

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT 71 OF 2008, AS AMENDED**

**MEMORANDUM OF
INCORPORATION**

relating to
**MAHUBE CAPITAL FUND 1 (RF)
PROPRIETARY LIMITED**
(registration number 2015/212709/07)

This memorandum of incorporation was adopted by a special resolution in terms of section 16(1) passed by the shareholder of the Company on 22 February 2022

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1. INTRODUCTION

- 1.1 The memorandum of incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Companies Act shall not apply to the Company.
- 1.2 This MOI contains restrictive conditions contemplated in section 15(2)(b) of the Companies Act and contains additional conditions to those stipulated in section 16 of the Companies Act in respect of amending of this MOI.

IT IS AGREED:

2. INTERPRETATION AND DEFINITIONS

- 2.1 In this MOI, the following words shall bear the following meanings and other words derived from the same origin as such words (that is cognate words) shall bear corresponding meanings, unless the context indicates otherwise:

"Annexe" means an annexe attached to this MOI from time to time;

"A Preference Shares" means the variable rate cumulative non-participating redeemable preference Shares in the Company, designated as class "A" preference shares, which shall confer on their holder the rights and privileges set out in Annexe 2 hereto and **"A Preference Share"** means each or any of them (as the context may require);

"Approved Agreements" means:

- (a) any agreement in relation to or arising from the Existing Projects or any one of them;
- (b) the Dorper Option Agreement;
- (c) the Intikon Option Agreement;
- (d) the Gaia FS Preference Share Subscription Agreement;
- (e) the Gaia SPV C Preference Share Subscription Agreement;
- (f) the Gaia FS Subordination Agreement;
- (g) the Gaia SPV Subordination Agreement;
- (h) the Gaia FS Pledge and Cession Agreement;
- (i) the Gaia FS SARGE Preference Share Subscription Agreement;
- (j) the Gaia FS SARGE Reversionary Pledge and Cession;
- (k) the Gaia SPV Issuer Shareholder Guarantee, Pledge and Cession;
- (l) the N Share Subscription Agreement;
- (m) the Call Option Agreement;

(n) any other agreement which the Company enters into from time to time, with the prior written consent of RMB;

"Board" means the board of Directors of the Company;

"B Preference Shares" means the cumulative redeemable participating preference Shares in the Company, designated as class "B" preference shares, which shall confer on their holder the rights and privileges set out in Annexe 3 hereto and **"B Preference Share"** means each or any of them (as the context may require);

"Call Option Agreement" means the agreement entitled "*Call Option Agreement*" entered into or to be entered into between the Company, Gaia SPV and Roux Trust upon the terms and conditions contained therein;

"Companies Act" means the Companies Act 71 of 2008;

"Companies Regulations" means the Companies Regulations, 2011;

"Company" means Mahube Capital Fund 1 (RF) Proprietary Limited (previously known as Gaia Financial Services (RF) Proprietary Limited), registration number 2015/212709/07, a private company duly incorporated in accordance with the laws of South Africa;

"Debt Instruments" shall bear the meaning ascribed to it in section 43(1)(a) of the Companies Act;

"Director" means a director of the Company from time to time;

"Dorper Option Agreement" means the option agreement in terms of which the Company is entitled to acquire an additional 49.3% of the equity, indirectly, in the Dorper Project;

"Dorper Project" means the 97.5MW wind farm project, located between the towns of Sterkstroom and Molteno in the Eastern Cape province of South Africa, operated by Dorper Wind Farm (RF) Proprietary Limited;

"Electronic Communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act 25 of 2002;

"Encumber" includes, in relation to any Shares, any pledge, charge, hypothecation, lien, subordination, mortgage, right of retention as security or any other encumbrance whatsoever, or any form of hedging of or over those Shares;

"Existing Projects" means the Dorper Project and the Intikon Projects;

"Final Discharge Date" shall have the meaning ascribed to it in the Gaia FS Preference Share Subscription Agreement;

"Gaia FS Preference Share Subscription Agreement" means the agreement entitled "*Gaia FS Preference Share Subscription Agreement*" executed between the Company, RMBIA and RMB (acting in its capacity as agent for RMBIA) on or about 19 September 2017, in terms of which, *inter alia*, RMBIA or its nominee subscribes for, and the Company issues to RMBIA, the Preference Shares upon the terms and conditions contained therein;

"Gaia FS Pledge and Cession Agreement" means the pledge and cession agreement titled "*Issuer Pledge and Cession Agreement*" executed on or about 19 September 2017, by the Company upon the terms and conditions contained therein;

"Gaia FS SARGE Preference Share Subscription Agreement" means the agreement entitled "*Preference Share Subscription Agreement*" entered into or to be entered into between the Company and SARGE, in terms of which, *inter alia*, the Company subscribes for, and SARGE issues to the Company, certain preference shares described thereunder upon the terms and conditions contained therein;

"Gaia FS SARGE Reversionary Pledge and Cession" means the agreement entitled "*Reversionary Pledge and Cession Agreement*" entered into or to be entered into between the Company and SARGE upon the terms and conditions contained therein;

"Gaia FS Subordination Agreement" means the agreement entitled "*Subordination Agreement*" entered into on or about 19 September 2017 between the Company, RMB, RMBIA, Holdco and GIP upon the terms and conditions contained therein;

"Gaia SPV" means Mahube Infrastructure Investment 1 (RF) Proprietary Limited (previously known as Gaia SPV (RF) Proprietary Limited), registration number 2015/377586/07, a private company duly incorporated in accordance with the laws of South Africa;

"Gaia SPV Issuer Shareholder Guarantee, Pledge and Cession" means the agreement entitled "*Gaia SPV Issuer Shareholder Guarantee, Pledge and Cession Agreement*" entered into on or about 19 September 2017 between the Company, RMBIA and the Roux Trust upon the terms and conditions contained therein;

"Gaia SPV C Preference Share Subscription Agreement" means the agreement entitled "*Gaia SPV C Preference Share Subscription Agreement*" executed on or about 19 September 2017 between the Company and Gaia SPV, in terms of which *inter alia* Gaia SPV agrees to issue, and the Company agrees to subscribe for, certain preference shares in Gaia SPV, upon the terms and conditions contained therein;

"Gaia SPV Subordination Agreement" means the agreement entitled "*Gaia SPV Subordination Agreement*" entered into on or about 19 September 2017 between the Company, Gaia SPV, RMBIA and the Roux Trust upon the terms and conditions contained therein;

"GIP" means Gaia Infrastructure Partners Proprietary Limited, registration number 2012/093632/07, a private company with limited liability duly registered in accordance with the laws of South Africa;

"Holdco" means Mahube Infrastructure Limited, registration number 2015/115237/06, a public company with limited liability duly registered in accordance with the laws of South Africa;

"Intikon Option Agreement" means the option agreement in terms of which the Company is entitled to acquire 100% of the equity in the Intikon Projects;

"Intikon Projects" means:

- (a) the 75MW solar photovoltaic plant known as Jasper and located in Kimberly in the Northern Cape Province of South Africa, operated by Jasper Power Company (RF) Proprietary Limited, registration number 2012/030036/07;
- (b) the 75MW solar photovoltaic plant known as Lesedi and located 150km west of Kimberly in the Northern Cape Province of South Africa, operated by Oakleaf Investment Holdings 79 (RF) Proprietary Limited, registration number 2011/105139/07; and
- (c) the 75MW solar photovoltaic plant known as Letsatsi and located 50km north-west of Bloemfontein in the Free State Province of South Africa, operated by Firefly Investments 253 (RF) Proprietary Limited, registration number 2011/145434/07;

"MOI" means this memorandum of incorporation including all Annexes;

"N Share Subscription Agreement" means the agreement titled "*Subscription Agreement*" executed or to be executed between the Company and Holdco, in terms of which Holdco will subscribe for N Shares;

"N Shares" means the no par value Shares of the Company which are subject to the preferences, rights, limitations and other terms set out in Annexe 4 hereto;

"Options" means options for the issue or subscription of Shares, Securities or Debt Instruments, as the case may be;

"Ordinary Shares" means the ordinary no par value Shares of the Company which are subject to the preferences, rights, limitations and other terms set out in Annexe 1 hereto;

"Preference Shares" means the A Preference Shares and the B Preference Shares;

"RMB" means FirstRand Bank Limited (acting through its Rand Merchant Bank division), registration number 1929/001225/06, a public company duly incorporated in accordance with the laws of South Africa;

"RMBIA" means RMB Investments and Advisory Proprietary Limited, registration number 2007/016079/07, a private company duly incorporated in accordance with the laws of South Africa;

"Roux Trust" means the trustees for the time being of the Francois Roux Family Trust, a trust registered by the Master of the High Court in accordance with the laws of South Africa, with Master's reference number IT 2141/2000;

"SARGE" means South African Renewable Green Energy Proprietary Limited, registration number 2008/028622/07, a private company with limited liability duly registered in accordance with the laws of South Africa;

"Securities Holder" means the registered holder of any Securities in the Company, including without limitation a holder of Ordinary Shares;

"Securities Register" means the register required to be established by the Company in terms of section 50(1) of the Companies Act;

"Shares" means any shares of the Company of whatever designation and with whatever preferences, rights and limitations, as set out in this MOI;

"Shareholder" means the registered holder of Shares in the Company, from time to time.

2.2 In this MOI:

2.2.1 the **"Securities Holder"** and **"RMB"** shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees;

2.2.2 a reference to an **"article"** by number refers to the corresponding article in this MOI;

2.2.3 a reference to a **"regulation"** by number refers to the corresponding regulation in the Companies Regulations;

2.2.4 a reference to a **"paragraph"** by number refers to the corresponding paragraph of the relevant Annexe to this MOI;

2.2.5 a reference to a **"section"** by number refers to the corresponding section of the Companies Act unless otherwise specified;

2.2.6 a reference to **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a **"business day"** will bear the meaning set out in article 2.1;

2.2.7 a reference to **"law"** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;

2.2.8 references to a **"person"** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

2.2.9 a reference to **"writing"** means legible writing and in English and includes printing, typewriting or any other mechanical process, as well as any Electronic Communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;

2.2.10 article and paragraph headings are for convenience only and are not to be used in the interpretation thereof;

2.2.11 words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be), the singular includes the plural and *vice versa*, and natural persons include artificial persons and *vice versa*;

- 2.2.12 if there is any conflict between any definitions in this MOI then, for purposes of interpreting any article of the MOI or paragraph of any Annexe, the definition appearing in that article or paragraph shall prevail over any other conflicting definition appearing elsewhere in the MOI or any Annexe;
- 2.2.13 the use of any expression covering a process available under South African law (including, for example, a winding-up) shall, if any of the Shareholders or other persons in respect of which this MOI applies is subject to the law of any other jurisdiction, be interpreted in relation to such person as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.14 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;
- 2.2.15 words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this MOI in a similar context bear the same meaning, unless excluded by the subject or the context, or unless this MOI provides otherwise;
- 2.2.16 where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur;
- 2.2.17 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; and
- 2.2.18 each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.

3. INCORPORATION AND NATURE OF THE COMPANY

3.1 Incorporation

The Company is incorporated as a private company and has juristic personality from the date and time that the incorporation of the Company is registered, as stated in its registration certificate.

3.2 Constitution of the Company

The Company is constituted in terms of section 19(1)(c) in accordance with and governed by:

- 3.2.1 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;
- 3.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this MOI; and
- 3.2.3 the other provisions of this MOI.

3.3 **Private company**

The Company is a private company in terms of section 8(2)(b) and:

- 3.3.1 the transferability of the Securities of the Company is restricted as provided in article 9.8.1; and
- 3.3.2 any offer to the public to subscribe for any Securities of the Company is hereby prohibited.

3.4 **Limitation of liability**

No person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

3.5 **Powers and capacity of the Company**

- 3.5.1 The Company has the powers and capacity of an individual, save that in accordance with section 19(1)(b), the powers of the Company shall, until the Final Discharge Date, be limited, so that, unless otherwise agreed in writing by RMB, the Company may not take any action or enter into any transaction, including incurring any Financial Indebtedness, permitting the creation of any Security over its assets, or acquiring or Disposing of any asset, other than:
 - 3.5.1.1 any action in relation to the Existing Projects;
 - 3.5.1.2 entering into and/or implementing the Approved Agreements;
 - 3.5.1.3 exercising its rights and performing its obligations under any Approved Agreement;
 - 3.5.1.4 taking legal action to protect or pursue its rights in terms of any Approved Agreement;
 - 3.5.1.5 declaring and paying dividends and making other Distributions in respect of the Preference Shares, the N Shares and its Ordinary Shares, as permitted or required by any Approved Agreement;
 - 3.5.1.6 defending and/or settling any proceedings instituted against it;
 - 3.5.1.7 rendering tax and other regulatory or statutory returns;
 - 3.5.1.8 objecting to tax assessments or appealing against such assessments;

- 3.5.1.9 soliciting and obtaining any legal, financial and/or other professional advice which it may require from time to time in the ordinary course;
 - 3.5.1.10 complying with all obligations imposed on it by any law or any regulatory authority having jurisdiction over it, and for this purpose it shall be entitled to engage auditors to perform the necessary annual audit of the Company; and
 - 3.5.1.11 paying all reasonable costs and expenses in relation to any of the matters described in articles 3.5.1.1 to 3.5.1.10 above, limited to any amount stipulated in terms of the Approved Agreements in respect of such costs and expenses (if any) or such other amount as may be approved in writing by RMB.
- 3.5.2 Notwithstanding any resolution of the Shareholders to the contrary, no provision of this article 3 shall be amended or deleted without the prior written consent of RMB, which consent shall not be unreasonably withheld.

4. MOI AND COMPANY RULES

- 4.1 Subject to article 3.5.2 above, 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 this MOI, which the Board is empowered to do, all other amendments of this MOI shall be effected in accordance with sections 16(1) and 16(4). The Board shall publish a copy of any such correction effected by the Board transmitting same to each Shareholder by Electronic Communication.
- 4.2 The Board is not authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company as contemplated in sections 15(3) to (5) in respect of matters that are not addressed in the Companies Act or in this MOI.

5. EXTENDED ACCOUNTABILITY REQUIREMENTS

- 5.1 The Company elects, in terms of section 84(1)(c)(ii) read with section 34(2), to have its annual financial statements audited every year.
- 5.2 The Company shall keep complete, accurate and current records and books of account and shall adopt a consistent and, as far as possible, uniform policy in the preparation of its monthly reports based on sound and generally accepted accounting principles and practice in South Africa.
- 5.3 The books of account (including the management accounts) and other books and documents of the Company shall be kept at the registered office of the Company or such other place as the Company may notify the Shareholders of in writing and, subject to any reasonable restrictions as to the time and manner of inspection as may be imposed by the Board, shall be open to inspection of Shareholders during normal business hours.

6. TAKEOVER REGULATIONS

Part B and Part C of Chapter 5 of the Act, and the Takeover Regulations, shall not apply to the Company except to the extent provided in section 118(1)(c)(i).

7. FINANCIAL ASSISTANCE TO GROUP COMPANIES

The Board does not have the authority to authorise the Company to provide direct or indirect financial assistance to any person contemplated in section 45 without the prior written consent of RMB, save as required or permitted under any Approved Agreement but in any event subject to complying with section 45(3).

8. SOLVENCY AND LIQUIDITY TEST

This MOI does not alter the application of the solvency and liquidity test provided in section 4 of the Companies Act.

9. SECURITIES OF THE COMPANY

9.1 Authorisation of Shares

9.1.1 The authorised Shares of the Company comprise:

9.1.1.1 1,013,786,750 (one billion thirteen million seven hundred and eighty six thousand seven hundred and fifty) Ordinary Shares;

9.1.1.2 55,151,000 (fifty five million one hundred and fifty one thousand) N Shares;

9.1.1.3 200,000 (two hundred thousand) A Preference Shares;

9.1.1.4 200,000 (two hundred thousand) B Preference Shares; and

9.1.2 The Board does not have the authority to:

9.1.2.1 increase or decrease the number of authorised Shares of any class of Shares;

9.1.2.2 reclassify any Shares that have been authorised but not issued;

9.1.2.3 classify any unclassified Shares that have been authorised but not issued;

9.1.2.4 determine the preferences, rights, limitations or other terms of any class of authorised Shares or amend any preferences, rights, limitations or other terms so determined,

save with the prior written consent of RMB.

9.1.3 All Shares of a particular class shall have preferences, rights, limitations and other terms that are identical to those of other Shares of the same class

9.2 Financial assistance for the subscription or purchase of Securities or Options

The Board does not have the authority to authorise the Company to provide financial assistance to any person for the purpose of, or in connection with, the subscription of any Option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any Securities of the Company or any related or inter-related company, in accordance with the Companies Act, without the prior written consent of RMB,

save as required or permitted under any Approved Agreement but in any event subject to complying with section 44(3).

9.3 **Capitalisation Shares**

The Board does not have the authority to:

- 9.3.1 approve the issue of any authorised Shares of the Company as capitalisation shares;
- 9.3.2 approve the issue of Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 9.3.3 permit the holders of Ordinary Shares to elect to receive a cash payment in lieu of a capitalisation share, at a value determined by the Board,

save with the prior written consent of RMB.

9.4 **Debt Instruments**

The Board does not have the authority to authorise the Company to issue secured or unsecured Debt Instruments, save with the prior written consent of RMB.

9.5 **Registration of beneficial interests**

The issuing of securities by, and the registration of the Company's issued securities in the name of, one person for the beneficial interest of another, is prohibited save with the prior written consent of RMB.

9.6 **Issue of Shares or Options to subscribe for Shares**

9.6.1 Shares are to be issued in certificated form, subject to the provisions of the Companies Act and this MOI.

9.6.2 The Board, after first having:

- 9.6.2.1 ascertained and verified the number of authorised but unissued Shares of the Company;
- 9.6.2.2 determined the number of Shares to be issued;
- 9.6.2.3 determined the identity of the persons who will be offered the opportunity to subscribe for Shares;
- 9.6.2.4 determined the number of Shares to be offered to each such person; and
- 9.6.2.5 set the issue price per Share,

may (subject to article 9.7) issue Shares (including Options as contemplated by section 42) at any time but only within the classes, and to the extent, that the Shares have been authorised by or in terms of article 9.1.

9.7 Shareholders' rights of pre-emption on issue

- 9.7.1 The statutory pre-emptive right of Shareholders, contemplated in sections 39(2) and (4), to be offered and to subscribe for additional Shares in the Company shall not apply to the issue of Ordinary Shares. Instead, the provisions of this article 9.7 shall apply, subject to article 9.7.6.
- 9.7.2 If the Company proposes to issue Ordinary Shares, those Ordinary Shares shall not be allotted or issued to any person unless:
- 9.7.2.1 not less than 75% of the holders of the N Shares have approved the proposed allotment; and
- 9.7.2.2 the Company has first offered them to all the other holders of the Ordinary Shares (the "**Offeree Shareholders**") on the date of the offer, on the same terms and at the same price as those Ordinary Shares are proposed to be offered to other persons on a *pro rata* basis to the number of Ordinary Shares by the Offeree Shareholders.
- 9.7.3 The offer contemplated in article 9.7.2.2:
- 9.7.3.1 shall be in writing and shall give details of the number and subscription price of the relevant Ordinary Shares and any other relevant conditions attached to the proposed offer;
- 9.7.3.2 shall be open for acceptance for a period of 15 business days from the date of the offer; and
- 9.7.3.3 may stipulate that any Offeree Shareholder who wishes to subscribe for a number of Ordinary Shares in excess of the proportion to which it is entitled shall, in its acceptance, state the number of excess Ordinary Shares ("**Excess Shares**") for which it wishes to subscribe.
- 9.7.4 In exercising its right under article 9.7.2.2, an Offeree Shareholder may subscribe for fewer Ordinary Shares than it is entitled to under the offer.
- 9.7.5 Any Ordinary Shares not accepted by Offeree Shareholders pursuant to the offer made to them in accordance with article 9.7.2.2 (as read with article 9.7.3) shall be used to satisfy any requests for Excess Shares made pursuant to article 9.7.3.3. If there are insufficient Excess Shares to satisfy such requests, the Excess Shares shall be allotted to the Offeree Shareholders *pro rata* to the number of Ordinary Shares held by them immediately before the offer was made (as nearly as possible without increasing the number of Excess Shares allotted to any Shareholder beyond that applied for by him). After that allotment, any Excess Shares remaining shall be offered to any other person as the Board may determine, at the same price and on the same terms as the offer to the Offeree Shareholders.
- 9.7.6 It is specifically recorded that the pre-emptive rights contained in this article 9.7 shall not apply where the issue of Shares is prescribed by way of an agreement amongst the Shareholders themselves and the Company, in particular, without limitation, the Gaia SPV Issuer Shareholder Guarantee, Pledge and Cession.

9.8 Transfer of Shares

9.8.1 *Restriction on transfer of Shares*

No Ordinary Shares may be transferred without the prior written consent of RMB, save as permitted in or required by any Approved Agreement.

9.8.2 *Proper instrument of transfer*

For purposes of section 51(6)(a), a "*proper instrument of transfer*" means an instrument in writing, in any form, specifying (a) the full name of the transferor (being the name of a person entered in the Shares Register as the registered holder of the Shares being transferred), (b) the full name of the transferee and (c) the number of the class of Shares being transferred, which has been signed by or on behalf of the registered Shareholder as transferor and signed by or on behalf of the transferee.

9.8.3 *Registration of transfer*

9.8.3.1 Subject to article 9.9, the Board may not decline to register the transfer of any Shares in terms of a proper instrument of transfer unless (and for so long as):

- (a) the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this MOI and/or the Approved Agreements; and/or
- (b) the transferee has not settled in full the securities transfer tax payable in respect of such a transfer (if any).

9.8.3.2 If the Board refuses to register the transfer of a share it shall give notice of that refusal to the proposed transferor and transferee within 10 business days following the date on which the relevant transfer form is lodged at the Company's principal place of business.

9.8.3.3 The transferor shall be deemed to remain the holder of and shall remain the registered Shareholder in respect of such Shares until the name of the transferee is entered in the Securities Register in respect thereof.

9.8.4 *Documents required for registration of transfer*

9.8.4.1 Any person wishing the Company to register the transfer of any Shares shall deliver to the Company:

- (a) a copy of a proper instrument of transfer; and
- (b) the original certificate of the Shares being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require proving the title of the transferor or his rights to transfer the Shares.

9.8.4.2 Where an instrument of transfer is signed by a person other than the relevant Shareholder, a copy of the authority granted by the

Shareholder for the purpose of transferring Shares, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.

9.8.4.3 Such authorities shall, as between the Company and the grantor of such authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the Shareholder as transferor pursuant to such authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Shareholder is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer, signed under the authority to sign and certified by any officer of the Company as being in order, before the lodging of such written notice of revocation.

9.8.4.4 The copy of the instrument of transfer, original or duplicate certificate, other documentary evidence and a copy of any authority to transfer the Shares, shall remain in the custody of the Company at its registered office, unless the Board refuses to transfer the Shares in question in which case the Company shall return such documents to the transferor within 20 business days of the Company giving written notice to the transferor and transferee of such refusal.

9.8.5 *Recognition of title*

The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is an insolvent or the *curator bonis* of any registered Shareholder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered Shareholder shall, subject to the provisions of articles 9.10.2 and 9.10.3 regarding joint holders, be the only person recognised by the Company as having any title to any Shares registered in the name of such Shareholder, including for voting purposes.

9.8.6 *Transmission of Shares*

9.8.6.1 Subject to section 51(6)(b) and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of articles 9.10.2 and 9.10.3 or article 9.8.5 as having any title to any Shares (including the legal guardian of any minor Shareholder and any person who obtains title to any Shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this article or as to his title to any Shares, and subject to the transfer provisions in this MOI, transfer such Shares to himself or to any other person contemplated in this article 9.8.6.

9.8.6.2 A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a registered Shareholder who is deceased or the estate of a Shareholder whose estate has been sequestrated or who is otherwise under a disability, or of his appointment as the liquidator of any body

corporate which is a Shareholder, shall be entered in the Securities Register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder.

9.9 Restriction on Encumbrance

Other than as contemplated in any Approved Agreement, no Ordinary Shares shall be Encumbered save with the prior written consent of RMB.

9.10 Securities Register

9.10.1 Any person who is entitled to have his name entered into the Securities Register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the Securities Register including the name, business address, residential address, postal address and available e-mail address of that person.

9.10.2 In the case of any Security registered in the names of two or more persons as joint holders, the person first named in the Securities Register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such Security and to the related certificate of title.

9.10.3 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such security.

9.11 Certificated Shares

9.11.1 Shares of the Company are to be issued in certificated form only, as contemplated in section 49(2)(a).

9.11.2 A certificate evidencing any Shares of the Company:

9.11.2.1 must state on its face:

- (a) the name of the Company;
- (b) the name of the person to whom the Shares were issued or transferred, as the case may be;
- (c) the number and class of Shares and the designation of the series, if any, evidenced by that certificate; and
- (d) a restriction on the transfer of the Shares evidenced by the certificate and, in particular, must be endorsed as follows:

"The securities represented hereby are transferable only upon compliance with the provisions of the Memorandum of Incorporation of the Company, as amended or substituted from time to time, a copy of which is on file with the Company.

9.11.2.2 must be signed by two persons authorised by the Board; and

- 9.11.2.3 may otherwise be in such form as the Board prescribes from time to time.
- 9.11.3 Every registered Shareholder shall be entitled to be issued certificates evidencing ownership of the Securities on the initial issue or transfer of Shares to the Shareholder, free of charge, but for every subsequent certificate the Board may make such charge as from time to time the Board may think fit.
- 9.11.4 Where a Shareholder has transferred part only of his Shares evidenced by a particular certificate, he shall be entitled, free of charge, to be issued with a new certificate for the balance of his Shares.
- 9.11.5 The Company shall, within two business days after the issue of any Shares or the lodgement of an instrument of transfer for any Shares, have ready for delivery the relevant certificate/s of title.
- 9.11.6 Every person to whom Shares are issued and whose name is entered in the Securities Register shall be entitled to one certificate for all the Shares of each class registered in his name, or, if the Board agrees, to several certificates, each for a part of such Shares.
- 9.11.7 A Share certificate complying with article 9.11.2 is proof that the named Securities Holder owns the Shares specified in the certificate, in the absence of evidence to the contrary.
- 9.11.8 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "Duplicate Certificate" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.
- 9.11.9 A certificate registered in the names of two or more persons shall be delivered to the person first named in the Securities Register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that Security.

10. PROXIES

10.1 Representation by concurrent proxies

The right of a Shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a), is not amended by this MOI.

10.2 Authority of proxy to delegate

A proxy may delegate his authority to act on behalf of a Shareholder appointing him as proxy to another person.

10.3 Form of proxy instrument

A form of proxy shall be in a form approved by the Board from time to time.

10.4 **Validity of proxy instrument**

- 10.4.1 A proxy instrument shall not be valid for longer than 12 months after its execution, unless the proxy document expressly states otherwise.
- 10.4.2 A proxy instrument that is invalid in respect of a Shareholders' meeting will also be invalid in respect of any postponement or adjournment of such meeting.
- 10.4.3 Voting rights exercised pursuant to an instrument of proxy, shall be valid notwithstanding the prior death of the Shareholder who appointed the proxy, or the revocation of the proxy or transfer of the Shares in respect of which the voting rights were exercised, provided that written notice of such death, revocation or transfer, as the case may be, does not reach the registered office of the Company or the chairperson of the meeting prior to the relevant Shareholders' meeting.

10.5 **Deliberative authority of proxy**

The authority of a Shareholder's proxy to decide to vote in favour of, against, or to abstain from exercising any voting rights, as contemplated in section 58(7), shall be determined by the instrument appointing the proxy.

11. **SHAREHOLDERS**

11.1 **Shareholders' right to information**

This MOI does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and (2).

11.2 **Shareholders' authority to act**

- 11.2.1 If, at any time, there is only one Shareholder of the Company, the authority of that Shareholder to act without notice or compliance with any other internal formalities, as set out in section 57(2) is not amended by this MOI.
- 11.2.2 If, at any time, every Shareholder of the Company is also a Director of the Company as contemplated in section 57(4), the authority of the Shareholders to act without notice or compliance with any other internal formalities as set out in that section, is not amended by this MOI.

11.3 **Record date for exercise of Shareholder rights**

- 11.3.1 The Board may determine record dates for purposes of determining Shareholder rights in accordance with section 59(1) and (2).
- 11.3.2 If, at any time, the Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be a date that is 48 hours before the date on which the event or action, in respect of which the record date is being set, is scheduled to occur.

11.4 Shareholders' meetings

11.4.1 *Right to call meeting*

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

11.4.1.2 The Board must call a meeting of Shareholders if one or more written and signed demands for such a meeting are delivered to the Company and:

- (a) each such demand describes the specific purpose for which the meeting is proposed; and
- (b) in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

11.4.1.3 The Company authorises any Shareholder to call a Shareholders' meeting in the case that the Company is unable to convene a meeting because there are no Directors or all the Directors are incapacitated, as contemplated in section 61(11).

11.4.2 *Location of Shareholders' meetings*

The Board may determine the location of Shareholders' meetings (including the location of any meeting which has been adjourned), provided that the location shall be the registered office of the Company or an alternate suitable venue in South Africa which is reasonably accessible to each Shareholder.

11.4.3 *Notice of Shareholders' meetings*

The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders, as required by section 62(1)(b), is five business days before the meeting is to begin.

11.4.4 *Electronic participation in Shareholders' meetings*

11.4.4.1 A resolution approved by the required majority of Shareholders who were connected by Electronic Communication at a Shareholders' meeting where:

- (a) all such Shareholders remained connected for the duration of the meeting;
- (b) the subject matter of the resolution had been discussed at such meeting; and
- (c) the chairperson, deputy chairperson or any Shareholder present at such meeting confirmed in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of such meeting).

11.4.4.2 Within 10 business days after the adoption or failing of a resolution at a meeting contemplated in article 11.4.4.1, the Company shall:

(a) deliver to each Shareholder a copy of the resolution proposed with a statement describing the results of the vote, consent process or election as the case may be; and

(b) insert a copy of the resolution and statement referred to in article (a) into the Company's minute book.

11.4.5 *Quorum for, and postponement or adjournment of, Shareholders' meetings*

11.4.5.1 This MOI does not specify a different percentage in place of the 25% required in terms of section 64(1) for a Shareholders' meeting to begin or for any matter to be considered at any Shareholders' meeting to be decided.

11.4.5.2 This MOI does not specify a different time to the one hour provided in sections 64(4) and 64(5) for a quorum to be established before a Shareholders' meeting may be adjourned.

11.4.5.3 This MOI does not specify a different period than the period of one week provided in section 64(4) for the adjournment of a Shareholders' meeting.

11.4.6 This MOI does not restrict or prohibit the continuation of any Shareholders' meeting or the consideration of any matter to be considered at any Shareholders' meeting after a quorum has been established for commencement of such meeting, or for such matter to be considered, provided at least one Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

11.4.7 *Adjournment of Shareholders' meetings*

This MOI does not provide different maximum periods for adjournment than those specified in section 64(12).

11.4.8 *Right to demand a poll*

Each Shareholder shall be entitled to demand that voting take place on a poll at any meeting of Shareholders.

11.5 **Shareholders' resolutions**

11.5.1 For an ordinary resolution of Shareholders to be adopted, it must be supported by more than 50% of the voting rights (capable of and entitled to be exercised) exercised on the resolution.

11.5.2 For a special resolution to be adopted, it must be supported by at least 75% of the voting rights (capable of and entitled to be exercised) exercised on the resolution.

11.6 Shareholders' acting other than at a Meeting

- 11.6.1 In accordance with the provisions of section 60, a resolution that could be voted on at a Shareholders' meeting (including in respect of the election of Directors but excluding any business of the Company that is required by the Companies Act or this MOI to be conducted at a meeting of the Company) may instead be:
- 11.6.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to that resolution; and
 - 11.6.1.2 voted on in writing by such Shareholders within a period of 20 business days after the resolution was submitted to them.
- 11.6.2 A resolution contemplated in article 11.6.1:
- 11.6.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary resolution or a special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
 - 11.6.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 11.6.3 Within 10 business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this article 11.6, the Company shall deliver a statement describing the results of the vote, consent process or election to every Shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

12. DIRECTORS AND OFFICERS

12.1 Authority of the Board

- 12.1.1 The authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66(1), is limited, restricted and qualified to the limitations, restrictions and qualifications contemplated in the Approved Agreements and article 3.
- 12.1.2 If, at any time, the Company has only one Director, this MOI does not restrict that Director from exercising any power or performing any function of the Board at any time, without notice or compliance with any internal formalities.

12.2 Composition of the Board

- 12.2.1 This MOI does not specify a higher number in substitution for the minimum number of Directors required in terms of section 66(2).
- 12.2.2 The Ordinary Shareholders shall elect the Directors, and shall be entitled to elect one or more alternate Directors, in accordance with the provisions of section 68(1).

- 12.2.3 This MOI does not provide for:
- 12.2.3.1 the direct appointment or removal of any Director or alternate Director by any particular person, except as provided in clause 12.2.7; or
 - 12.2.3.2 the appointment of any person as an *ex officio* Director of the Company.
- 12.2.4 This MOI does not stipulate any additional qualifications or eligibility requirements other than those set out in the Companies Act for a person to become or remain a Director or a prescribed officer of the Company.
- 12.2.5 Subject to the Companies Act and this MOI, each Director of the Company shall serve for an indefinite term.
- 12.2.6 The Board may appoint any person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on a temporary basis until the vacancy is filled by election in accordance with section 68(1).
- 12.2.7 Without derogation from the provisions of the Companies Act, a Director shall cease to be a Director if:
- 12.2.7.1 a written notice to that effect signed by Ordinary Shareholders holding not less than 51% of the voting rights of the Company is delivered at the registered office of the Company, with effect from the date stipulated in that notice; or
 - 12.2.7.2 a written notice to that effect as provided or contemplated in the Approved Agreements is delivered at the registered office of the Company, with effect from the date stipulated in that notice; or
 - 12.2.7.3 he/she is removed by a resolution signed by all his co-Directors, with effect from the date stipulated in that resolution.

12.3 **Board meetings**

12.3.1 *Requisitioning of meetings*

The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1)(b), may be exercised by one Director.

12.3.2 *Electronic meetings*

The authority of the Board to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), is not amended by this MOI.

12.3.3 *Notice of meetings*

Subject to section 73(5)(a), a notice of a Board meeting must be in writing and delivered to each Director of the Company (which may be given by e-mail or fax), so as to be received by the Director in question in the ordinary course not

less than five business days before the date appointed for the Board meeting, provided that:

12.3.3.1 in exceptional circumstances the notice period may be shortened as is necessary to allow the Directors to attend to the exceptional circumstances in question; or

12.3.3.2 the notice may be waived by all the Directors.

12.3.4 *Defective or inadequate notice of Board meeting*

If all of the Directors of the Company:

12.3.4.1 acknowledge actual receipt of the notice;

12.3.4.2 are present at the meeting; or

12.3.4.3 waive notice in writing of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was defect in the giving of the notice.

12.3.5 *Automatic postponement of a meeting*

12.3.5.1 If within 30 minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for five business days.

12.3.5.2 The 30 minute limit may be extended for a reasonable period not exceeding one hour by the chairperson of the meeting.

12.3.6 *Automatic adjournment of a meeting*

If at the time a matter is to be considered at a Board meeting, a quorum is not present and there is no other business on the agenda which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for one week.

12.3.7 *Voluntary postponement of a particular matter to later in the Board meeting*

If at the time a particular matter is to be considered at the Board meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion or vote) to the end of the Board meeting.

12.3.8 *Further notice required for postponed or adjourned meeting*

At least five business days' notice shall be given to all Directors of the date, time and venue of a meeting that is postponed or adjourned.

12.3.9 *Continuing quorum during meeting*

After a quorum has been established for a Board meeting or for a matter to be considered at a Board meeting, the Board meeting may only continue or the

matter may only be considered, as the case may be, for so long as such quorum remains present at the meeting.

12.3.10 *Adjournment by Directors*

A Board meeting may otherwise be adjourned by majority vote of the Directors present at the meeting.

12.3.11 *Quorum at Board meetings*

The quorum for Board Meetings shall be a majority of Directors.

12.3.12 *Voting at Board meetings*

Each Director shall have one vote.

12.3.13 *Approval of resolutions*

A Board resolution shall be approved if supported by a majority of the votes cast on that resolution.

12.3.14 *Appointment of chairperson*

12.3.14.1 The chairperson of the Board shall be elected by the Directors (or its successors-in-title), provided that if no chairperson is appointed at the time or the chairperson is absent from a meeting for any reason, the Directors shall elect one of their number present to be the chairperson of that meeting.

12.3.14.2 The chairperson of the Board shall not have a casting vote.

12.3.14.3 The chairperson's duties and functions shall include presiding at meetings of the Board, ensuring that all resolutions of the Board are carried into effect, the monitoring of the Company's and Directors' performances and such other functions, responsibilities and duties as may be given to the chairperson by the Board from time to time.

12.3.15 *Minutes*

12.3.15.1 Minutes of Board meetings shall:

- (a) set out full details of the voting on, and adoption of, resolutions by the Board, including a record of who voted for or against a particular resolution;
- (b) include any declaration of interest by a Director in terms of section 75;
- (c) be settled by the chairperson and circulated to the Directors within 10 business days following the relevant meeting;
- (d) be submitted to the next meeting for approval, with or without modification; and

- (e) be signed by the chairperson of that meeting confirming the approval thereof.

12.3.15.2 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next Board meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

12.3.16 *Directors' round robin resolutions*

12.3.16.1 A resolution that could be voted on at a Board meeting (other than a Board resolution that the Company voluntarily begin business rescue proceedings and place the Company under supervision as contemplated in section 129(1)) may instead of being voted on at a meeting be:

- (a) submitted (by the Directors proposing the resolution) for consideration to each Director (section 74(1)); and
- (b) voted on in writing by Directors entitled to exercise voting rights on that matter within 20 business days after the resolution was submitted to them.

12.3.16.2 A round-robin resolution of Directors may consist of several documents in like form, each signed by one or more of the Directors. A faxed or electronic copy of a signed round-robin resolution shall be acceptable evidence that such resolution has been signed by the Director whose signature appears thereon, provided that the Director lodges the original signed round-robin resolution in the records of the Company within the 20 business days referred to in article 12.3.16.1(b).

12.3.16.3 A resolution contemplated in paragraph 12.3.16.1 will have been adopted as a Board resolution if it has been supported in writing by a majority of the Directors who are entitled to exercise and exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a Board meeting.

12.3.16.4 A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date the resolution was submitted to directors for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors entitled to do so voting in favour of the resolution (or if that or any other written approval is undated, the date on which such written approval was communicated to the Company) within the 20 business days referred to in paragraph 12.3.16.1(b).

12.4 **Directors' compensation**

The payment of remuneration to the Directors for their service as Directors is prohibited save with the prior written consent of RMB.

12.5 **Indemnification of Directors**

The Company does not have the ability to -

- 12.5.1 advance expenses to a Director in order to defend any legal proceedings arising from his service to the Company, or to indemnify a Director against such expenses if the proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director in terms of sections 78(5) and 78(6);
- 12.5.2 indemnify a Director in respect of any liability arising out of the Director's service to the Company to the fullest extent permitted by the Companies Act; and
- 12.5.3 purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director in terms of the Companies Act and this MOI, or the Company against any contingency,

save with the prior written consent of RMB.

12.6 **Committees of the Board**

- 12.6.1 This MOI does not limit, restrict or qualify the authority of the Board to appoint any number of committees of Directors, or to delegate to any such committee any of the authority of the Board.
- 12.6.2 Except to the extent that a Board resolution establishing a committee provides otherwise, the committee:
 - 12.6.2.1 may include persons who are not Directors of the Company but any such person must not be ineligible or disqualified to be a Director in terms of section 69, any such persons shall not have a vote on any matter to be decided by the committee;
 - 12.6.2.2 may consult with or receive advice from any person; and
 - 12.6.2.3 has the full authority of the Board in respect of any matter referred to it.

13. **DISTRIBUTIONS**

- 13.1 Subject to the provisions of the Companies Act, the Company shall make distributions in respect of the Preference Shares, the N Shares and the Ordinary Shares, as permitted or required by any Approved Agreement or with the prior written consent of RMB.
- 13.2 Subject to the provisions of clause 13.1, in the event that sufficient funds are available for distribution, that distribution is permitted or required by any Approved Agreement and the Company will satisfy the solvency and liquidity test immediately after completing the proposed distribution, then the Board shall authorise such distribution by resolution.

14. WINDING UP

- 14.1 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be distributed among the Ordinary Shareholders and the holders of the N Shares in proportion to the number of Shares held by each of them, subject to the rights of the holders of Shares issued upon special conditions.
- 14.2 In a winding-up of the Company, any part of the assets of the Company, including any Shares of other companies may, with the sanction of a special resolution of the Company, be paid to the Shareholders of the Company *in specie* or may, with the same sanction, be vested in trustees for the benefit of such Shareholders, and the liquidation of the Company may be finalised and the Company dissolved.

15. DELIVERY AND PUBLICATION OF NOTICES AND CERTAIN DOCUMENTS

- 15.1 All notices and documents or other communications required to be published as contemplated in section 15(3)(a) or section 17(1)(a) shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11), read with Regulation 7 and Table CR3, to each Shareholder to any of his addresses (including fax numbers and/or e-mail addresses) recorded in the Securities Register.
- 15.2 If a Shareholder has not notified an address, fax number or e-mail address in terms of article 9.10, it shall be deemed (for all purposes, including for the purposes set out in article 15.1) to have nominated the Company's registered address, from time to time until the date on which it notifies the Company of its address, fax number or e-mail address.
- 15.3 All notices with respect to any Shares to which persons are jointly entitled, may be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of article 9.10 and notice so given shall be sufficient notice to all the holders of such Shares.
- 15.4 Where a notice is sent by post, the post office shall be the agent for the Shareholder and the Shareholder shall, from the time and date of delivery of the notice to the post office, bear all risks associated with that notice including of non-delivery or late delivery of the notice.

**ANNEXE 1: PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS
ATTACHING TO THE ORDINARY SHARES**

1. VOTING

- 1.1 Each Ordinary Share shall entitle the holder thereof to notice of every general meeting and adjourned meeting of the Shareholders.
- 1.2 The holder of each Ordinary Share shall be entitled to be present at and to vote at each meeting of the Shareholders.
- 1.3 The holder of each Ordinary Share shall be entitled to vote on all matters requiring the vote of the holders of Ordinary Shares.
- 1.4 Each Ordinary Share shall entitle the holder thereof to exercise one general voting right.

2. RANKING

- 2.1 Each Ordinary Share will rank *pari passu* with each other Ordinary Share and each N Share on a winding-up of, or any return of capital by, the Company.
- 2.2 Each Ordinary Share shall rank behind the rights of the holders of the A Preference Shares and the holders of the B Preference Shares on a winding up of, or any return of capital by, the Company.

3. DISTRIBUTIONS

Each Ordinary Share shall entitle the holder to receive Distributions, *pari passu* with each other Ordinary Share and each N Share, as may be authorised by the Board.

**ANNEXE 2: PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS
ATTACHING TO THE A PREFERENCE SHARES**

1. DEFINITIONS

In these terms and conditions capitalised terms not otherwise defined herein shall bear the meanings assigned to them in the Subscription Agreement (as such term is defined below) and, unless inconsistent with or otherwise indicated by the context:

"A Preference Share Breakage Dividends" has the meaning specified in clause 2.3 (*A Preference Share Breakage Dividends*);

"A Preference Share Dividend Calculation Date" means, in respect of each A Preference Share:

- (a) the last day of February, 31 May, 31 August and 30 November of each year; and
- (b) the Actual Redemption Date in respect of each such A Preference Share;

"A Preference Share Dividend Calculation Period" means, in respect of each A Preference Share, each period which commences on (and includes) one A Preference Share Dividend Calculation Date and which ends on (and excludes) the next A Preference Share Dividend Calculation Date provided that:

- (a) the first A Preference Share Dividend Calculation Period in respect of each A Preference Share shall commence on (and include) the Subscription Date of that A Preference Share and shall end on (and exclude) the first A Preference Share Dividend Calculation Date which occurs after the Actual Issue Date of that A Preference Share;
- (b) the last A Preference Share Dividend Calculation Period in respect of each A Preference Share shall commence on (and include) the last A Preference Share Dividend Calculation Date which occurs prior to the Actual Redemption Date of that A Preference Share and end on (and exclude) that Actual Redemption Date;
- (c) if the A Preference Share Dividend Rate changes on any day other than an A Preference Share Dividend Calculation Date, whether pursuant to the Adjustment Clause or otherwise (1) the period which commences on (and includes) the most recent A Preference Share Dividend Calculation Date and which ends on (and excludes) the day on which the A Preference Share Dividend Rate changes shall be an A Preference Share Dividend Calculation Period, and (2) the period which commences on (and includes) the date on which the A Preference Share Dividend Rate changes and which ends on (and excludes) the next A Preference Share Dividend Calculation Date shall be another A Preference Share Dividend Calculation Period; and
- (d) if an Additional A Preference Share Dividend is claimed in any Adjustment Notice pursuant to clause 3.1.3.1 (1) the period which commences on (and includes) the most recent A Preference Share Dividend Calculation Date and which ends on (and excludes) the date specified in the relevant Adjustment Notice (being a date not earlier than the date of the relevant Adjustment Notice) ("**Adjustment Date**") shall be an A Preference Share Dividend Calculation Period, and (2) the period which

commences on (and includes) the Adjustment Date and which ends on (and excludes) the next A Preference Share Dividend Calculation Date shall be another A Preference Share Dividend Calculation Period;

"A Preference Share Dividend Payment Date" means, in respect of each A Preference Share:

- (a) the last day of February of each year after the Actual Issue Date of that A Preference Share until the Interim Discharge Date (A Preference Shares); and
- (b) 31 August of each year after the Actual Issue Date of that A Preference Share until the Interim Discharge Date (A Preference Shares); and
- (c) in respect of all A Preference Share Dividends not previously paid in respect of any A Preference Share, the Actual Redemption Date in respect of that A Preference Share;

"A Preference Share Dividend Rate" means, subject to adjustment in accordance with clauses 2.2.1 or 2.2.2 or an Adjustment Clause, a rate equal to the A Preference Share Dividend Rate Percentage of the Base Rate;

"A Preference Share Dividend Rate Percentage" means –

- (a) prior to adjustment in accordance with the Adjustment Clause, 100%; and
- (b) subsequent to adjustment in accordance with the Adjustment Clause, the new Dividend Rate Percentage determined in accordance with the provisions of clause 3.2 (*Specific Formula*);

"A Preference Share Dividends" means, in respect of each A Preference Share, the applicable Scheduled A Preference Share Dividends and includes (without double counting) any Accumulated A Preference Share Dividends (adjusted, if applicable, in terms of any Adjustment Clause), any Additional A Preference Share Dividends, any A Preference Share Breakage Dividends and any A Preference Share Early Redemption Dividends, if applicable;

"A Preference Share Early Redemption Dividend" means any dividend payable by the Company pursuant to clause 2.3 (*A Preference Share Early Redemption Dividends*);

"A Preference Share Redemption Price" means, in relation to an Outstanding A Preference Share, an amount equal to its A Preference Share Subscription Price;

"A Preference Share Subscription Price" means, in respect of each A Preference Share, an amount of ZAR999.99 (nine hundred and ninety nine Rand and ninety nine cents);

"A Preference Share Terms" means the rights and privileges (which will, pursuant to the provisions of the Subscription Agreement, attach to the A Preference Shares) set out in this Schedule 3 to the Subscription Agreement;

"A Preference Share Trigger Event" means any event listed in clause 4 (*A Preference Share Trigger Events*) of these A Preference Share Terms;

"A Preference Shares" means 188,000 (one hundred and eighty eight thousand) variable rate non-participating redeemable *"A Preference Shares"* in the issued share capital of the

Company which confer on their Holders the rights and privileges set out in these A Preference Share Terms, and "**A Preference Share**" means each or any of them, as the context requires;

"**Accumulated A Preference Share Dividends**" means any Scheduled A Preference Share Dividend for any A Preference Share Dividend Calculation Period which is not paid in full on the applicable A Preference Share Dividend Payment Date and which remains unpaid;

"**Acting as an Expert**" means, in relation to any matter which is referred to the Dispute Auditor under any clause of these A Preference Share Terms, that the Dispute Auditor:

- (a) must determine the matter in question acting as an expert and not as an arbitrator;
- (b) shall, in determining that matter, be entitled to (1) follow such a procedure as he may deem appropriate, and (2) rely on such evidence of such persons as he may deem appropriate, and (3) make such a ruling in regard to the payment of his costs as he may deem appropriate (failing which his costs shall be paid by the unsuccessful Party),

and that the Dispute Auditor's decision shall, in the absence of a manifest error, be final and binding;

"**Actual Issue Date**" means, in relation to each A Preference Share, the date on which the Company issues that A Preference Share to its first Holder;

"**Actual Redemption Date**" means, in relation to any A Preference Share, the date on which the Company redeems that A Preference Share by paying its A Preference Share Redemption Price to the applicable Holder (provided that the Company has paid all the A Preference Share Dividends in respect of that A Preference Share);

"**Additional A Preference Share Dividend**" has the meaning specified in clause 3.1.3.1;

"**Adjustment Clause**" means clause 3 (*Adjustment Events*);

"**Adjustment Notice**" has the meaning specified in clause 3.1.2;

"**Amortisation Date**" means each amortisation date set out in the Amortisation Schedule, including the Final Redemption Date;

"**Applicable Laws**" means, from time to time, any law (including statutory, common or customary law), statute, constitution, decree, treaty, regulation, judgment, directive, by-law, order, other legislative measure, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court;

"**Available Cash**" means, on any A Preference Share Dividend Payment Date, the aggregate of all and any Internally Generated Cash Flows which the Company has actually received since the most recent A Preference Share Dividend Payment Date (including without limitation all and any amounts standing to the credit of the Issuer Transaction Proceeds Accounts), after payment of, and/or provision for a reasonable estimate of the amounts (if any) contemplated in clauses 12(c)(i) and 12(c)(ii) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement for the period from and excluding the immediately preceding A Preference Share Dividend Payment Date up to and including the A Preference Share

Dividend Payment Date immediately following the relevant A Preference Share Dividend Payment Date;

"Available Cash for Cash Sweeps" means, on any A Preference Share Dividend Payment Date, without double counting, an amount equal to the amount of Available Cash after payment and/or provision by the Company for a reasonable estimate of the amounts (if any) contemplated in clauses 12(c)(iii) to 12(c)(viii) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement;

"B Preference Share Trigger Event" means a "*B Preference Share Trigger Event*", as such term is defined in the B Preference Share Terms;

"Base Rate" means a rate that is equal to:

- (a) 72% (seventy two per cent) of JIBAR; plus
- (b) 4.75% (four point seven five per cent);

"Basic Calculation Formula" means the formula contained in clause 2.2.1;

"Board" means the Company's board of directors from time to time;

"Breakage Costs" means, in respect of any A Preference Share, all direct losses, payments, damages, liabilities, penalties, charges, fees, Taxes, costs and expenses incurred by any Holder as a result of (i) the redemption of such A Preference Share on a day other than an A Preference Share Dividend Payment Date or the Final Redemption Date; and/or (ii) the payment of any A Preference Share Dividends in relation to such A Preference Share on any date other than an A Preference Share Dividend Payment Date, as the case may be, such Losses to include, *inter alia*, the costs incurred by such Holder in unwinding any instrument raised or any part thereof pursuant to such redemption of such A Preference Share on a date other than an A Preference Share Dividend Payment Date or the Final Redemption Date or payment of such A Preference Share Dividend on a date other than on an A Preference Share Dividend Payment Date, as the case may be, and all costs incurred by that Holder pursuant to the early termination, unwinding, closing-out or modification of any underlying hedging instruments entered into by that Holder in order to hedge its dividend rate risk under such A Preference Share;

"Broken Period" means an A Preference Share Dividend Calculation Period, to the extent that such period is less than three Months;

"Calendar Month" means each Month of the Gregorian Calendar;

"Cash Sweep Date" means each A Preference Share Dividend Payment Date contemplated in clauses 5.2.1 and 5.2.2;

"Cash Sweep Event" means the occurrence of any one of the following events:

- (a) a Company Distribution Lock-Up Event;
- (b) an A Preference Share Trigger Event which is continuing;
- (c) any:

- (i) change or amendment of any nature whatsoever of any provision of any Transaction Document (including any amendments to the definitions of any ratios contained in any Transaction Document) after the Signature Date: or
- (ii) change to the material terms and conditions on which the funding is provided under and in terms of any Project Company Senior Facility Finance Document (save for any such changes made pursuant to a Project Company Refinance),

which adversely impacts on the rights, interests or returns of a Holder under the Finance Documents, or

- (d) any Project Company Refinance which results in:
 - (i) an increase in the aggregate Financial Indebtedness owing by the Transaction Parties; or
 - (ii) the A Preference Share Service Cover Ratio for any Measurement Period ending on or before the Interim Discharge Date (A Preference Shares) falling below 1.2:1 (one point two to one) or, after the RE 2 Investment Date, 1.6:1 (one point six to one), on P50 basis, or any of the Preference Share Project Life Cover Ratios on any Measurement Date until the Interim Discharge Date (A Preference Shares) falling below 2.28:1 (two point two eight to one) or, after the RE 2 Investment Date, 3:1 (three to one),

as determined by the Preference Share Agent;

"Company" means Gaia Financial Services Proprietary Limited (in the process of changing its name to "*GAIA Financial Services (RF) Proprietary Limited*"), registration number 2015/212709/07, a private company with limited liability duly registered in accordance with the laws of South Africa;

"Company Distribution Lock-Up Event" means that the Company has available cash to make a Distribution to the Issuer Shareholder pursuant to clause 12(c)(xii)(E) of the Subscription Agreement or make payment of the profit element of the Gaia Management Fee pursuant to clause 12(c)(xii)(C) of the Subscription Agreement (after application of its Available Cash pursuant to the preceding clauses 12(c)(i) to 12(c)(xii) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement) but is restricted from making payment of such Distribution as a result of any of the requirements of clause 11.9(b)(ii) of clause 11.9 (*Distributions*) of the Subscription Agreement not being satisfied;

"Company Refinance Proceeds" means any proceeds received by the Company pursuant to a Company Refinance;

"Corporate Tax Rate" means the rate at which Normal Tax is levied on the taxable income of companies in terms of section 5(2) of the Tax Act and which is twenty eight per cent on the Signature Date;

"Default A Preference Share Dividend Rate" means the A Preference Share Dividend Rate prevailing at the time plus 2% (two per cent) (provided that if the Default A Preference Share Dividend Rate already applies pursuant to the occurrence of the Default A Preference Share Dividend Rate Trigger Event contemplated in paragraph (a) of the definition of "*Default A Preference Share Dividend Rate*", the Default A Preference Share Dividend Rate shall increase by an additional 2% (two per cent));

"Default A Preference Share Dividend Rate Trigger Event" means:

- (a) any amount payable on account of any A Preference Share or pursuant to the Subscription Agreement (whether an A Preference Share Dividend, an A Preference Share Redemption Price, an amount required to be paid into the Redemption Reserve Account (A Preference Shares) or otherwise) is not paid by the Company on the relevant A Preference Share Dividend Payment Date; or
- (b) any other A Preference Share Trigger Event occurs and the Holders notify the Company of the occurrence thereof;

"Dispute Auditor" means an independent auditor appointed by agreement between the Company and the Preference Share Agent, and failing such agreement, by the President for the time being of the South African Institute of Chartered Accountants, in either case from amongst the four largest auditing firms in the Republic of South Africa;

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the A Preference Shares (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payment operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, or is beyond the control of, the Party whose operations are disrupted;

"Distribution" means, in relation to any company, any payment (whether in cash or in specie and whether by way of set-off, counterclaim or otherwise) by way of interest or principal (whether in respect of an inter-company loan or otherwise), dividend, redemption, fee, royalty or other distribution or payment (including by way of the repurchase of any shares) by or on behalf of that company to or for the account of any direct or indirect shareholder of that company (in its capacity as such), and the term **"Distribution"** shall include a *"distribution"*, as such term is defined in the Companies Act;

"Dividends Tax" means the withholding Tax on dividends, imposed under Part VIII of Chapter II of the Tax Act;

"Final Discharge Date" means, in respect of each A Preference Share held by each Holder, the date of expiry of a period of five years following the Actual Redemption Date of that A Preference Share;

"Final Redemption Date" means the date falling twelve years after the Actual Issue Date of the first A Preference Share to be issued;

"Holder" means, in relation to any A Preference Share at any time, the person who then holds that A Preference Share at that time;

"JIBAR" means, in relation to each A Preference Share Dividend Calculation Period:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available on the Quotation Day applicable to that A Preference Share Dividend Calculation Period) the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Preference Share Agent at its request, quoted by the Reference Banks to leading banks in the Johannesburg interbank market,

as of 11h00 on the Quotation Day for the offering of deposits in Rand for the period which most closely approximates such A Preference Share Dividend Period, provided that for any Broken Period JIBAR shall be determined in accordance with the following formula:

$$r = r1 + (t - t1) \times (r2 - r1) / (t2 - t1)$$

where:

r = JIBAR to be determined,

r1 = the JIBAR rate for the period closest to but less than the Broken Period plus, if this would result in r1 being equal to JIBAR Overnight Deposit Rate, 0,01%;

r2 = the JIBAR rate for the period closest to but greater than the Broken Period;

t1 = the number of days applicable to the period for which r1 is quoted on the first day of the Broken Period;

t2 = the number of days applicable to the period for which r2 is quoted on the first day of the Broken Period;

t = the number of days in the Broken Period,

such JIBAR rate to be proved, whether it is determined pursuant to paragraphs (a) or (b), *prima facie*, by a certificate under the hand of any director or manager of the Preference Share Agent (whose appointment and authority need not to be proved);

"JIBAR Overnight Deposit Rate" means, on any relevant date for its determination, the rate for overnight deposits in South African Rand which appears on the Reuters Screen SAFETY Page alongside the caption "SFXROD" as of 11h00, Johannesburg time on that date;

"Normal Tax" means the Tax levied, in terms of section 5 of the Tax Act, on *"taxable income"* as defined in the Tax Act;

"Outstanding A Preference Shares" means, on any day, all A Preference Shares which have been issued but which have not been redeemed, and **"Outstanding A Preference Share"** means each or any of them (as the context requires);

"Potential A Preference Share Trigger Event" means the occurrence of any facts and/or circumstances which will become an A Preference Share Trigger Event if those facts and/or circumstances are not remedied:

- (a) within the applicable grace period (if any) stipulated in clause 4 (*A Preference Share Trigger Events*) of these A Preference Share Terms; or
- (b) after any notice required by clause 4 (*A Preference Share Trigger Events*) of these A Preference Share Terms has been given and has expired;

"Project Company Refinance Proceeds" means any proceeds directly or indirectly received by the Company pursuant to a Project Company Refinance;

"Quotation Day" means, in relation to any period for which the A Preference Share Dividend Rate is to be determined, the first day of that period, provided that, where such day is not a Business Day, the applicable Quotation Day will be the first Business Day occurring thereafter;

"Reduction Notice" has the meaning specified in clause 3.3;

"Reference Banks" means Nedbank Limited, Absa Bank Limited, FirstRand Bank Limited and The Standard Bank of South Africa Limited, or such other banks as may be appointed by the Preference Share Agent in consultation with the Company;

"Restricted Period" means, in relation to each A Preference Share, the period from the Actual Issue Date of that A Preference Share to (and including) the date falling three years and one day after that Actual Issue Date;

"Return" means the overall net financial return and/or net after Tax return to be achieved by any Holder in respect of, or in connection with, the subscription and holding of the A Preference Shares held by that Holder from time to time, and includes any Holder's:

- (a) financial return, net of charges, costs, imposts, capital adequacy or liquidity requirements or any other costs, charges, levies or imposts in respect of which an Adjustment Event may apply; and/or
- (b) after-Tax return, net of all Taxes payable in respect of, or in connection with the subscription for and holding of such A Preference Shares;

"Scheduled A Preference Share Dividend" means, for each A Preference Share and for each A Preference Share Dividend Calculation Period, the dividend calculated in accordance with the Basic Calculation Formula;

"Scheduled Redemption Date" means each Amortisation Date occurring after the last day of the Restricted Period;

"Screen Rate" means the Johannesburg Interbank Agreed Rate, polled and published by the South African Futures Exchange (a division of the JSE Limited) for deposits in Rand for each A Preference Share Dividend Calculation Period, as displayed on the SAFETY Page of the Reuters screen, alongside the caption **"YIELD"**. If the relevant page is replaced or the information service ceases to be available, the Preference Share Agent (after consultation with the Company) may specify another page or service displaying the appropriate rate;

"Signature Date" means the "*Signature Date*", as such term is defined in the Subscription Agreement;

"Solvency and Liquidity Test" means the solvency and liquidity test contemplated in section 4(1) of the Companies Act;

"STT" means the securities transfer tax imposed under the Securities Transfer Tax Act, 2007;

"Subscriber" means RMBIA;

"Subscription Agreement" means the agreement between the Company, the Subscriber and the Preference Share Agent to which these A Preference Share Terms have been annexed as Schedule 3 (which requires the Company to issue the A Preference Shares to the Subscribers);

"Subscription Date" means the "*Subscription Date*", as such term is defined in the Subscription Agreement;

"Tax" means all and any taxes and levies of whatever nature, including income tax, capital gains tax, value-added tax, stamp duties, securities transfer tax, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties, fines, additional tax or interest payable as a consequence of any failure or delay in paying any Taxes; and

"Tax Act" means the Income Tax Act, 1962, as amended from time to time.

2. DIVIDENDS

2.1 Entitlement

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

2.1.2 The A Preference Share Dividends shall be paid in priority to the payment of dividends in respect of any other classes of shares in the Company's share capital (including without limitation the B Preference Shares).

2.2 Scheduled A Preference Share Dividend

2.2.1 For each A Preference Share Dividend Calculation Period each Outstanding A Preference Share shall be entitled to a Scheduled A Preference Share Dividend, which shall, subject to clause 2.2.4, be calculated in accordance with the following formula:

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

in which formula:

a = the Scheduled A Preference Share Dividend for the applicable A Preference Share Dividend Calculation Period;

b = the aggregate of (i) the A Preference Share Subscription Price of that A Preference Share, plus (ii) the Accumulated A Preference Share Dividends

(if any) which from time to time accrue during any prior A Preference Share Dividend Calculation Period and which remain unpaid during that A Preference Share Dividend Calculation Period, plus (iii) the Additional A Preference Share Dividends (if any) envisaged in clause 3.1.3.1 that have not otherwise been paid;

- c = the applicable A Preference Share Dividend Rate or, upon the occurrence of a Default A Preference Share Dividend Rate Trigger Event, subject to clause 2.2.2, the Default A Preference Share Dividend Rate; and
- d = the number of days in the applicable A Preference Share Dividend Calculation Period divided by 365.

2.2.2 The Default A Preference Share Dividend Rate shall apply until:

- 2.2.2.1 the date on which the relevant Default A Preference Share Dividend Rate Trigger Event has been remedied, if such Default A Preference Share Dividend Rate Trigger Event occurred as a result of there being insufficient amounts standing to the credit of the Issuer Proceeds Account to satisfy the payments set out in clause 12(c) of the Subscription Agreement due to no fault of the Company; or
- 2.2.2.2 the Actual Redemption Date of all Outstanding A Preference Shares in all other circumstances.

2.2.3 The Company shall:

- 2.2.3.1 on or before each A Preference Share Dividend Payment Date, apply the Solvency and Liquidity Test and, once the Board is reasonably satisfied that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant A Preference Share Dividends payable or to become payable on that A Preference Share Dividend Payment Date, the Board shall pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant A Preference Share Dividends;
- 2.2.3.2 on each A Preference Share Dividend Payment Date pay A Preference Share Dividends in an aggregate amount equal to the lesser of:
 - (a) the aggregate of (i) the Scheduled A Preference Share Dividends accrued and/or compounded and which remain unpaid for the two most recent A Preference Share Dividend Calculation Periods, plus (ii) any Accumulated A Preference Share Dividends as at the first day of that most recent A Preference Share Dividend Calculation Period and which remain unpaid during the relevant A Preference Share Dividend Calculation Period, plus (iii) any Additional A Preference Share Dividends which the Company has become obliged to pay but which have not been paid;
 - (b) the amount of Available Cash,

and any Scheduled A Preference Share Dividends not paid on an A Preference Share Dividend Payment Date as a result of there not being sufficient Available Cash for purposes of such payment (pursuant to the provisions of the Subscription Agreement) shall become Accumulated A Preference Share Dividends and shall be paid by the Company on the immediately succeeding A Preference Share Dividend Payment Date on which there is sufficient Available Cash for purposes of such payment (pursuant to the provisions of the Subscription Agreement).

- 2.2.4 Each A Preference Share Dividend shall, for the purposes of calculation:
- 2.2.4.1 accrue on a daily basis during the applicable A Preference Share Dividend Calculation Period;
 - 2.2.4.2 be compounded in arrears on the last day of the applicable A Preference Share Dividend Calculation Period;
 - 2.2.4.3 be calculated on the actual number of days elapsed and on the basis of a 365 day year irrespective of whether or not the applicable year is a leap year; and
 - 2.2.4.4 be determined inclusive of the first day and inclusive of the last day of the period for which it is determined and if such period would otherwise end on a day which is not a Business Day that period shall instead end on the immediately preceding day which is a Business Day.
- 2.2.5 The A Preference Share Dividends paid by the Company pursuant to clause 2.2.3 shall be allocated as follows:
- 2.2.5.1 first, to all and any Accumulated A Preference Share Dividends;
 - 2.2.5.2 thereafter, to all and any Additional A Preference Share Dividends which have accrued but which have not been paid; and
 - 2.2.5.3 thereafter, to all and any Scheduled A Preference Share Dividends.

2.3 A Preference Share Breakage Dividends

Each Holder shall:

- 2.3.1 have the right to receive and be paid, in respect of each A Preference Share held by it, a preferential cash dividend (each an "**A Preference Share Breakage Dividend**") in an amount equal to the Breakage Costs incurred by that Holder in relation to the redemption of that A Preference Share on a date other than its Final Redemption Date, or an A Preference Share Dividend Payment Date, or the payment of any A Preference Share Dividends in relation to that A Preference Share on a date other than an A Preference Share Dividend Payment Date, on such payment date;
- 2.3.2 if requested by the Company, provide the Company with a certificate confirming in reasonable detail the amount of its Breakage Costs as soon as reasonably possible after being so requested by the Company.

2.4 A Preference Share Early Redemption Dividends

If the Company redeems any Outstanding A Preference Shares prior to the Scheduled Redemption Date other than out of the proceeds of any Internally Generated Cash Flows, the Company shall, on the Actual Redemption Date on which it redeems each such Outstanding A Preference Share, pay a dividend, on account of each such Outstanding A Preference Share, in an amount equal to:

- 2.4.1 if that Actual Redemption Date occurs on or before the 5th (fifth) anniversary of the Actual Issue Date of the relevant Outstanding A Preference Shares being redeemed, 5% (five per cent) of the A Preference Share Redemption Price applicable to each such Outstanding A Preference Share being redeemed;
- 2.4.2 if that Actual Redemption Date occurs after the 5th (fifth) anniversary of the Actual Issue Date of the relevant Outstanding A Preference Shares being redeemed and on or before the 7th (seventh) anniversary of that Actual Issue Date, 3% (three per cent) of the A Preference Share Redemption Price applicable to each such Outstanding A Preference Share being redeemed,

provided that no A Preference Share Early Redemption Dividend will be payable on account of any such Outstanding A Preference Shares which are redeemed after the 7th (seventh) anniversary of the Actual Issue Date applicable to such Outstanding A Preference Shares.

2.5 Actual Redemption Date

The Company shall, to the extent to which it has not yet done so, pay all the A Preference Share Dividends in respect of each A Preference Share on the Actual Redemption Date of that A Preference Share (and each Accumulated A Preference Share Dividend shall, if applicable, be adjusted in the manner envisaged in terms of any Adjustment Clause).

3. ADJUSTMENT EVENTS

3.1 Adjustment Events

- 3.1.1 An adjustment event ("**Adjustment Event**") shall occur if:
 - 3.1.1.1 any of the events and/or circumstances envisaged in clauses 3.1.5, 3.1.6 or 3.1.7, occur and, as a result of such occurrence, any Holder will achieve a lower or higher Return in respect of the Outstanding A Preference Share held by it; or
 - 3.1.1.2 the Corporate Tax Rate increases or decreases.
- 3.1.2 If an Adjustment Event occurs in relation to a Holder, that Holder shall be entitled to deliver written notice (an "**Adjustment Notice**") to the Company in which the Holder advises the Company of that occurrence (including sufficient details of the relevant Adjustment Event).
- 3.1.3 If (i) a Holder delivers an Adjustment Notice as a result of the occurrence of an Adjustment Event other than the Adjustment Event envisaged in clause 3.1.1.2; and (ii) the occurrence of the applicable Adjustment Event:

- 3.1.3.1 has the effect of reducing the applicable Holder's Return for any period prior to the date on which that Adjustment Event occurs, the Company shall on the A Preference Share Dividend Payment Date immediately following receipt of the Adjustment Notice (and otherwise subject to the provisions of clause 2.2.3) pay such further A Preference Share Dividend (the "**Additional A Preference Share Dividend**") in respect of each Outstanding A Preference Share held by the applicable Holder (subject to the provisions of clause 2.2.3), as will result in that Holder achieving the same Return (for the period prior to the date on which the Adjustment Event occurred), as that which it would have achieved had the Adjustment Event not occurred, in such amount calculated by the relevant Holder and specified in the relevant Adjustment Notice; and/or
- 3.1.3.2 will decrease the relevant Holder's Return for the period after the Adjustment Event occurs, the A Preference Share Dividend Rate shall be increased by such a margin, as calculated by the relevant Holder and specified in the relevant Adjustment Notice, as will have the result that the relevant Holder achieves the same Return as that which it would have achieved had the Adjustment Event not occurred (and the increase in the A Preference Share Dividend Rate shall take effect on the date stipulated by the applicable Holder in its Adjustment Notice, which date may be a date earlier than the date on which the Adjustment Notice is given).
- 3.1.4 If the Adjustment Event envisaged in clause 3.1.1.2 occurs, the A Preference Share Dividend Rate shall be recalculated in accordance with the formula contained in clause 3.2.1, and that recalculated A Preference Share Dividend Rate shall be applied retrospectively in re-calculating, *mutatis mutandis* in accordance with clause 2.2.1, all Scheduled A Preference Share Dividends that have accrued in respect of the A Preference Shares held by the applicable Holder during the current and all preceding A Preference Share Dividend Calculation Periods and which have not been paid in accordance with clause 2.2.3.
- 3.1.5 An Adjustment Event shall occur if there is any change in Applicable Law or in the interpretation or general application of any Applicable Law (whether in force before or after the Signature Date), or the introduction of any new Applicable Law, which increases or decreases the Return to a Holder in respect of the Outstanding A Preference Shares held by it, including as a result of any of the following:
- 3.1.5.1 any increase and decrease in the costs of subscribing for any A Preference Shares and/or holding the relevant Outstanding A Preference Shares; or
- 3.1.5.2 any event which reduces or increases the after-Tax A Preference Share Dividend receipt by the relevant Holder in respect of the relevant A Preference Share Dividends;
- 3.1.5.3 any Tax imposed on, or in respect of, the payment of dividends or the imposition of any Tax in respect of any amount received in respect of the A Preference Shares (other than Dividends Tax) whether such Tax is imposed on dividends, return of capital, as a withholding Tax, or otherwise;

3.1.5.4 a Holder is no longer exempt from Dividends Tax or, after a Holder is no longer exempt from Dividends Tax, the applicable rate at which Dividends Tax is levied is increased.

3.1.6 An Adjustment Event shall also occur if, for so long as a Holder is a Bank or is otherwise subject to regulation under the Banks Act, 1990, or is a financial institution duly registered as such with any statutory or monetary authority in South Africa, or is a Subsidiary of such Bank or financial institution, each time there is any:

3.1.6.1 proposal or measure implemented pursuant to any version of the International Convergence of Capital Measurement and Capital Standards (Basel Accord) on a basis materially different to that which is in force as at the Signature Date;

3.1.6.2 directive of any central bank or any other fiscal, monetary, regulatory or other authority in South Africa having jurisdiction in respect of such Bank, financial institution or Subsidiary, as the case may be;

3.1.6.3 change in practice as it affects or is applied generally by such Banks, financial institutions or Subsidiaries, as the case may be, in South Africa;

3.1.6.4 requirement or request by any central bank or statutory or monetary authority with which such Banks, financial institutions or Subsidiaries, as the case may be, in South Africa generally comply, to pay any amounts or maintain any special deposits or reserve assets in addition to those paid or maintained or reserved by the relevant Holder at the Signature Date; or

3.1.6.5 compliance by the relevant Holder with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement) whether or not having the force of law, in respect of the relevant Outstanding A Preference Shares, with which such Banks, financial institutions or Subsidiaries, as the case may be, in South Africa generally comply in addition to those applicable as at the Signature Date,

which is applicable to that Bank, financial institution or Subsidiary, as the case may be, and which increases or decreases the Return to the relevant Holder in respect of the relevant Outstanding A Preference Shares held by it.

3.1.7 An Adjustment Event shall furthermore occur if any Tax, other than Dividends Tax, is or becomes payable on or in respect of the Outstanding A Preference Shares held by a Holder, any A Preference Share Dividend, any A Preference Share Redemption Price or any other amount received in respect of such Outstanding A Preference Shares.

3.2 Specific Formula

3.2.1 If any Adjustment Event envisaged in clause 3.1.1.2 occurs, the A Preference Share Dividend Rate Percentage will be recalculated in accordance with the following formula and the A Preference Share Dividend Rate will be adjusted accordingly:

$$D = OR (1 - NT)/(1 - OT)$$

in which formula:

D = the adjusted A Preference Share Dividend Rate Percentage to be determined, expressed as a percentage;

NT = the Corporate Tax Rate applicable pursuant to the relevant Adjustment Event;

OT = the Corporate Tax Rate applicable immediately prior to the occurrence of such Adjustment Event; and

OR = the A Preference Share Dividend Rate Percentage applicable immediately prior to the occurrence of such Adjustment Event, expressed as a percentage.

3.2.2 The new A Preference Share Dividend Rate determined by applying the A Preference Share Dividend Rate Percentage calculated in accordance with this clause 3.2 (*Specific Formula*) shall be applied retrospectively in re-calculating, *mutatis mutandis* in accordance with clause 2 (*Dividends*), all A Preference Share Dividends.

3.3 Reciprocity

If, at any time after the Signature Date, an Adjustment Event occurs in relation to any Holder (other than an Adjustment Event envisaged in clause 3.1.1.2), then the Company shall, notwithstanding anything to the contrary contained herein or in any other Finance Document, be entitled to give written notice thereof to the Preference Share Agent (which notice shall set out sufficient details regarding the relevant Adjustment Event), requiring the Preference Share Agent to carry out the necessary calculations and if, after such calculation, the Preference Share Agent finds that such Adjustment Event has the effect that (a) the relevant Holder will achieve a higher Return in respect of the A Preference Shares as the relevant Holder would have achieved had that Adjustment Event not occurred, (b) the higher Return achieved by the relevant Holder is solely as a result of the occurrence of the Adjustment Event and (c) the higher Return was actually achieved by the relevant Holder, then the Holders shall, on written notice to the Company (the "**Reduction Notice**") decrease the A Preference Share Dividend Rate by such a margin, as calculated by the relevant Holder and specified in the relevant Reduction Notice, as is necessary to ensure that the relevant Holder achieves the same Return as it would have achieved if that Adjustment Event had not taken place, provided that notwithstanding the foregoing:

3.3.1 the A Preference Share Dividend Rate shall not be reduced below the A Preference Share Dividend Rate as at the Signature Date;

3.3.2 save in respect of any change in the Corporate Tax Rate (in which case the provisions of this clause 3.3 shall not be applicable), the A Preference Share Dividend Rate shall not be decreased to a rate which would result in the rate of Return of any Holder being less than the rate of Return of the Holders as at the Signature Date;

3.3.3 the Company's written demand pursuant to this clause 3.3 is delivered to the Preference Share Agent within 30 days after the occurrence of the relevant Adjustment Event;

- 3.3.4 the Company shall not be entitled to make written demand pursuant to this clause 3.3 if an A Preference Share Trigger Event or Potential A Preference Share Trigger Event has occurred and is continuing; and
- 3.3.5 no Holder, nor the Preference Share Agent, shall be under any obligation to provide the Company with any notice of the occurrence of any Adjustment Event.
- 3.4 Disputes and no double counting
- 3.4.1 When calculating any Additional A Preference Share Dividend and/or an increase or decrease in the A Preference Share Dividend Rate, as the case may be, pursuant to the occurrence of an Adjustment Event, such calculation shall be done on the basis of no double counting.
- 3.4.2 If the Company disputes the correctness of any calculation in an Adjustment Notice and/or pursuant to any Reduction Notice, a certificate by the auditors of the relevant Holder shall, in the absence of manifest error, be prima facie proof of the correctness of such calculation.
- 3.4.3 The Company shall only be entitled to raise any such dispute in writing for a period of 30 Business Days after delivery to the Company by the Preference Share Agent of the relevant Adjustment Notice or notification of the Preference Share Agents' calculation pursuant to any Reduction Notice, as the case may be.
- 3.4.4 Should, despite the furnishing of the certificate contemplated in clause 3.4.2 above, a dispute arise in respect of any calculation in an Adjustment Notice and/or pursuant to any Reduction Notice, such Dispute shall be referred to the Dispute Auditor, who shall make a determination Acting as an Expert.
- 3.5 Post-Redemption Payment

If the occurrence of an Adjustment Event and/or the effect thereof only becomes apparent after all of the A Preference Shares held by a Holder have been redeemed, and that Holder achieves or achieved a lower Return on account of its holding of any A Preference Share as a result of such Adjustment Event, the Company shall and hereby does indemnify and hold that Holder harmless against the effect of such Adjustment Event and, accordingly, shall pay to that Holder, on demand, such amount as may be required to result in that Holder achieving the same Return as it would have achieved had the relevant Adjustment Event not occurred. The provisions of this clause 3.5 shall survive the redemption of the A Preference Shares and shall remain enforceable against the Company by the Holders until the Final Discharge Date.

4. A PREFERENCE SHARE TRIGGER EVENTS

- 4.1 **Each of the events and circumstances set out in this clause 4 (*A Preference Share Trigger Events*) is an A Preference Share Trigger Event, whether or not the occurrence of such A Preference Share Trigger Event is within the Company's control.**
- 4.2 **Failure by any Holder or the Preference Share Agent to notify the Company of the occurrence of any A Preference Share Trigger Event and/or to exercise its rights pursuant to the occurrence of any such A Preference Share Trigger Event shall not prejudice the rights of that Holder or the Preference Share Agent to subsequently exercise such rights on account of the occurrence of such A Preference Share Trigger Event, and accordingly the relevant A Preference Share Trigger Event shall be deemed to reoccur every day until such time as the relevant A Preference Share Trigger Event is**

waived or the Holders and/or Preference Share Agent exercise their rights on account of the occurrence of such A Preference Share Trigger Event (as applicable).

4.3 Solvency and Liquidity Test

On or before each relevant A Preference Share Dividend Payment Date:

- 4.3.1 the Company fails to apply the Solvency and Liquidity Test to determine whether after payment of the applicable Distribution the Company will satisfy the Solvency and Liquidity Test for any reason;
- 4.3.2 the Company applies the Solvency and Liquidity Test in respect of the applicable Distribution and fails to satisfy itself that after payment of such Distribution the Company will satisfy the Solvency and Liquidity Test for any reason whatsoever; or
- 4.3.3 the Company applies the Solvency and Liquidity Test in respect of the applicable Distribution and satisfies itself that after payment of such Distribution the Company will satisfy the Solvency and Liquidity Test but the Board fails to pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant Distribution for any reason whatsoever.

4.4 Failure to pay A Preference Share Dividends

The Company fails:

- 4.4.1 to pay any A Preference Share Dividends envisaged in clause 2.2.3 and accrued for the two A Preference Share Dividend Calculation Periods immediately preceding any A Preference Share Dividend Payment Date when the Company does, on that A Preference Share Dividend Date, have Available Cash for purposes of making such payment, unless its failure to pay is caused by:

- 4.4.1.1 administrative or technical error; or

- 4.4.1.2 a Disruption Event; and

payment is made within 3 (three) Business Days of its due date; or

- 4.4.2 on or before the earlier to occur of the date falling (6) six Months after any A Preference Share Dividend Payment Date, to pay the A Preference Share Dividends envisaged in clause 2.2.3 and accrued for the two A Preference Share Dividend Calculation Periods immediately preceding that A Preference Share Dividend Payment Date whether or not as a result of the Company not, on that A Preference Share Dividend Date, having sufficient Available Cash for purposes of making payment of the full amount of such A Preference Share Dividends.

4.5 Cash Sweep

4.5.1 The Company fails:

- 4.5.1.1 on any day during the Restricted Period, to make payment into the Redemption Reserve Account, on the relevant Cash Sweep Date, in

circumstances in which it has Available Cash for Cash Sweeps to pay such amount into the Redemption Reserve Account and/or utilise such amount to voluntarily redeem such number of Outstanding A Preference Shares as can be redeemed utilising such portion of the Available Cash for Cash Sweeps; or

4.5.1.2 on any day after the Restricted Period, to redeem the relevant Outstanding A Preference Shares on the relevant Cash Sweep Date in circumstances in which it has Available Cash for Cash Sweeps to redeem such number of Outstanding A Preference Shares as can be redeemed utilising such portion of the Available Cash for Cash Sweeps.

4.5.2 No A Preference Share Trigger Event under clause 4.5.1 will occur if the failure is caused by:

4.5.2.1 administrative or technical error; or

4.5.2.2 a Disruption Event; and

such failure is remedied within 3 (three) Business Days of its due date.

4.6 Scheduled Redemption

4.6.1 The Company fails to redeem the Outstanding A Preference Shares on the date falling six Months after the Scheduled Redemption Date for those Outstanding A Preference Shares.

4.6.2 No A Preference Share Trigger Event under clause 4.6.1 will occur if the failure is caused by:

4.6.2.1 administrative or technical error; or

4.6.2.2 a Disruption Event; and

such failure is remedied within 3 (three) Business Days of its due date.

4.7 Preference Share Project Life Cover Ratio

On any Measurement Date, any of the Preference Share Project Life Cover Ratios from (and including) that date until the Interim Discharge Date (A Preference Shares) is (determined on a P50 basis) equal to or less than 1.4:1 (one point four to one).

4.8 Other obligations

4.8.1 The Company or the Issuer Shareholder do not comply with any provision of any Finance Document to which they are a party (other than those referred to in clauses 4.3 to 4.7).

4.8.2 No A Preference Share Trigger Event under clause 4.8 will occur if the failure to comply or breach is capable of remedy and is remedied within 5 Business Days of the date of receipt of written notice by the Company from the Preference Share Agent calling for such failure or breach to be remedied.

4.9 Distributions

The Company declares and/or pays any Distributions other than in accordance with the provisions of, or as permitted by, the Subscription Agreement.

4.10 Financial Indebtedness

4.10.1 The Company incurs Financial Indebtedness which ranks *pari passu* with, or ahead of, the Holders' rights under the Subscription Agreement without the Holders' prior written consent.

4.10.2 Any Transaction Party incurs any Financial Indebtedness, save to the extent contemplated or permitted in the Finance Documents or the Project Company Senior Facility Finance Documents.

4.11 Misrepresentation

4.11.1 Any representation or statement made or deemed to be made by any Transaction Party in the Finance Documents or Transaction Documents and/or any other document delivered by or on behalf of any Transaction Party under or in connection with any Finance Document or Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

4.11.2 No A Preference Share Trigger Event under clause 4.11.1 will occur if the relevant circumstances are capable of remedy and is remedied within 5 Business Days of the date of receipt of written notice by the Company from the Preference Share Agent calling for circumstances to be remedied.

4.12 A Preference Share Dividends

4.12.1 Any A Preference Share Dividend, in respect of the full amount of such A Preference Share Dividend:

4.12.1.1 is not declared or, if it was declared in accordance with these A Preference Share Terms, will not be a "*dividend*" as defined in section 1 of the Tax Act; or

4.12.1.2 is not declared or, if it was declared in accordance with these A Preference Share Terms, will not be dividend exempt from tax as contemplated in section 10(1)(k)(i) of the Tax Act.

4.12.2 Any A Preference Share Dividend reduces the "*contributed tax capital*" (as such term is defined in section 1 of the Tax Act) in relation to any of the A Preference Shares.

4.13 IK Option

The "*Closing Date*" (as such term is defined in the IK Asset for Share Agreement) does not occur on or before the date falling 30 days from the date on which RE 1 delivers notice of its exercise of the IK Option to the IK Company.

4.14 Illegality

It is or becomes illegal or unlawful for a Holder or the Preference Share Agent to perform any of its obligations contemplated under the Finance Documents or to hold the A Preference Shares it holds or to claim and recover all or any part of the A Preference Share Dividends or an A Preference Share Redemption Price.

4.15 Proceedings

4.15.1 Any litigation, arbitration or administrative proceedings are commenced against any Transaction Party and/or any Affiliate of a Transaction Party.

4.15.2 No A Preference Share Trigger Event under clause 4.15.1 will occur in relation to a Project Company in respect of any litigation, arbitration or administrative proceedings which if adversely determined, might in the Preference Share Agent's reasonable opinion be expected to result in a liability, for the applicable Project Company, in an aggregate amount exceeding ZAR5,000,000 (five million Rand).

4.16 B Preference Share Trigger Event

A B Preference Share Trigger Event occurs.

4.17 Cross Default

4.17.1 Any Financial Indebtedness of the Company and/or any other Transaction Party is not paid when due nor within any originally applicable grace period.

4.17.2 Any Financial Indebtedness of the Company or any other Transaction Party is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

4.17.3 Any commitment for any Financial Indebtedness of the Company or any other Transaction Party is cancelled or suspended by a creditor of the Company or that Transaction Party (as applicable) as a result of an event of default (however described).

4.17.4 Any creditor of the Company or any other Transaction Party becomes entitled to declare any Financial Indebtedness of the Company or that Transaction Party due and payable prior to its specified maturity as a result of an event of default (however described).

4.17.5 No A Preference Share Trigger Event under clauses 4.17.1 to 4.17.4 will occur in relation to a Project Company, if the amount of Financial Indebtedness contemplated in clauses 4.17.1 to 4.17.4 is less than ZAR5,000,000 (five million Rand).

4.18 Project Company Senior Facility Finance Documents

4.18.1 A breach of any term of any Project Company Senior Facility Finance Document (or any agreement in relation to any refinancing of any facilities provided under any Project Company Senior Facility Finance Documents, the issue by any Project Company of any preference shares or the introduction of any mezzanine facilities to any Project Company) occurs and is not remedied within the applicable remedy period (if any).

- 4.18.2 Any event (other than an event of default contemplated in clause 4.18.1) contemplated in any Project Company Senior Facility Finance Document occurs which results in any Project Company being prevented from making payment of any Distributions to any of its shareholders.
- 4.19 Insolvency Events
- 4.19.1 An Insolvency Event occurs in relation to a Transaction Party.
- 4.19.2 Clause 4.19.1 shall not apply to:
- 4.19.2.1 any winding-up petition which is frivolous or vexatious, is contested in good faith (in each case in the opinion of the Preference Share Agent) and is discharged, stayed or dismissed within 30 Business Days of commencement; or
- 4.19.2.2 any solvent winding up or liquidation with the prior written consent of the Preference Share Agent.
- 4.20 Creditors' process
- 4.20.1 Any attachment, sequestration, implementation of any business rescue plan, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Transaction Party which is/are material to the conduct of business by that Transaction Party.
- 4.20.2 Clause 4.20.1 shall not apply if such attachment, sequestration, implementation of any business rescue plan, distress or execution or analogous process is discharged within 30 Business Days of the relevant Transaction Party becoming aware thereof.
- 4.21 Failure to comply with a compliance notice
- Any Transaction Party fails to comply with a compliance notice issued under section 171 of the Companies Act and such event is not remedied within 30 Business Days of receipt of written notice from the Preference Share Agent calling upon the Company to remedy such event or procure that such event is remedied.
- 4.22 Failure to comply with Final Judgment
- 4.22.1 Any Transaction Party fails to comply with or pay any sum due from it under any final judgment or any final order made or given by any court of competent jurisdiction within the time frame for such compliance or payment specified in such final judgment or final order.
- 4.22.2 For the purposes of clauses 4.22.1, a final judgment or final order means a judgment or order (1) which is not appealable, or (2) which is appealable but in respect of which the period for the lodging of an appeal has lapsed and the relevant Transaction Party has failed to institute appeal proceedings, or (3) which is not capable of rescission, or (4) which is capable of rescission but in respect of which the period for applying for rescission has lapsed and the relevant Transaction Party has failed to apply for rescission or the relevant Transaction Party has applied for rescission of such judgment or order and the application for rescission has been denied.

4.23 Expropriation

The authority or ability of any Transaction Party to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person.

4.24 Unlawfulness

4.24.1 It is or becomes unlawful for the Company or the Issuer Shareholder to perform any of its obligations under the Finance Documents to which it is a party.

4.24.2 It is or becomes unlawful for any Transaction Party to perform any of its obligations under the Transaction Documents to which it is a party.

4.25 Security

At any time, any of the security created under or evidenced by any Security Document is or becomes unlawful or is not, or ceases to be a first ranking security (to the extent that it is expressed to be) or to be, legal, valid, binding and enforceable or otherwise ceases to be effective.

4.26 Cessation of business

A Transaction Party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business in the same manner as such business was carried on at the Signature Date.

4.27 Audit qualification

The Auditors of any Transaction Party qualify the audited annual consolidated financial statements of such Transaction Party.

4.28 Repudiation

The Company or the Issuer Shareholder repudiates a Finance Document to which it is a party or evidences an intention in writing to repudiate a Finance Document to which it is a party.

4.29 Material Adverse Effect

4.29.1 Any event or circumstance occurs which, in the reasonable opinion of the Preference Share Agent, has or is reasonably likely to have a Material Adverse Effect.

4.29.2 No A Preference Share Trigger Event under clause 4.29.1 will occur if the relevant event constitutes a Potential A Preference Share Trigger Event under any other sub clause of this clause 4, and such event is remedied within the applicable remedy period specified in such sub clause.

4.30 Change of Control or Change of Shareholding

A Change of Control or Change of Shareholding occurs.

4.31 Transaction Documents

- 4.31.1 A breach of any term of any Transaction Document (including the commission of a Corrupt Act by any Transaction Party or any of its respective employees, directors or Affiliates in relation to the relevant Project or in respect of any Transaction Document) occurs and is not remedied within the applicable remedy period (if any).
- 4.31.2 Any Transaction Document is cancelled or terminated for any reason whatsoever.
- 4.32 CIPC Confirmations
- CIPC fails to issue the certificate of confirmation in respect of the filing of the Notice of Amendment (as contemplated in paragraph 1(b) of Schedule 1 (*Conditions Precedent*) of the Preference Share Subscription Agreement) and/or a copy of such confirmation together with a copy of the Memorandum of Incorporation of the Issuer (which, *inter alia*, incorporates the Preference Share Terms) has not been delivered to the Preference Share Agent on or before 31 December 2017 (or such later date as the Holders may agree in the circumstances).**
- 4.33 Expenses
- 4.33.1 The Issuer incurs any costs or expenses of any nature whatsoever other than the Issuer Operational Expenses.
- 4.33.2 With effect from the RE 2 Investment Date, RE 2 incurs any costs or expenses of any nature whatsoever without the prior written consent of the Preference Share Agent.
- 4.33.3 RE 1 incurs any costs or expenses of any nature whatsoever which are in excess of the RE 1 Operational Expenses, without the prior written consent of the Preference Share Agent.
- 4.33.4 Oakleaf 83 incurs any costs or expenses of any nature whatsoever which are in excess of the Oakleaf 83 Operational Expenses, without the prior written consent of the Preference Share Agent.
- 4.33.5 Oakleaf 90 incurs any costs or expenses of any nature whatsoever which are in excess of the Oakleaf 90 Operational Expenses, without the prior written consent of the Preference Share Agent.
- 4.33.6 Newco 2 incurs any costs or expenses of any nature whatsoever which are in excess of the Newco 2 Operational Expenses, without the prior written consent of the Preference Share Agent.
- 4.34 Oakleaf 80 and Oakleaf 90 IRR
- The accounting officer of:**
- 4.34.1 Oakleaf 83 at any time determines that the predicted internal rate of return of Oakleaf 83 will be below the minimum level required by Old Mutual Life Assurance Company (South Africa) Limited ("**OMLACSA**") under and in terms of the shareholders' agreement entered into between Oakleaf 83, Intikon and OMLACSA; and/or

4.34.2 Oakleaf 90 at any time determines that the predicted internal rate of return of Oakleaf 90 will be below the minimum level required by the Government Employees Pension Fund, represented by the Public Investment Corporation SOC Limited ("**PIC**") under and in terms of the shareholders' agreement entered into between Oakleaf 90, Intikon and PIC.

5. REDEMPTION

5.1 Scheduled Redemption

5.1.1 The Company shall, on each Scheduled Redemption Date, utilise any and all amounts standing to the credit of the Redemption Reserve Account to redeem such number of Outstanding A Preference Shares (rounded up to the closest whole A Preference Share) as can be redeemed utilising such amounts.

5.1.2 The Company shall, on each Scheduled Redemption Date, redeem such number of Outstanding A Preference Shares (rounded up to the closest whole A Preference Share) the aggregate A Preference Share Redemption Prices in respect of which equal or exceed the aggregate amount set out under the heading "*Redemption Amount*" in the Amortisation Schedule for the Amortisation Date coinciding with that Scheduled Redemption Date.

5.1.3 The Company shall redeem all Outstanding A Preference Shares on the Final Redemption Date.

5.1.4 The Company shall, upon receipt of any Company Refinance Proceeds after the expiry of the Restricted Period, redeem all Outstanding A Preference Shares.

5.2 Cash Sweep

After the Restricted Period, upon the occurrence of a Cash Sweep Event contemplated in:

5.2.1 paragraphs (a), (b), (c) or (d)(i) of the definition of "*Cash Sweep Event*", the Company shall, on each relevant A Preference Share Dividend Payment Date to occur thereafter, utilise all and any Available Cash for Cash Sweeps to redeem such number of Outstanding A Preference Shares as can be redeemed utilising such portion of the Available Cash for Cash Sweeps in accordance with clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement, until such time as the relevant Cash Sweep Event ceases to continue; or

5.2.2 paragraph (d)(ii) of the definition of "*Cash Sweep Event*", the Company shall, on each relevant A Preference Share Dividend Payment Date to occur thereafter, utilise all and any Available Cash for Cash Sweeps to redeem such number of Outstanding A Preference Shares as can be redeemed utilising such portion of the Available Cash for Cash Sweeps, in accordance with clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement until such time as:

5.2.2.1 the Preference Share Service Cover Ratio, based on revised cashflow projections of the Company (taking into account the changes contemplated in the Cash Sweep Event contemplated clause (d)(ii)) exceeds 1.2:1 (one point two to one) or, with effect from the RE 2 Investment Date, 1.6:1 (one point six to one), on a P50 basis, for each Measurement Period ending on or before the Interim Discharge Date (A Preference Shares); and

5.2.2.2 the Preference Share Project Life Cover Ratio, based on revised cashflow projections of the Company exceeds 2.28:1 (two point two eight to one) or, with effect from the RE 2 Investment Date, 3:1 (three to one) on each Measurement Date until the Interim Discharge Date (A Preference Shares).

5.3 Redemption Reserve Account

The Company shall:

5.3.1 on each Amortisation Date to occur prior to the last day of the Restricted Period pay:

5.3.1.1 the amount set out in the Amortisation Schedule under the heading "*Redemption Amount*" for that Amortisation Date; and

5.3.1.2 subject to clause 5.5.1.1 below, all Company Refinance Proceeds, into the Redemption Reserve Account, save to the extent that the Company utilises all or a portion of such amount to voluntarily redeem all or any A Preference Shares;

5.3.2 upon receipt of any Company Refinance Proceeds prior to the last day of the Restricted Period, pay into the Redemption Reserve Account an amount equal to the aggregate of all A Preference Share Dividends and all A Preference Share Redemption Prices and all such other amounts that would become payable on account of the redemption of all Outstanding A Preference Shares;

5.3.3 on each Amortisation Date to occur after the occurrence, prior to the last day of the Restricted Period, of a Cash Sweep Event contemplated in:

5.3.3.1 paragraphs (a), (b), (c) or (d)(i) of the definition of "*Cash Sweep Event*", pay all and any Available Cash for Cash Sweeps into the Redemption Reserve Account, save to the extent that the Company utilises all or a portion of such amount to voluntarily redeem all or any A Preference Shares, until such time as the relevant Cash Sweep Event ceases to continue;

5.3.3.2 paragraph (d)(ii) of the definition of "*Cash Sweep Event*", pay all and any Available Cash for Cash Sweeps into the Redemption Reserve Account, save to the extent that the Company utilises all or a portion of such amount to voluntarily redeem all or any A Preference Shares, until such time as:

(a) the A Preference Share Service Cover Ratio, based on revised cash flow projections of the Company (taking into account the changes contemplated in the Cash Sweep Event contemplated in paragraph (d)(ii) of the definition of "*Cash Sweep Event*") exceeds 1.2:1 (one point two to one) or, after the RE 2 Investment Date, 1.6:1 (one point six to one), on a P50 basis, for each Measurement Period ending on or before the Interim Discharge Date (A Preference Shares); and

- (b) the Preference Share Project Life Cover Ratio, based on revised cash flow projections of the Company (taking into account the changes contemplated in the Cash Sweep Event contemplated in paragraph (d)(ii) of the definition of "*Cash Sweep Event*") exceeds 2.28:1 (two point two eight to one) or, after the RE 2 Investment Date, 3:1 (three to one) on each Measurement Date until the Interim Discharge Date (A Preference Shares).

5.4 Cure Payment

If the Company becomes aware of a Potential A Preference Share Trigger Event contemplated in clause 4.7 (*Preference Share Project Life Cover Ratio*) which has occurred or which is likely to occur, which Potential A Preference Share Trigger Event is capable of being avoided or remedied by the Company incurring Financial Indebtedness in favour of, or issuing shares to, the Issuer Shareholder (the claims of the Issuer Shareholder on account of such Financial Indebtedness or shares to be subordinated to the claims of the Holders on account of the A Preference Shares and the B Preference Shares in accordance with the provisions of the Subordination Agreement) ("**Cure Payment**"), the Company shall be entitled, upon written notice to the Preference Share Agent ("**Cure Notice**"), to so avoid or remedy that Potential A Preference Share Trigger Event by means of making payment of that Cure Payment into the Redemption Reserve Account not later than the earlier of (1) 20 Business Days after the date of that Cure Notice and (2) the date of occurrence of the A Preference Share Trigger Event relating to that Potential A Preference Share Trigger Event, provided that the Company shall not be entitled to make payment of a Cure Payment pursuant to this clause 5.4 (*Cure Payment*) more than twice in any Financial Year.:

5.5 Voluntary Redemption

5.5.1 The Company shall be entitled (but not obliged) to redeem, at any time:

5.5.1.1 prior to the expiry of the period ending three years and one day after the Actual Issue Date applicable to the A Preference Shares all (but not some) of the Outstanding A Preference Shares out of the proceeds of any Company Refinance Proceeds;

5.5.1.2 after the expiry of the period ending three years and one day after the Actual Issue Date applicable to the A Preference Shares:

- (a) such a number of the Outstanding A Preference Shares as the Company may in its sole discretion determine out of the Company's Internally Generated Cashflows (after payment and/or provision by the Company for a reasonable estimate of the amounts (if any) contemplated in clauses 12(c)(i) to 12(c)(vii) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement);
- (b) such number of the Outstanding A Preference Shares as the Company may in its sole discretion determine using any funds contemplated in clause 5.3.1 and/or amounts standing to the credit of the Redemption Reserve Account from time to time.

5.5.2 Subject to clauses 5.2 (*Cash Sweep*) and 5.3.2, if the Company elects to redeem any Outstanding A Preference Shares voluntarily:

5.5.2.1 the Company shall deliver written notice (a "**Voluntary Redemption Notice**") to the Preference Share Agent such notice to set out (i) the number of the Outstanding A Preference Shares (the "**Voluntary Redemption Shares**") which the Company has elected to redeem (provided that the aggregate A Preference Share Redemption Prices on account of such Outstanding A Preference Shares is not less than ZAR5,000,000.00 or, if less, the aggregate A Preference Share Redemption Prices on account of all Outstanding A Preference Shares), and (ii) the amount of the A Preference Share Dividends which the Company will become obliged to pay, by virtue of the provisions of clause 2.5 (*Actual Redemption Date*), on the date on which the Company wishes to redeem the Voluntary Redemption Shares (the "**Voluntary Redemption Date**"), and (iii) the Voluntary Redemption Date (provided that such date will not later than 20 Business Days after the date on which the Company delivers its Voluntary Redemption Notice, and (iv) the source of the funding which the Company will use to redeem the Voluntary Redemption Shares (i.e. whether the Voluntary Redemption Shares will be redeemed out of Company Refinance Proceeds, Project Company Refinance Proceeds and/or or the Company's Internally Generated Cash Flows):

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

5.5.2.3 if the Company does not redeem the Voluntary Redemption Shares on the Voluntary Redemption Date the Company shall not thereafter redeem those Voluntary Redemption Shares without again delivering a Voluntary Redemption Notice to the Company in terms of clause 5.5.2.1 provided that, if the Voluntary Redemption Shares were to be redeemed utilising any funds contemplated in clause 5.3 (*Redemption reserve Account*) and/or amounts standing to the credit of the Redemption Reserve Account, the Company shall pay the amount not so utilised directly into the Redemption Reserve Account.

5.5.3 If the Company elects to voluntarily redeem the A Preference Shares in terms of clause 5.5.2, the Company shall, in addition to the A Preference Share Redemption Prices, also pay any Additional A Preference Share Dividends and A Preference Share Early Redemption Dividends arising as a result thereof.

5.6 Compulsory Early Redemption

5.6.1 If an A Preference Share Trigger Event occurs, subject to clause 5.4 (*Cure Payment*):

5.6.1.1 the Preference Share Agent shall be entitled, but not obliged, to give written notice (a "**Trigger Event Remedy Notice**") to the Company in which the Preference Share Agent requires the Company to

remedy that A Preference Share Trigger Event within a period of one Business Day; and

5.6.1.2 if the Preference Share Agent gives the written notice as contemplated in clause 5.6.1.1 and the Company does not remedy that A Preference Share Trigger Event within the aforesaid one Business Day period, the Preference Share Agent shall be entitled, but not obliged, to deliver written notice (an "**Early Redemption Notice**") to the Company in which the Preference Share Agent requires the Company to redeem the Outstanding A Preference Shares on a date (the "**Early Redemption Date**") set out in the Early Redemption Notice, the Early Redemption Date to be no sooner than one Business Day after the date on which the Preference Share Agent delivers the Early Redemption Notice to the Company.

5.6.2 If the Preference Share Agent delivers an Early Redemption Notice to the Company, the Company shall, on the Early Redemption Date set out in the Early Redemption Notice:

5.6.2.1 pay all the outstanding A Preference Share Dividends in respect of the Outstanding A Preference Shares; and

5.6.2.2 redeem the Outstanding A Preference Shares.

5.7 Procedure for Redemption

5.7.1 The Company shall redeem each Outstanding A Preference Share by paying its A Preference Share Redemption Price into the bank account envisaged in clause 8 (*Payments*).

5.7.2 Against payment of the A Preference Share Redemption Price of any Outstanding A Preference Share the relevant Holders shall, provided that all the Outstanding A Preference Share Dividends in respect of that Outstanding A Preference Share have been paid, surrender its share certificates in respect of that Outstanding A Preference Share to the Company.

5.8 Cost of Redemption

The Company shall pay all the costs of redeeming the Outstanding A Preference Shares including STT.

6. VOTING

6.1.1 No A Preference Share shall have any votes except if:

6.1.1.1 circumstances in which the Companies Act prescribes that the applicable A Preference Share shall have a vote have occurred and are continuing;

6.1.1.2 an A Preference Share Trigger Event has occurred and is continuing;
or

- 6.1.1.3 the shareholders of the Company propose a resolution which affects the rights and privileges attaching to any A Preference Shares or the interests of the Holders, including a resolution for the winding-up, commencement of business rescue proceedings, liquidation or any similar proceedings of the Company, the reduction of the Company's capital or the acquisition by the Company of its shares in terms of section 48 of the Companies Act.
- 6.1.2 If the circumstances envisaged in clause 6.1.1 occur, each Outstanding A Preference Share shall, at any general meeting of the Company, be entitled to exercise such a number of votes as is equal to 95% of the total number of all the votes exercisable at that general meeting, divided by the number of the Outstanding A Preference Shares, provided that no Holder shall vote in favour of any matter to the extent that it would result in a breach of, or non-compliance with, any black economic and/or economic development requirements set out in any Transaction Document.
- 6.1.3 The Holders shall be entitled to receive notices of general meetings at which the A Preference Shares are entitled to vote (but not to any other notice of any other general meetings).

7. RETURN OF CAPITAL

- 7.1.1 If the Company is liquidated each A Preference Share shall be entitled to a return of capital equal to:
 - 7.1.1.1 its A Preference Share Subscription Price; and
 - 7.1.1.2 the A Preference Share Dividends accrued up to the date on which that return of capital is paid to the Holder.
- 7.1.2 Each A Preference Share's right to a return of capital shall rank in priority to the rights (to returns of capital) of the Company of any other classes of shares in the Company (including without limitation the B Preference Shares).
- 7.1.3 Except for the rights conferred on the A Preference Shares in terms of clauses 7.1.1 and 7.1.2, no A Preference Share shall have any right participate in excess assets in the event of the Company's liquidation.

8. PAYMENTS

All A Preference Share Dividends and A Preference Share Redemption Prices which become payable by the Company under these A Preference Share Terms shall be paid into the following account of the Preference Share Agent:

Account Name:	RMB DMM Account
Bank:	First National Bank
Branch:	Corporate Account Services - Johannesburg
Branch Code:	25 50 05

Account Number:	50619016740
Reference:	IBD RUS 872

or such a different account as the Preference Share Agent may designate on two Business Days written notice to the Company.

9. GENERAL

- 9.1.1 The Company shall not issue any A Preference Shares to any person and the Company shall not Dispose of the A Preference Shares in any manner to any other person, save to the extent contemplated in the Subscription Agreement and these A Preference Share Terms.
- 9.1.2 These A Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the Preference Share Agent.
- 9.1.3 No shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or pari passu with the A Preference Shares shall be created or issued without the prior written consent of the Preference Share Agent.
- 9.1.4 A certificate delivered by the Preference Share Agent to the Company, reflecting the amount owing by the Company to the Holders, will in the absence of manifest error be prima facie proof of the amount owing. The appointment of the director, divisional director, manager or employee of the Preference Share Agent providing such certification, shall not be required to be proved.

**ANNEXE 3: PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS
ATTACHING TO THE B PREFERENCE SHARES**

1. DEFINITIONS

In these terms and conditions, capitalised terms not otherwise defined herein shall bear the meanings assigned to them in the Subscription Agreement (as such term is defined below) and, unless inconsistent with or otherwise indicated by the context:

"A Preference Share Trigger Event" means an *"A Preference Share Trigger Event"*, as such term is defined in the A Preference Share Terms;

"Accumulated B Preference Share Dividends" means any Scheduled B Preference Share Dividend in respect of any B Preference Share Dividend Payment Date which is not paid on that B Preference Share Dividend Payment Date and which remains unpaid;

"Actual Redemption Date" means, in relation to each B Preference Share, the date on which the Company redeems that B Preference Share by paying its B Preference Share Redemption Price to the relevant Holder (provided that the Company has paid the B Preference Share Dividends payable on account of that B Preference Share);

"Available Cash for B Preference Shares" means, on any B Preference Share Dividend Payment Date, the aggregate of all and any Internally Generated Cashflows which the Company has actually received since the most recent B Preference Share Dividend Payment Date:

- (a) excluding any Refinance Proceeds (other than Refinance Proceeds after A Redemption) which the Company has actually received since the most recent B Preference Share Dividend Payment Date; and
- (b) including any Refinance Proceeds after A Redemption,

after payment and/or provision by the Company for a reasonable estimate of the amounts (if any) contemplated in clauses 12(c)(i) to 12(c)(x) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement;

"B Preference Share Dividend Payment Date" means:

- (a) prior to the Scheduled Redemption Date, each A Preference Share Dividend Payment Date on which the Company has Available Cash for B Preference Shares; and
- (b) in respect of all B Preference Share Dividends not previously paid in respect of any B Preference Share, the Actual Redemption Date in respect of that B Preference Share;

"B Preference Share Dividends" means the applicable Scheduled B Preference Share Dividends and includes (without double counting) any Accumulated B Preference Share Dividends and any B Preference Share Early Redemption Dividends, if applicable;

"B Preference Share Early Redemption Dividend" means any dividend payable by the Company pursuant to clause 2.4 (*Scheduled B Preference Share Dividend*);

"B Preference Share Redemption Price" means, in respect of each B Preference Share, an amount equal to its B Preference Share Subscription Price;

"B Preference Share Subscription Price" means, in relation to each B Preference Share, an amount equal to R0.01 (one cent), the aggregate B Preference Share Subscription Price in respect of all B Preference Shares being an amount equal to ZAR1,880.00 (one thousand eight hundred and eighty Rand);

"B Preference Share Terms" means the rights and privileges (which will attach to the B Preference Shares) set out in this Schedule 4 to the Subscription Agreement;

"B Preference Share Trigger Event" means any event listed in clause 3 (*B Preference Share Trigger Events*) of these B Preference Share Terms;

"B Preference Shares" means 188,000 (one hundred and eighty eight thousand) variable rate cumulative participating redeemable *"B Preference Shares"* in the issued share capital of the Company, which confer on their Holders the rights and privileges set out in these B Preference Share Terms, and **"B Preference Share"** means each or any of them (as the context may require);

"Board" means the Company's board of directors from time to time;

"Company" means Gaia Financial Services Proprietary Limited (in the process of changing its name to *"GAIA Financial Services (RF) Proprietary Limited"*), registration number 2015/212709/07, a private company with limited liability duly registered in accordance with the laws of South Africa;

"Discount Rate (B Preference Shares)" means, a rate equal to the Prime Rate prevailing at the time plus 1 per cent;

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the B Preference Shares (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payment operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, or is beyond the control of, the Party whose operations are disrupted;

"Holder" means, on any day and in respect of each B Preference Share, the person who holds that B Preference Share on that day, and **"Holders"** means all or some of them, as the context requires;

"Outstanding B Preference Shares" means, on any day, all B Preference Shares which have been issued but which have not been redeemed, and **"Outstanding B Preference Share"**

"Refinance" means any Financial Indebtedness which the Company, any other Transaction Party or any direct or indirect Affiliate of the Company or any other Transaction Party directly or indirectly incurs, including without limitation any Financial Indebtedness which a Project Company incurs in relation to any refinancing of any facilities provided under the Project Company Senior Facility Finance Documents to which it is a party, the issue by a Project Company of any preference shares or the introduction of any mezzanine facilities to a Project Company;

"Refinance Proceeds" means any proceeds received by the Company pursuant to a Refinance;

"Refinance Proceeds after A Redemption" means any Refinance Proceeds (or portion thereof) received or retained by the Company after the redemption in full of the A Preference Shares out of Refinance Proceeds in accordance with the provisions of the A Preference Share Terms;

"Scheduled B Preference Share Dividend" means, in relation to each B Preference Share, and on each relevant B Preference Share Dividend Payment Date, subject to clause 2.4, an amount equal to:

- (a) prior to the RE 2 Investment Date, 10% (ten per cent); and
- (b) with effect from the RE 2 Investment Date, 2% (two per cent),

of Available Cash for B Preference Shares on that B Preference Share Dividend Payment Date, divided by the number of Outstanding B Preference Shares on that B Preference Share Dividend Payment Date;

"Scheduled Redemption Date" means, in relation to each B Preference Share, the date coinciding with the last PPA Termination Date to occur (excluding any extension of any such date unless specifically agreed to in writing between the Preference Share Agent and the Company);

"Solvency and Liquidity Test" means the solvency and liquidity test contemplated in section 4(1) of the Companies Act;

"Subscription Agreement" means the agreement between the Company, the Subscribers and the Preference Share Agent to which these B Preference Share Terms have been annexed as Schedule 4 (which requires the Company to issue the B Preference Shares to the Subscribers); and

"STT" means the Securities Transfer Tax, levied in terms of the Securities Transfer Tax Act, 2007.

2. DIVIDENDS

2.1 Entitlement

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

2.1.2 The B Preference Share Dividends shall be paid in priority to the payment of dividends in respect of any other classes of shares in the Company's share capital,

save for the A Preference Shares, which shall rank ahead of the B Preference Shares.

2.2 Scheduled B Preference Share Dividend

2.2.1 Each Holder shall be entitled, in respect of each B Preference Share held by that Holder on each B Preference Share Dividend Payment Date, to an amount equal to the Scheduled B Preference Share Dividends on that B Preference Share Dividend Payment Date.

2.2.2 The Company shall on or before each B Preference Share Dividend Payment Date, apply the Solvency and Liquidity Test and, once the Board is reasonably satisfied that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant B Preference Share Dividends payable or to become payable on that B Preference Share Dividend Payment Date, the Board shall pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant B Preference Share Dividends.

2.2.3 On each applicable B Preference Share Dividend Payment Date the Company shall pay, in respect of each B Preference Share, the applicable B Preference Share Dividends payable on that B Preference Share Dividend Payment Date.

2.2.4 The B Preference Share Dividends paid by the Company pursuant to clause 2.2.3 above shall be allocated as follows:

2.2.4.1 first, to all and any Accumulated B Preference Share Dividends;

2.2.4.2 thereafter, to all and any Scheduled B Preference Share Dividends;
and

2.2.4.3 thereafter, to all B Preference Share Early Redemption Dividends.

2.3 B Preference Share Trigger Event

If a B Preference Share Trigger Event contemplated in clause 3.3 (*Failure to pay Dividends*) or clause 3.5 (*Scheduled Redemption*) occurs the Scheduled B Preference Share Dividend shall be recalculated at a rate of:

(a) prior to the RE 2 Investment Date, 15% (fifteen per cent); and

(b) with effect from the RE 2 Investment Date, 3% (three per cent),

of Available Cash for B Preference Shares, provided that the Scheduled B Preference Share Dividend shall be recalculated at the rate of:

(a) prior to the RE 2 Investment Date, 10% (ten per cent); and

(b) with effect from the RE 2 Investment Date, 2% (two per cent),

of Available Cash upon the curing of the relevant B Preference Share Trigger Event only if such B Preference Share Trigger Event occurred as a result of there being insufficient amounts standing to the credit of the Issuer Proceeds Account to satisfy the payments set out

in clause 12(c) of clause 12 (*Issuer Bank Accounts*) of the Subscription Agreement due to no fault of the Company (it being agreed that if the relevant B Preference Share Trigger Event occurred as a result of any default or breach (howsoever described) of the Finance Documents by the Company, the Scheduled B Preference Share Dividend shall not be so recalculated and the recalculations set out in this clause shall remain effective, notwithstanding any such cure).

2.4 B Preference Share Early Redemption Dividends

If the Company redeems any Outstanding B Preference Shares prior to the Scheduled Redemption Date whether pursuant to clause 4.2 (Voluntary Redemption), clause 4.3 (*Early Redemption*) or otherwise, the Company shall pay, on the Actual Redemption Date on which it redeems each such Outstanding B Preference Share, a dividend on account of each such Outstanding B Preference Share, in an amount equal to the present value of the aggregate of all B Preference Share Dividends projected to accrue on account of that Outstanding B Preference Share from that Actual Redemption Date to the Scheduled Redemption Date, as set out in the Original Base Case Financial Model–GAIA FS (determined on a P50 basis), discounted using the Discount Rate (B Preference Shares).

2.5 Actual Redemption Date

The Company shall, to the extent to which it has not yet done so, pay all the B Preference Share Dividends in respect of each B Preference Share on the Actual Redemption Date of that B Preference Share.

3. B PREFERENCE SHARE TRIGGER EVENTS

3.1.1 Each of the events or circumstances set out in this clause 3 (*B Preference Share Trigger Events*) is a B Preference Share Trigger Event, whether or not the occurrence of such event is within the Company's control.

3.1.2 Failure by any Holder or the Preference Share Agent to notify the Company of the occurrence of any B Preference Share Trigger Event and/or to exercise its rights pursuant to the occurrence of any such B Preference Share Trigger Event shall not prejudice the rights of that Holder or the Preference Share Agent to subsequently exercise such rights on account of the occurrence of such B Preference Share Trigger Event, and accordingly the relevant B Preference Share Trigger Event shall be deemed to reoccur every day until such time as the relevant Trigger Event is remedied or waived or the Holders or Preference Share Agent exercise their rights on account of the occurrence of such B Preference Share Trigger Event (as applicable).

3.2 Solvency and Liquidity Test

On or before each relevant B Preference Share Dividend Payment Date (to the extent that there is Available Cash for B Preference Shares on that B Preference Share Dividend Payment Date):

3.2.1 the Company fails to apply the Solvency and Liquidity Test to determine whether after payment of the applicable Distribution the Company will satisfy the Solvency and Liquidity Test for any reason whatsoever; or

3.2.2 the Company applies the Solvency and Liquidity Test in respect of the applicable Distribution and fails to satisfy itself that after payment of such Distribution the

Company will satisfy the Solvency and Liquidity Test for any reason whatsoever;
or

3.2.3 the Company applies the Solvency and Liquidity Test in respect of the applicable Distribution and satisfies itself that after payment of such Distribution the Company will satisfy the Solvency and Liquidity Test but the Board fails to pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant Distribution for any reason whatsoever.

3.3 Failure to pay Dividends

To the extent that there is Available Cash for B Preference Shares on that B Preference Share Dividend Payment Date and the Company fails, on such B Preference Share Dividend Payment Date, to pay the B Preference Share Dividends envisaged in clause 2 (*Dividends*) payable by the Company on that B Preference Share Dividend Payment Date, and such failure is not remedied within five Business Days of receipt of written notice from the Preference Share Agent calling upon the Company to remedy such failure, unless its failure to pay is caused by:

3.3.1 administrative or technical error; or

3.3.2 a Disruption Event; and

payment is made within 3 (three) Business Days of its due date.

3.4 Illegality

It is or becomes illegal or unlawful for a Holder to perform any of its obligations contemplated under the Finance Documents or to hold the B Preference Shares it holds or to claim and recover all or any part of the B Preference Share Dividends.

3.5 Scheduled Redemption

The Company fails to redeem all the B Preference Shares on the Scheduled Redemption Date, unless such failure is caused by:

3.5.1.1 administrative or technical error; or

3.5.1.2 a Disruption Event; and

such failure is remedied within 3 (three) Business Days of its due date.

3.6 A Preference Share Trigger Event

An A Preference Share Trigger Event occurs.

4. REDEMPTION

4.1 Scheduled Redemption

The Company shall redeem all the B Preference Shares on the Scheduled Redemption Date.

4.2 Voluntary Redemption

The Company shall be entitled to voluntarily redeem any B Preference Shares at any time after the redemption in full of the A Preference Shares and prior to the Scheduled Redemption Date, provided that, prior to such redemption, the Company makes payment of all B Preference Share Dividends (including without limitation the B Preference Share Early Redemption Dividends) payable or to become payable on account of such B Preference Shares.

4.3 Compulsory Early Redemption

4.3.1 If a B Preference Share Trigger Event occurs:

4.3.1.1 the Preference Share Agent shall be entitled, but not obliged, to give written notice ("**Trigger Event Remedy Notice**") to the Company in which the Preference Share Agent requires the Company to remedy that B Preference Share Trigger Event within a period of one Business Day; and

4.3.1.2 if the Preference Share Agent gives the written notice as contemplated in clause 4.3.1.1 and the Company does not remedy that B Preference Share Trigger Event within the aforesaid one Business Day period, the Preference Share Agent shall be entitled, but not obliged, to deliver written notice ("**Early Redemption Notice**") to the Company in which the Preference Share Agent requires the Company to redeem the Outstanding B Preference Shares on a date ("**Early Redemption Date**") set out in the Early Redemption Notice, the Early Redemption Date to be no sooner than one Business Day after the date on which the Preference Share Agent delivers the Early Redemption Notice to the Company.

4.3.2 If the Preference Share Agent delivers an Early Redemption Notice to the Company, the Company shall, on the Early Redemption Date set out in the Early Redemption Notice:

4.3.2.1 pay the B Preference Share Early Redemption Dividends payable pursuant to clause 2.4 (*B Preference Share Early Redemption Dividends*);

4.3.2.2 pay all the outstanding B Preference Share Dividends in respect of the Outstanding B Preference Shares; and

4.3.2.3 redeem the Outstanding B Preference Shares.

4.4 Procedure for Redemption

4.4.1 The Company shall not redeem the B Preference Shares (or any of them) except if it has declared and paid the B Preference Share Dividends applicable to all Outstanding B Preference Shares in full.

4.4.2 The Company shall redeem the B Preference Shares by paying their B Preference Share Redemption Prices into the Bank account envisaged in clause 7 (*Payments*).

5. VOTING

- 5.1.1 The B Preference Shares shall not have any votes except if:
- 5.1.1.1 circumstances in which the Companies Act prescribes that the B Preference Shares shall have a vote have occurred and are continuing;
 - 5.1.1.2 a B Preference Share Trigger Event has occurred and is continuing; or
 - 5.1.1.3 the shareholders of the Company propose a resolution which affects the rights and privileges attaching to the B Preference Shares, or the interests of the Holders, including a resolution for the winding-up, commencement of business rescue proceedings or liquidation of the Company, the reduction of the Company's capital or the acquisition by the Company of its shares in terms of section 48 of the Companies Act.
- 5.1.2 If the circumstances envisaged in clause 5.1.1 occur and are continuing, the Holders shall between them, together with any holders of the A Preference Shares which at that time are entitled to vote on account of the A Preference Shares, have ninety five per cent of all the votes exercisable at general meetings of the Company.
- 5.1.3 The Holders shall be entitled to notices of general meetings at which the B Preference Shares are entitled to vote (but not to any other notice of any other general meetings).

6. RETURN OF CAPITAL

- 6.1.1 If the Company is liquidated the Holder of each B Preference Share shall be entitled to a return of capital equal to:
- 6.1.1.1 its B Preference Share Subscription Price; and
 - 6.1.1.2 the Accumulated B Preference Share Dividends payable on account of that B Preference Share up to the date on which that return of capital is paid to the Holder.
- 6.1.2 The B Preference Shares' right to a return of capital shall rank behind the A Preference Shares, but in priority to the rights (to returns of capital) of the holders of any other classes of shares in the Company.
- 6.1.3 Except for the rights conferred on the B Preference Shares in terms of clauses 6.1.1 and 6.1.2, the B Preference Shares shall have no right to participate in excess assets in the event of the Company's liquidation.

7. PAYMENTS

The B Preference Share Dividends and the B Preference Share Redemption Prices which become payable by the Company under these B Preference Share Terms shall be paid into the following account:

Account Name:	RMB DMM Account
Bank:	First National Bank
Branch:	Corporate Account Services - Johannesburg
Branch Code:	25 50 05
Account Number:	50619016740
Reference:	IBD RUS 872

or such a different account as the Holders may designate on two Business Days written notice to the Company.

8. GENERAL

8.1.1 These B Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the Holders.

8.1.2 Save for the A Preference Shares, no shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or pari passu with the B Preference Shares (other than the A Preference Shares) shall be created or issued without the prior written consent of the Holders.

8.1.3 A certificate delivered by a Holder to the Company, reflecting the amount owing by the Company to the Holders, will be prima facie proof of the amount owing. The appointment of the director, divisional director, manager or employee of any Holder providing such certification, shall not be required to be proved.

8.1.4 The Company shall procure that it obtains a duly completed Exemption Declaration and Undertaking Form, substantially in the form set out below, from any Holder that is exempt from Dividends Tax. The Subscriber, in turn, undertakes to execute such Exemption Declaration and Undertaking within a reasonable time period after receipt of written request from the Company.

8.1.4.1 Notes on completion of this form:

(a) This form is to be completed by the beneficial owner (of dividends, including dividends in specie) in order for the exemptions from dividends tax, referred to in section 64F read with sections 64FA(2), 64G(2) or 64H(2)(a) of the Income Tax Act, No 58 of 1962 (the Act), to apply.

(b) In order to qualify for an exemption, this declaration and written undertaking should be submitted to the withholding agent (i.e. the company declaring the dividend or the Regulated Intermediary) within the period required by the latter (provided it is before payment of an affected dividend). Failure to do so will result in the full dividends tax being withheld/payable.

8.1.4.2 Part A: Withholding Agent

- (a) Registered name: [Unlisted shares: Full registered name of the company which issued the shares; Listed shares: full registered name of the Regulated Intermediary]
- (b) Dividends tax reference number: [Income Tax Reference No. of the company which issued the shares / the Regulated Intermediary]

8.1.4.3 Part B: Beneficial Owner

Registered name: _____

Nature of entity (please select appropriate box):

_____ Individual

_____ Listed company

_____ Unlisted company

_____ Trust (any type)

_____ RSA Government, Provincial Administration, Municipalities

_____ Retirement Fund (Pension Fund, Provident, Benefit, RA etc)

_____ Other (if selected, please provide a description / explanation of nature of the entity / person)

Registration number: _____

South African income tax reference number: _____

Physical address: _____

Postal address:: _____

Country of residence for tax purposes: Republic of South Africa

8.1.4.4 Part C: Exemption

Please indicate the reason why the Beneficial Owner is exempt from Dividends Tax:

Par (a) of section 64F - a company which is resident in South Africa;

Par (b) of section 64F - the Government, a provincial administration or a municipality of the Republic of South Africa;

Par (c) of section 64F - a public benefit organisation (approved by SARS in terms of section 30(3) of the Act);

Par (d) of section 64F - a trust contemplated in section 37A of the Act (i.e. rehabilitation trusts);

Par (e) of section 64F - an institution, board or body contemplated in section 10(1)(cA) of the Act (eg. water board, tribal authority etc);

Par (f) of section 64F - a fund contemplated in section 10(1)(d)(i) or (ii) of the Act (i.e. pension fund, pension preservation fund, provident fund, provident reservation fund, retirement annuity fund, beneficiary fund or benefit fund);

Par (g) of section 64F - a person contemplated in section 10(1)(t) of the Act (eg. CSIR, SAIDC, SANRAL, ARMSCOR, Development Bank of SA etc);

Par (h) of section 64F - a shareholder in a registered micro business, as defined in the Sixth Appendix to the Act, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to its shareholders during the year of assessment in which that dividend is paid does not exceed the amount of R200 000;

Par (j) of section 64F - a person that is not a resident of South Africa and the dividend is an B Preference Share Dividend contemplated in paragraph (b) of the definition of "dividend" in section 64D (ie a foreign dividend paid by a non-resident company that is listed in South Africa).

DECLARATION in terms of sections 64F(1)(a)(i), 64G(2)(a)(aa) or 64(H)(2)(a)(aa) of the Act:

I, _____

(full names in print please), the undersigned, hereby declare that dividends paid to the beneficial owner are exempt, or would have been exempt had it not been a distribution of an asset in specie, from dividends tax in terms of the paragraph of section 64F of the Act indicated above.

Signature _____ Date: _____

(duly authorised to do so)

Capacity of signatory (if not beneficial owner): _____

UNDERTAKING in terms of sections 64F(1)(a)(ii), 64G(2)(a)(bb) or 64(H)(2)(a)(bb) of the Act:

I, _____

(full names in print please), the undersigned, undertake to forthwith inform the withholding agent in writing should the circumstances of the beneficial owner as set out above change.

Signature _____ Date: _____

(duly authorised to do so)

Capacity of signatory (if not beneficial owner): _____

**ANNEXE 4: PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS
ATTACHING TO THE N SHARES**

1. VOTING

No N Share shall have any votes except if:

- (i) circumstances in which the Companies Act prescribes that the applicable N Share shall have a vote have occurred and are continuing;
- (ii) a resolution of the shareholders of the Company is proposed which affects the rights and privileges attaching to any N Share, including a resolution for the winding-up, commencement of business rescue proceedings, liquidation or any similar proceedings of the Company, the reduction of the Company's capital or the acquisition by the Company of its shares in terms of section 48 of the Companies Act.
- (iii) the holder of each N Share shall be entitled to receive notices of general meetings at which the N Shares are entitled to vote (but not to any other notice of any other general meetings); and
- (iv) the holder of each N Share shall be entitled to exercise one vote on all matters requiring the vote of the holders of N Shares.

2. RANKING

- 2.1 Each N Share will rank *pari passu* with each other N Share and each Ordinary Share on a winding-up of, or any return of capital by, the Company.
- 2.2 Each N Share shall rank behind the rights of the holders of the A Preference Shares and the holders of the B Preference Shares on a winding up of, or any return of capital by, the Company.

3. DISTRIBUTIONS

Each N Share shall entitle the holder to receive Distributions, *pari passu* with each other N Share and each Ordinary Share, as may be authorised by the Board.