

This is the Memorandum of Incorporation tabled and adopted by way of a Special Resolution in accordance with section 16(1)(c) of the Companies Act No 71 of 2008 at the general meeting of the Company held on [] 2012 and has been initialled by the Chairman for purposes of identification.

Chairman

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

of

TRANSPACO LIMITED

(Registration number 1951/000799/06)

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 Companies Regulations shall not apply to the Company.

This Memorandum of Incorporation replaces the Memorandum of Incorporation of the Company that was in existence at the time of adoption of this Memorandum of Incorporation.

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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*;

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 "**Auditors**" - the auditors of the Company appointed from time to time by the Board;

1.2.2 "**Board**" - the board of Directors of the Company from time to time;

1.2.3 "**Business Day**" - any day other than a Saturday, Sunday or public holiday in the Republic;

1.2.4 "**Central Securities Depository**" - the Central Securities Depository as defined in section 1 of the Securities Services Act;

1.2.5 "**Companies Act**" - the Companies Act No 71 of 2008, as amended or re-enacted and for the time being in force, including all schedules to such Act and any Regulations promulgated thereunder and for the time being in force;

1.2.6 "**Company**" - the company defined as such on the front page of this MOI;

- 1.2.7 **"CSDP"** - a depository institution accepted by a Central Securities Depository as a "participant" in terms of the exchange operated by the JSE in the Republic;
- 1.2.8 **"Director"** - a director of the Company;
- 1.2.9 **"JSE"** - JSE Limited (registration number 2005/022939/06), a public company duly incorporated in accordance with the laws of the Republic, licensed as an exchange under the Securities Services Act;
- 1.2.10 **"JSE Listings Requirements"** - the JSE Listings Requirements of the JSE and all other applicable rules, regulations, requirements and rulings of the JSE. Any requirements of this MOI in relation to such JSE Listings Requirements shall only apply for as long as the Securities of the Company are listed on the JSE;
- 1.2.11 **"Legal Representative"** - any Person who has submitted proof (which is satisfactory to the Board) of his 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 Shareholder, or a curator, guardian or trustee of a Shareholder whose estate has been sequestrated or who is otherwise under any disability;
- 1.2.11.2 the liquidator of any Shareholder that is a body corporate in the course of being wound-up; or
- 1.2.11.3 the business rescue practitioner of any Shareholder which is a company undergoing business rescue proceedings;
- 1.2.12 **"Memorandum of Incorporation"** or **"MOI"** - the memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.13 **"Ordinary Share"** - an ordinary share in the capital of the Company, having the preferences, rights, limitations and other terms contemplated in article 9;

- 1.2.14 **"Ordinary Shareholder"** - a Shareholder who holds an Ordinary Share;
- 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 **"Regulations"** - the Companies Regulations of 2011, and any other regulations made in terms of the Companies Act for so long as they remain of force and effect;
- 1.2.17 **"Republic"** - the Republic of South Africa;
- 1.2.18 **"Securities"** – collectively -
- 1.2.18.1 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
- 1.2.18.2 anything falling within the meaning of the definition of "securities" as defined in section 1 of the Securities Services Act;
- 1.2.19 **"Securities Services Act"** – the Securities Services Act No 36 of 2004;
- 1.2.20 **"SENS"** – the Securities Exchange News Service established and operated by the JSE;
- 1.2.21 **"Share"** – a share (as defined in the Companies Act) of the Company, which shall include Ordinary Shares;
- 1.2.22 **"Shareholder"** - a holder of a Share who is entered as such in the Securities Register of the Company;

- 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 the corresponding meaning;
- 1.2.24 **"Sub-Register"** – the record of Uncertificated Securities administered and maintained by a CSDP, which forms part of the Securities Register in terms of the Companies Act;
- 1.3 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the date on which this MOI was tabled and adopted at the general meeting of the Company and as amended or substituted from time to time;
- 1.4 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;
- 1.5 the use of the word **"including"**, **"includes"** and **"include"**, followed by a specific example/s, shall not be construed 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;
- 1.6 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;
- 1.7 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;
- 1.8 a reference to a **"section"** refers to the corresponding section of the Companies Act;

- 1.9 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 by this MOI;
- 1.10 references in the left-hand margins to sections of the Companies Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only and shall not be used in the interpretation of this MOI;
- 1.11 the headings of articles in this MOI are for information purposes only and shall not be used in the interpretation of this MOI; and
- 1.12 save to the extent otherwise provided by this MOI, the provisions of the Company's MOI in force immediately prior to the adoption of this MOI shall, to the exclusion of this MOI, continue to regulate any matter which, by the provisions of the Companies Act, continues to be regulated by the law relating to companies as it existed immediately prior to the coming into operation of the Companies Act.

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 or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict, and to the extent that such alterable or elective provision of the Companies Act expressly allows for the Company to adopt the conflicting provision;
- 2.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict.

3 **AMENDMENT OF THE MOI**

- S15(2)(b) 3.1 Every provision of this MOI is capable of amendment in accordance with
S15(2)(c) sections 16(1)(a), 16(1)(c), and 152(6)(b) of the Companies Act, and,
S16
S17

accordingly, there is no provision of this MOI which may not be amended as contemplated in section 15(2)(b) or 15(2)(c) of the Companies Act.

3.2 This MOI may only be altered or amended -

S16(1)(a)

3.2.1 in compliance with a court order on the basis set out in section 16(1)(a) and 16(4) of the Companies Act and any other applicable provisions of the Companies Act; or

S16(1)(c)

3.2.2 by way of a Special Resolution of the Shareholders passed in accordance with section 16(1)(c) of the Companies Act, read in conjunction with the remaining provisions of the Companies Act and this MOI **[LR SCH. 10.5(d)]**; or

3.2.3 as contemplated in section 17 and 152(6)(b) of the Companies Act.

3.3 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) of the Companies Act 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.

3.4 Any change to the name of the Company and any variation of the share capital of the Company referred to in article 10.3 shall be effected by an amendment to this MOI by way of a Special Resolution as referred to in article 3.2.2. **[LR SCH. 10.5(d)(vii)]**

4 **RULES**

S15(3)

The Board is prohibited from making, amending or appealing any Rules and the authority of the Board in this regard is hereby excluded. **[LR SCH. 10.4]**

PART B – STATUS AND POWERS OF THE COMPANY

5 STATUS AS PUBLIC COMPANY

- 5.1 The Company is a Pre-Existing Company, and accordingly continues to exist as if it had been incorporated and registered in terms of the Companies Act.
- 5.2 The Securities issued by the Company are freely transferable, subject to compliance with the procedural requirements for transfer contained in article 14.
- 5.3 The Company is entitled to offer its Securities to the public, subject to compliance with this MOI and the Companies Act.
- 5.4 The Company is, accordingly, classified as a public company in terms of section 8(2) of the Companies Act.

6 POWERS OF THE COMPANY

- 6.1 The Company is governed by –
- 6.1.1 the Unalterable Provisions of the Companies Act;
- 6.1.2 the Alterable Provisions of the Companies Act, subject to the extensions, limitations, substitutions or variations set out in this MOI; and
- 6.1.3 the other provisions of this MOI.
- 6.2 The Company has, subject to section 19(1)(b)(i) of the Companies Act, 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 contemplated in section 19(1)(b)(ii) of the Companies Act.
- 6.3 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b) of the Companies Act.
- 6.4 No Special Resolution contemplated in section 20(2) or section 20(6) of the Companies Act to ratify any action which is contrary to the JSE Listings

S19(1)(b)(ii)

Requirements shall be proposed to the Shareholders unless otherwise agreed to by the JSE. **[LR SCH. 10.3]**

7 **LIMITATION OF LIABILITY**

S19(2) 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.

PART C – CAPITALISATION AND SECURITIES OF THE COMPANY

8 **SHARE CAPITAL**

S36(1)(a) The numbers and classes of Shares which the Company is authorised to issue are set out in Schedule 1 to this MOI.

9 **RIGHTS OF THE ORDINARY SHARES**

S36(1)(b) Each Ordinary Share in the issued capital of the Company ranks *pari passu* with, and is identical in all respects to, every other Ordinary Share in respect of all rights, and entitles its holder to - **[LR SCH. 10.5(a)]**

9.1 the right to be entered into the Securities Register as the registered holder of an Ordinary Share;

9.2 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)); **[LR SCH. 10.5(a)] / [LR SCH. 10.5(b)]**

9.3 participate equally with every other Ordinary Share in any Distribution (excluding any payment in lieu of a capitalisation share and any consideration payable by the Company for any of its own Shares or for any shares of another company within the same group as contemplated in paragraphs (ii) and (iii) of the definition of Distribution in the Companies Act) to Ordinary Shareholders, whether during the existence of the Company or upon its dissolution.

10 VARIATION OF SHARE CAPITAL

- S36(3) 10.1 Notwithstanding the provisions of section 36(3) of the Companies Act, the Board shall not have the power to -
- 10.1.1 increase or decrease the number of authorised Shares of any class of the Shares;
 - 10.1.2 reclassify any classified Shares that have been authorised but not issued;
 - 10.1.3 classify any unclassified Shares that have been authorised but not issued;
or
 - 10.1.4 determine the preferences, rights, limitations or other terms of any Shares,
- which powers shall only be capable of being exercised by the Shareholders, as contemplated in article 10.3. **[LR SCH. 10.5(d)]**
- 10.2 Each Share 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 Share. **[LR SCH. 10.5(e)]**
- S36(2) 10.3 The Shareholders may, by amendment to the MOI by way of a Special Resolution adopted in accordance with the MOI and in accordance with the JSE Listings Requirements -
- 10.3.1 increase or decrease the number of authorised Securities of any class;
[LR SCH. 10.5(d)(iv)]
 - 10.3.2 reclassify any classified Securities that have been authorised but not issued;
 - 10.3.3 classify any unclassified Securities that have been authorised but not issued; or

- 10.3.4 determine the preferences, rights, limitations or other terms of any Securities which have been authorised (but not yet issued) without such preferences, rights, limitations or other terms having been determined; **[LR SCH. 10.5(d)(ii)]**
- 10.3.5 create any class of Securities; **[LR SCH. 10.5(d)(i)]**
- 10.3.6 convert one class of Securities into one or more other classes of Securities, and convert par value shares into no par value shares; **[LR SCH. 10.5(d)(iii)]**
- 10.3.7 consolidate any number of Securities of the same class into a lesser number of Securities of the same class or subdivide any Security into a number of Securities of the same class; **[LR SCH. 10.5(d)(v) and (vi)]**
- 10.3.8 vary any preferences rights, limitations or other terms of any class of Securities already in issue, but no such variation shall be implemented unless –
- 10.3.8.1 it has been approved by a Special Resolution adopted by the holders of that class of Securities at a separate meeting; and **[LR SCH. 10.5(e)]**
- 10.3.8.2 if there is any other class/es of Securities in issue, it has also been approved by a Special Resolution adopted by the holders of all Securities of the Company entitled to vote thereon (including, subject to the provisions of article 30.3, the holders referred to in Article 10.3.8.1) which Special Resolution shall only be proposed after the Special Resolution referred to in 10.3.8.1 has been passed. **[LR SCH. 10.5(d), LR SCH. 10.5(e) and LR SCH. 10.9(c)]**
- 10.4 The preferences, rights, limitations or any other terms of any class of Shares must not be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act and the powers of the Board are limited accordingly. **[LR SCH. 10.5(g)]**

11 ISSUE OF SECURITIES

11.1 The Company may only issue Securities which are freely transferable and only within the classes and to the extent that those Securities have been authorised by or in terms of this MOI. **[LR SCH. 10.2(a)]**

11.2 Notwithstanding the provisions of section 40(5), all Securities of the Company for which a listing is sought on the JSE must, unless otherwise required by any statute, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities. **[LR SCH. 10.2(a)]**

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

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

11.3.2 in accordance with the JSE Listings Requirements, particularly for any issue for cash, shares, options or convertible Securities;

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

11.3.4 if such Shares have first been offered to all existing holders of Shares of that class of Shares (or, if there are no Shares of that class in issue, to the Ordinary Shareholders) pro-rata in proportion to their existing shareholdings at a subscription price which (ignoring any commission referred to in article 12 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 Person/s; provided that the pre-emptive right stipulated in this article 11.3.4 shall not apply to any issue of Shares -

11.3.4.1 pursuant to the exercise of any option granted in accordance with this MOI and the Companies Act; or

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11.3.4.2 in terms of any employee share scheme (as defined in section 95(1)(c) of the Companies Act) of the Company; or

11.3.4.3 in consideration for the acquisition by the Company of any assets, including any Securities in another company.

Save as provided for in this article 11.3.4 or specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Securities issued by the Company;

11.3.5 subject to the provisions of this article 11.3, with the approval of an Ordinary Resolution of the Shareholders in general meeting. Any such Ordinary Resolution (or Special Resolution required by any other provision of this article 11.3) may authorise the Board to issue Securities of the Company at any time and/or grant options to subscribe for Securities of the Company 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 JSE Listings Requirements. **[LR SCH. 10.1]**

12 COMMISSION

The Company shall not pay commission exceeding 10% to any Person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company. **[LR SCH. 10.14]**

13 REGISTER AND CERTIFICATES

S49(2) 13.1 The Securities issued by the Company shall be issued in Certificated or Uncertificated form.

S50(1) 13.2 The Company shall establish or cause to be established, and shall maintain, a Securities Register in accordance with the Companies Act and the Regulations and, to the extent that the form of and the manner of maintaining the Securities Register is not prescribed, the Board shall determine the form and manner thereof.

S51(5)
S51(6) 13.3 The Company shall enter into its Securities Register the transfer of any Certificated Securities which is effected in accordance with article 14 and shall include in such entry the information required by section 51(5) of the Companies Act.

S51(1) 13.4 The certificates evidencing any Certificated Securities of the Company shall comply with the requirements set out in section 51(1) of the Companies Act and shall otherwise be in such form as may be determined by the Board.

13.5 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.

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14 **TRANSFER AND CONVERSION OF SECURITIES**

14.1 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.

14.2 Transfer of ownership in any Uncertificated Securities shall be effected in accordance with the provisions of the Companies Act. 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 Securities Services Act and any applicable requirements or rules of the JSE, STRATE and the relevant CSDP or Central Securities Depository.

14.3 The Company shall not enter into its Securities Register the transfer of any Certificated Securities, unless -

14.3.1 the transfer is evidenced by a proper instrument of transfer Signed by the transferor and transferee, the form of which shall be determined by the Board from time to time or in the absence of any such determination shall be in such common form as may be acceptable to the Board, which has been delivered to the Company at its Registered Office together with -

14.3.1.1 such proof as the Board may require of the authority of the signatory/ies to that instrument of transfer; and

14.3.1.2 the certificate in respect of Securities being transferred; or

14.3.2 the transfer was effected by operation of law.

14.4 Subject to the provisions of this Memorandum of Incorporation, every instrument of transfer and accompanying documents received by the Company referred to in article 14.3.1 shall be deemed to remain in full force, and the Company may allow the same to be acted upon, until written notice of revocation thereof is lodged at the Registered Office. Even after the giving and lodging of such notice of revocation, the Company shall be entitled to give effect to any duly Signed instrument of transfer which was accepted and certified by any officer of the Company as being in order before the giving and lodging of such notice of revocation. **[LR SCH. 10.2(b)]**

14.5 Fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable. **[LR SCH. 10.12]**

15 CAPITALISATION SHARES

S47(1) 15.1 The Board shall -

15.1.1 have the power and the authority to approve the issuing of any authorised Shares as capitalisation shares; or

15.1.2 subject to article 15.2, have the power and the authority to resolve to permit the Shareholders to elect to receive a cash payment in lieu of a capitalisation share, **[LR SCH. 10.7]**

but the Board shall not have the power or authority to issue Shares of one class as capitalisation shares in respect of the Shares of another class unless specifically authorised by the Shareholders by means of an Ordinary Resolution authorising the specific transaction contemplated. The authority of the Board to issue capitalisation shares in accordance with section 47(1) of the

Companies Act is accordingly limited and restricted by this Memorandum of Incorporation.

15.2 The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in section 47(2) of the Companies Act, unless the Board –

15.2.1 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

15.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the Distribution.
[LR SCH. 10.6]

15.3 If, on any capitalisation issue, Shareholders would, but for the provisions of this article 15, become entitled to fractions of Shares, the Board shall, subject to any contrary provisions in the Resolution authorising the capitalisation issue but subject to the JSE Listings Requirements, be entitled to round off 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 Shareholders, and any Director shall be empowered to Sign any instrument of transfer or other instrument necessary to give effect to that sale.

16 **ACQUISITION OF SHARES ISSUED BY THE COMPANY**

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Subject to the provisions of the Companies Act and the JSE Listings Requirements, the Company may acquire any Shares issued by the Company on the basis that –

16.1 all or a portion of the price payable on such acquisition may be paid out of the funds of or available to the Company 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

- 16.2 the Shares so acquired shall be restored to the status of unissued shares and the authorised share capital of the Company shall remain unaltered.
[LR SCH. 10.9(b)]

17 DEBT INSTRUMENTS

- S43(2) 17.1 The Board may authorise the Company to issue secured or unsecured debt
S43(3) instruments as set out in section 43(2) of the Companies Act; provided that the Board shall not be entitled to issue any debt instruments that grants the holder thereof any rights regarding -

17.1.1 attending and voting at general meetings and the appointment of Directors; and

17.1.2 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 (whether on conversion or redemption or repurchase of the debt instrument or otherwise) without the approval of a Special Resolution.

- 17.2 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 Memorandum or Incorporation. **[LR SCH. 10.10]**

18 BENEFICIAL INTERESTS

- S56(1) Securities issued by the Company may be held by, and registered in the name of, one Person for the beneficial interest of another Person, but no Person other than the registered holder of a Security shall (save to the extent expressly provided for 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 holder of a Security 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.

19 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 -

- 19.1 notwithstanding anything to the contrary contained anywhere else in this MOI, on the death, sequestration, liquidation or legal disability of any one of those joint holders who is not represented by a Legal Representative as referred to in article 20, the remaining joint holders may be recognised, at the discretion of the Board, as the only Persons having title to that Security;
- 19.2 any one of those joint holders may give effective receipts for any Distributions or other payments or accruals payable to those joint holders;
- 19.3 only the joint holder whose name stands first in the Securities Register shall be entitled to delivery of the certificate relating to that Security, 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);
- 19.4 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 Shareholders, either personally or by proxy, the joint holder who tenders a vote (including an abstention) and whose name stands in the Securities 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.

20 LEGAL REPRESENTATIVES

A Legal Representative of the holder of any Security issued by the Company ("**Security Holder**") shall -

- 20.1 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 Security Holder whom he represents; provided that if a Security Holder or his Legal Representative is a

joint holder of that Security, then this article 20.1 shall not detract from article 19 and this article 20.1 shall be read together with article 19; and

20.2 if so required by that Legal Representative or by the Board, be entered into the Securities Register of the Company *nomine officio* in the place and on behalf of that Security Holder,

provided that -

20.3 if the Legal Representative so entered into the Securities Register ceases to be the Legal Representative of that Security Holder, the Board shall, pending transfer of that Security to 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 holder of that Security to vote and shall be entitled to withhold (and retain until such transfer has occurred) all Distributions payable to the holder of that Security; and

20.4 that Security Holder shall not, merely by virtue of the appointment, or entry into the Securities Register of the Legal Representative, be released from any obligation arising out of or in connection with the holding of that Security;

20.5 Securities registered in the name of a deceased or insolvent Security Holder shall not be forfeited if such Security Holder's executor or trustee fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the Directors to do so. **[LR SCH.10.13]**

PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS

21 SHAREHOLDERS RIGHT TO INFORMATION

Each Shareholder and each Person who is the registered holder of, or holds a beneficial interest in, any Securities issued by the Company shall have the information rights set out in section 26(1) of the Companies Act.

S26(1)

22 SINGLE SHAREHOLDER'S AUTHORITY TO ACT

As contemplated in section 57(2) of the Companies Act, if, at any time, the Company has only one Shareholder –

- 22.1 that Shareholder may exercise any and all of the Voting Rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities, and that power is not limited or restricted by this MOI; and
- 22.2 the provisions of articles 24 (Record Dates), 26 (Notice to Shareholders Meetings), 27 (Conduct of Shareholders Meeting), 28 (Shareholder Meeting Quorum and Adjournment), 30 (Shareholder Resolutions) and 31 (Shareholders Acting Other Than at a Meeting) shall not apply.

23 PROXY REPRESENTATION

- S58(1) 23.1 A Shareholder may, at any time by written proxy appointment ("**Proxy Instrument**") which complies with this MOI and the Companies Act, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to -
- 23.1.1 participate in, and speak and vote at, a Shareholders Meeting on behalf of the Shareholder; or
- 23.1.2 give or withhold written consent on behalf of the Shareholder to a decision contemplated in article 31,
- 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 of the Companies Act and this article 23.
- 23.2 The Board may determine a standard form of Proxy Instrument and make it available to Shareholders on request.
- 23.3 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.

23.4 A Proxy Instrument which complies with the Companies Act and this MOI shall, subject to the article 23.7 and if any meeting to which it relates is adjourned or postponed, unless the contrary is stated thereon, 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).

S58(3)(a) 23.5 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; provided that a Shareholder shall be entitled to appoint more than one alternative proxy in terms of the Proxy Instrument.

S58(3)(b) 23.6 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.

S58(3)(c)
S58(5) 23.7 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy –

23.7.1 until the expiry of two Business Days after the date on which the Proxy Instrument containing the appointment of that proxy was delivered; or

23.7.2 if such proxy is revocable and is revoked by such Shareholder in writing and such written revocation was delivered (at least one Business Day before the relevant Shareholders meeting or (if applicable) adjourned or postponed Shareholders meeting),

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 any meeting at which the proxy wishes to exercise any rights of the Shareholder) or to any other Person entitled to accept the Proxy Instrument or revocation on behalf of the Company; provided that –

23.7.3 any such revocation shall be effective on the later of the date stated in the written revocation or the date on which the written revocation was delivered to the Registered Office of the Company in accordance with this article 23.7;

23.7.4 the Board, or the chairperson of any meeting at which the proxy wishes to exercise any rights of the Shareholder, may agree to allow any such Proxy Instrument or revocation to become effective prior to the time when it would otherwise have become effective in terms of this article 23.7

S58(7) 23.8 A proxy shall, as contemplated in section 58(7) of the Companies Act, 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.

24 **RECORD DATES**

S59(1)
S59(2) The Board may, in accordance with section 59 of the Companies Act and the Regulations, determine and publish a Record Date for the purposes of determining which Shareholders are entitled to -

24.1 receive a notice of a Shareholders Meeting;

24.2 participate in and vote at a Shareholders Meeting;

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

24.4 receive a Distribution; or

24.5 be allotted or exercise any other rights,

provided that –

S59(3)

24.6 if the Board does not determine a Record Date for any action or event, as contemplated in this article 24, the Record Date shall, subject to article 24.7, be as determined in accordance with section 59(3) of the Companies Act; and

24.7 whilst the Shares of the Company are listed on the JSE, the Record Date shall be determined in accordance with the JSE Listings Requirements.

[LR SCH. 10.15]

25 SHAREHOLDERS MEETINGS

S61(2)(a)

25.1 The Company shall not be required to hold any meetings of Shareholders other than those required by the Companies Act and/or the JSE Listings Requirements. **[LR SCH. 10.11(d)]**

25.2 Without limiting the foregoing, the Company shall hold a Shareholders meeting in the circumstances contemplated in section 61(2) of the Companies Act.

S61(3)

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

S61(9)

25.4 The Board shall determine the location for any Shareholders Meeting of the Company and the Company may hold any such meeting in the Republic or any foreign country and, accordingly, the authority of the Board, as contemplated in section 61(9) of the Companies Act, is not limited or restricted by this MOI.

26 NOTICE OF SHAREHOLDERS MEETINGS

26.1 The Company must -

26.1.1 deliver notice of each Shareholders' Meeting to -

26.1.1.1 all Shareholders as of the Record Date for receiving notice of that Shareholders' Meeting; and

26.1.1.2 the JSE,

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

26.1.2 simultaneously with delivery of any notice in terms of article 26.1.1, announce such notice through SENS. **[LR SCH. 10.11(a), (b) and (f)]**

S62(3) 26.2 The notice of a Shareholders Meeting shall be in writing and shall include the items set out in section 62(3) of the Companies Act.

26.3 The notice of a Shareholders Meeting must be delivered in accordance with the provisions of article 47.

27 CONDUCT OF MEETINGS

27.1 The Company -

S63(2)(a) 27.1.1 may, as contemplated in section 63 of the Companies Act, provide for a Shareholders Meeting to be conducted in whole or in part by Electronic Communication; and

S61(10)
S63(2)(b) 27.1.2 must always make reasonable provision for any Shareholder, or proxy for a Shareholder, to participate by Electronic Communication in every Shareholders Meeting that is being held in person, irrespective of whether such meeting is held in the Republic or elsewhere,

S61(2) and any Electronic Communication facility so employed must ordinarily enable all Persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Company shall be limited and restricted accordingly.

27.2 Subject to article 27.1, 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. If a provision has been made for a Shareholders Meeting to be conducted by Electronic Communication or for participation in a Shareholders Meeting by Electronic

Communication and the medium or means of such Electronic Communication is available, functioning and reasonably accessible, then the Shareholders Meeting shall be entitled to proceed even if a Shareholder or proxy is not able to gain access to the medium or means of Electronic Communication so employed.

S63(3)(a) 27.3 The Company shall ensure that any notice of any meeting of Shareholders, at which it will be possible for Shareholders to participate by way of Electronic Communication, shall inform Shareholders of that form of participation and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication.

27.4 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 27 to 31 shall apply to these meetings.

S63(4) 27.5 At a meeting of Shareholders a resolution put to the vote shall be decided by a poll and not by a show of hands.

28 **SHAREHOLDER MEETING QUORUM AND ADJOURNMENT**

S64(1) 28.1 The quorum requirements for meetings of Shareholders shall, subject to article 28.5, be that –

28.1.1 such a meeting shall not begin unless sufficient Persons (being not less than three in number who are entitled) are Present at such Meeting 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. Once such a quorum has been established, all the shareholders of the quorum must be present at the meeting to hear any matter that must be considered at the meeting; and **[LR SCH. 10.11(h)]**

28.1.2 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) are Present at such Meeting to exercise, in aggregate, at least 25% of all Voting Rights that are entitled to be exercised on that matter.

- S64(4) 28.2 Notwithstanding the provisions of section 64(4) of the Companies Act and article 28.1, if, within thirty minutes after the appointed time for a meeting -
- 28.2.1 the quorum requirements for a meeting to begin have not been satisfied, the 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;
- 28.2.2 the quorum requirements for consideration of a particular matter to begin or continue have not been satisfied, then -
- 28.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
- 28.2.2.2 if there is no other business on the agenda of the meeting, the 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.
- 28.3 The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- S64(5) 28.4 The chairperson of the meeting shall be entitled to extend the thirty minute limit referred to in article 28.2 in the circumstances contemplated in section 64(5) of the Companies Act.
- S64(8) 28.5 If, at the time appointed in terms of this article 28 for an adjourned meeting to resume, or for a postponed 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.

S64(10)
S64(11)
S64(12)

28.6 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) of the Companies Act, it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.

28.7 The Board may, at any time after notice of a Shareholders Meeting 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.

S64(7)(a)
S64(7)(b)

28.8 If a Shareholders Meeting is postponed or adjourned, whether in terms of article 28.2 or otherwise, the Company must, by announcement on SENS, 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.

28.9 Even if he is not a Shareholder –

28.9.1 any Director; or

28.9.2 the Company's attorney (or where the Company's attorneys are a firm, any partner, director or employee thereof) or other person admitted and permitted to speak by the chairperson of the meeting,

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

29 **CHAIRPERSON OF SHAREHOLDERS MEETINGS**

29.1 The chairperson of the Board or, failing him, 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.

29.2 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.

30 SHAREHOLDERS RESOLUTIONS

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

S63(6)

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.

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

30.2.1 during any period while any dividend, any part of any dividend on such other Securities or any redemption payment thereon remains in arrears and unpaid, it being recorded that such period shall commence 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; and/or

30.2.2 in regard to any resolution proposed for the winding-up of the Company or the reduction of its capital. [**LR SCH. 10.5(h)**]

30.3 If the Other Security Holders are entitled to vote at the meeting of Ordinary Shareholders as contemplated in article 30.2, then the Other Security Holders shall be entitled to 1 (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 Ordinary Shareholders) exercisable at that meeting (and numbers of votes of the Other Security Holders shall be reduced to the extent necessary to give effect to this proviso and on the basis that after such reduction the numbers of votes of each Other Security Holder shall bear the same proportion to the votes of all Other Security Holders as it did before such reduction). **[LR SCH. 10.5 (c) & (e)]**

30.4 In order for -

S65(7) 30.4.1 an Ordinary Resolution to be approved, it must be supported by a simple majority of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or

S65(10) 30.4.2 a Special Resolution to be approved, it must be supported by at least 75% of the Voting Rights exercised on the Special Resolution, as provided in section 65(9), **[LR SCH. 10.11(a)]**

at a quorate meeting of Shareholders which is quorate in relation to that resolution; provided that this article 30 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in article 31.

30.5 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.

S65(11) 30.6 Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11), any other section of the Companies Act, any provision of the Regulations, this MOI or the JSE Listings Requirements, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Shareholders.

31 WRITTEN RESOLUTIONS BY SHAREHOLDERS

- S60(1)
- 31.1 A resolution that could be voted on at a Shareholders Meeting may instead be adopted by written vote of the Shareholders, as contemplated in section 60 of the Companies Act, if it is supported by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Shareholders Meeting.
- 31.2 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the last day of the twenty Business Day period referred to in section 60(1)(b) (or, if applicable, any earlier date on which the Company received the written vote of the Shareholder or the proxy of the Shareholder whose vote resulted in the resolution by being supported by sufficient votes for its adoption irrespective of any votes received thereafter).
- 31.3 The provisions of this article 31 shall not apply to any Shareholders' resolution which is required for the purposes of the JSE Listings Requirements or any resolution for the election of a director. **[LR SCH. 10.11(c) and (h)]**

PART E – DIRECTORS POWERS AND PROCEEDINGS

32 AUTHORITY OF THE BOARD OF DIRECTORS

- S66(1)
- 32.1 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.
- 32.2 The Board may delegate to any one or more Persons any of its powers, authority and functions (including the power to sub-delegate).
- 32.3 If the Securities of the Company are no longer listed on the JSE and the Company has only one Director -
- 32.3.1 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;

S71(3)-(7) 32.3.2 sections 71(3) to (7) of the Companies Act shall not apply to the governance of the Company; and

S34 32.3.3 the provisions of articles 37 and 38 shall not apply to the governance of
S35 the Company.

33 APPOINTMENT OF DIRECTORS

33.1 The Board shall comprise not less than four Directors. **[LR SCH. 10.16(a)]**

S66(4)(a)(i) 33.2 All of the Directors and any Alternate Directors shall be elected by an Ordinary
S66(4)(a)(ii) Resolution of the Shareholders at a Shareholders Meeting. The provisions of
S68(2) section 68(2) of the Companies Act shall apply to the election of Directors,
provided that a Director may not be elected by written vote in accordance with
article 31. There shall be no *ex officio* directors, as contemplated in section
66(4)(a)(i) of the Companies Act, 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)(ii) of the Companies Act. **[LR SCH. 10.16(b)]**

S68(3) 33.3 The Board may appoint a Person who satisfies the requirements for election as
a Director to fill any vacancy and serve as a Director of the Company 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 33.2. 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. **[LR SCH. 10.16(c)]**

S68(1) 33.4 The Directors shall retire from office in accordance with the following
provisions - **[LR SCH. 10.16(g) & 10.16(k)]**

33.4.1 at each Annual General Meeting, Directors comprising one third of the
aggregate number of Directors (excluding the Chief Executive Officer and
any other Director who has been appointed as an executive Director
referred to in article 39) 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 and any Director who has been appointed as an executive Director referred to in article 39) shall retire from office and accordingly life directorships and directorships for an indefinite period are not permissible;

33.4.2 the Directors to retire in terms of article 33.4.1 shall exclude any Chief Executive Officer and any other Director who has been appointed as an executive Director as referred to in article 39 and 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;

33.4.3 any Director appointed as such by the Directors in terms of article 33.3 shall, in addition to the Directors retiring in terms of article 33.4.1, retire from office at the conclusion of the Annual General Meeting held immediately after his appointment;

33.4.4 a retiring Director (including a Director appointed in terms of article 33.3) may, if eligible, be re-elected and, if re-elected, shall be deemed for all purposes other than articles 33.4.1 to 33.4.3 not to have vacated his office;

33.4.5 no Person other than a retiring Director shall be eligible for election as a Director at any Annual General Meeting unless -

33.4.5.1 the Directors recommend such other Person for election; or

33.4.5.2 that Person has been nominated in accordance with article 33.6; and

33.4.6 a retiring Director shall continue to act as Director throughout the general meeting at which he retires and his retirement shall become effective only at the end of such meeting.

33.5 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.

33.6 Any Shareholder shall be entitled to nominate any Person for election as a Director by delivering such nomination to the Company in writing together with the written consent and curriculum vitae of that person and such other information as the Board may reasonably require from time to time. **[LR SCH. 10.16(b)]**

S69(3) 33.7 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Companies Act.

S69(6) 33.8 In addition to the grounds of ineligibility and disqualification of Directors contained in section 69 of the Companies Act, a Director shall cease to be eligible to continue to act as a Director if he absents himself from all meetings of the Board occurring within a period of six consecutive months without the leave of the Board, and if the Board resolves that his office shall be vacated; provided that this article 33.8 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself.

33.9 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 33.8.

S70 33.10 Section 70 of the Companies Act shall apply to any vacancy on the Board which may arise from time to time.

33.11 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, 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 33.3 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 Memorandum of Incorporation. **[LR SCH. 10.16(d)]**

33.12 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 Memorandum of Incorporation after the expiry of the three month period contemplated in article 33.11, 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) of the Companies Act or of summoning general meetings of the Company, but not for any other purpose. **[LR SCH. 10.16(d)]**

34 **ALTERNATE DIRECTORS**

34.1 The appointment of an Alternate Director shall terminate -

34.1.1 when the Director to whom he is an Alternate Director ceases to be a Director; or

34.1.2 upon the removal of that Alternate Director from his office as such.

34.2 An Alternate Director shall, subject to this MOI -

34.2.1 in the place and stead of the Director to whom he is an Alternate Director, act as a Director and generally exercise all the rights of a Director, but only -

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

34.2.1.2 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 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

34.2.2 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 is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

35 **BOARD COMMITTEES**

S72(1) 35.1 The Board shall appoint such committees, with such powers and duties, as may be required by the Companies Act, and may in addition -

35.1.1 appoint any number of committees of Directors; and

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

35.1.3 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.

S72(2) 35.2 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 Companies Act in respect of committees required to be established by the Companies Act, be restricted by the Board when establishing any committee or by subsequent resolution.

36 **CHAIRPERSON OF THE BOARD**

36.1 The Board shall be entitled, from time to time, to appoint -

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

36.1.2 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 and, even though that period has not yet expired, to remove that chairperson or deputy chairperson from his post, with or without nominating a replacement; provided that life directorships and directors appointed for an indefinite period shall not be permissible. **[LR SCH. 10.16(i) AND 10.16(k)]**

36.2 The chairperson of the Board or, failing him, 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. **[LR SCH. 10.16(i)]**

36.3 The chairperson of a meeting of the Board referred to in 36.2 shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at that meeting.

36.4 Notwithstanding the provisions of section 73(5)(e) of the Companies Act, the chairperson of the Board or any meeting of the Board shall not have a second or casting vote in addition to his deliberative vote on any matter referred to the Board. **[LR SCH. 10.16(i)]**

37 DIRECTORS MEETINGS

37.1 The Board may -

S73(1)(b)
S73(2) 37.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2) of the Companies Act, any Director shall be entitled to convene or direct the Person so authorised by the Board to convene a meeting of the Board;

S73(4) 37.1.2 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) of the Companies Act; provided that, subject to article 37.2, no meeting may be convened without notice to all of the Directors. The authority of the Board in this regard is not limited or restricted by this MOI

- S73(5)(a) 37.2 If all of the Directors of the Company –
- 37.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;
 - 37.2.2 are present at a meeting; or
 - 37.2.3 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.
- S73(3) 37.3 The Board –
- 37.3.1 may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and
 - 37.3.2 must always make provision for any Director to participate by Electronic Communication in every Board Meeting that is held in person,
- and any Electronic Communication facility so employed must ordinarily enable all Persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Board in this regard is not limited or restricted by this MOI.
- 37.4 As set out in section 73(5)(b) of the Companies Act, the quorum for meetings of the Board shall be a majority in number of the Directors then in office; provided that unless the Board decides otherwise –
- S73(5)(b)-(e)
- 37.4.1 if a quorum is not present within thirty 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;

37.4.2 if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Companies Act, 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.

37.5 If a meeting of the Board is postponed or adjourned, whether in terms of article 37.4 or otherwise, the Company must, as soon as reasonably possible 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.

37.6 At any meeting of the Board -

S73(5)

37.6.1 each Director has one vote on every matter to be decided by the Board; and

37.6.2 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in article 37.6.1 at a meeting of the Board at which a quorum (or deemed quorum) is present in terms of article 37.4. There shall be no casting vote so, in the case of a tied vote on a resolution, that resolution will not be adopted. This article 37.6.2 shall not detract from the Board's ability to adopt resolutions as set out in article 38.

S73(6) 37.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes -

37.7.1 any declaration given by notice or made by a Director, as required by section 75 of the Companies Act; and

37.7.2 every resolution adopted by the Board.

S73(7) 37.8 Resolutions adopted by the Board -

37.8.1 must be dated and sequentially numbered; and

37.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.

S73(8) 37.9 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.

37.10 The provisions of this article 37 shall apply mutatis mutandis to a meeting of a Committee.

38 WRITTEN RESOLUTIONS BY DIRECTORS

S74 38.1 A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been given (in person or by Electronic Communication) to all of the Directors and Signed by at least a majority of the Directors (or their Alternate Directors). **[LR SCH. 10.16(j)]**

38.2 Any such resolution, inserted in the minute book, shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors. **[LR SCH. 10.16(j)]**

38.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was Signed by or on behalf of the Director (or Alternate Director) who Signed it last. **[LR SCH. 10.16(j)]**

38.4 The resolution may consist of one or more counterpart documents, each Signed by one or more Directors (or their Alternates). **[LR SCH. 10.16(j)]**

38.5 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 the Republic, or is incapacitated.

39 EXECUTIVE DIRECTORS

The Board may appoint, from time to time, one or more of the Directors as executive Directors, who shall be employees of the Company and/or any Subsidiary of the Company, on such terms and conditions of employment as to his appointment and remuneration and otherwise as may be determined from time to time by a disinterested quorum of the Board. **[LR SCH. 10.16(e)]**

40 PAYMENTS TO DIRECTORS

S66(8)
S66(9)

40.1 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 40.3; 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. For the avoidance of doubt it is recorded that this article does not apply to remuneration paid to executive directors for their services as employees of the Company (which is governed by article 39).

40.2 Each Director shall be paid all travelling, subsistence and other expenses properly incurred by him in the execution of his 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 ratified by the Directors. **[LR SCH. 10.16(f)]**

40.3 Any Director who is required to –

40.3.1 devote special attention to the business of the Company; or

40.3.2 travel or reside outside the Republic for the purpose of the Company; or

40.3.3 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 he may be entitled as a Director), as a disinterested quorum of the Board may from time to time determine. **[LR SCH. 10.16(f)]**

41 **BORROWING POWERS**

The -

41.1 borrowing powers of the Company; and

41.2 powers of the Company to mortgage or encumber its undertaking and property or any part thereof and to issue debentures or debenture stock (whether secured or unsecured), whether outright or as security for any debt, liability or obligation of the Company or of any third party,

shall be unlimited and shall be exercised by the Directors.

42 **INDEMNIFICATION AND INSURANCE FOR DIRECTORS**

42.1 For the purposes of this 42, a Director includes -

S78(1)

42.1.1 a former Director and an Alternate Director;

42.1.2 a Prescribed Officer; and

42.1.3 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.

42.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Companies Act -

S78(4)

S78(5)

S78(7)

42.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

42.2.2 directly or indirectly indemnify a Director for expenses contemplated in 42.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -

42.2.2.1 are abandoned or exculpate that Director; or

42.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of 42.2.3;

42.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Companies Act;

42.2.4 purchase or pay for insurance to protect -

42.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with 42.2.3;

42.2.4.2 the Company against any contingency, including -

42.2.4.2.1 any expenses -

42.2.4.2.1.1 that the Company is permitted to advance in accordance with 42.2.1; or

42.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with 42.2.2; or

42.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with 42.2.3,

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

42.3 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 capacity as a Director; provided that –

- 42.3.1 this indemnity shall not extend to any Loss –
 - 42.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Companies Act; or
 - 42.3.1.2 arising from any gross negligence or recklessness on the part of that Director, or
 - 42.3.1.3 arising from any loss of or damage to reputation; or
 - 42.3.1.4 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); or
 - 42.3.1.5 arising from a breach by a Director of the Company's written Standard Operating Procedures as amended or substituted by the Board from time to time; or
 - 42.3.1.6 arising from a breach by an executive Director of his employment contract with the Company; or
 - 42.3.1.7 arising from a breach by a non-executive Director of the agreement between him and the Company appointing him as a non-executive Director; or
 - 42.3.1.8 arising from any breach by a Director of any law, statute and/or regulation; or
 - 42.3.1.9 arising from a breach by a Director of the Company's written Code of Business Principles as amended or substituted by the Board from time to time.

and Directors shall not be entitled to recover the Losses referred to in this article 42.3.1 from the Company. All losses other than those referred to in this 42.3.1 are referred to herein as "**Indemnified Losses**";

42.3.2 each Director's right to be indemnified by the Company in terms of this article 42 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;

42.3.3 if any claim is made against a Director in respect of any Indemnified Loss, then –

42.3.3.1 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 42.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this 42.3.3, 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 42.3.3, in which event the Company shall not be liable for such excess Indemnified Loss;

42.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisers, 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 judgment 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 -

42.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the

Company may reasonably require of the Director in order to contest such claim;

42.3.3.2.2 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;

42.3.3.2.3 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;

42.3.3.2.4 the Company shall not make any admission of wrongdoing on behalf of the Director without the Directors' express consent therefor;

42.3.4 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;

42.3.5 if this article 42 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 resolution effecting such amendment is adopted by the Shareholders;

42.3.6 all provisions of this article 42.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this article 42.3 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 agreement shall remain of full force and effect;

42.3.7 this indemnity shall not detract from any separate indemnity that the Company may Sign in favour of the Director.

PART F – GENERAL PROVISIONS

43 FINANCIAL STATEMENTS

S29
S30

43.1 The Company shall –

43.1.1 prepare annual Financial Statements in accordance with the Companies Act and the Regulations and shall have those annual Financial Statements audited;

43.1.2 ensure that all subsidiaries of the Company prepare annual Financial Statements in accordance with the Companies Act and the Regulations, and shall, only to the extent required by the Companies Act, the Regulations or the JSE Listing Requirements, have those annual Financial Statements audited. **[LR SCH. 10.22]**

43.2 A copy of the annual Financial Statements of the Company shall be distributed to all Shareholders in accordance with article 47 as soon as possible after those annual Financial Statements have been approved by the Board and audited, but in any event no later than required by the Companies Act and at least fifteen Business Days before the date of the Annual General Meeting of the Company at which such annual Financial Statements will be considered. **[LR SCH. 10.19].**

44 FINANCIAL ASSISTANCE

44.1 Financial assistance for subscription for or purchase of Securities

S44

The Board may, as contemplated in section 44 of the Companies Act and subject to the requirements of that section, authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise, to any Person for the purpose of, or in connection with, the

subscription for any option, or any Securities, issued or to be issued by the Company or a Related or Inter-related company, or for the purchase of any such Securities. The authority of the Board in this regard is, accordingly, not limited or restricted by this MOI.

44.2 **Financial assistance to Directors, Prescribed Officers and Related and Inter-related Companies**

S45 The Board may, as contemplated in section 45 of Act and subject to the requirements of that section, authorise the Company to provide direct or indirect financial assistance to a Director or Prescribed Officer of the Company, or of a Related or Inter-related Company or corporation, or to a Related or Inter-related Company or corporation, or to a Member of a Related or Inter-related Company or corporation, or to a Person Related to any such Company, corporation, Director, Prescribed Officer or Member. The authority of the Board in this regard is, accordingly, not limited or restricted by this MOI.

45 **DISTRIBUTIONS**

S46 45.1 Subject to the provisions of the Companies Act and this MOI, the Board may declare any Distribution.

45.2 All Distributions shall comply with the JSE Listings Requirements. **[LR SCH. 10.8]**

45.3 Distributions (in the form of dividends or otherwise) are to be declared by the Board in accordance with the Companies Act **[LR SCH. 10.17(a)]**

45.4 The Company may transmit any Distribution or amount payable in respect of a Share by -

45.4.1 ordinary post to the postal address of the Shareholder thereof (or, where two or more Persons are registered as the joint Shareholders of any Share, to the address of the joint holder whose name stands first in the Securities Register) recorded in the Securities Register or such other address as the holder thereof may previously have notified to the Company in writing for this purpose; or

45.4.2 electronic bank transfer to such bank account as the holder thereof may have notified to the Company in writing for this purpose,

and the Company shall not be responsible for any loss in transmission.

45.5 Any Distribution or other money payable to Security Holders, -

45.5.1 which is unclaimed, may (subject to the laws of prescription) be retained by the Company and held in trust indefinitely and may while so retained (but subject to the laws of prescription) be invested as the Board may deem fit until claimed by the Security Holder concerned or until the Security Holder's claim therefore prescribes in terms of article 45.5.2; **[LR SCH. 10.17(c)]**

45.5.2 may only be claimed for a period of three years (or such other period as may be applicable to the Securities Holder's claim therefor in terms of the laws of prescription) from the date on which it accrued to Security Holders, after which period the Security Holders' claim therefor shall prescribe and the amount of that Distribution shall, unless the Board decides otherwise, be forfeited for the benefit of the Company;

45.6 shall not bear interest against the Company,

and the Board shall, for the purpose of facilitating the winding-up or deregistration of the Company before the date of any such prescription, be entitled to delegate to any bank, registered as such in accordance with the laws of the Republic, the liability for payment of any such Distribution or other money, the claim for which has not been prescribed in terms of the foregoing.

45.7 Distributions (in the form of a dividend or otherwise) shall be paid to Shareholders registered as at a Record Date subsequent to the date of declaration or, if applicable, date of confirmation of the Distribution, whichever is the later date. **[LR SCH. 10.17(b)]**

46 FUNDAMENTAL TRANSACTIONS

Subject to any restrictions imposed on the Company elsewhere in this MOI, the requirements of the Companies Act and the JSE Listings Requirements, the Company shall be entitled to propose, agree to and implement any disposal referred to in section 112 of the Companies Act, any amalgamation or merger referred to in section 113 of the Companies Act or any scheme of arrangement referred to in section 114 of the Companies Act.

47 NOTICES

47.1 Any notice to the Company, Shareholders or Directors -

47.1.1 may be given in any manner prescribed in the Table CR3 to the Regulations and any notice so given shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery; and

47.1.2 shall, simultaneously with being distributed to Shareholders, be announced through SENS and given by the Company to the Issuer Regulation Division of the JSE in writing in any manner prescribed in Table CR 3 to the Regulations and the manner authorised by the JSE Listings Requirements. All notices shall, in addition, be released through SENS. **[LR SCH. 10.11(F)]**

47.2 Each Shareholder and Director shall -

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

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

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

47.3 The postal address notified by any Shareholder to the Company in terms of article 47.2.1 may be a postal address within or outside the Republic. **[LR SCH. 10.18]**

SCHEDULE 1 – SHARE CAPITAL

S36(1)(a) The numbers and classes of Shares which the Company is authorised to issue are set out below.

- 1 250 000 000 Ordinary Shares, having a par value of R0,01 and having the rights and limitations set out in the MOI.