



**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**

**REPUBLIC OF SOUTH AFRICA**

**MEMORANDUM OF INCORPORATION**

**of**

**Thungela Resources Limited**

(Registration number: 2021/303811/06)

being a profit company which is classified as a public company

(the "**Company**")

The Company has adopted this unique form of memorandum of incorporation and, accordingly, the standard form of memorandum of incorporation for profit companies as contained in the Regulations shall not apply to the Company.

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## PART A – THE MOI AND RULES

### 1. INTERPRETATION

In this MOI, article headings are used for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

- 1.1 an expression that denotes:
  - 1.1.1 any gender, includes the other genders;
  - 1.1.2 a natural Person, includes an artificial or juristic Person and *vice versa*; and
  - 1.1.3 the singular, includes the plural and *vice versa*;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
  - 1.2.1 "**Board**" means the board of Directors of the Company from time to time;
  - 1.2.2 "**Business Day**" means any day other than a Saturday, Sunday or gazetted, national public holiday in South Africa;
  - 1.2.3 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
  - 1.2.4 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, including all schedules to such act and all regulations promulgated thereunder and for the time being in force (including, as at the date of adoption of this MOI, the Regulations);
  - 1.2.5 "**Company**" means Thungela Resources Limited (formerly known as K2021303811 (South Africa) Proprietary Limited) with registration number 2021/303811/06 as defined on the front page of this MOI;
  - 1.2.6 "**CSD**" means the Central Securities Depository as defined in section 1 of the Financial Markets Act;
  - 1.2.7 "**CSDP**" means a depository institution accepted by a CSD as a "**participant**" in terms of section 31 of the Financial Markets Act;
  - 1.2.8 "**Director**" means a director of the Company, from time to time;
  - 1.2.9 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, as amended, including all schedules to such act and all regulations and standards promulgated thereunder and for the time being in force;
  - 1.2.10 "**JSE**" means the JSE Limited, registration number 2005/022939/06, a public company incorporated in accordance with the laws of South Africa and licensed as an exchange under the Financial Markets Act;
  - 1.2.11 "**Legal Representative**" means any Person who has submitted proof (which is satisfactory to the Board) of his/her appointment (and, to the extent required by the Board, the continuation of that appointment) as:
    - 1.2.11.1 an executor of the estate of a deceased Security Holder, or a curator, guardian or trustee of a Security Holder whose estate has been sequestered or who is otherwise under any disability;

- 1.2.11.2 the liquidator of any Security Holder that is a body corporate in the course of being wound up; or
- 1.2.11.3 the business rescue practitioner of any Security Holder which is a company undergoing business rescue proceedings;
- 1.2.12 "**Listings Requirements**" means the Listings Requirements of the JSE and any other securities exchange on which any of the Securities may be listed or become listed, all other applicable rules, regulations, requirements and rulings of the JSE or such other exchange, as amended;
- 1.2.13 "**the / this MOI**" means this memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.14 "**MPRDA**" means the Minerals and Petroleum Resources Development Act, No. 29 of 2002, as amended;
- 1.2.15 "**Person**" or "**Entity**" includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- 1.2.16 "**Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1);
- 1.2.17 "**Regulations**" means the Companies Regulations, 2011, as amended and any other regulations made from time to time in terms of the Companies Act for so long as they remain of force and effect;
- 1.2.18 "**Security Holder**" means a holder of a Security who is entered as such in the Register of the Company, including a Legal Representative;
- 1.2.19 "**Securities**" means, collectively:
- 1.2.19.1 shares (including the Shares), debentures, notes, bonds, units or other instruments, irrespective of their form or title (including any options thereon and rights thereto) issued or authorised to be issued by the Company; and
- 1.2.19.2 anything falling within the meaning of the definition of "**securities**" as defined in section 1 of the Financial Markets Act issued or authorised to be issued by the Company;
- 1.2.20 "**SENS**" means the Stock Exchange News Service established and operated by the JSE;
- 1.2.21 "**Share**" means an ordinary share in the capital of the Company, having the preferences, rights, limitations and other terms contemplated in article 11;
- 1.2.22 "**Shareholder**" means a holder of a Share who is entered as such in the Register of the Company, including a Legal Representative;
- 1.2.23 "**Sign**" includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical or electronic process, and "**Signature**" has a corresponding meaning;
- 1.2.24 "**South Africa**" means the Republic of South Africa;
- 1.2.25 "**Strate**" means Strate Proprietary Limited, registration number 1998/022242/07, a private company incorporated in accordance with the laws of South Africa, and

registered as a CSD responsible for the electronic clearing and settlement of trades on the JSE; and

- 1.2.26 **"Uncertificated Securities"** means any Securities which are **"uncertificated securities"** defined as such in section 1 of the Financial Markets Act;
- 1.3 references to any law, statute, regulation or other legislation include any regulations and subordinate legislation made from time to time thereunder;
- 1.4 any reference to **"law"** means law, legislation, statutes, subordinate legislation, regulations, ordinances, treaties, protocols, codes, standards, rules, by-laws, directives, orders, guidelines, notices, promulgations, requirements, orders, judgments, decisions, instructions, injunctions, awards and other decrees of any governmental authority and all codes of practice, statutory guidance and policy notes, which have force of law or which it would be an offence not to obey, and the common law, as amended, supplemented, replaced, re-enacted, restated or re-interpreted from time to time;
- 1.5 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.6 the use of the words **"including"**, **"includes"** or **"include"**, followed by a specific example/s, shall not be construed (notwithstanding that in some instances this may have been specifically provided for, but not in others) as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;
- 1.7 where any term is defined within a particular article other than this article 1, that term shall bear the meaning ascribed to it in that article wherever it is used in this MOI;
- 1.8 any capitalised word or expression that is not otherwise defined in this MOI shall be construed in accordance with the Companies Act. For the avoidance of doubt, it is recorded that any reference to **"Present at such Meeting"** or **"Present at the Meeting"** shall be construed in accordance with the definition of *"Present at a Meeting"* in the Companies Act;
- 1.9 a reference to a **"section"** refers to the corresponding section of the Companies Act;
- 1.10 when any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or gazetted, national public holiday, in which case the last day shall be the next Business Day;
- 1.11 this MOI shall be deemed to authorise the Company to do anything which the Companies Act empowers a company to do if so authorised by its MOI, unless that authority is expressly excluded;
- 1.12 the headings of articles in this MOI are for information purposes only and shall not be used in the interpretation of this MOI;
- 1.13 the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the articles themselves do not expressly provide for this;
- 1.14 if any provision of this MOI imposes any obligation or requirement pursuant only to:
- 1.14.1 the Listings Requirements of the JSE, then: (i) unless the Company is a *"listed company"*, as such term is defined in the Listings Requirements of the JSE, any such provision shall be deemed not to apply to the Company; and (ii) insofar as the

JSE exempts or no longer requires compliance with such obligations or requirements, the obligations or requirements shall be deemed to have been complied with; or

- 1.14.2 the Listings Requirements of any other securities exchange (not being the JSE), on which any of the Securities are listed then: (i) unless any of the Securities are listed on such other securities exchange, any such provision shall be deemed not to apply to the Company; and (ii) insofar as such other securities exchange exempts or no longer requires compliance with such obligations or requirements, the obligations or requirements shall be deemed to have been complied with;
- 1.15 if any provision of this MOI limits, restricts or prohibits any power or authority of the Company or the Board pursuant only to:
- 1.15.1 the Listings Requirements of the JSE, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by the JSE, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required; or
- 1.15.2 the Listings Requirements of any other securities exchange (not being the JSE) on which any of the Securities are listed, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by such other securities exchange, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required;
- 1.16 to the extent that any provisions of this MOI are based on any Unalterable Provisions of the Companies Act and any of these provisions are amended, the Directors are authorised to amend this MOI to align with such amended Unalterable Provisions, subject to the approval thereof by the JSE and to the extent relevant, applicable or required, any other securities exchange on which any of the Securities are listed, to reflect such amendments (which amendments will apply to the Company by operation of law); and
- 1.17 if any provision of this MOI has been inserted to comply with (or require compliance with) a then applicable provision of the Listings Requirements:
- 1.17.1 which is subsequently removed or modified, the provision in question shall no longer apply if the relevant provision has been removed or shall apply as modified in the Listings Requirements. The Directors are authorised to amend this MOI to reflect such amendments, subject to the approval thereof by the JSE and to the extent relevant, applicable or required, any other securities exchange on which any of the Securities are listed; and
- 1.17.2 shall only apply for as long as the Securities are listed on the JSE or any other securities exchange on which any of the Securities are listed.

## 2. **CONFLICTS WITH THE MOI**

In accordance with the Companies Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and:

- 2.1 an Alterable Provision or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict; and
- 2.2 an Unalterable Provision or non-elective provision of the Companies Act, the Unalterable Provision or non-elective provision of the Companies Act shall prevail to the extent of the conflict.

### 3. AMENDMENT OF THE MOI

- 3.1 Every provision of this MOI is capable of amendment in accordance with sections 16(1)(a), 16(1)(c), 16(4), 17 and 152(6)(b), read together with the Listings Requirements and the MPRDA (and, to the extent applicable, any licencing conditions imposed on the Company) and, accordingly, there is no provision of this MOI which may not be amended as contemplated in sections 15(2)(b) or 15(2)(c).
- 3.2 This MOI may only be altered or amended:
- 3.2.1 in compliance with a court order on the basis set out in sections 16(1)(a) and 16(4) and any other applicable provisions of the Companies Act; or
- 3.2.2 by way of a Special Resolution of the Shareholders passed in accordance with section 16(1)(c), read in conjunction with the remaining provisions of the Companies Act and this MOI; or
- 3.2.3 as contemplated in sections 17 and 152(6)(b).
- 3.3 While the Shares of the Company remain listed on the JSE, the Board must, prior to proposing any amendments for approval by the Company's Shareholders, submit any such proposed amendments to the MOI to the JSE for approval in accordance with the Listings Requirements.
- 3.4 Save as specifically provided for in article 3.2, this MOI is not capable of amendment by any other method. Accordingly, the provisions of section 16(1)(b) shall not apply, nor shall any other Alterable Provisions of the Companies Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in article 3.2 apply.
- 3.5 Any change to the name of the Company, and any variation of the Share capital of the Company referred to in article 12.3 shall be effected by an amendment to this MOI as referred to in articles 3.1 and 3.2.

### 4. RULES

The Board is prohibited from making, amending or appealing any Rules as contemplated in section 15(3) and the authority of the Board in this regard is hereby excluded.

### 5. OTHER LISTINGS

- 5.1 The Company's Securities (or some of them) or beneficial interests in relation to them may, from time to time, be listed and traded on securities exchanges and/or over-the-counter markets (each a "**Regulated Market**") in various jurisdictions. In this regard, notwithstanding anything in this MOI to the contrary, the Board shall be entitled to do, or cause to be done, all things necessary or desirable to ensure:
- 5.1.1 compliance with applicable law in such jurisdictions, as well as the listings requirements or rules of the applicable Regulated Market; and
- 5.1.2 that efficient and effective trading, movement between Regulated Markets and settlement mechanisms are in place and operating in the jurisdiction of such Regulated Market and/or between Regulated Markets (including the JSE).
- 5.2 Subject to applicable law and the provisions of this MOI:
- 5.2.1 if it is necessary, expedient or desirable to take any action because of legal impediments or compliance with the laws or the requirements of any regulatory body



of any jurisdiction outside South Africa that may be applicable to the any relevant Security Holder; or

- 5.2.2 any other difficulty arises in connection with corporate actions to be undertaken by the Company in such jurisdiction,

the Company shall be entitled to take such action or resolve such matter as the Directors in their discretion may deem fit; provided that in taking such action, the Directors shall do so in an orderly manner.

## **PART B – STATUS AND POWERS OF THE COMPANY**

### **6. STATUS AS A PUBLIC COMPANY**

- 6.1 The Securities issued by the Company are fully paid up and freely transferable, subject to compliance with the procedural requirements for transfer contained in article 18.
- 6.2 The Company is entitled to offer its Securities to the public, subject to compliance with this MOI and the Companies Act.
- 6.3 The Company is, accordingly, classified as a public company in terms of section 8(2).

### **7. POWERS OF THE COMPANY**

- 7.1 The Company is governed by the:
- 7.1.1 Unalterable Provisions of the Companies Act;
- 7.1.2 Alterable Provisions of the Companies Act, subject to the extensions, limitations, substitutions or variations set out in this MOI; and
- 7.1.3 other provisions of this MOI.
- 7.2 The Company has, subject to section 19(1)(b)(i), all of the legal powers and capacity of an individual, and the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii).
- 7.3 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b).
- 7.4 To the extent that the Companies Act or the Listings Requirements require a company to be expressly authorised by its memorandum of incorporation to do anything, the Company is, by this provision, conferred with the requisite authority to do so, subject to any express limitations set out in this MOI.
- 7.5 No Special Resolution contemplated in sections 20(2) or 20(6) to ratify any action which is contrary to the Listings Requirements shall be proposed to the Shareholders unless otherwise agreed to by the JSE or, to the extent required, relevant or applicable, any other securities exchange on which any of the Securities are listed.

### **8. 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.

### **9. EXTENDED ACCOUNTABILITY REQUIREMENTS IN CHAPTER 3 OF THE COMPANIES ACT**

- 9.1 **application of chapter 3 of the Companies Act to the Company**

9.1.1 The Company, being a public company, is required in terms of section 34(1) to comply with the extended accountability requirements set out in chapter 3 (*Enhanced Accountability and Transparency*) of the Companies Act.

9.1.2 The Company must:

9.1.2.1 appoint a Person to serve as company secretary in the manner and for the purposes set out in article 9.3;

9.1.2.2 appoint a Person to serve as an auditor, in the manner and for the purposes set out in article 9.4; and

9.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in article 9.5,

provided that no Person who is ineligible (other than by virtue of being a juristic Person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) (as relevant) or articles 36.6 and 36.7 shall be appointed as the company secretary, auditor or a member of the statutory audit committee.

9.1.3 In terms of section 72(4) read with regulation 43, the Company must, unless exempted, appoint a social and ethics committee which complies with the Companies Act.

## 9.2 **register of company secretary and auditor**

9.2.1 The Company shall, in accordance with section 85, establish or cause to be established, and maintain, a record of its company secretary and auditor.

9.2.2 Within 10 Business Days of appointing a company secretary or auditor, or of termination of such an appointment, the Company must file with the Companies and Intellectual Property Commission a notice of the appointment or termination, as the case may be.

## 9.3 **company secretary**

9.3.1 The Company must appoint a Person to serve as company secretary.

9.3.2 The Person appointed as company secretary shall be appointed on such terms and subject to such conditions and for such period/s as the Board in its discretion deems fit, provided that such Person:

9.3.2.1 has the requisite knowledge of, or is experienced with, relevant laws; and

9.3.2.2 is a permanent resident of South Africa, and remains so while serving in that capacity.

9.3.3 Without in any way limiting or excluding any other grounds for removing a Person as the company secretary, any Person who is the company secretary for the time being who:

9.3.3.1 does not, in the reasonable opinion of the Board, have the requisite knowledge of, or experience with, relevant laws; or

9.3.3.2 ceases to be a permanent resident of South Africa; or

9.3.3.3 ceases to be a Person eligible or qualified to serve as a Director of the Company as contemplated in articles 36.6 or 36.7 (as relevant),

shall cease to be the company secretary on delivery to him/her of a notice by the Board terminating such appointment.

- 9.3.4 A Juristic Person or partnership complying with the requirements set out in section 87 may be appointed by the Board to hold the office of company secretary.
- 9.3.5 The company secretary shall be accountable to the Board.
- 9.3.6 The duties of the company secretary shall be the duties as specified in writing by the Board from time to time, and shall include as a minimum the statutory duties set out in section 88(2).
- 9.3.7 If the office of company secretary becomes vacant for any reason, the Board must fill that vacancy by appointing a Person whom the Directors consider to have the requisite knowledge of or experience in, relevant laws and is a permanent resident of South Africa within 60 Business Days after the vacancy arises.

#### 9.4 **auditors**

- 9.4.1 Each year at its Annual General Meeting, the Company must appoint an auditor.
- 9.4.2 The auditor shall be appointed subject to and in compliance with the requirements and criteria as to auditors set out in sections 90 and 92 and any applicable Listings Requirements.
- 9.4.3 If the Annual General Meeting of the Company does not appoint or reappoint an auditor, the Board must fill the vacancy in the office in terms of the procedure set out in article 9.4.5 within 40 Business Days after the date of the Annual General Meeting.
- 9.4.4 If a vacancy arises in the office of the auditor of the Company at any time, the Board:
- 9.4.4.1 must appoint a new auditor within 40 Business Days, if there was only one incumbent auditor of the Company; and
- 9.4.4.2 may appoint a new auditor at any time, if there was more than one incumbent auditor, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Company.
- 9.4.5 Before making an appointment in terms of articles 9.4.3 or 9.4.4:
- 9.4.5.1 the Board must propose to the Company's audit committee, within 15 Business Days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new auditor; and
- 9.4.5.2 may proceed to make an appointment of a Person proposed in terms of article 9.4.5.1 if, within five Business Days after delivering the proposal, the audit committee does not give notice in writing to the Board rejecting the proposed auditor.
- 9.4.6 If the Company appoints a firm as its auditor, a change in more than one half of the composition of the members of that firm will constitute the resignation of the firm as auditor of the Company, giving rise to a vacancy.
- 9.4.7 Any auditors of the Company for the time being shall have the rights and restricted functions set out in section 93.

## 9.5 **audit committee**

- 9.5.1 The Company must establish an audit committee comprising at least three members. All members of the audit committee must be non-executive, with the majority of the members being independent, as envisaged in the Companies Act and the Listings Requirements.
- 9.5.2 The members of the audit committee must be elected at each Annual General Meeting of the Company, in accordance with, and subject to, the requirements and criteria as to the members and composition of such a committee as set out in section 94.
- 9.5.3 If a vacancy arises on the audit committee, the Board must fill such vacancy within 40 Business Days, and the appointment must be ratified at the next Annual General Meeting.
- 9.5.4 Neither the appointment nor the duties of the audit committee of the Company reduce the functions and duties of the Board, except with respect to the appointment, fees and terms of engagement of the auditor.
- 9.5.5 The Company shall pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, amongst other financial constraints, the Solvency and Liquidity Test as applied to the Company.
- 9.5.6 At least one third of the members of the Company's audit committee at any particular time must have academic qualifications, or experience, in corporate law, corporate governance, finance, accounting, audit processes, integrated reporting, commerce and industry.

## **PART C –SECURITIES OF THE COMPANY AND CAPITALISATION ISSUES**

### 10. **AUTHORISED SECURITIES**

The numbers and classes of Securities which the Company is authorised to issue are set out in Schedule 1 to this MOI.

### 11. **RIGHTS OF THE SHARES**

Each Share in the issued capital of the Company ranks *pari passu* with, and is identical in all respects to, every other Share in respect of all rights, and entitles its holder to:

- 11.1 the right to be entered into the Register as the registered Shareholder;
- 11.2 exercise one vote on any matter to be decided by Shareholders of the Company (other than matters which are, in terms of this MOI or the Companies Act, to be decided solely by the holders of any other class/es of Share/s);
- 11.3 subject to article 49, participate equally with every other Share in any Distribution to Shareholders, whether during the existence of the Company or upon its dissolution;
- 11.4 if the Company is to be wound-up or liquidated, the assets remaining after payment of the debts and liabilities of the Company and the costs of the winding-up or liquidation shall be distributed among the Shareholders in proportion to the number of Shares held by each of them, provided that the provisions of this article 11.4 shall be subject to the rights of the holders of Securities issued upon special conditions;

- 11.5 in a winding-up or liquidation of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a Special Resolution of the Shareholders, 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 winding-up or liquidation of the Company may be closed and the Company dissolved; and
- 11.6 all other rights attaching to the Shares in terms of this MOI, the Companies Act, the Listings Requirements, or any other law.

## 12. VARIATION OF SHARE CAPITAL

- 12.1 Notwithstanding the provisions of section 36(3), the Board shall not have the power to:
- 12.1.1 increase or decrease the number of authorised Securities of any class;
- 12.1.2 reclassify any classified Securities that have been authorised but not issued;
- 12.1.3 classify any unclassified Securities that have been authorised but not issued; or
- 12.1.4 determine the preferences, rights, limitations or other terms of any Securities,
- which powers shall only be capable of being exercised by the Shareholders, as contemplated in article 12.3.
- 12.2 Subject to article 34.3, each Security issued by the Company shall entitle its holder to vote on any proposal to amend the preferences, rights, limitations or other terms associated with that Security.
- 12.3 The Shareholders may, by amendment to the MOI by way of a Special Resolution and in accordance with the Listings Requirements:
- 12.3.1 increase or decrease the number of authorised Securities of any class;
- 12.3.2 reclassify any classified Securities that have been authorised but not issued;
- 12.3.3 classify any unclassified Securities that have been authorised but not issued;
- 12.3.4 determine or vary the preferences, rights, limitations or other terms of any Securities;
- 12.3.5 create any class of Securities;
- 12.3.6 convert one class of Securities into one or more other classes of Securities, including the conversion of par value shares into no par value shares;
- 12.3.7 consolidate or subdivide any class of Securities; and
- 12.3.8 vary any preferences rights, limitations or other terms of any class of Securities already in issue, but no such variation shall be implemented unless:
- 12.3.8.1 it has been approved by a Special Resolution adopted by Security Holders at a separate meeting;
- 12.3.8.2 if those Securities are not Shares, it has been approved by a Special Resolution of the Shareholders; and
- 12.3.8.3 if there is/are any other class/es of Securities in issue, it has also been approved by a Special Resolution of all of the Security Holders of the Company entitled to vote thereon, which Special Resolution shall only be

proposed after the Special Resolution referred to in article 12.3.8.1 has been passed.

- 12.4 The preferences, rights, limitations or any other terms of any class of Securities must not be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) and the powers of the Board are limited accordingly.

### 13. ISSUE OF SECURITIES

- 13.1 The Company may, subject to the Listings Requirements and the further provisions of this article 13, only issue Securities which are fully paid up and freely transferable and only within the classes and to the extent that those Securities have been authorised by or in terms of this MOI.

- 13.2 Notwithstanding the provisions of section 40(5), all Securities of the Company for which a listing is sought on the JSE or any other securities exchange must, unless otherwise required by any law, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.

- 13.3 The Board may only authorise the issue of any Securities to any Person/s:

- 13.3.1 in accordance with the Companies Act and, in particular, with the approval of a Special Resolution if required by section 41;

- 13.3.2 in accordance with the Listings Requirements, particularly for any issue of shares, options or convertible securities for cash;

- 13.3.3 in accordance with this MOI and, in particular, any rights specifically conferred on any class of issued Securities;

- 13.3.4 if the Company has complied with the pre-emptive rights required by the Listings Requirements by first offering such Securities to all existing Security Holders of that class of Securities (or, if there are no Securities of that class in issue, to the Shareholders) ("**Offerees**") in proportion to their existing holdings of Securities at a subscription price which (ignoring any commission referred to in article 14 or any discount not exceeding 10% which may be granted instead of such commission) is not higher than the subscription price at which they will be issued to that/those Person/s. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Offeree that they decline to accept the Security offered, the Directors may, subject to the provisions of this article 13, issue such Security in such manner as they consider most beneficial to the Company. The Directors may exclude any Security Holders or category of Security Holders from an offer contemplated in this article 13.3.4 if, and to the extent, that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer. The pre-emptive right stipulated in this article 13.3.4 shall not apply to:

- 13.3.4.1 any issue of Shares in terms of options or conversion rights, provided that such options or conversion rights have been previously approved, to the extent necessary;

- 13.3.4.2 any issue of Shares in terms of a rights offer to be undertaken by the Company;

- 13.3.4.3 Shares to be held under an employee share scheme in terms of section 97, a share incentive scheme which complies with the provisions of schedule 14 of the Listings Requirements, or any other employee share option or incentive scheme, provided that such issue of Shares was previously approved, to the extent required;

- 13.3.4.4 capitalisation shares contemplated in section 47;
- 13.3.4.5 Shares issued pursuant to a scrip dividend, as contemplated by the Listings Requirements;
- 13.3.4.6 any issue of Shares in consideration for the acquisition by the Company or any of its subsidiaries of any assets (corporeal or incorporeal), including any securities in another company; and
- 13.3.4.7 any issue of Shares in terms of any vendor consideration placing directly or indirectly related to an acquisition of assets, for the purposes of an amalgamation or merger, or any other arrangement in respect of which the Listings Requirements do not require the Company to make such an offer;
- 13.3.4.8 Shares or equity Securities issued for cash pursuant to a general or specific approval given by the Shareholders in general meeting;
- 13.3.4.9 any issue of Shares which otherwise falls within a category in respect of which it is not, in terms of the Listings Requirements, a requirement for the relevant Shares to be so offered to existing Shareholders; or
- 13.3.4.10 to the extent that an Ordinary Resolution of the Offerees determines that it shall not apply,

and save as provided for in this article 13.3.4 or specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued, no Security Holder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Securities issued by the Company; or

- 13.3.5 subject to the remaining provisions of this article 13, with the approval of an Ordinary Resolution of the Shareholders. Any such Ordinary Resolution or Special Resolution required by any other provision of this article 13 may authorise the Board to issue Securities of the Company at any time and/or grant options to subscribe for Securities as the Directors in their discretion think fit, provided that such transaction/s has/have been approved by the JSE and comply/ies with the Listings Requirements.
- 13.4 The provisions of article 13.3 will apply *mutatis mutandis* to an issue of a class of authorised Securities which have not been issued, based on the percentage Voting Rights which that Shareholder has in relation to the aggregate general Voting Rights, calculated at the time the offer was made.
- 13.5 Notwithstanding anything in this article 13 to the contrary, Shareholder approval (by Ordinary or Special Resolution of the Shareholders, as the case may be) for the Board to issue Securities to any Person will only be required under this article 13 to the extent required under the Companies Act or Listings Requirements.
- 13.6 At all times whilst any of the Company's Securities are listed on the JSE or any other securities exchange, the Company shall not issue any Shares in terms of sections 40(5) to 40(7).
- 13.7 Should there be any listed preference shares in the share capital of the Company, the issue of further shares ranking in priority to, or *pari passu* with, those preference shares, shall be deemed to be a variation of the rights attached to those preference shares, which will adversely affect those rights and no further shares of any class ranking in priority to, or *pari passu* with, existing preference shares, shall be created without a Special Resolution passed at a separate general meeting of the holders of such existing preference shares.

## 14. COMMISSION

14.1 The Company may pay to any Person:

14.1.1 a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally); or

14.1.2 a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally),

for any Securities issued or to be issued by the Company, provided that, for so long as any Securities of the Company are listed on the JSE, any such commission or brokerage shall not exceed 10% of the consideration payable for such subscription.

## 15. RIGHTS OFFER (EXCLUSION OF NON-RESIDENTS)

15.1 The Company may apply to the Companies and Intellectual Property Commission to exclude from any rights offer any category of the Company's Security Holders who are not resident within South Africa, in terms of section 99(7).

15.2 Notwithstanding article 15.1 above, any *pro rata* offer of any Securities to any Person shall be subject to the possible exclusion of any Persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer, or where the Directors determine that it is necessary or expedient to exclude such Persons from the offer because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer.

## 16. REGISTER AND CERTIFICATES

16.1 Shares and other Securities which are of a class listed on the JSE or any other securities exchange shall, subject to the relevant Listings Requirements and article 17 below, be issued in the form of "*uncertificated*" Shares or other Securities; provided that the Directors shall, subject to applicable law be entitled to resolve that Shares or other Securities be issued in certificated form.

16.2 The Company shall establish or cause to be established, and shall maintain, a Register in accordance with the Companies Act and, to the extent that the form of and the manner of maintaining the Register is not prescribed, the Board shall determine the form and manner thereof.

16.3 The Company shall enter into its Register the transfer of any Certificated Securities and shall include in such entry the information required by section 51(5).

16.4 The certificates evidencing any Certificated Securities of the Company shall comply with the requirements set out in section 51(1) and shall otherwise be in such form as may be determined by the Board.

16.5 If any certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, and on such terms as the Board may determine.

16.6 The conversion of Certificated Securities to Uncertificated Securities or of Uncertificated Securities to Certificated Securities shall occur in accordance with the Regulations, any applicable provisions of the Financial Markets Act and any applicable requirements or rules of the JSE, Strate and the relevant CSDP or CSD or similar rules and requirements for any other securities exchange on which any of the Securities may be listed.



## 17. UNCERTIFICATED SECURITIES

- 17.1 In terms of and in accordance with the provisions of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each Person for whom any Uncertificated Securities are held in the Uncertificated Securities Register of the Company. The Company shall not issue certificates or statements evidencing or purporting to evidence title to Uncertificated Securities of the Company.
- 17.2 A Person who is entitled to and wishes to inspect the Uncertificated Securities Register may do so only through the Company and in accordance with the rules of the CSD in terms of section 52(2) read with section 26.

## 18. TRANSFER OF SECURITIES

- 18.1 Save in the case of a transfer which is effected by operation of law and overrides the requirements of this MOI, no Person may transfer any Securities in the Company to any other Person without first complying with the requirements for transfer as set out in this MOI.
- 18.2 Transfer of ownership in any Uncertificated Securities shall be effected in accordance with the provisions of section 53, any applicable provisions of the Financial Markets Act and any applicable requirements or rules of the JSE, Strate and the relevant CSDP or CSD or similar rules and requirements for any other securities exchange on which any of the Securities may be listed.
- 18.3 All authority to Sign transfer deeds granted by Security Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the transferor of such Securities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company shall be entitled to give effect to any instruments signed under the authority to Sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.
- 18.4 Fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

## 19. DEBT INSTRUMENTS

- 19.1 The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2); provided that the Board shall not be entitled to issue any debt instruments that grants the holder thereof any rights regarding:
- 19.1.1 attending and voting at general meetings and the appointment of Directors; or
- 19.1.2 the receipt by the holder thereof of anything other than repayment of the capital amount thereof and payment of interest thereon, all in cash, without the approval of the Shareholders by way of a Special Resolution. Without limiting the foregoing, it is recorded that a debt instrument may not confer on its holder any right to receive any Shares or other Securities of the Company or any other Entity or any other property (whether on conversion or redemption or repurchase of the debt instrument or otherwise) without the approval of a Special Resolution of the Shareholders.
- 19.2 The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2), is accordingly limited or restricted by this MOI.

## 20. BENEFICIAL INTERESTS

Securities issued by the Company may be held by, and registered in the name of, one Person for the beneficial interest of another Person, as set out in section 56(1), but no Person other than the registered Security Holder shall (save to the extent expressly provided for otherwise in this MOI) be entitled to exercise any of the rights associated with that Security and the Company shall not recognise any Person other than the registered Security Holder as the holder (whether beneficial or otherwise) of that Security. The holding of the Company's Securities by a registered holder for the beneficial interest of another Person is accordingly limited and restricted by this MOI.

## 21. JOINT HOLDERS OF SECURITIES

Where two or more Persons are registered as the holders of any Security, they shall be deemed to hold that Security jointly, and:

- 21.1 notwithstanding anything to the contrary contained anywhere else in this MOI, on the death, sequestration, liquidation, winding-up, dissolution or legal disability of any one of those joint holders who is not represented by a Legal Representative as referred to in article 22, the remaining joint holders may be recognised, at the discretion of the Board, as the only Persons having title to that Security;
- 21.2 any one of those joint holders may give effective receipts for any Distributions or other payments or accruals payable to those joint holders;
- 21.3 only the joint holder whose name stands first in the Register shall be entitled to delivery of a certificate relating to that Security if required in terms of article 16.6, or to receive notices or payments from the Company (and any notice or payment given to that joint holder shall be deemed to be notice or payment, as the case may be to all of the joint holders);
- 21.4 any one of the joint holders of any Security conferring a right to vote on any matter may vote either personally or by proxy at any meeting in respect of that Security as if he were solely entitled to exercise that vote, and, if more than one of those joint holders is present at any meeting of Security Holders, either personally or by proxy, the joint holder who tenders a vote (including an abstention) and whose name stands in the Register before the other joint holders who are present, in person or by proxy, shall be the joint holder who is entitled to vote in respect of that Security; and
- 21.5 the Company shall be entitled to refuse to register more than five Persons as the joint holders of a Security.

## 22. LEGAL REPRESENTATIVES

A Security Holder shall be the only Person recognised by the Company as having any rights in respect of or title to a Security registered in the name of the Shareholder whom he/she represents; provided that:

- 22.1 if a Shareholder or his/her Legal Representative is a joint holder of that Security, then this article 22 shall not detract from article 21 and this article 22 shall be read together with article 21; and
- 22.2 if so required by that Legal Representative or by the Board, be entered into the Register of the Company *nomine officio* in the place and on behalf of that Security Holder,

provided that: (i) if the Legal Representative so entered into the Register ceases to be the Legal Representative of that Security Holder, the Board shall, pending transfer of that Security Holder or another Legal Representative of that Security Holder or any other Person who is entitled to become the holder of that Security, be entitled to suspend the rights of the Shareholder to vote and shall be entitled to withhold (and retain until such transfer has occurred) all Distributions payable to the Security Holder; and (ii) that Security Holder shall not, merely by virtue of the

appointment, or entry into the Register of the Legal Representative, be released from any obligation arising out of or in connection with the holding of that Security.

### 23. CORPORATE ACTIONS REQUIRED TO COMPLY WITH THE LISTINGS REQUIREMENTS

Notwithstanding anything to the contrary in this MOI, the Company shall, for so long as any of the Company's Securities are listed on the JSE or any other securities exchange, ensure that all of the Company's corporate actions comply with the Listings Requirements to the extent applicable. In particular, the Company shall ensure that when it undertakes the following corporate actions, such actions are done in compliance with the Listings Requirements:

- 23.1 the issue of Shares for cash and options and convertible Securities granted/issued for cash;
- 23.2 the repurchase of Securities by the Company; and
- 23.3 the alteration of the Company's Share capital, authorised Shares and rights attaching to a class/es of Shares.

### 24. CAPITALISATION SHARES

- 24.1 The Board shall:
  - 24.1.1 have the power and the authority to approve the issuing of any authorised Shares as capitalisation shares for purposes of section 47;
  - 24.1.2 have the power and authority to approve the issue shares of one class as a capitalisation share in respect of shares of another class; and
  - 24.1.3 subject to article 24.2, have the power and the authority to resolve to permit the Security Holders to elect to receive scrip dividends *in lieu* of cash dividends or a cash payment *in lieu* of a capitalisation share.
- 24.2 The Board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation share, as contemplated in article 24.1.3, unless the Board:
  - 24.2.1 has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and
  - 24.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the Distribution.
- 24.3 If, on any capitalisation issue, Security Holders would, but for the provisions of this article 24, become entitled to fractions of Securities, the Board shall, subject to the Listing Requirements and any contrary provisions in the resolution authorising the capitalisation issue, be entitled to round down the number of capitalisation shares to be received to the nearest whole number or to sell the shares resulting from the aggregation of those fractions, on such terms and conditions as it deems fit, for the benefit of the relevant holders of Securities, and any Director shall be empowered to Sign any instrument of transfer or other instrument necessary to give effect to that sale.

### 25. ACQUISITION BY THE COMPANY OF ITS SECURITIES ISSUED

Subject to the provisions of the Companies Act and the Listings Requirements applicable at that time, the Company may acquire any Securities issued by the Company on the basis that:

- 25.1 all or a portion of the price payable on such acquisition may be paid out of the funds of or available to the Company, including whether or not such payment results in a reduction of

the share capital, stated capital, reserves, any capital redemption reserve fund and/or any other account of the Company; and

- 25.2 the Securities so acquired shall be restored to the status of unissued Securities and the authorised capital of the Company shall remain unaltered.

## 26. ODD-LOT OFFERS

For purposes hereof:

- 26.1 "**Odd-lot**" means (i) in relation to Shares, any total holding by a Shareholder (which for the purposes of this article 26 shall include a dematerialised Shareholder without "*own-name registration*" that holds the Shares through a nominee in accordance with the rules and procedures of Strate) of less than 100 Shares (or such other number as may be permitted by the JSE or any other securities exchange on which any of the Shares are listed), or (ii) in relation to other Securities, any total holding by a Security Holder of less than 100 Securities of any class of Securities (or such other number as may be permitted by the JSE or any other securities exchange on which any of the Securities are listed) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other rand amount as may be permitted by the JSE or any other securities exchange on which any of the Securities are listed); and
- 26.2 "**Odd-lot Offer**" means an offer by the Company, or its nominee (which for the avoidance of doubt shall include any of the Company's subsidiaries from time to time), to the holders of Odd-lots in terms of which the holders of the Odd-lots may elect to retain their holdings or sell their Odd-lots, subject to the Listings Requirements to the extent applicable.
- 26.3 The Company, or its nominee may make and implement Odd-lot Offers on such terms and conditions as the Board may determine, in accordance with and subject to the Listings Requirements (which shall for the avoidance of doubt include any Shareholder approval required in terms of the Listings Requirements, it being recorded that it will be competent for the Company to procure any Shareholder approval required for an Odd-lot Offer by written resolution of Shareholders as envisaged in article 29.5) or as otherwise permitted by the JSE or any other securities exchange on which any of the Securities are listed); and if it does so and any Shareholder or Security Holder who qualifies to participate in that Odd-lot Offer does not elect any of the election alternatives (namely to retain their Odd-lots or to sell their Odd-lots) in accordance with the terms of the Odd-lot Offer, such Shareholder or Securities Holder (as the case may be) (and any Person with a beneficial interest in such Odd-lots) shall be deemed to have agreed to sell the Odd-lots, and the Company, or its nominee shall be entitled (on implementation of the Odd-lot Offer) to cause the Odd-lots to be sold on behalf of such Persons to any party (including the Company) on such terms and conditions as the Board may determine; provided that the Company shall account to the Shareholders and Security Holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such Odd-lots.
- 26.4 All unclaimed proceeds of Odd-lot sales shall be held by the Company in trust for the benefit of the Shareholders and Security Holders (as relevant), subject to article 49.3.12 and to the laws of prescription.

## PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS

### 27. PROXY REPRESENTATION

- 27.1 A Shareholder may, at any time by written proxy appointment ("**Proxy Instrument**") which complies with this MOI, the Companies Act and the relevant Listings Requirements, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to:

27.1.1 participate in, and speak and vote at, a Shareholders Meeting on behalf of that Shareholder; or

27.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in article 29.5,

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by section 58 and this article 27.

27.2 The Board may determine a standard form of Proxy Instrument and make it available to Shareholders on request.

27.3 Subject to the provisions of the Companies Act, a Proxy Instrument may be an instrument created or transmitted by electronic or other means, including electronic mail or facsimile.

27.4 Unless the contrary is stated therein, a Proxy Instrument which complies with the Companies Act and this MOI shall, if any meeting to which it relates is adjourned or postponed be valid at that meeting when it resumes after such adjournment or commences after such postponement, even if it had not been lodged timeously for use at the meeting as originally scheduled (prior to the adjournment or postponement).

27.5 A Shareholder may not appoint more than one Person concurrently as proxies, and may not appoint more than one proxy to exercise Voting Rights attached to different Securities held by the Shareholder.

27.6 A proxy may not delegate the proxy's authority to act on behalf of the Shareholder to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Companies Act and this MOI.

27.7 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy after midnight on the day on which the instrument revoking the appointment (if revocable) of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the company secretary, chairperson or managing director of the Company and accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the Board or the chairperson of the relevant meeting) or to any other Person entitled to accept the Proxy Instrument or revocation on behalf of the Company and shall not permit the proxy to exercise such rights after the chairperson becomes aware of that revocation.

27.8 A proxy shall, as contemplated in section 58(7), be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any Voting Right of the Shareholder; provided that if the Proxy Instrument specifically provides otherwise then the specific provisions of the Proxy Instrument shall prevail.

## 28. RECORD DATES

The Board may, in accordance with section 59 and the Regulations, determine and publish a Record Date for the purposes of determining which Shareholders are entitled to:

28.1 receive a notice of a Shareholders Meeting;

28.2 participate in and vote at a Shareholders Meeting;

28.3 decide any matter by written consent or by Electronic Communication;

28.4 receive a Distribution; or

28.5 be allotted or exercise any other rights,

provided that:

28.5.1 if the Board does not determine a Record Date for any action or event, as contemplated in this article 28, the Record Date shall, subject to article 28.5.2, be as determined in accordance with section 59(3); and

28.5.2 whilst the Shares of the Company are listed on the JSE or any other securities exchange, the Record Date shall be determined in accordance with the relevant Listings Requirements.

## 29. SHAREHOLDERS MEETINGS

29.1 The Company shall not be required to hold any Shareholders Meeting other than those required by the Companies Act and/or the Listings Requirements.

29.2 Without limiting the foregoing, the Company shall hold a Shareholders Meeting in the circumstances contemplated in section 61(2).

29.3 The Board (or any Prescribed Officer of the Company authorised by the Board) is entitled to call a Shareholders Meeting at any time.

29.4 All Shareholders Meetings that are called for in terms of the Listings Requirements must be convened by the Board (and such Shareholders Meetings shall be held in person or by Electronic Communication as contemplated in article 31 and subject to article 29.5 below may not be held by means of a written resolution as is contemplated in section 60) for purposes of the Shareholders considering and, if deemed fit, approving the Shareholders resolutions required to be passed by the Shareholders in terms of the Listings Requirements.

29.5 The Company shall be entitled to propose, as written resolutions in terms of section 60, all such matters as may be permitted in terms of the Listings Requirements to be proposed in terms of section 60 and if such resolution/s is supported by Persons entitled to exercise sufficient Voting Rights for the resolution to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, such resolutions will be deemed to have been passed at a properly constituted Shareholders Meeting.

29.6 The Board shall determine the location for any Shareholders Meeting of the Company and the Company may hold any such meeting in South Africa or any foreign country it deems fit and, accordingly, the authority of the Board, as contemplated in section 61(9), is not limited or restricted by this MOI.

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

## 30. NOTICE OF SHAREHOLDERS MEETINGS

30.1 The Company must:

30.1.1 subject to section 62(2A), deliver a notice of each Shareholders Meeting to:

30.1.1.1 all Shareholders as of the Record Date entitled to vote or otherwise entitled to receive notice in accordance with, and subject to, the provisions of the Companies Act; and

30.1.1.2 the JSE and any other securities exchange on which any of the Securities are listed,

at least 15 Business Days before that Shareholders Meeting is to begin; and

- 30.1.2 simultaneously with delivery of any notice in terms of article 30.1.1, announce such notice through SENS or the relevant news service of any other securities exchange on which any of the Securities are listed.
- 30.2 The notice of a Shareholders Meeting shall be in writing and shall include the items set out in section 62(3).
- 30.3 The notice of a Shareholders Meeting must be delivered in accordance with the provisions of article 55.
- 30.4 Should the Board receive requests from Shareholders for the inclusion of certain resolutions in the notice prior to the dispatch of such notices, or after dispatch of such notices, but at least 15 Business Days before the Shareholders Meeting is to begin, the Board shall in good faith consider such requests and determine whether the resolution should be included in the notice of the Shareholders Meeting. Any such requests should provide the specific purpose for which the resolution is proposed, must be delivered to the Company in writing and be otherwise in compliance with the Companies Act. Requests for the inclusion of resolutions at a Shareholders Meeting receive by the Company within a period of 15 Business Days of the Shareholders Meeting shall not be considered at the Shareholders' Meeting.

## 31. CONDUCT OF MEETINGS

- 31.1 The chairperson of a Shareholders Meeting can take any action he/she considers appropriate for the proper and orderly conduct of the business to be carried out at the meeting. The chairperson's decision on points of order, matters of procedure or matters that arise incidentally from the business of the meeting (including whether or not a matter falls in these categories) shall be final.
- 31.2 The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication in the manner contemplated in section 63(2) is not limited or restricted in any way by this MOI.
- 31.3 Subject to article 31.1, the responsibility for, and any expense of gaining access to the medium or means of Electronic Communication employed for any Shareholders Meeting shall be that of the Shareholder or proxy.
- 31.4 A resolution passed at any meeting that employs Electronic Communication shall, notwithstanding that the Shareholders are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of articles 29.5 and 31 to 34 shall apply to these meetings.
- 31.5 At a Shareholders Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (or on before the declaration of the result of a show of hands) by:
- 31.5.1 the chairperson of the meeting; or
- 31.5.2 not less than five Shareholders Present at the Meeting having the right to vote on that resolution; or
- 31.5.3 a Shareholder or Shareholders Present at the Meeting having the right to exercise at least 10% of the total Voting Rights of All Shareholders having the right to vote on that resolution.

31.6 No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting (contemplated in article 32 below) at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

## 32. SHAREHOLDERS MEETING QUORUM AND ADJOURNMENT

- 32.1 The quorum requirements for Shareholders Meetings shall, subject to article 32.5, be that:
- 32.1.1 such a meeting shall not begin unless sufficient Persons (being not less than three in number who are entitled to vote on the matters before the Shareholders Meeting) are Present at such Meeting who are entitled to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 32.1.2 the consideration of a matter to be decided at the meeting shall not begin or continue unless sufficient Persons (being not less than three in number who are entitled to vote on the particular matter) are Present at such Meeting who are entitled to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised on that matter.
- 32.2 Notwithstanding the provisions of section 64(4) and article 32.1, if, within 30 minutes after the appointed time for a Shareholders Meeting:
- 32.2.1 the quorum requirements for the Shareholders Meeting to begin have not been satisfied, the Shareholders Meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a Business Day, the next Business Day) in the next week;
- 32.2.2 the quorum requirements for consideration of a particular matter to begin or continue have not been satisfied, then:
- 32.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the Shareholders Meeting without motion or vote; or
- 32.2.2.2 if there is no other business on the agenda of the Shareholders Meeting, the Shareholders Meeting is adjourned, without motion or vote, to the same day (or if that day is a public holiday, the next Business Day) in the next week.
- 32.3 The adjourned or postponed Shareholders Meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- 32.4 The chairperson of the Shareholders Meeting shall be entitled to extend the 30 minute limit referred to in article 32.2 in the circumstances contemplated in section 64(5).
- 32.5 If, at the time appointed in terms of this article 32 for an adjourned Shareholders Meeting to resume, or for a postponed Shareholders Meeting to begin, the quorum requirements have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 32.6 A Shareholders Meeting, or the consideration of any matter being debated at a Shareholders Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12), it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.
- 32.7 The Board may, at any time after notice of a Shareholders Meeting (other than a Shareholders Meeting required to be held in terms of article 29.3) has been given but prior



to the commencement of that meeting, postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage; provided that the Board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Companies Act or this MOI to be held.

32.8 If a Shareholders Meeting is postponed or adjourned, whether in terms of article 32.2 or otherwise, the Company must, by announcement on SENS or the news service of any other securities exchange on which any of the Securities are listed, give notice to all Shareholders who were entitled to receive notice of the meeting of the postponement or adjournment and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and any other information which the Board may decide to include therein.

32.9 Even if he/she is not a Shareholder:

32.9.1 any Director; or

32.9.2 the Company's attorney (or where the Company's attorneys are a firm, any partner, director or employee thereof) or any other Person admitted by the chairperson of the meeting,

may attend and speak at any Shareholders Meeting, but may not vote, unless he/she is a Shareholder or the proxy or representative of a Shareholder.

### 33. CHAIRPERSON OF SHAREHOLDERS MEETINGS

33.1 The chairperson of the Board or, failing him/her, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each Shareholders Meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the Shareholders present shall elect one of the Directors or, if no Director is present and willing to act, a Shareholder, to be the chairperson of that Shareholders Meeting.

33.2 The chairperson of a Shareholders Meeting shall, subject to the Companies Act and this MOI, determine the procedure to be followed at that meeting but shall not have a second or casting vote at any Shareholders Meeting.

### 34. SHAREHOLDERS RESOLUTION

34.1 At any Shareholders Meeting, any Person who is Present at the Meeting, whether as a Shareholder or as a proxy for a Shareholder, shall be entitled:

34.1.1 on a show of hands, to one vote, irrespective of the number of Voting Rights that Shareholder would otherwise be entitled to exercise; and

34.1.2 on a poll, to exercise the number of Voting Rights associated with the Shares held by such Shareholder, which Voting Rights shall be determined in accordance with the preferences, rights, limitations and other terms of the Shares, as set out in this MOI.

34.2 Any holder of Securities other than Shares ("**Other Security Holder**") shall not be entitled to vote on any resolution at a Shareholders Meeting, except:

34.2.1 during any period provided for in article 34.2.3, during which any dividend, any part of any dividend on preference shares or any redemption payment thereon remain in arrears and unpaid; and/or

34.2.2 in regard to any resolution proposed for the winding-up or liquidation of the Company;

- 34.2.3 the period referred to in article 34.2.1 shall be the period commencing on the due date of the dividend or redemption payment in question or, where no due date is specified, the expiry of the sixth month after the end of the financial year of the Company in respect of which such dividend accrued or such redemption payment became due.
- 34.3 If the Other Security Holders are entitled to vote at the Shareholders Meeting as contemplated in article 34.2, then the Other Security Holders shall be entitled to one vote for every Other Security held; provided that the total Voting Rights of the Other Security Holders in respect of the Other Securities shall not exceed 24.99% of the total votes (including the votes of the Shareholders) exercisable at that meeting (and the votes of the Other Security Holders shall be reduced if necessary to give effect to this proviso with any cumulative fraction of a vote in respect of any Other Securities held by Other Security Holders rounded down to the nearest whole number).
- 34.4 In order for:
- 34.4.1 an Ordinary Resolution to be approved, it must be supported by more than 50% of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or
- 34.4.2 a Special Resolution to be approved, it must be supported by at least 75% of the Voting Rights exercised on the Special Resolution, as contemplated in section 65(9),
- at a quorate Shareholders Meeting which is quorate in relation to that resolution; provided that this article 34.4 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in article 29.5.
- 34.5 If any Shareholder abstains from voting in respect of any resolution, that Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.
- 34.6 Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11), any other provision of the Companies Act, this MOI or the Listings Requirements, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Shareholders.

## **PART E – DIRECTORS POWERS AND PROCEEDINGS**

### **35. AUTHORITY OF THE BOARD OF DIRECTORS**

- 35.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.
- 35.2 The Board may delegate to any one or more Persons any of its powers, authority and functions (including the power to sub-delegate).
- 35.3 If none of the Securities of the Company are no longer listed on the JSE or any other securities exchange and the Company has been converted to a private company and has only one Director:
- 35.3.1 that Director may exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities;
- 35.3.2 sections 71(3) to (7) shall not apply to the governance of the Company; and

35.3.3 the provisions of articles 40 and 41 shall not apply to the governance of the Company.

### 36. APPOINTMENT OF DIRECTORS

36.1 The Board shall comprise not less than four Directors.

36.2 Save as provided in article 36.3, all of the Directors and any Alternate Directors shall be elected by a separate Ordinary Resolution of the Shareholders with respect to each such Director and each Alternate Director, at a general meeting of the Company, provided that if the Shareholders do not elect an Alternate Director, the Board shall be entitled to appoint such Alternate Director(s) unless such Alternate Director is a person previously proposed to the Shareholders as an Alternate Director or as a Director and was not elected by the Shareholders when put to the vote.<sup>1</sup> The provisions of section 68(2) shall apply to the election of Directors, provided that a Director may not be elected by written vote in accordance with articles 29.5. There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(ii), and no Person shall have the right to effect the direct appointment or removal of one or more Directors as contemplated in section 66(4)(a)(i).

36.3 Notwithstanding anything in this MOI to the contrary, the Board may appoint a Person who satisfies the requirements for election as a Director to fill any vacancy or to serve as a Director of the Company or as an additional Director on a temporary basis until the earlier of the date of the next Annual General Meeting of the Company and the date on which the vacancy has been filled by election in terms of article 36.2. During that period any Person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company. The authority of the Board in this regard is not limited or restricted by this MOI.

36.4 The Directors shall rotate in accordance with the following provisions of this article 36.4:

36.4.1 at the first Annual General Meeting of the Company, all the elected Directors shall retire from office (including the chief executive officer, financial director or any other Director who has been appointed as an executive director), and at each subsequent Annual General Meeting (or other general meeting held on an annual basis) Directors comprising one third of the aggregate number of Directors (excluding the chief executive officer, financial director and any other Director who has been appointed as an executive director referred to in article 42) or, if their number is not three or a multiple thereof, then the number nearest to but not less than one third of the aggregate number of Directors (excluding the chief executive officer, the financial director and any other Director who has been appointed as an executive director referred to in article 42) shall retire from office and accordingly life directorships and directorships for an indefinite period are not permissible;

36.4.2 the Directors to retire in terms of article 36.4.1 shall exclude any chief executive officer, the financial director and any other Director who has been appointed as an executive director as referred to in article 42, in addition if a Director is appointed as an employee of the Company in any other capacity, the contract under which he/she is appointed may provide that he/she shall not, while he/she continues to hold that position or office, be subject to retirement by rotation and he/she shall not, in such case, be taken into account in determining the rotation or retirement of Directors;

36.4.3 the Directors to retire in terms of article 36.4.1 shall be those who have been longest in office since their last election, provided that if more than one of them were elected Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;

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<sup>1</sup> LR Schedule 10 para 10.16(b); section 66(4)(b) and 66(4)(a)(iii)

- 36.4.4 any Director appointed as such by the Directors after the conclusion of the Company's preceding Annual General Meeting shall, in addition to the Directors retiring in terms of article 36.4.1, retire from office at the conclusion of the Annual General Meeting held immediately after his/her appointment;
- 36.4.5 a retiring Director may, if eligible, be re-elected and, if re-elected, shall be deemed for all purposes other than articles 36.4.1 to 36.4.4 not to have vacated his/her office;
- 36.4.6 no Person other than a retiring Director shall be eligible for election as a Director at any Annual General Meeting unless the Directors recommend such other Person for election;
- 36.4.7 a retiring Director shall continue to act as Director throughout the general meeting at which he retires and his/her retirement shall become effective only at the end of such meeting; and
- 36.4.8 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this MOI, including article 32, will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.
- 36.5 The Board may in the notice of the meeting at which the re-election of a retiring Director is proposed, provide the Shareholders with a recommendation as to which retiring Directors should be re-elected, taking into account that Director's past performance and contribution.
- 36.6 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Companies Act.
- 36.7 In addition to the grounds of ineligibility and disqualification of Directors as contained in section 69, a Director shall cease to be eligible to continue to act as a Director if he absents himself/herself from all meetings of the Board occurring within a period of six consecutive months without the leave of the Board, and the Board resolves that his/her office shall be vacated; provided that this article 36.7 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself/herself.
- 36.8 This MOI does not impose any minimum shareholding or other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Companies Act and article 36.7.
- 36.9 Section 70 shall apply to any vacancy on the Board which may arise from time to time. For purposes of this article 36.9, a vacancy shall arise when, notwithstanding that the minimum number of Directors required in terms of article 36.1 are in office, one or more Directors, resign, become indisposed or unable to fulfil their duties, so that the number of Directors fall below the number elected to office by the Shareholders at the previous Annual General Meeting or Shareholders Meeting.
- 36.10 If the number of Directors falls below the minimum number fixed in accordance with this MOI, the remaining Directors must, as soon as possible and in any event not later than three months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with article 36.3 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said three month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is below the minimum number fixed in accordance with this MOI.
- 36.11 The Directors in office may act notwithstanding any vacancy in their body, but if their number remains reduced below the minimum number fixed in accordance with this MOI

after the expiry of the three month period contemplated in article 36.10, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

### 37. ALTERNATE DIRECTORS

37.1 The appointment of an Alternate Director shall terminate:

37.1.1 when the Director to whom he/she is an Alternate Director ceases to be a Director; or

37.1.2 upon the removal of that Alternate Director from his/her office as such.

37.2 An Alternate Director shall, subject to this MOI:

37.2.1 in the place and stead of the Director to whom he/she is an Alternate Director, act as a Director and generally exercise all the rights of a Director, but only:

37.2.1.1 at any meeting of the Board during the absence of that Director from such meeting; or

37.2.1.2 otherwise than at a meeting of the Board, during the incapacity of that Director or to the extent authorised by that Director in writing,

and if more than one Alternate Director to a Director is present at a meeting or able to act in the place of that Director and that Director has not indicated in writing who should act in his/her place, then those Alternate Directors may agree as to which of them should act in the place of that Director and in the absence of such agreement between them, the most senior of them in age shall act in the place of that Director; and

37.2.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he/she is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

### 38. BOARD COMMITTEES

38.1 The Board shall appoint such committees, with such powers and duties, as may be required by the Listing Requirements and the Companies Act, and may in addition:

38.1.1 appoint any number of committees of Directors; and

38.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate);

38.1.3 include any Person who is not a Director of the Company in such committees,

and, accordingly, the authority of the Board in this regard is not limited or restricted by this MOI.

38.2 The authority and power of any committees established by the Board is not limited or restricted by this MOI, but may, subject to the requirements of the Listing Requirements and the Companies Act in respect of committees required to be established by the Listing Requirements and the Companies Act, be restricted by the Board when establishing any committee or by subsequent resolution.

38.3 No Person shall be appointed as a member of a Board committee if that person is ineligible or disqualified to act as Director for purposes of section 69 and any such appointment shall be a nullity. A Person who is ineligible or disqualified for purposes of section 69 must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

38.4 A member of a Board committee shall cease to hold office as such immediately upon becoming ineligible or disqualified to act as Director for purposes of the Companies Act.

### 39. CHAIRPERSON OF THE BOARD

39.1 The Board shall be entitled, from time to time, to appoint:

39.1.1 a Director to act as the chairperson of the Board; and

39.1.2 to appoint one or more Directors to act as deputy chairperson/s of the Board,

for such period as may be determined by the Board or for an indefinite period and, even though that period has not yet expired, to remove that chairperson or deputy chairperson from his/her post, with or without nominating a replacement.

39.2 The chairperson of the Board or, failing him/her, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board; provided that, if no chairperson or deputy chairperson is present and willing to act, the Board present shall elect one of the Directors to be the chairperson of that meeting of the Board.

39.3 The chairperson of a meeting of the Board referred to in article 39.2 shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at that meeting.

39.4 Notwithstanding the provisions of section 73(5)(e), the chairperson of the Board or any meeting of the Board shall not have a second or casting vote in addition to his/her deliberative vote on any matter referred to the Board.

### 40. DIRECTORS MEETINGS

40.1 The Board may:

40.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2), any Director shall be entitled to convene or direct the Person so authorised by the Board to convene a meeting of the Board; and

40.1.2 from time to time determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4); provided that, subject to article 40.2, no meeting may be convened without notice to all of the Directors, which notice must allow a reasonable period of time taking into account the travelling distances of the Directors. The authority of the Board in this regard is not limited or restricted by this MOI.

40.2 If all of the Directors of the Company:

40.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

40.2.2 are present at a meeting; or

40.2.3 waive notice of the meeting,

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

- 40.3 A meeting of the Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication in accordance with section 73(3) of the Companies Act.
- 40.4 The quorum for meetings of the Board shall be a majority in number of the Directors then in office (of which two shall be independent non-executive Directors) present; provided that unless the Board decides otherwise:
- 40.4.1 if a quorum is not present within 30 minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and
- 40.4.2 if at any such postponed meeting a quorum is not present within 30 minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b), the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.
- 40.5 If a meeting of the Board is postponed or adjourned, whether in terms of article 40.4 or otherwise, the Company must, within 48 hours thereafter, send notice of the postponement or adjournment to all Directors who are entitled to receive notice of the meeting (excluding those of the Directors who have agreed not to receive such notice of postponement or adjournment or agreed that the meeting may proceed without them) and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and the business to be dealt with thereat. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh notice has been given in accordance with this MOI.
- 40.6 At any meeting of the Board:
- 40.6.1 each Director has one vote on every matter to be decided by the Board; and
- 40.6.2 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in article 40.6.1 at a quorate meeting of the Board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This article 40.6.2 shall not detract from the Board's ability to adopt resolutions as set out in article 41.
- 40.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes:
- 40.7.1 any declaration given by notice or made by a Director, as required by section 75; and
- 40.7.2 every resolution adopted by the Board.
- 40.8 Resolutions adopted by the Board:
- 40.8.1 must be dated and sequentially numbered; and
- 40.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.

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

#### 41. WRITTEN RESOLUTIONS BY DIRECTORS

41.1 A decision that could be voted on at a meeting of the Board (other than a Board resolution resolving that the Company voluntarily begins business rescue proceedings and places the Company under supervision as contemplated in section 129(1)) may instead be:

41.1.1 submitted for consideration to each Director; and

41.1.2 voted on in writing by Directors (or their Alternate Directors) entitled to exercise voting rights on that matter within 10 Business Days after the resolution was submitted to them, or such other period as may be specified in the notice.

41.2 A resolution contemplated in article 41.1 will have been adopted as a Board resolution if, at any time while open to voting, the number of votes exercised in favour of the resolution by Directors (or their Alternate Directors) who are entitled to exercise voting rights on the proposed resolution ("**Eligible Directors**") exceeds the sum of (i) the number of votes exercised against the resolution by Eligible Directors plus (ii) the number of votes by Eligible Directors who do not (or at such time have not) exercise their vote; provided that in determining whether a vote has been exercised, any election by an Eligible Director to abstain from voting which abstention is recorded in writing on the resolution shall be counted as the exercise of a vote, but shall be disregarded for purposes of calculating whether the required majority has been reached.

41.3 A resolution contemplated in article 41.1 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 on which 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 (or their Alternate Directors) entitled to do so voting in favour of the resolution within the 10 Business Days (or other applicable period) referred to in article 41.1, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed.

41.4 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors and shall be inserted in the Company's minute book for meetings and resolutions of Directors.

41.5 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternate Directors).

41.6 An Alternate Director shall only be entitled to Sign such a written resolution if the Director to whom he is an Alternate Director is, at the time of the Alternate Director's Signature, absent from South Africa, or is incapacitated.

41.7 In relation to any such resolution:

41.7.1 a fax or other electronic form of copy (eg PDF format or electronically scanned) of a Director's Signed resolution shall be acceptable evidence that such resolution has been Signed by the Director (or their Alternate Director);

41.7.2 if a Director (or his/her Alternate Director) is ineligible to vote on, or participate in any discussion on, a resolution (or relevant part thereof), the signature by that Director (or his/her Alternate Director) of the written resolution will not invalidate the written resolution and that Director's (or his/her Alternate Director's) signature shall be counted as the exercise of a vote, but shall be disregarded for purposes of calculating whether the required majority has been reached; and



- 41.7.3 any failure by any Director (or his/her Alternate Director) to sign any resolution within the period stipulated in the notice to the Director shall not affect the validity of such resolution.

## 42. EXECUTIVE DIRECTORS

- 42.1 Subject to compliance with the Listing Requirements with regard to corporate governance and the composition of the Board, the Board may appoint, from time to time, one of their number as a chief executive officer, financial director, or to any other executive office of the Company, who shall be employees of the Company and/or any subsidiary of the Company, on such terms and conditions of employment as to remuneration and otherwise as may be determined from time to time by a disinterested quorum of the Board.
- 42.2 Subject to the provisions of any contract between such executive officer and the Company, the executive officer shall be a Director and shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 42.3 The Directors may from time to time entrust to, and confer upon, the chief executive officer appointed in terms of article 42.1 such powers exercisable in terms of this MOI by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that respect, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 43. PAYMENTS TO DIRECTORS

- 43.1 The Company may pay remuneration to its Directors for their services as such and, without detracting from the foregoing, may pay any additional remuneration as referred to in article 43.3; provided that such remuneration must have been approved by a Special Resolution passed by the Shareholders within the two previous years and the authority of the Board in this regard is not restricted or limited by this MOI.
- 43.2 Each Director shall be paid all travelling, subsistence and other expenses properly incurred by him/her in the execution of his/her duties as a Director (including attending meetings of the Board or of the Board committees); provided that such expenses shall first have been authorised or subsequently ratified by a disinterested quorum of the Board of the Directors.
- 43.3 Any Director who is required to:
- 43.3.1 devote special attention to the business of the Company; or
  - 43.3.2 travel or reside outside South Africa for the purpose of the Company; or
  - 43.3.3 otherwise perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,
- may be paid such extra remuneration or allowances (either in addition to or in substitution for any other remuneration to which they may be entitled as a Director), as a disinterested quorum of the Board may from time to time determine.
- 43.4 For the avoidance of doubt it is recorded that this article 43 does not apply to remuneration or reimbursement for expenses paid to executive Directors for or in connection with their services as employees of the Company which is governed by article 42.1.

#### 44. **PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES**

- 44.1 For the purposes of this article 44, a reference to "Director" includes and Alternate Director, a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 44.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Security Holders (if the circumstances contemplated in section 75(3) prevail), a notice in writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further written notice from that Director.
- 44.3 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 44.4 Subject to any limitation in the Companies Act and to compliance therewith in relation to the approval of the contract, a Director may have a Personal Financial Interest, or other interest, in any contract between the Company and himself, or any other Person.

#### 45. **INDEMNIFICATION AND INSURANCE FOR DIRECTORS**

- 45.1 For the purposes of this article 45, a Director includes:
- 45.1.1 a former Director and an Alternate Director;
- 45.1.2 a Prescribed Officer; and
- 45.1.3 a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 45.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7):
- 45.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company;
- 45.2.2 directly or indirectly indemnify a Director for expenses contemplated in article 45.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings:
- 45.2.2.1 are abandoned or exculpate that Director; or
- 45.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 45.2.3;
- 45.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6);
- 45.2.4 purchase or pay for insurance to protect:
- 45.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with article 45.2.3;

- 45.2.4.2 the Company against any contingency, including:
- 45.2.4.2.1 any expenses:
- 45.2.4.2.1.1 that the Company is permitted to advance in accordance with article 45.2.1; or
- 45.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with article 45.2.2; or
- 45.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 45.2.3,

and the authority of the Board in this regard is not limited or restricted by this MOI.

45.3 The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any Loss, liability, damage, cost (including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense ("**Loss**") which that Director may suffer as a result of any act or omission of that Director in his/her capacity as a Director; provided that:

- 45.3.1 this indemnity shall not extend to any Loss:
- 45.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6);
- 45.3.1.2 arising from any gross negligence or recklessness on the part of that Director;
- 45.3.1.3 arising from any loss of or damage to reputation; or
- 45.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),

and Directors shall not be entitled to recover the losses referred to in this article 45.3.1 from the Company. All losses other than those referred to in this 45.3.1 are referred to herein as "**Indemnified Losses**";

- 45.3.2 each Director's right to be indemnified by the Company in terms of this article 45 shall exist automatically upon his/her becoming a Director and shall endure even after he/she ceases to be a Director until he/she can no longer suffer or incur any Indemnified Loss;
- 45.3.3 if any claim is made against a Director in respect of any Indemnified Loss, then:
- 45.3.3.1 the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this article 45.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this article 45.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this article 45.3.3;
- 45.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisors, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be

made (or which may review any decision or judgement made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that:

- 45.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisors) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;
- 45.3.3.2.2 the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director;
- 45.3.3.2.3 the Company shall consult with the Director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim; and
- 45.3.3.2.4 the Company shall not make any admission of wrongdoing on behalf of the Director without the Directors' express consent therefor;
- 45.3.4 to the extent that any Indemnified Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;
- 45.3.5 if this article 45 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this article in respect of any period prior to the date on which the required resolution effecting such amendment is adopted by the Shareholders;
- 45.3.6 all provisions of this article 45.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this article 45.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI shall remain of full force and effect; and
- 45.3.7 this indemnity shall not detract from any separate indemnity that the Company may Sign in favour of the Director.

## **PART F – GENERAL PROVISIONS**

### **46. FINANCIAL STATEMENTS**

- 46.1 The Company shall prepare Annual Financial Statements in accordance with the Companies Act and shall have those Annual Financial Statements audited.
- 46.2 The audited Annual Financial Statements must be submitted to the Audit Committee for consideration and onward recommendation to the Board for approval.
- 46.3 A copy of the audited Annual Financial Statements of the Company shall be distributed to all Shareholders in accordance with article 55 as soon as reasonably practicable after those Annual Financial Statements have been approved by the Board, but in any event no later than required by the Companies Act and at least 15 Business Days before the date of the Annual General Meeting of the Company at which such annual Financial Statements will be presented to Shareholders.

#### 47. ACCESS TO COMPANY INFORMATION

Directors shall have access to all accounting and other records of the Company as is necessary for such Director to comply with his/her fiduciary, and other duties, imposed on him/her in terms of the Companies Act, the Listing Requirements or the applicable law.

#### 48. FINANCIAL ASSISTANCE

The Board's powers to provide direct or indirect financial assistance as contemplated in section 44(2) and/or section 45(2), or otherwise, are not limited in any manner.

#### 49. DISTRIBUTIONS

49.1 Subject to the provisions of the Companies Act and this MOI, the Board may declare any Distribution.

49.2 In respect of Distributions to Shareholders holding Shares listed on the JSE, payments to such Shareholders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.

##### 49.3 Distributions to Shareholders

49.3.1 This article 49.3 shall apply to Distributions (including dividends) made to holders on a class of Shares as envisaged in paragraph (a) of the definition of 'distributions' in the Companies Act, and references in this article 49.3 to "**Distributions**" shall be read accordingly.

49.3.2 Subject to the further provisions of this MOI and save as otherwise authorised by law or the regulations of a securities exchange on which the relevant shares are listed, distributions to holders of a class of Shares shall be declared in proportion to the number of shares of the relevant class held by such Shareholders.

49.3.3 Distributions (including a dividend) may be paid out of any lawful source (including from capital, reserves, realised or unrealised profits).

49.3.4 Distributions shall be declared payable to the relevant Shareholders registered as such on the Record Date with respect to such Distribution, determined in terms of article 28, provided that such Record Date in the case of the payment of any Distribution shall be a date subsequent to the date of sanctioning of the Distribution or declaring the Distribution by the Board, whichever is the later.

49.3.5 Distributions payable in cash shall be declared in the currency of South Africa. The Board may, in its discretion and on such terms and conditions as it may determine, authorise the payment of any Distribution to a non-resident Shareholder in any foreign currency requested by the non-resident shareholder, at the cost, expense and risk of the non-resident Shareholder in question.

49.3.6 In the case where several persons are registered as the joint holders of any shares, any one of such persons may give to the company effective receipts for all or any distributions and payments on account of distributions in respect of such Shares.

49.3.7 Subject to article 49.3.9 below, all cash Distributions, interest or other sums payable in cash to Shareholders shall be paid by electronic funds transfer or other electronic means, or as otherwise specified by the Board from time to time. Payment by any means into the bank account recorded in the Company's bank account register nominated by the Shareholder, or in the case of joint shareholders into the bank account nominated by the Shareholder whose name stands first in the Securities Register in respect of the Share, shall discharge the Company of any further liability in respect of the amount concerned.

- 49.3.8 Every payment of a Distribution, interest or other sums made by electronic funds transfer shall be made at the risk of the Shareholders or joint Shareholders. The Company shall not be responsible for the loss or misdirection of any electronic funds transfer.
- 49.3.9 In respect of Distributions to Shareholders holding Shares listed on the JSE or any securities exchange, payments to such Shareholders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.
- 49.3.10 A Distribution may also be made and/or paid in any other way determined by the Directors and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 49.3.11 No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of the issue of the Shares in respect of which such Distribution is payable.
- 49.3.12 Distributions unclaimed for a period of not less than four years from the date on which such Distributions became payable by the Company may, at the discretion of the Board, be declared forfeit by the Board for the benefit of the Company. For the avoidance of doubt, all Distributions in the form of monies shall be held by the Company in trust for the benefit of the Shareholders, until lawfully claimed by the relevant Shareholders, but subject to the provisions of this article 49.3.12 and the laws of prescription from time to time, or until the Company is wound up.
- 49.3.13 Subject only to the provisions of any law to the contrary, Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 49.3.14 The Directors may from time to time declare and pay to the Shareholders such interim Distributions as the Directors consider appropriate.
- 49.3.15 Without detracting from the ability of the Company to issue capitalisation shares, any Distribution may be effected and/or paid wholly or in part:
- 49.3.15.1 by the distribution of specific assets; or
- 49.3.15.2 by the issue of Shares, debentures or Securities of the Company or of any other company; or
- 49.3.15.3 in cash; or
- 49.3.15.4 in any other way which the Directors or Company in general meeting may at the time of declaring the Distribution determine, including granting to the Company's Shareholders a right of election between receiving any Distribution in cash or in the form of the distribution of specific assets.
- 49.3.16 Where any difficulty arises in regard to any Distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on Distribution.
- 49.3.17 The Directors may:
- 49.3.17.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of Distribution; and
- 49.3.17.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the Distribution as the Directors deem expedient.

#### 49.4 **Other Distributions**

Distributions made by the Company as envisaged in paragraphs (b) and/or (c) of the definition of 'distributions' in the Companies Act, and/or Distributions made to persons other than Shareholders, shall be effected in such manner and subject to such terms as the Directors or the Company in general meeting may at the time of declaring the Distribution determine.

#### 50. **RESERVE FUND**

Subject to section 56:

- 50.1 the Directors may, before declaring or recommending any Distribution, set aside out of the amount available for Distribution such sum as they think proper as a reserve fund or as an addition thereto. The Directors may divide the reserve fund into such special funds as they think fit, with full power to employ the assets constitution such fund or funds in the business of the Company, or may invest the same upon such investments (other than Shares) as they may select, without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not;
- 50.2 the reserve fund shall, at the discretion of the Directors be available for the equalisation of dividends or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company, or for any other purpose to which the profits of the Company may be properly applied; and
- 50.3 the Directors may at any time divide among Security Holders by way of a bonus, or special distribution, any part of the reserve funds which they, in their discretion, may determine not to be required for the aforesaid purposes.

#### 51. **CAPITALISATION**

Subject to section 46:

- 51.1 the Company at an Annual General Meeting, or the Directors, may at any time and from time to time pass a resolution to capitalise any sum forming part of the undivided profits standing to the credit of the Company's reserve fund, or any sum in the hands of the Company and available for dividend, or any sum carried to reserve as a result of a sale or revaluation of the assets of the Company or any part thereof, or any sum received by way of premium on the issue of any Shares or other Securities. Such resolution may provide that any such sum or sums shall be set free for Distribution and be appropriated to and amongst the Security Holders either with or without deduction for income tax, rateably according to their rights and holdings in Securities in such manner as the resolution may direct; and
- 51.2 where any difficulty arises in respect of such Distribution, the Directors may settle the Distribution as they deem expedient, fix the value for distribution of any fully paid Securities, make cash payments to any Security Holders on the footing of the value so fixed in order to adjust rights, and vest any Securities or assets in trustees upon such trusts for the persons entitled in the appropriation or Distribution, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to provide that fractions shall be ignored altogether, or by payment in cash or otherwise, in all such instances as may seem just and expedient to the Directors. When deemed requisite, a contract shall be entered into and filed in accordance with the Companies Act, and the Directors may appoint any person to sign such contract on behalf of the Persons entitled in the appropriation or Distribution, and such appointments shall be effective, and the

contract may provide for the acceptance by Security Holders to be allotted to them respectively in satisfaction of their claims in respect of the sum so capitalised.

## 52. REGISTER OF DISCLOSURES

The Company must establish and maintain a register of the disclosures made in terms of section 56(7).

## 53. BRANCH REGISTER

53.1 The Company, or the Board on behalf of the Company, may cause to be kept in any foreign country a branch register or Securities Register of Security Holders resident in such foreign country and the Board may, subject to the provisions of the Companies Act, make and vary such regulations as it may think fit respecting the keeping of any such branch register or Securities Register.

53.2 Subject to and to the extent permitted by applicable law and regulation, and to the rules applicable to such a system, the Company may determine that any Securities or class of Securities held on any such branch register or Securities Register may be held in uncertificated form in accordance with any system outside South Africa, which enables title to such Securities to be evidenced and transferred without a written instrument, and which is an electronic settlement environment for transactions to be settled and transfer of ownership in Securities to be recorded electronically.

53.3 Notwithstanding anything in this MOI to the contrary and subject to applicable law, the Directors, in their discretion, shall be entitled to put into place any mechanism and/or system in any jurisdictions and within or across numerous markets, whether involving third parties or otherwise, in relation to the recording, transfer, custody, clearing and settlement of Shares and/or title and/or interests in respect of same, whether or not in conjunction with or separate of any such branch registers or Securities Registers in place.

## 54. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any document, including cheques, warrants and share certificates, sent through the post either to the registered address of any Security Holder or to any other address requested by the Security Holder.

## 55. NOTICES

55.1 Any notice that is required to be given and any document required to be delivered or distributed to Security Holders or Directors:

55.1.1 may be given, delivered or distributed in any manner prescribed in the Table CR3 to the Regulations and that notice or document shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery; and

55.1.2 shall, simultaneously with being distributed to Security Holders, be announced through SENS and given by the Company to the JSE in writing in any manner prescribed in Table CR 3 to the Regulations and the manner authorised by the Listings Requirements.

55.2 Each Security Holder and Director shall:

55.2.1 notify the Company in writing of a postal address, which address shall be his/her registered address for the purposes of receiving written notices from the Company by post; and



55.2.2 be entitled to, notify in writing to the Company an e-mail address and facsimile number, which address shall be his/her address for the purposes of receiving notices by way of Electronic Communication,

and, if he/she has not notified to the Company any such postal or email address, then he/she shall not be entitled to receive notices from the Company until such a postal or e-mail address is provided.

55.2.3 The postal address notified by any Security Holder to the Company in terms of article 55.2.1 may be a postal address within or outside South Africa.

## **SCHEDULE 1**

### **AUTHORISED SHARES**

The Company is authorised to issue 10,000,000,000 Shares, having no par value and having the rights and limitations set out in the MOI to which this Schedule is attached.