1" SPV Prefs** means the variable rate convertible cumulative redeemable "A1" preference shares in the share capital of the SPV with a par value of R1;
- 1.1.4 **"A1" and "A2" Redemption Reserve Account** means the call account open and maintained by the SPV with RMB, as such account may be replaced, renumbered or redesignated from time to time, or such other account as the Bank Consortium may notify to the SPV in writing from time to time;
- 1.1.5 **the Act** means the Companies Act 61 of 1973, as amended from time to time;
- 1.1.6 **Additional Dividend** means the additional dividend payable to the Holders of "A1" Met Prefs in accordance with clause 1.3.1.2 below;
- 1.1.7 **the Bank Consortium** means collectively, RMB, Nedbank and SCM;
- 1.1.8 **Business Day** means any day (other than a Saturday, Sunday or an official public holiday in South Africa within the meaning of the Public Holidays Act, No. 36 of 1994, as amended) on which banks generally are open for business in Johannesburg;
- 1.1.9 **Dividend Date** means 31 March and 30 September each year until the Redemption Date and the Redemption Date;
- 1.1.10 **Dividend Period** means each period commencing on (and including) the previous Dividend Date and ending on (but excluding) the subsequent Dividend Date, provided that the last Dividend Period in respect of any "A1" Met Pref shall be the period from and including the Dividend Date immediately preceding the Redemption Date of such "A1" Met Pref until (and excluding) the Redemption Date of such "A1" Met Pref;
- 1.1.11 **Dividend Rate** means a rate equal to 85% of the Prime Rate from time to time;

- 1.1.12 **"Effective Date"** means 30 September 2009, or such other date as may be agreed in writing between the Bank Consortium, the Company of the SPV from time to time;
- 1.1.13 **"Holder"** means the holder of the "A1" Met Prefs from time to time;
- 1.1.14 **"Issue Date"** means the date of issue of the "A1" Met Prefs;
- 1.1.15 **"Issue Price"** means the amount of R5.12 (being an initial issue price of R7.12 less aggregate repayments of share capital and share premium of R2.00) less any further repayments of share capital or premium to Holders;
- 1.1.16 **"JSE"** means the securities exchange licensed in terms of the Securities Services Act, owned and operated by JSE Limited, a public company incorporated under the laws of South Africa with registration number 2005/022939/06;
- 1.1.17 **"Nedbank"** means Nedbank Limited, a public company incorporated under the laws of South Africa with registration number 1951/000009/06, acting through its Capital Division;
- 1.1.18 **"Prime Rate"** means the prevailing interest rate (per cent, per annum, compounded monthly) from time to time published by First National Bank, a division of FirstRand Bank Limited, as being its prime overdraft rate (as certified by any manager of FirstRand Bank Limited whose appointment and designation need not be proved) expressed as a percentage;
- 1.1.19 **"Redemption Amount"** means the amount detailed in clause 1.5.1 below;
- 1.1.20 **"Redemption Date"** means 30 October 2012, unless the "A1" Met Prefs are converted or redeemed at an earlier date in terms of this Schedule A or such later date as agreed between the SPV, the Bank Consortium and the Company;
- 1.1.21 **"RMB"** means FirstRand Bank Limited, a public company incorporated under the laws of South Africa with registration number 1929/001225/06, acting through its Rand Merchant Bank Division;
- 1.1.22 **"SCM"** means Sanlam Capital Markets Limited, a public company incorporated under the laws of South Africa with registration number 1996/004744/06;
- 1.1.23 **"SPV"** means Off the Shelf Investments 108 (Proprietary) Limited, a private company incorporated under the laws of South Africa with registration number 2004/013271/07; and
- 1.1.24 **"Subsidiary"** means any subsidiary as defined in the Act.

## 1.2 "A1" Met Preference Dividends

- 1.2.1 The "A1" Met Prefs shall confer on the Holder thereof the right to receive out of the profits of the Company prior to the provision for, or declaration or payment of, any dividends or capital of any nature whatsoever on any ordinary share in the capital of the Company, a 6 monthly cumulative preferential cash dividend which shall accrue on a daily basis and which shall be determined in the manner set out in clauses 1.2.2 and 1.2.4 below.
- 1.2.2 The "A1" Met Preference Dividends shall be due and payable 6 monthly in arrear on the Dividend Dates to Holders of "A1" Met Prefs registered on the Business Day immediately preceding each Dividend Date.

- 1.2.3 The Company shall pay any preference dividends on the "A1" Met Prefs into the "A1" and "A2" Redemption Reserve Account in accordance with the Priority of Payments provisions in respect of the "A1" SPV Prefs.
- 1.2.4 The Holders of the "A1" Met Prefs shall have the right to receive and be paid, on each Dividend Date in respect of each "A1" Met Pref held by it, an "A1" Met Preference Dividend for the Dividend Period preceding such Dividend Date, determined as follows:

$$\text{MPD} = \frac{A \times B \times C}{365}$$

MPD = the "A1" Met Preference Dividend per "A1" Met Pref;

A = the Dividend Rate;

B = the Issue Price per "A1" Met Pref; and

C = the number of days in the period for which the "A1" Met Preference Dividend is payable;

### 1.3 Additional Dividends

- 1.3.1 In addition to the "A1" Met Preference Dividend, the Holders of the "A1" Met Prefs shall be entitled to:
- 1.3.1.1 an initial special dividend of R2 713 600.00 payable to the Holder of the "A1" Met Prefs on the Effective Date; and
- 1.3.1.2 in the event that the SPV becomes obliged to pay to the holder of any "A1" SPV Pref any additional dividend or increased dividend or any other amount pursuant to the provisions of clause 39.4 (Adjustment Events) of the memorandum of incorporation (previously called it articles of association) of the SPV ("Increased Amount"), such additional dividend ("Additional Dividend") or increased dividend or other amount as will place the SPV in the same net after-tax position after the payment of the Increased Amount as it would have been in had it not become obliged to pay the Increased Amount, within 3 Business Days after receipt of the SPV's written demand in the case of an Additional Dividend or other amount and on the next succeeding Dividend Date in the case of an increased dividend. This obligation shall endure notwithstanding the redemption of the "A1" Met Prefs in full;

### 1.4 Redemption

- 1.4.1 The amount at which the Company shall redeem each "A1" Met Pref in terms of clause 1.4.3 shall be an amount equal to:
- 1.4.1.1 The Issue Price;

- 1.4.1.2 any accrued, but unpaid "A1" Met Preference Dividends; and
- 1.4.1.3 any arrear "A1" Met Preference Dividends which at the date of redemption are still unpaid in respect of each "A1" Met Pref, on the basis that a dividend will be deemed to be in arrear and unpaid if at any earlier dividend payment date the "A1" Met Preference Dividend was neither declared nor paid or if declared, was not paid; plus
- 1.4.1.4 any additional dividend detailed in clause 1.3 to which the Holder is entitled but not yet been paid by the Company.
- 1.4.2 The Company shall make provision for the redemption of "A1" Met Prefs from its share premium account as contemplated in s76(3)(c) of the Companies Act, 61 of 1973.
- 1.4.3 Subject to the further provisions of the Act and the provisions of clause 1.6 below, the Company shall redeem the "A1" Met Prefs in full for the Redemption Amount, on the Redemption Date against either:
- 1.4.3.1 surrender to the Company of the certificates in respect of the "A1" Met Prefs; or
- 1.4.3.2 if such certificates are lost, receipt of a suitable written indemnity from the holder that the certificates have not been alienated or pledged.
- 1.4.4 If either the "A1" Met Preference Dividend, any Additional Dividend or the Redemption Amount is not paid on the date upon which it is due and payable in terms of this Schedule A then, for so long as the amount due by the Company in respect of either the "A1" Met Preference Dividend, Additional Dividend or the Redemption Amount remains in arrears, the amount due by the Company in respect of the arrear "A1" Met Preference Dividend, Additional Dividend or the Redemption Amount (as the case may be) shall be increased by an amount arrived at by applying & rate which is 200 basis points above the Prime Rate to the amount of the arrear "A1" Met Preference Dividend, Additional Dividend or the Redemption Amount, on the same basis as set out in clause 1.2.4, *mutatis mutandis*, from and including the due date for payment thereof to, but excluding, the actual date of actual payment.

## 1.5 Redemption on Default

### 1.5.1 Default event requiring written notification from SPV

Notwithstanding anything to the contrary herein contained, all the issued "A1" Met Prefs shall be redeemed in full for the Redemption Amount, if:

- 1.5.1.1 the Company should have failed to declare any dividend on the Met Prefs on the Dividend Date, or, having declared any dividend, should have failed to pay such dividend on the due date of payment therefor unless such failure is caused by an administrative or technical error and payment is made within 3 Business Days of its due date; or
- 1.5.1.2 if the Company should fail to redeem any of the "AT Met Prefs on the Redemption Date or fail to pay to the Holder thereof the full proceeds on redemption of the due date of payment therefor,

unless such failure is caused by an administrative or technical error and payment is made within 3 Business Days of its due date;

and the SPV has given the Company written notice that it requires redemption of such "A1" Met Prefs.

### 1.5.2 *Default events requiring immediate redemption*

- 1.5.2.1 any default under the terms of "A1" SPV Prefs resulting in the SPV being called upon or otherwise obliged to redeem the "A1" Met Prefs; or
- 1.5.2.2 if the Company commits an act of insolvency which, if it were a natural person, would be an act of insolvency in terms of Section 8 of the Insolvency Act; or
- 1.5.2.3 if the Company should be placed into liquidation or under judicial management or wound-up, in any case whether provisionally or finally and whether voluntarily or compulsorily; or
- 1.5.2.4 if the Company should give any notice or take any steps to convene a meeting of its shareholders to adopt a resolution placing it in liquidation or under judicial management, in either case whether provisionally or finally; or
- 1.5.2.5 if the Company should make or attempt to make or recommend any general offer of compromise with any or all of its creditors.

## 1.6 Meetings

The Holder shall be entitled to receive notice of, and to be present at, any general meeting of the Company and shall (in its capacity as holder) be entitled to vote, either in person, by representation or by proxy, at any such meeting as if the Holder is an ordinary shareholder of the Company holding as many ordinary shares of the Company as it holds "A1" Met Prefs, but subject to the following conditions imposed by the Listings Division of the JSE:

- 1.6.1 the Exercise of the Voting Rights of the "A1" Met Prefs is entirely subject to the conditions of approval issued by the Listings Division of the JSE;
- 1.6.2 no further issue of "A1" Met Prefs may be made without the written consent of the JSE; and
- 1.6.3 the Holder may not veto any resolutions of the Company that would otherwise have been passed by the holders of ordinary shares together with the Holder of the "A1" Met Prefs.

## 1.7 Rights of Conversion

- 1.7.1 The Holder may, upon written notice to the secretary of the Company after 3 years and one day after the Issue Date, but prior to the Redemption Date and subject to the written consent of the Bank Consortium, request the Company to convert the "A1" Met Prefs into ordinary shares of the Company, on the basis of a conversion of one "A1" Met Pref for one such ordinary share ranking *pari passu* in all respects with the



then existing ordinary shares of the Company, with effect from the date of receipt by the secretary of the said notice together with the written consent of the Bank Consortium.

- 1.7.2 Upon such conversion the Holder of the "A1" Met Prefs shall deliver to the Company certificates in respect of the number of "A1" Met Prefs converted and details of their Central Securities Depository Participant to hold the uncertificated ordinary shares of the Company against payment of all costs incurred by the Company to issue such ordinary shares of the Company, whereafter the Company shall apply for the listing of such converted "A1" Met Prefs on the JSE.

## 1.8 General

- 1.8.1 The Company shall not be liable to the Holders for interest on any unclaimed "A1" Met Preference Dividend or distribution of redemption monies. The Company shall retain all unclaimed monies until they are claimed; provided that any amount remaining unclaimed for a period of 12 years shall be forfeited by the Holder to the Company.

## SCHEDULE B

### 1. PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS OF THE "A2" MET PREFS

Notwithstanding anything to the contrary in this clause, the following terms and conditions shall attach to the variable rate convertible cumulative "A2" redeemable preference shares of 0,0001 cent (zero comma zero zero zero one cent) each in the issued share capital of the Company.

#### 1.1 Interpretation

For the purposes of this Schedule B, unless the context clearly indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings –

- 1.1.1 **"A1 Met Prefs"** means the 75 842 650 variable rate cumulative convertible redeemable preference shares in the share capital of the Company with a par value of 0,0001 cent and a premium of R6,119999 issued by the Company to the SPV on 1 October 2004;
- 1.1.2 **"A1 SPV Prefs"** means the variable rate cumulative redeemable "A1" preference shares in the share capital of the SPV with a par value of R1.00 issued to the Bank Consortium on 1 October 2004;
- 1.1.3 **"A2 Met Prefs"** means the variable rate convertible cumulative redeemable "A2" preference shares in the share capital of the Company with a par value of 0,0001 cent;
- 1.1.4 **"A2 Met Preference Dividend"** means the preferential cash dividend payable to the Holders of "A2" Met Prefs in accordance with clause 1.2 below;
- 1.1.5 **"A2 SPV Subscription Agreement"** means the "A2" SPV preference share subscription agreement between the Company, the SPV, Newco and the Bank Consortium concluded contemporaneously with this Agreement;
- 1.1.6 **"A1" and "A2" Redemption Reserve Account"** means the call account opened and maintained by the SPV with RMB, as such account may be replaced, renumbered or redesignated from time to time, or such other account as the Bank Consortium may notify to the SPV in writing from time to time;
- 1.1.7 **"the Act"** means the Companies Act 61 of 1973, as amended from time to time;
- 1.1.8 **"Additional Dividend"** means additional dividend payable to the Holders of the "A2" Met Pref in accordance with clause 1.2.5.2 below;
- 1.1.9 **"the Bank Consortium"** means collectively RMB, Nedbank and SCM;
- 1.1.10 **"Business Day"** means any day (other than a Saturday, Sunday or an official public holiday in South Africa within the meaning of the Public Holidays Act, No. 36 of 1994, as amended) on which banks generally are open for business in Johannesburg;
- 1.1.11 **"Dividend Rate"** means a rate equal to 85% of the Prime Rate from time to time, adjusted in accordance with the provisions of clause 1.2.5.2, or such other rate as may be agreed in writing between the S PV, the Company and the Bank Consortium from time to time;

- 1.1.12 **"Dividend Date"** means 31 March and 30 September each year until Redemption Date and the Redemption Date;
- 1.1.13 **"Dividend Period"** means each period commencing on (and including) the previous Dividend Date and ending on (but excluding) the subsequent Dividend Date, provided that the last Dividend Period in respect of any "A2" Met Pref shall be the period from and including the Dividend Date immediately preceding the Redemption Date of such "A2" Met Pref until (and excluding) the Redemption Date of such "A2" Met Pref;
- 1.1.14 **"Effective Date"** means 30 September 2009, or such other date as may be agreed in writing between the Bank Consortium, the Company and the SPV from time to time;
- 1.1.15 **"Holder"** means the holder of the "A2" Met Prefs from time to time;
- 1.1.16 **"Issue Date"** means the date of issue of the "A2" Met Prefs, being 30 September 2005;
- 1.1.17 **"Issue Price"** means the amount of R9.18 (being an initial issue price of R10.18 less aggregate repayments of share capital and share premium of R1.00) less any further repayments of share capital or premium to Holders;
- 1.1.18 **"JSE"** means the securities exchange licensed in terms of the Securities Services Act, owned and operated by JSE Limited, a public company incorporated under the laws of South Africa with registration number 2005/022939/06;
- 1.1.19 **"Met Ords"** means the ordinary shares of 0,0001 cent in the share capital of the Company;
- 1.1.20 **"Met Prefs"** means collectively the "A1" Met Prefs, the "A2" Met Prefs and any additional preference shares that rank *pari passu* with them issued by the Company to the SPV on or after the Issue Date which additional issue shall not exceed R350 000 000;
- 1.1.21 **"Nedbank"** means Nedbank Limited, a public company incorporated under the laws of South Africa with Registration Number 1951/000009/06;
- 1.1.22 **"Prime Rate"** means the prevailing interest rate (per cent, per annum, compounded monthly) from time to time published by First National Bank, a division of FirstRand Bank Limited, as being its prime overdraft rate (as certified by any manager of FirstRand Bank Limited whose appointment and designation need not be proved) expressed as a percentage;
- 1.1.23 **"Redemption Amount"** means the amount detailed in clause 1.3.1 below;
- 1.1.24 **"Redemption Date"** means 5 December 2012, unless the "A2" Met Prefs are converted or redeemed at an earlier date in terms this Schedule B, or such later date as agreed between the SPV, the Bank Consortium and the Company;
- 1.1.25 **"RMB"** means FirstRand Bank Limited, a public company incorporated under the laws of South Africa with Registration Number 1929/001225/06, acting through its Rand Merchant Bank Division;
- 1.1.26 **"SCM"** means Sanlam Capital Markets Limited, a public company incorporated under the laws of South Africa with registration number 1996/004744/06;
- 1.1.27 **"SPV"** means Off the Shelf Investments 108 (Proprietary) Limited, a private company incorporated under the laws of South Africa with Registration Number 2004/013271/07;
- 1.1.28 **"Subsidiary"** means any subsidiary as defined in the Act.

## 1.2 "A2" Preference Dividends

- 1.2.1 The "A2" Met Prefs shall confer on the Holder thereof the right to receive out of the profits of the Company, which right shall rank *pari passu* with the rights of all other holders of Met Prefs but prior to the provision for, or declaration or payment of, any dividends or capital of any nature whatsoever on any ordinary share in the capital of the Company, a 6 (six) monthly cumulative preferential cash dividend which shall accrue on a daily basis and which shall be determined in the manner set out in 1.2.2 and 1.2.4 below.
- 1.2.2 The "A2" Met Preference Dividends shall be due and payable 6 (six) monthly in arrear on the Dividend Dates to the Holder of "A2" Met Prefs registered on the Business Day immediately preceding each Dividend Date.
- 1.2.3 The Company shall pay any "A2" Met Preference Dividends on the "A2" Met Prefs into the "A1" and "A2" Redemption Reserve Account in accordance with the Priority of Payments provisions in respect of the "A2" SPV Prefs.
- 1.2.4 The Holders of the "A2" Met Prefs shall have the right to receive and be paid, on each Dividend Date in respect of each "A2" Met Pref held by it, an "A2" Met Preference Dividend for the Dividend Period preceding such Dividend Date, determined as follows:

$$\text{MPD} = \frac{A \times B \times C}{365}$$

Where:

- MPD = the "A2" Met Preference Dividend per "A2" Met Pref; the
- A = Dividend Rate;
- B = the Issue Price per "A2" Met Pref; and;
- C = the number of days of the period for the "A2" Met Preference Dividend is payable;

- 1.2.5 The "A2" Met Pref shall be entitled to:
- 1.2.5.1 an initial special dividend of R1 165 900.00 payable to the Holder of the "A2" Met Prefs on the Effective Date; and
- 1.2.5.2 in the event that the SPV becomes obliged to pay to the holder of any "A2" SPV Pref any additional dividend or increased dividend or any other amount pursuant to the provisions of clause 42.4 (Adjustment Events) of the memorandum of incorporation (previously called its articles of association) of the SPV ("Increased Amount"), such additional dividend ("Additional Dividend") or increased dividend or other amount as will place the SPV in the same net after-tax position after the payment of the Increased Amount as it would have been in had it not become obliged to pay the increased Amount, within 3 Business Days after receipt of the SPV's written demand in the case of an Additional Dividend or other

amount and on the next succeeding Dividend Date in the case of an increased dividend. This obligation shall endure notwithstanding the redemption of the "A2" Met Prefs in full.

### 1.3 Redemption

- 1.3.1 The amount at which the Company shall redeem each "A2" Met Pref in terms of 1.3.3 shall be an amount equal to:
- 1.3.1.1 the Issue Price;
  - 1.3.1.2 any accrued, but unpaid "A2" Met Preference Dividends; and
  - 1.3.1.3 any arrear "A2" Met Preference Dividends which at the date of redemption are still unpaid in respect of each "A2" Met Pref, on the basis that a dividend will be deemed to be in arrear and unpaid if at any earlier dividend payment date the "A2" Met Preference Dividend was neither declared nor paid or if declared, was not paid; plus
  - 1.3.1.4 any additional dividend detailed in clause 1.2.5 to which the Holder is entitled but not yet been paid by the Company.
- 1.3.2 The Company shall make provision for the redemption of the "A2" Met Prefs from its share premium account as contemplated in s76(3)(c) of the Act.
- 1.3.3 Subject to the further provisions of the Act and the provisions of 1.4 below, the Company shall redeem the "A2" Met Prefs in full for the Redemption Amount, on the Redemption Date against either –
- 1.3.3.1 surrender to the Company of the certificates in respect of the "A2" Met Prefs; or
  - 1.3.3.2 if such certificates are lost, receipt of a suitable written indemnity from the holder that the certificates have not been alienated or pledged.
- 1.3.4 If either the "A2" Met Preference Dividend, any Additional Dividend or the Redemption Amount is not paid on the date upon which it is due and payable in terms of this Schedule B then, for so long as the amount due by the Company in respect of either the "A2" Met Preference Dividend or the Redemption Amount remains in arrears, the amount due by the Company in respect of the arrear "A2" Met Preference Dividend, Additional Dividend or the Redemption Amount (as the case may be) shall be increased by an amount arrived at by applying a rate which is 200 basis points above the Prime Rate to the amount of the arrear "A2" Met Preference Dividend, Additional Dividend or the Redemption Amount, on the same basis as set out in clause 1.2.4, mutatis mutandis, from and including the due date for payment thereof to, but excluding, the actual date of actual payment.

### 1.4 Redemption or Default

#### 1.4.1 *Redemption events requiring written notification from SPV*

Notwithstanding anything to the contrary herein contained, all the issued "A2" Met Prefs shall be redeemed in full, if –

- 1.4.1.1 the Company should have failed to declare any dividend on the "A2" Met Prefs on the Dividend Dates, or, having declared any dividend, should have failed to pay such dividend on the due date of payment therefor unless such failure is caused by an administrative or technical error and payment is made within 3 Business Days of its due date; or
- 1.4.1.2 if the Company should fail to redeem any of the "A2" Met Prefs on the Redemption Date or fail to pay to the Holder thereof the full proceeds on redemption of the due date of payment therefor, unless such failure is caused by an administrative or technical error and payment is made within 3 Business Days of its due date; and  
the SPV has given the Company written notice that it requires redemption of such "A2" Met Prefs.

#### 1.4.2 *Default events requiring immediate redemption*

- 1.4.2.1 any default under the terms of "A2" SPV Prefs resulting in the SPV being called upon or otherwise obliged to redeem the "A2" SPV Prefs; or
- 1.4.2.2 if the Company commits an act which, if it were a natural person, would be an act of insolvency in terms of Section 8 of the Insolvency Act; or
- 1.4.2.3 if the Company should be placed into liquidation or under judicial management or wound-up, in any case whether provisionally or finally and whether voluntarily or compulsorily; or
- 1.4.2.4 if the Company should give any notice or take any steps to convene a meeting of its shareholders to adopt a resolution placing it in liquidation or under judicial management, in either case whether provisionally or finally; or
- 1.4.2.5 if the Company should make or attempt to make or recommend any general offer of compromise with any or all of its creditors.

### 1.5 Meetings

The Holder shall be entitled to receive notice of, and to be present at, any general meeting of the Company and shall (in its capacity as holder) be entitled to vote, either in person, by representation or by proxy, at any such meeting as if the Holder is an ordinary shareholder of the Company holding as many ordinary shares of the Company as it holds "A2" Met Prefs, but subject to the following conditions imposed by the Listing Division of the JSE:

- 1.5.1 the Exercise of the Voting Rights of the "A2" Met Prefs is entirely subject to the conditions of approval issued by the Listings Division of the JSE, in particular that the Holder be a black Person or company;
- 1.5.2 no further "A2" Met Prefs may be issued without the written consent of the JSE; and
- 1.5.3 the Holder may not veto any resolutions of the Company that would otherwise have been passed by the holders of Met Ords together with the Holder of the "A2" Met Prefs.

## 1.6 Rights of Conversion

- 1.6.1 The Holder may, upon written notice to the secretary of the Company after 3 years and one day after the Issue Date but prior to the Redemption Date and subject to the written consent of the Bank Consortium, request the Company to convert the "A2" Met Prefs into ordinary shares of the Company, on the basis of a conversion of one "A2" Met Pref for one such ordinary share ranking *pari passu* in all respects with the then existing ordinary shares of the Company, with effect from the date of receipt by the secretary of the Company of the said notice together with the written consent of the Bank Consortium.
- 1.6.2 Upon such conversion the Holder of the "A2" Met Prefs shall deliver to the Company certificates in respect of the number of "A2" Met Prefs converted and details of their Central Securities Depository Participant to hold the uncertificated Met Ords against payment of all costs incurred by the Company to issue such Met Ords, whereafter the Company shall apply for the listing of such converted "A2" Met Prefs on the JSE.

## 1.7 General

- 1.7.1 The Company shall not be liable to the Holders for interest on any unclaimed "A2" Met Preference Dividend or distribution of redemption monies. The Company shall retain all unclaimed monies until they are claimed; provided that any amount remaining unclaimed for a period of 12 years shall be forfeited by the Holder to the Company.

## SCHEDULE C

### 1. PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS OF THE “A3” MMI PREFS

Notwithstanding anything to the contrary in this schedule, the following terms and conditions shall attach to the fixed coupon convertible cumulative “A3” redeemable preference shares of 0,0001 cent (zero comma zero zero zero one cent) each in the Company.

#### 1.1 INTERPRETATION

For the purposes of this Schedule A, unless the context clearly indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings:

1.1.1	<b>“A3’ MMI Preference”</b>	the preferential cash dividend payable to the Holders of “A3” MMI Prefs in accordance with 1.2 below;
1.1.2	<b>“A3’ MMI Prefs”</b>	the fixed coupon cumulative convertible redeemable “A3” preference shares in the Company with a par value of 0,0001 cent (zero comma zero zero zero one cent);
1.1.3	<b>“A3’ SPV Prefs”</b>	the variable rate cumulative redeemable “A3” preference shares in the SPV with a par value of R1,00 (one rand) each;
1.1.4	<b>“the Act”</b>	the Companies Act, 71 of 2008, as amended from time to time;
1.1.5	<b>“Business Day”</b>	any day, other than a Saturday, Sunday or a day which is a statutory public holiday in the Republic of
1.1.6	<b>“Company”</b>	MMI Holdings Limited, a public company incorporated under the laws of South Africa with Registration Number 2000/031756/06 (previously known as Metropolitan Holdings Limited);
1.1.7	<b>“Dividend Date”</b>	31 March and 30 September each year;
1.1.8	<b>“Extension Date”</b>	the date set out in the Notice of Amendment (as contemplated in the Act) on which the memorandum of incorporation of the Company is amended to insert this definition and related amendments adopted by special resolution;
1.1.9	<b>“Holder”</b>	the holder of the “A3” MMI Prefs from time to time;



1.1.10	<b>“Issue Date”</b>	the date of issue of the “A3” MMI Prefs, being
1.1.11	<b>“Issue Price”</b>	R10.18 (ten rand and eighteen cents) per “A3” MMI Pref, of which 0,0001 (zero comma zero zero zero one) cent was allocated to the par value of such share and the balance to the share premium account of the Company;
1.1.12	<b>“JSE”</b>	JSE Limited;
1.1.13	<b>“MMI Ords”</b>	the ordinary shares of 0,0001 cent (zero comma zero zero zero one cent) in the Company;
1.1.14	<b>“Pre-Extension Date Terms”</b>	the preferences, rights, limitations and other terms of the “A3” MMI Prefs as set out in clause 137 of the memorandum of incorporation of the Company immediately prior to the amendments to the memorandum of incorporation that become effective on the Extension Date;
1.1.15	<b>“Prime Rate”</b>	the prevailing interest rate (per cent, per annum, compounded monthly) from time to time published by First National Bank, a division of FirstRand Bank Limited, as being its prime overdraft rate (as certified by any manager of FirstRand Bank Limited whose appointment and designation need not be proved) expressed as a percentage;
1.1.16	<b>“Redemption Amount”</b>	the amount detailed in 1.5.1;
1.1.17	<b>“Redemption Date”</b>	the date which falls on the 5th anniversary of the Extension Date, unless the “A3” MMI Prefs are converted or redeemed at an earlier date in terms of this Schedule A, or such later date as agreed in writing between the SPV and the Company;
1.1.18	<b>“Return of Capital”</b>	any distributions in respect of any share in the Company to the extent that such distribution results in a reduction of contributed tax capital of the Company;
1.1.19	<b>“SPV”</b>	Off the Shelf Investments 108 (Proprietary) Limited, a private company incorporated under the laws of South Africa with Registration Number 2004/013271/07;
1.1.20	<b>“Subsidiary”</b>	any subsidiary as defined in the Act.

## 1.2 PREFERENCE DIVIDENDS

- 1.2.1 The “A3” MMI Prefs shall confer on the Holder thereof the right to receive out of the profits of the Company, which right shall rank *pari passu* with the rights of all other holders of preference shares in MMI but prior to the provision for, or declaration or payment of, any dividends or other distributions of any nature whatsoever on any ordinary share in the capital of the Company, a cumulative preferential cash dividend which shall accrue on a daily basis and which shall be determined in the manner set out in clauses 1.2.2 to 1.2.4 and clause 1.3 below
- 1.2.2 In the period from (and including) the Extension Date up to (but excluding) the first Dividend Date thereafter (“First Period”), each “A3” MMI Pref shall confer on the Holder registered as such on the Business Day immediately preceding such Dividend Date the right to receive out of the profits of the Company a cumulative preferential cash dividend in the amount equal to 132 cents divided by 365 and multiplied by the number of days in such First Period. Thereafter, the “A3” MMI Pref shall confer on the Holder registered as such on the Business Day immediately preceding each Dividend Date the right to receive out of the profits of the Company a cumulative preferential cash dividend in the amount of 132 cents per annum per share, paid in equal amounts semi-annually in arrear on each Dividend Date
- 1.2.3 Such cumulative preferential cash dividends shall for purposes of the calculation thereof from time to time accrue on each day at such amount as is equal to 132 cents divided by 365
- 1.2.4 Should any “A3” MMI Pref be redeemed or converted in accordance with the provisions of this Schedule C, then the Holder registered as such on the date of such redemption or conversion shall be entitled to receive, immediately prior to such redemption or conversion, out of the profits of the Company –
- 1.2.4.1 any arrear “A3” MMI Preference Dividends which have not been paid on such “A3” MMI Pref in accordance with the terms and conditions attaching to such “A3” MMI Pref, on the basis that a dividend will be deemed to be in arrear if at any earlier dividend payment date the applicable “A3” MMI Preference Dividend was not paid; and
- 1.2.4.2 any “A3” MMI Preference Dividends which accrued since (and including) the last Dividend Date in respect of such “A3” MMI Pref for the period from the last Dividend Date up to (but excluding) such date of redemption or conversion

## 1.3 ADJUSTMENT EVENTS

In the event that, on or following the Extension Date, the SPV becomes obliged to pay to the holder of an “A3” SPV Pref any additional dividend or increased dividend or other amount pursuant to the provisions of clause 39.7, which is to be amended to constitute the sub-clause headed “*Adjustment Events and Additional Dividends*”, of the terms attaching to the A3 SPV Prefs in Schedule 1 to the memorandum of incorporation of SPV (appearing as clause 1.2.4 of Annexure A to the A3 SPV Prefs Amendment Agreement) (“**Increased Amount**”), the Company shall pay to the SPV such additional dividend or increased dividend or other amount as will place the SPV in the same net after-tax position after the payment by the SPV of the Increased Amount as it

would have been in had it not become obliged to pay the Increased Amount, within 7 days after receipt of the SPV's written demand in the case that the SPV is obliged to pay an additional dividend or other amount and on the next succeeding Dividend Date in the case that the SPV is obliged to pay an increased dividend. The obligation in this clause 1.3 shall endure notwithstanding the redemption or conversion of the "A3" MMI Prefs in full

#### 1.4 RETURN OF CAPITAL

Save if the Holder and the Company have agreed otherwise in writing, in the event that the Company makes any distribution to holders of MMI Ords which constitutes a Return of Capital, then the "A3" MMI Prefs shall confer upon the Holder the right to receive and be paid an amount constituting a Return of Capital in respect of each "A3" MMI Pref held which shall be equal to the amount so distributed by the Company in respect of each MMI Ord, but which shall not exceed the amount in clause 1.5.1.1.

#### 1.5 REDEMPTION

1.5.1 The amount at which the Company shall redeem each "A3" MMI Pref in terms of clause 1.5.2 shall be an amount equal to –

1.5.1.1 the Issue Price, less any Return of Capital or any payments of share capital or premium to holders in respect of the "A3" MMI Prefs since the Issue Date; plus

1.5.1.2 any unpaid arrear "A3" MMI Preference Dividend which has not been paid in accordance with clause 1.2.4, on the basis that a dividend will be deemed to be in arrear if at any earlier dividend payment date the "A3" MMI Preference Dividend was not paid; plus

1.5.1.3 any "A3" MMI Preference Dividends which accrued since the last Dividend Date in respect of such "A3" MMI Pref for the period from the last Dividend Date to the date of redemption (and which has not been paid in accordance with clause 1.2.4); plus

1.5.1.4 interest on arrear "A3" MMI Preference Dividends calculated daily at the Prime Rate plus 2%, from (and including) the due date for payment of the "A3" MMI Preference Dividend up to (but excluding) the date of redemption, compounded monthly.

1.5.2 Subject to the further provisions of the Act and the provisions of 1.6 below, the Company shall redeem the "A3" MMI Prefs in full for the Redemption Amount on the Redemption Date against either –

1.5.2.1 surrender to the Company of the certificates in respect of the "A3" MMI Prefs; or

1.5.2.2 if such certificates are lost, receipt of a suitable written indemnity from the Holder that the certificates have not been alienated or pledged

- 1.5.3 Should the Redemption Amount not be paid on due date, then such amount shall bear interest at the Prime Rate plus 2% from (and including) the due date until (but excluding) the date of payment.

## 1.6 REDEMPTION EVENTS

- 1.6.1 Notwithstanding anything to the contrary herein contained, all the issued “A3” MMI Prefs shall be redeemed in full, if –
- 1.6.1.1 the Company should after the Extension Date have failed to pay any dividend on the “A3” MMI Prefs on the due date of payment therefor and has failed to remedy such breach within 1 (one) Business Day of written notice by the Holder requesting it to do so; and
- 1.6.1.2 the SPV has given the Company written notice that it requires redemption of the “A3” MMI Prefs
- 1.6.2 Notwithstanding anything to the contrary herein contained, all the “A3” MMI Prefs shall become immediately redeemable and shall be redeemed in full conditional upon the occurrence of any one or more of the following events after the Extension Date, namely –
- 1.6.2.1 if the Company should fail to redeem any of the “A3” MMI Prefs on the Redemption Date or fail to pay to the Holder thereof the full proceeds of redemption on the due date of payment therefor and has failed to remedy such breach within 1 (one) Business Day of written notice by the Holder requesting it to do so; or
- 1.6.2.2 if the Company commits an act which, if it were a natural person, would be an act of insolvency in terms of Section 8 of the Insolvency Act and has failed to remedy such breach within 10 (ten) Business Days of written notice by the Holder requesting it to do so; or
- 1.6.2.3 if the Company should be placed into liquidation or wound-up, in any case whether provisionally or finally and whether voluntarily or compulsorily and has failed to remedy such breach within 10 (ten) Business Days of written notice by the Holder requesting it to do so or
- 1.6.2.4 if the Company should be placed under supervision pursuant to business rescue proceedings and has failed to remedy such breach within 10 (ten) Business Days of written notice by the Holder requesting it to do so
- 1.6.2.5 if the Company should give any notice or take any steps to convene a meeting of its shareholders to adopt a resolution placing it in liquidation (whether provisionally or finally) or to be placed under supervision pursuant to business rescue proceedings and has failed to remedy such breach within 10 (ten) Business Days of written notice by the Holder requesting it to do so; or

- 1.6.2.6 if the Company should make or attempt to make or recommend any general offer of compromise with any or all of its creditors and has failed to remedy such breach within 10 (ten) Business Days of written notice by the Holder requesting it to do so; or
- 1.6.2.7 if any asset of the Company is attached for a judgement in excess of R50 000 000 (Fifty Million Rand) and the Company fails to set such attachment aside within 60 (sixty) days following receipt of written notice given by the Holder to the Company to do so; or
- 1.6.2.8 if the SPV is required to redeem the “A3” SPV Prefs prior to their scheduled redemption date pursuant to the occurrence of a Trigger Event or and Illegality Event (as respectively defined in Schedule 1 of the memorandum of incorporation of the SPV); or
- 1.6.2.9 any repudiation by the Company of its obligations under the terms of this Schedule C and the Company has failed to remedy such breach within 1 (one) Business Day of written notice by the Holder requesting it to do so

## 1.7 MEETINGS

The Holder shall be entitled to receive notice of, and to be Present at, any general meeting of the Company and shall (in its capacity as holder) be entitled to vote, either in person, by representation or by proxy, at any such meeting as if the Holder is an ordinary shareholder of the Company holding as many ordinary shares of the Company as it holds “A3” MMI Prefs, but subject to the following conditions imposed by the Listing Division of the JSE –

- 1.7.1 the exercise of the voting rights of the “A3” MMI Prefs is entirely subject to the conditions of approval issued by the Listings Division of the JSE, in particular that the Holder be a black person or company;
- 1.7.2 no further issue of “A3” MMI Prefs may be made without the written consent of the JSE; and
- 1.7.3 the Holder may not veto any resolutions of the Company that would otherwise have been passed by the holders of MMI Ords together with the Holder of the “A3” MMI Prefs.

## 1.8 RIGHTS OF CONVERSION

- 1.8.1 The Holder may, upon written notice to the secretary of the Company in the period after 3 (three) years and one day following the Issue Date but prior to the Redemption Date require the Company to convert all or a portion of the “A3” MMI Prefs held by the Holder on a one for one basis into MMI Ords, ranking pari passu in all respects with the then existing ordinary shares of the Company, with effect from the date of receipt by the secretary of the Company of the said notice.
- 1.8.2 Upon such conversion the Holder of the “A3” MMI Prefs shall deliver to the Company certificates in respect of the number of MMI Prefs converted and details of its Central Securities Depository Participant to hold the uncertificated MMI Ords against payment of all costs incurred by the Company to issue such

MMI Ords, whereafter the Company shall within 5 Business Days apply for the listing of such MMI Ords on the JSE.

## 1.9 GENERAL

- 1.9.1 The Company shall not be liable to the Holders for interest on any unclaimed "A3" MMI Preference Dividend or distribution of redemption monies. The Company shall retain all unclaimed monies until they are claimed, provided that any amount remaining unclaimed for a period of 12 (twelve) years shall be forfeited by the Holder to the Company.
- 1.9.2 Subject to contrary agreement in writing between the Company and the Holder, if the date scheduled for payment by the Company of any "A3" Preference Dividend or Redemption Amount falls on a day other than a Business Day, then such dividend or amount shall be paid by the Company to the Holder on the preceding Business Day.
- 1.9.3 The Holder and the Company may agree in writing that the Company shall make all payments due by the Company to the Holder in respect of the "A3" MMI Prefs to an agent of the Holder.

## 1.10 EXTENSION DATE

- 1.10.1 The Pre-Extension Date Terms shall continue to govern the preferences, rights, limitations and other terms attaching to the Preference Shares up to the date immediately prior to the Extension Date.
- 1.10.2 Without derogating from the generality of clause 1.10.1, the 6 (six) monthly preferential cash dividend accumulating in respect of the "A3" MMI Prefs in the period from (and including) 30 March 2012 up to (and including) the day immediately prior to the Extension Date shall be paid by the Company in accordance with the Pre-Extension Date Terms on 30 September 2012.
- 1.10.3 The provisions contained in this clause 1.10 shall replace the Pre-Extension Date Terms with effect from the Extension Date and shall, subject to clause 1.10.1, constitute the preferences, rights, limitations and other terms attaching to the "A3" MMI Prefs from the Extension Date.