

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 which has been initialled by the chairperson of the Annual General Meeting for purposes of identification.

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**Chairperson**

**MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY WITH MEMBERS**

of

**NATIONAL SEA RESCUE INSTITUTE "NPC"**

being a non-profit company in terms of the Companies Act, No 71 of 2008 and registered under

Registration No.: **1967/013618/08**

**("the Company")**

This Memorandum of Incorporation was adopted by special resolution passed in accordance with the provisions of the Companies Act, No 71 of 2008, in substitution for the existing memorandum of incorporation (being the memorandum of association and articles of association of the Company, which were the constitutional documents of the Company in terms of the Companies Act, No. 61 of 1973). This Memorandum of Incorporation takes effect in terms of Section 16(9)(b)(i) of the Companies Act, No. 71 of 2008 on the Filing Date (as defined in clause 1 below).

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## 1. INTERPRETATION

In this MOI:

- 1.1 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings, unless the context otherwise requires:
  - 1.1.1 “**Annual General Meeting**” means the annual general meeting required to be held by the Company pursuant to clause 12.1 below;
  - 1.1.2 “**the Auditors**” means the duly appointed auditors of the Company from time to time;
  - 1.1.3 “**Board**” means the board of Directors of the Company from time to time;
  - 1.1.4 “**Companies Act**” means the Companies Act, No. 71 of 2008, as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;
  - 1.1.5 “**Company**” means the company defined as such on the front page of this MOI;
  - 1.1.6 “**Connected Person**” means a connected person as defined in the Income Tax Act;
  - 1.1.7 “**Deliver**” means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 27 below and the Companies Act;
  - 1.1.8 “**Director**” means a director of the Company;
  - 1.1.9 “**Electronic Address**” means in regard to Electronic Communication, any email address furnished to the Company by the Member;
  - 1.1.10 “**Executive Director**” means a director of the Company who is also an employee of the Company, appointed by the Board pursuant to clause 20.4 below;
  - 1.1.11 “**Filing Date**” means the date on which the notice of amendment, substituting the memorandum of association and articles of association of the Company (which were the constitutional documents of the Company in terms of the Companies Act, No. 61 of 1973) with this MOI, is filed with the Companies and Intellectual Property Commission;
  - 1.1.12 “**Honorary Membership**” means those Person listed or approved as Honorary Life Governors of the Company from time to time;
  - 1.1.13 “**Income Tax Act**” means the Income Tax Act, No. 58 of 1962, as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;

- 1.1.14 **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act or as contemplated in clause 15 which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers;
- 1.1.15 **"Member"** means a person who holds membership in and specified rights in respect of the Company, as contemplated in Schedule 1 of the Companies Act and in this MOI;
- 1.1.16 **"Memorandum of Incorporation"** or **"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;
- 1.1.17 **"Public Interest Score"** means, in respect of any financial year, the sum of the following:
- 1.1.17.1 a number of points equal to the average number of employees of the Company during the financial year;
- 1.1.17.2 1 (one) point for every R1 000 000.00 (one million Rand) (or portion thereof) in third party liability of the Company, at the financial year end;
- 1.1.17.3 1 (one) point for every R1 000 000.00 (one million Rand) (or portion thereof) in turnover during the financial year; and
- 1.1.17.4 1 (one) point for every Individual who, at the end of the financial year, is known by the Company to be a Member of the Company, or a member of an association that is a Member of the Company;
- 1.1.18 **"Regulations"** means the Companies Regulations of 2011 for so long as they remain of force and effect and any other regulations made in terms of the Companies Act;
- 1.1.19 **"Republic"** means the Republic of South Africa;
- 1.1.20 **"Round Robin Resolution"** means a resolution passed other than at a:
- 1.1.20.1 Members' meeting, which was submitted for consideration to the persons entitled to exercise voting rights in relation to the resolution and was voted on by the requisite percentage of the persons entitled to vote by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them, and includes written polling of persons entitled to vote regarding the election of Directors;
- 1.1.20.2 meeting of Directors, in respect of which all the Directors who may at the time be present in the Republic being not less than a quorum of Directors, voted in favour by signing in

writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them;

- 1.2 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;
- 1.3 the use of the word "**including**", "**includes**" and "**include**", followed by a specific examples, 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 that specific example;
- 1.4 where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this MOI;
- 1.5 any word or expression (whether or not capitalised or not in this MOI) that is defined in the Companies Act and that is not otherwise defined in this MOI shall have the meaning assigned to it in the Companies Act;
- 1.6 the use of the word "**writing**" includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;
- 1.7 references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.8 references to Members entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.9 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.10 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.11 subject to the provisions of Item 4(4) of the Fifth Schedule of the Companies Act, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;

- 1.12 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply to this MOI;
- 1.13 when a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
  - 1.13.1 excluding the day on which the first such event occurs;
  - 1.13.2 including the day on or by which the second event is to occur; and
  - 1.13.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.13.1 and 1.13.2 respectively.

## 2. **NON-PROFIT COMPANY**

The Company is a Non-Profit Company as:

- 2.1 it is incorporated for a public benefit or other object as required by Item 1(1) of the First Schedule to the Companies Act;
- 2.2 it is and this MOI is consistent with the principles set out in Items 1(2) to 1(9) of the First Schedule to the Companies Act;
- 2.3 it is a public benefit organisation as contemplated in Section 30 of the Income Tax Act;
- 2.4 it is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of carrying out its stated objects) and is required to solely utilise its funds for the purpose for which it has been established.

## 3. **MAIN BUSINESS AND OBJECTS**

- 3.1 As more fully set out in Part I and Part II of the Ninth Schedule to the Income Tax Act, the main object of the Company is to:

***Preserve Life and Livelihoods on or around South African waters through Education, Training, Drowning Prevention and Rescue and any other adjunctive activity which may serve this purpose.***

## 4. **POWERS AND CAPACITY OF THE COMPANY**

- 4.1 The Company has the powers and capacity of an Individual save to the extent otherwise set out in the Companies Act and Regulations, and subject to the limitations set out in this clause 4 and elsewhere in this MOI. Notwithstanding the omission from this MOI of

any provision to that effect, the Company may do anything which the Companies Act empowers a Non-Profit Company to do if so authorised by its MOI.

- 4.2 The powers of the Company are limited, in terms of Items 1(2), 1(3) and 1(4) of the First Schedule to the Companies Act, in terms of clause 4.3, clause 4.4, clause 4.5 and clause 30 below.
- 4.3 The Company must apply all of its assets and income, however derived, to advance its objects; and, subject to the aforesaid:
  - 4.3.1 the Company may acquire and hold Securities issued by a Profit Company; or
  - 4.3.2 the Company directly or indirectly, alone or with any other person, may carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.4 The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
  - 4.4.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company, or as reasonable payment of, or reimbursement for, expenses incurred to advance a stated objects of the Company;
  - 4.4.2 as a reasonable payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
  - 4.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - 4.4.4 in respect of any legal obligation binding on the Company.
- 4.5 The Company shall not accept a donation that is revocable at the instance of the donor, other than a material failure to conform to the designated purpose and conditions of such donation, including any misrepresentation regarding the tax deductibility thereof; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

## 5. **MEMBERSHIP**

- 5.1 The Membership of the Company includes:

- 5.1.1 Registered Volunteers of a minimum of 1 (one) years good standing;
- 5.1.2 Directors;
- 5.1.3 Honorary Life Governors;
- 5.1.4 Honorary Life Members.
- 5.1.5 Any natural person or Juristic Person (include those classified as a Profit Company under the Companies Act) having contractual capacity may apply for membership of the Company.
- 5.2 All applications for membership shall be in writing and be addressed to the Board.
- 5.3 Each Member shall have one vote on every resolution proposed, either with a show of hands or by poll.
- 5.4 A Member shall *ipso facto* cease to be a Member of the Company:
  - 5.4.1 in the case of a natural person, if such:
    - 5.4.1.1 Member dies; or
    - 5.4.1.2 Member tenders written notice of his resignation as a Member to the Board; or
    - 5.4.1.3 Member has a trustee or curator appointed in respect of his/her assets or person;
    - 5.4.1.4 Member's estate is surrendered or sequestrated, whether voluntarily or compulsorily; or
    - 5.4.1.5 Member commits any act of insolvency (as contemplated in the Insolvency Act, No. 24 of 1936); or
    - 5.4.1.6 Member is removed by Ordinary Resolution of the Members;
  - 5.4.2 in the case of a Member which is not a natural person, if such Member:
    - 5.4.2.1 tenders written notice of resignation as a Member to the Directors; or
    - 5.4.2.2 is liquidated, wound up or becomes subject to business rescue proceedings, whether provisionally or finally and whether compulsorily or voluntarily; or
    - 5.4.2.3 commits any act, which, if such Member were an Individual, would be an act of insolvency (as contemplated in the Insolvency Act, No. 24 of 1936); or
    - 5.4.2.4 is removed as a Member by Ordinary Resolution of the Members.

5.5 Membership shall not be transferrable.

## 6. AMENDMENTS TO THE MOI

6.1 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with Section 16(1) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site, if any.

6.2 A copy of any amendment to the MOI must be submitted to the Commissioner: South African Revenue Services.

## 7. THE MAKING OF RULES AND ELECTION

7.1 The Board shall not be entitled to make any Rules, as contemplated in Section 15(3) of the Companies Act.

7.2 The Company does not elect, in terms of Section 34(2) of the Companies Act, to comply voluntarily with the provisions of Chapter 3 of the Act.

## 8. MEMBERS REGISTER

8.1 The Company must maintain a Members Register, in accordance with the provisions of Section 24(4) of the Companies Act.

8.2 The Company shall cause the Members Register to reflect:

8.2.1 the names and identity numbers, passport number or registration number of the Members;

8.2.2 the Member's business, residential or postal address;

8.2.3 the Members' electronic addresses who have furnished them;

8.2.4 the date on which the person became a Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company; and

8.2.5 any other information prescribed in terms of the Companies Act from time to time.

8.3 The Company shall not be bound to enter any person in the Members Register until that person gives the Company an address for entry in the Members Register.

## 9. FINANCIAL YEAR

The financial year of the Company shall be from 1 January to 31 December.

## 10. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 10.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 10.2 The Company must maintain adequate records of all revenue received from donations, grants and Member's fees (if any), or in terms of any funding contracts or arrangements with any party or person for a period of at least 5 (five) years.
- 10.3 The Company shall prepare its Financial Statements in accordance with the applicable Regulations to the Companies Act.
- 10.4 If the Company's Public Interest Score is at least 350 (three hundred and fifty), the Company shall prepare its Financial Statements in accordance with International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, and shall have its annual Financial Statements audited.
- 10.5 If the Company's Public Interest Score is at least 100 (one hundred), but less than 350 (three hundred and fifty), the Company shall prepare its Financial Statements in accordance with International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, or SA GAAP and shall have its annual Financial Statements audited.
- 10.6 If the Company's Public Interest Score is less than 100 (one hundred) and the Financial Statements are independently compiled, the Company shall prepare its Financial Statements in accordance with International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, or SA GAAP and shall have its annual Financial Statements audited.
- 10.7 If the Company's Public Interest Score is less than 100 (one hundred) and the Financial Statements are internally compiled, the Company shall prepare its Financial Statements in accordance with the Financial Reporting Standards as determined by the Company for as long as no Financial Reporting Standard is prescribed.

- 10.8 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, records in respect of Directors, Accounting Records required to be maintained by the Company, reports to Annual General Meetings, annual Financial Statements, notices and minutes of Members' meetings, communications generally to Members, and the Members Register), shall be open to inspection by Members not being Directors. In addition the Members have rights to information regarding Directors declarations of interests.
- 10.9 Apart from the Members, no other person shall be entitled to inspect any of the documents of the Company (other than the Members Register and the Directors' Register) unless expressly authorised by the Directors or by Ordinary Resolution.
- 10.10 The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

## 11. AUDITOR

- 11.1 The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in Section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless:
- 11.1.1 the retiring Auditor is;
    - 11.1.1.1 no longer qualified for appointment;
    - 11.1.1.2 no longer willing to accept the appointment, and has so notified the Company; or
    - 11.1.1.3 required to cease serving as Auditor, in terms of Section 92 of the Companies Act;
  - 11.1.2 the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.

- 11.2 Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individuals responsible for performing the audit must comply with the requirements of Section 90(2) of the Companies Act, provided that:
  - 11.2.1 the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
  - 11.2.2 if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 11.3 The Auditor:
  - 11.3.1 has the right of access at all times to the Accounting Records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
  - 11.3.2 if the Company is a Holding Company, has the right of access to all current and former Financial Statements of any subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties;
  - 11.3.3 is entitled to;
    - 11.3.3.1 attend any Members' meeting;
    - 11.3.3.2 receive all notices of and other communications relating to any Members' meeting; and
    - 11.3.3.3 be heard at any Members' meeting on any part of the business of the meeting that concerns the Auditor's duties or functions;
  - 11.3.4 may not perform any services for the Company that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of Section 44(6) of the Auditing Profession Act, No. 26 of 2005.
- 11.4 If a vacancy arises in the office of Auditor, the Board:
  - 11.4.1 must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

11.4.2 may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

11.5 The provisions of clauses 25.3.3 and 25.5 apply *mutatis mutandis* to the Auditor.

## 12. MEMBERS MEETINGS AND ROUND ROBIN RESOLUTIONS

12.1 The Company shall convene an Annual General Meeting not more than **18 (eighteen) months** after its incorporation and thereafter once in every calendar year, but no more than **15 (fifteen) months** after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted:

12.1.1 presentation of the Directors' report and audited Financial Statements for the immediately preceding financial year;

12.1.2 the election of the independent Non-Executive Directors, to the extent required by the Companies Act or the MOI;

12.1.3 the appointment of an Auditor for the ensuing year;

12.1.4 any matters raised by Members, with or without advance notice to the Company.

12.2 The Company shall, as determined by the Board, either:

12.2.1 hold a Members' meeting in order to consider one or more resolutions; or

12.2.2 as regards such resolutions that could be voted on at a Members' meeting (other than an Annual General Meeting) instead require them to be dealt with by Round Robin Resolution.

12.3 Within **10 (ten) Business Days** after a Round Robin Resolution is adopted, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round Robin Resolution.

12.4 A Company must hold a Members' meeting or put the proposed resolution by way of a Round Robin Resolution:

12.4.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for decision;

12.4.2 whenever required to fill a vacancy on the Board.

- 12.5 Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information and explanatory material to enable a person who is entitled to vote on the resolution to determine whether to participate in the Members' meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 12.6 The Board or Members holding not less than **10% (ten per centum)** of the Voting Rights may, whenever she/he/it thinks fit, convene a Members' meeting or put the proposed resolution by way of a Round Robin Resolution. A Members' meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if one or more written and signed demands for such a Members' meeting or Round Robin Resolution is/are delivered to the Company, and:
- 12.6.1 each such demand describes the specific purpose for which the Members' meeting is proposed; and
- 12.6.2 in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 10% (ten per centum) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Members' meeting.
- 12.7 Round Robin Resolutions will be passed if signed 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 Members' meeting.
- 12.8 Every Members' meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Members' meeting entirely by Electronic Communication, or to provide for participation in a Members' meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members' meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members' meeting, as set out in Section 63(2) of the Companies Act is not limited or restricted.
- 12.9 A Members' meeting shall be called by at least **15 (fifteen) Business Days'** notice delivered by the Company to all Members entitled to vote or otherwise entitled to receive notice.

- 12.10 The Company may call a Members' meeting with less notice than required by clause 12.9, but such a Members' meeting may proceed only if every person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda:
  - 12.10.1 is present at the Members' meeting; and
  - 12.10.2 votes to waive the required minimum notice of the Members' meeting.
- 12.11 A Member entitled to vote, who is present at a Members' meeting:
  - 12.11.1 is regarded as having received or waived notice of the Members' meeting if at least the required minimum notice was given;
  - 12.11.2 has a right to:
    - 12.11.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Members' meeting; and
    - 12.11.2.2 participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
  - 12.11.3 except to the extent set out in clause 12.11.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Members' meeting.
- 12.12 A notice of a Members' meeting must be in writing, in plain language and must include:
  - 12.12.1 the date, time and place for the meeting, and the Record Date for the meeting;
  - 12.12.2 the general purpose of the meeting, and any specific purpose contemplated in clause 12.1, if applicable;
  - 12.12.3 in the case of the Annual General Meeting a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding financial year;
  - 12.12.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
  - 12.12.5 a reasonably prominent statement that:
    - 12.12.5.1 a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' meeting in the place of

the Member entitled to vote or give or withhold written consent on behalf of the Member entitled to vote to a decision by Round Robin Resolution;

- 12.12.5.2 a proxy need not be a Member;
- 12.12.5.3 a Member entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights held by that Member entitled to vote in respect of any Members' meeting;
- 12.12.5.4 the proxy may not delegate the authority granted to her/him/it as proxy;
- 12.12.5.5 participants in a Members' meeting are required to furnish satisfactory identification in terms of Section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' meeting;
- 12.12.5.6 of the availability of that participation in the Members' meeting by Electronic Communication, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 12.13 A Members' meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 12.15, only if every person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Members' meeting is present at the Members' meeting and votes to approve the ratification of the defective notice.
- 12.14 If a Material defect in the form or manner of giving notice of a Members' meeting relates only to one or more particular matters on the agenda for the Members' meeting:
  - 12.14.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 12.14.2 the Members' meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 12.15 An immaterial defect in the form or manner of delivering notice of a Members' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members' meeting.
- 12.16 Business may be transacted at any Members' meeting only while a quorum is present.

- 12.17 The quorum for any Members' meeting shall be sufficient persons Present at the Members' meeting to exercise, in aggregate, at least **2% (two percent)** of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Members' meeting but if the Company has more than **2 (two)** Persons entitled to vote, the Members' meeting may not begin unless in addition at least **3 (three)** Persons entitled to vote are Present.
- 12.18 If within **30 (thirty) minutes** from the time appointed for the Members' meeting to commence, a quorum is not present, the Members' meeting shall be postponed, without motion, vote or further notice, subject to clause 12.23, for **1 (one) week** to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Members' meeting a quorum is not present within **30 (thirty) minutes** from the time appointed for the Members' meeting then, the person/s entitled to vote who are present at that meeting shall be deemed to be the requisite quorum.
- 12.19 A Members' meeting, or the consideration of any matter being debated at the Members' meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights:
- 12.19.1 held by all of the persons who are present at the Members' meeting at the time; and
- 12.19.2 that are entitled to be exercised on at least one matter remaining on the agenda of the Members' meeting, or on the matter under debate, as the case may be.
- 12.20 Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members), as agreed at the Members' meeting.
- 12.21 A Members' meeting may not be adjourned beyond the earlier of:
- 12.21.1 the date that is **120 (one hundred and twenty) Business Days** after the Record Date; or
- 12.21.2 the date that is **60 (sixty) Business Days** after the date on which the adjournment occurred.
- 12.22 No further notice is required to be delivered by the Company of a Members' meeting that is postponed or adjourned as contemplated in clause 12.19, unless the location for the Members' meeting is different from:
- 12.22.1 the location of the postponed or adjourned Members' meeting; or

- 12.22.2 a location announced at the time of adjournment, in the case of an adjourned Members' meeting.
- 12.23 After a quorum has been established for a Members' meeting, or for a matter to be considered at a Members' meeting, the Members' meeting may continue, or the matter may be considered, so long as at least **1 (one) person** with Voting Rights entitled to be exercised at the Members' meeting, or on that matter, is Present at the Members' meeting.
- 12.24 The chairperson, if any, of the Board shall preside as chairperson at every Members' meeting. If there is no such chairperson, or if at any Members' meeting she/he is not present within **15 (fifteen) minutes** after the time appointed for holding the Members' meeting or is unwilling to act as chairperson, the Members entitled to vote who are present shall select a Director present at the Members' meeting, or if no Director is present at the Members' meeting, or if all the Directors present decline to take the chair, the Members entitled to vote shall select one of their number who is present to be chairperson of the Members' meeting.
- 12.25 At any Members' meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by:
- 12.25.1 not less than **2 (two)** persons having the right to vote on that matter; or
- 12.25.2 a person/s entitled to exercise not less than **1/10<sup>th</sup> (one tenth)** of the total Voting Rights entitled to vote on that matter,
- and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members' meeting or adjourned Members' meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members' meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Members' meeting, whose decision shall be final and conclusive.
- 12.26 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the Members' meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the

chairperson of the Members' meeting, shall be deemed to be the resolution of the Members' meeting at which the poll is demanded.

- 12.27 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Members' meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 12.28 A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Members' meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 12.29 Every resolution of Members is either an **Ordinary Resolution or a Special Resolution**. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than **50% (fifty per centum)** of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than **75% (seventy five per centum)** of the Voting Rights exercised on the resolution.
- 12.30 On a show of hands and on a poll a person entitled to vote Present at the meeting shall have only **1 (one) vote**. A proxy shall irrespective of the number of Members entitled to vote she/he/it represents have only **1 (one) vote** on a show of hands.
- 12.31 No form appointing a proxy shall be valid after the expiration of **1 (one) year** from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 12.32 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company immediately prior to the Members' meeting, before the proxy exercises any rights of the Member entitled to vote at a Members' meeting.
- 12.33 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing

of such death, insanity or revocation as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Members' meeting or adjourned Members' meeting at which the proxy is used.

12.34 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Member entitled to vote.

12.35 If a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit unless the proxy indicates otherwise.

### 13. **RECORD DATE**

13.1 If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than **10 (ten) Business Days** before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.

13.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is:

13.2.1 in the case of a Members' meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that Members' meeting; or

13.2.2 the date of the action or event, in any other case.

13.3 The Company must publish a notice of a Record Date for any matter by:

13.3.1 delivering a copy to each Member; and

13.3.2 posting a conspicuous copy of the notice:

13.3.2.1 at its principal office;

13.3.2.2 on its web-site, if it has one.

### 14. **ELECTION OF INDEPENDENT NON-EXECUTIVE DIRECTORS AND ALTERNATE DIRECTORS AND CASUAL VACANCIES**

14.1 The minimum number of independent non-executive Directors shall be **8 (eight)** and the maximum shall be **15 (fifteen)**, unless the Company in general meeting otherwise resolves.

- 14.2 The Board shall comprise of the following individuals:
- 14.2.1 The ex officio Directors;
  - 14.2.2 8 (eight) independent non-executive Directors;
  - 14.2.3 The Chairperson of the Operations Support Committee;
  - 14.2.4 Any additional Director so appointed by the Board.
- 14.3 Directors must not be connected persons in relation to each other (as contemplated in Section 30 of the Income Tax Act). Any failure by the Company at any time to have the minimum number of Directors does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 14.4 Each of the independent non-executive Directors and their Alternate Directors (other than an ex officio Director) shall be elected to serve as a Director or Alternate Director for an indefinite term (as contemplated in Section 68(1) of the Companies Act), subject to the provisions requiring retirement of Directors by rotation set out in clause 16.1 below. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing her/him during the Director's/s' absence or inability to act as Director. If a person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, she/he shall have a separate vote, on behalf of each Director she/he is representing in addition to her/his own vote, if any.
- 14.5 All the Directors and the Alternate Directors (other a Director contemplated in clause 14.13) shall be elected by an **Ordinary Resolution** of the Members.
- 14.6 All members of the Executive Committee of management shall be *ex officio* directors, as contemplated in Section 66(4)(a)(ii) of the Companies Act.
- 14.7 The provisions of Section 68(2) of the Companies Act shall apply to the election of Directors, provided that a Director may be elected by written vote in accordance with Section 60 of the Companies Act.
- 14.8 There are no general qualifications prescribed by the Company for a person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act.
- 14.9 No Person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director.

- 14.10 This MOI does not impose any minimum membership or other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Act.
- 14.11 No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.
- 14.12 No election of a Director shall take effect until he/she has delivered to the Company a written consent to serve.
- 14.13 Any casual vacancy occurring on the Board may be filled by the Board, but the Individual so appointed shall cease to hold office at the termination of the first Members' meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Members' meeting or by Round Robin Resolution.
- 14.14 The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Members' meeting. Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time.
- 14.15 If there is no Director able and willing to act, then any Member entitled to exercise Voting Rights in the election of a Director may convene a Members' meeting for the purpose of appointing Directors.

## **15. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

In addition to clause 16 below, a Director or Alternate Director shall cease to hold office as such;

- 15.1 immediately if she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 15.2 when she/he dies;
- 15.3 when she/he resigns by written notice to the Company;
- 15.4 if there are more than 8 (eight) Directors in office and if the Board determines that she/he has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the

Director / Alternate Director has not, within the permitted period, filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);

15.5 if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company

15.6 if she/he is removed by Ordinary Resolution;

15.7 if there are more than 8 (eight) Directors in office and if she/he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application, but the court has not yet confirmed the removal (during which period she/he shall be suspended);

15.8 she/he/it files a petition for the surrender of her/his/its estate or an application for an administration order, or if she/he/it commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he/it makes any arrangement or composition with her/his/its creditors generally; or

15.9 she/he/it is otherwise removed in accordance with any provisions of this MOI.

## 16. RETIREMENT OF DIRECTORS IN ROTATION AND ELECTION OF NEW DIRECTORS

16.1 At the Annual General Meeting thereafter, one-third of the Directors (other than the *ex officio* Directors) for the time being shall retire from office or, if their number is not a multiple of three, then the number nearest to but not less than one-third shall retire from office.

16.2 The Directors so to retire shall be those who have been longest in office since their last election, but in the case of persons who became Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

16.3 Notwithstanding anything herein contained, if at the date of any Annual General Meeting any Director has held office for a period of **3 (three) years** since she/his last election or appointment, she/he shall retire at such meeting either as one of the Directors to retire by rotation or additionally thereto.

16.4 The length of time a Director has been in office shall be computed from his last election, appointment or date upon which he was deemed re-elected.

- 16.5 A Director retiring at a meeting shall retain office until the election of Directors at that meeting has been completed.
- 16.6 Retiring Directors shall be eligible for re-election.
17. The independent non-executive Directors and any new independent non-executive Directors shall be elected as follows -
- 17.1 at least thirty (30) Business Days (or such shorter period as may be agreed to in writing by all of the Persons who are Members at the time of that Members Meeting) before the Annual General Meeting of the Company, the Board shall furnish all Voting Members with a written call for nominations of directors, in the form as prescribed by the Board from time to time ("Call for Nominations");
- 17.2 The Call for Nominations shall stipulate at least that –
- 17.2.1 Voting Members are to nominate new candidate(s) to fill the retiring independent non-executive Director positions on the Board;
- 17.2.2 Each and every nomination shall be in writing and shall be signed by the nominee and any one (1) Voting Member of the Company and accepted in writing by the signature of the candidate in question;
- 17.2.3 Nomination forms shall be available from the registered office of the Company for the convenience of Members; and
- 17.2.4 Completed nomination forms must be lodged with the Company at its registered office at least twenty five (25) Business Days prior to the Annual General Meeting of the Company.
- 17.3 The retiring independent non-executive Directors who retire by rotation and who make themselves available for re-election at the Annual General Meeting will not be required to obtain a completed Nomination form.
- 17.4 The Human Capital Committee and the Chairperson of the Operations Support Committee will be responsible for vetting the suitability of the new nominees for election at the Annual General Meeting and the Human Capital Committee shall make the recommendation to the Board of Directors for the inclusion of the approved nominees in the notice convening the Annual General Meeting of the Company.
- 17.5 The notice convening the Annual General Meeting will include a brief Curriculum Vitae of the nominees approved by the Board of Directors for consideration by the Voting Members for election as an independent non-executive Director.

- 17.6 If the number of candidates nominated for the non-executive Directors in terms of paragraphs is equal to the number of vacancies in that class then the candidates nominated shall be deemed to have been duly elected by the Members, provided that such appointments shall be confirmed at the Annual General Meeting;
- 17.7 If the number of candidates nominated for any class of independent non-executive Directors is less than the number of vacancies, then the remaining Directors shall have the power at any time after the Annual General Meeting to assume a Person or Persons to fill the vacancy or vacancies;
- 17.8 If the number of candidates nominated for any class of non-executive Directors is more than the number of vacancies, then election of non-executive Directors shall –
- 17.8.1 take place at the Annual General Meeting;
- 17.8.2 shall be conducted in the manner as determined by the Chairperson of the Meeting; and in each vote to fill a vacancy (i) each voting right entitled to be exercised may be exercised once; and (ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate, provided that a Director may be elected by written vote in terms of 22.
- 17.9.1 A person appointed by the Directors as a Director to fill a casual vacancy in terms of clause 14.13 shall retire at the following Annual General Meeting and shall not be considered in determining the Directors to retire by rotation and they shall be eligible for re-election.

## **18. REMUNERATION OR REIMBURSEMENT**

The remuneration of the Directors, as determined by the Company in general meeting from time to time, shall be subject always to the provisions of clause 4 above. The Directors may be paid all travelling, hotel, subsistence, and other expenses properly incurred by them in or about the performance of their duties as Directors including those of attending and travelling to and from meetings of the Directors or any committee of the Directors or at any meeting of Members of the Company.

## **19. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

The Company may not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a Related or Inter-Related company, or to a person Related to any such Director, other than a transaction if it:

- 19.1 is in the ordinary course of the Company's business and for fair value;
- 19.2 constitutes an accountable advance to meet:
  - 19.2.1 legal expenses in relation to a matter concerning the Company; or
  - 19.2.2 anticipated expenses to be incurred by the person on behalf of the Company;
- 19.3 is to defray the person's expenses for removal at the Company's request; or
- 19.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

## 20. GENERAL POWERS AND DUTIES OF DIRECTORS

- 20.1 The management and control of the business of the Company shall be vested in the Directors who, in addition to the powers and authorities expressly conferred upon them by the MOI, may exercise all powers and authorities and perform all acts which may be exercised or performed by the Company, and are not by the MOI and/or by the Companies Act expressly reserved to the Company in general meeting.
- 20.2 Such management and control may not be inconsistent with the MOI nor with the provisions of the Companies Act. The general powers conferred by this MOI shall not be limited or restricted by any special authority or power granted to the Directors by any other MOI.
- 20.3 The Directors may:
  - 20.3.1 establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
  - 20.3.2 give pensions, gratuities, and allowances to and make payments for or towards the insurance of,  
  
any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a Subsidiary of the Company or is or was in any way allied to or associated with it or any such Subsidiary, and the wives, widows, families, and dependants of such persons.
- 20.4 The Board may from time to time appoint one or more of the Directors to the office of managing director (provided always that the number of Directors so appointed as managing Director and/or the holders of any other executive office Director shall at all times be less than one half of the number of Directors in office) for such period and at

such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms they may think fit, and it may be made a term of her/his appointment that she/he be paid a pension, gratuity or other benefit on her/his retirement from office.

20.5 The Board may from time to time entrust to and confer upon a managing Director for the time being such of the powers vested in the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A managing Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.

20.6 The Directors may:

20.6.1 in their discretion arrange that any branch of the business carried on by the Company or any other business in which the Company may be interested, shall be carried on by or through one or more Subsidiary companies;

20.6.2 subject to the Income Tax Act, make such arrangements on behalf of the Company as they think advisable for:

20.6.2.1 taking the profits or bearing the losses of any such branch or business; or

20.6.2.2 financing, assisting or subsidising any such Subsidiary company; or

20.6.2.3 guaranteeing its contracts, obligations or liabilities.

20.7 Any Subsidiary company may only receive funds from the Company in any way, if also exempted from income tax in terms of Section 10(1)(cB)(i)(cc) of the Income Tax Act.

20.8 Save as otherwise expressly provided by the MOI, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors may from time to time determine.

20.9 Subject to the provisions of clause 4 above, the Directors may from time to time:

20.9.1 borrow for the purpose of the Company such sums as they think fit; or

20.9.2 secure the payment or repayment of any such sums or any other sum, as they think fit, whether by the creation and issue of secured or unsecured debentures, and/or any mortgage or charge upon all or any of the property or assets of the Company.

## **21. BOARD COMMITTEES**

21.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may not include Persons who are not Directors.

21.2 No Person shall be appointed as a member of a Board committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified 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.

21.3 There are no general qualifications prescribed by the Company for a person to serve as a member of a Board committee in addition to the requirements of the Companies Act.

21.4 A member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

21.5 Committees of the Board may consult with or receive advice from any person.

21.6 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

## **22. PERSONAL FINANCIAL INTERESTS OF DIRECTORS**

22.1 For the purposes of this clause 22 "Director" includes an 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.

22.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board 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.

22.3 If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or knows that a Related Person has a Personal Financial Interest in the matter, the Director:

- 22.3.1 must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
- 22.3.2 must disclose to the meeting any Material information relating to the matter, and known to the Director;
- 22.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 22.3.4 if Present at the Meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 22.3.2 or 22.3.3;
- 22.3.5 must not take part in the consideration of the matter, except to the extent contemplated in clauses 22.3.2 or 22.3.3;
- 22.3.6 while absent from the meeting in terms of this clause 22.3:
  - 22.3.6.1 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
  - 22.3.6.2 is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 22.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 22.4 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.
- 22.5 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or person Related to the Director, only if:
  - 22.5.1 it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 22; or

22.5.2 despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

## 23. PROCEEDINGS OF DIRECTORS

23.1 A Director authorised by the Board:

23.1.1 may, at any time, summon a meeting of the Directors; and

23.1.2 must call a meeting of the Directors if required to do so by at least 2 (two) Directors.

23.2 The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.

23.3 If all of the Directors:

23.3.1 acknowledge actual receipt of the notice;

23.3.2 are present at a meeting of the Directors; or

23.3.3 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.

23.4 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

23.5 Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

23.6 The quorum for a Directors' meeting shall be constituted by the presence of a majority of the Directors then in office (present in person, represented by the Alternate Directors or present by Electronic Communication).

- 23.7 The Directors may elect a chairperson of their meetings and determine the period for which she/he is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not present within **15 (fifteen) minutes** after the time appointed for holding it, then the deputy chairperson shall be the chairperson of the meeting.
- 23.8 Each Director has **1 (one) vote** on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 23.9 In the case of a tied vote the chairperson will have a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 23.10 The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 23.10.1 any declaration given by notice or made by a Director as required by clause 22;
- 23.10.2 every resolution adopted by the Board.
- 23.11 Resolutions adopted by the Board:
- 23.11.1 must be dated and sequentially numbered; and
- 23.11.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 23.12 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 23.13 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa who is able to receive notice, has received notice of the matter to be decided upon. One or more Alternate Directors shall be entitled to sign a Round Robin Resolution if one or more Directors are not present in South Africa to sign, and without his/their vote/s the requisite majority cannot be achieved.

## 24. **PRESCRIBED OFFICERS**

- 24.1 No Person shall hold office as a Prescribed Officer if she/he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which

would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

24.2 A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

## 25. APPOINTMENT OF SECRETARY

25.1 The Directors may appoint the secretary from time to time, who:

25.1.1 shall be a permanent resident of the Republic and remain so while serving as secretary; and

25.1.2 shall have the requisite Knowledge of, or experience in, relevant laws; and

25.1.3 may be a Juristic Person subject to the following:

25.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

25.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 25.1.1 and 25.1.2.

25.2 Within **60 (sixty) Business Days** after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 25.1.3.

25.3 If at any time a Juristic Person or partnership holds office as company secretary of the Company:

25.3.1 the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 25.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;

25.3.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 25.1.3, until the Company has received a notice contemplated in clause 25.3.1; and

- 25.3.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 25.1.3 at the time of that action.
- 25.4 The company secretary may resign from office by giving the Company **1 (one) month's** Written notice or less than that with the prior written approval of the Board.
- 25.5 If the company secretary is removed from office by the Board, the company secretary may, by giving written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

## 26. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any document sent through the post either to the registered address of any Member or to any other address requested by the Member.

## 27. **NOTICES**

- 27.1 Any notice that is required to be given to Members or Directors may be given in any manner prescribed in the Table CR3 to the Regulations and that notice shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery.
- 27.2 Each Member and Director shall:
- 27.2.1 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, if he has not named such an address, he shall be deemed to have waived his right to be so served with notices; and
- 27.2.2 unless otherwise agreed with the Company, 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 e-mail or facsimile, respectively.
- 27.3 Any notice required to be given by the Company to the Members, and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject

to giving a notice of availability in accordance with clause 27.1 or 27.2), if given by posting it on the Company's web site, if any, until at least the date when the event to which the notice refers occurs.

27.4 A Member shall be bound by every notice. The Company shall not be bound to enter any person in the Members Register until that Person gives the Company an address for entry on the Members Register.

27.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 1), the provisions of clause 1.13 shall also be applied.

27.6 As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## 28. INDEMNITY

28.1 For the purposes of this clause 28, "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

28.2 The Company may:

28.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation;

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

28.2.3 directly or indirectly indemnify a Director for:

28.2.3.1 any liability, other than in respect of:

28.2.3.1.1 any liability arising in terms of Sections 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or

28.2.3.1.2 any fine contemplated in clause 28.2.1;

28.2.3.2 any expenses contemplated in clause 28.2.2, irrespective of whether it has advanced those expenses, if the proceedings:

28.2.3.2.1 are abandoned or exculpate the Director; or

28.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 28.2.3.1.

28.3 The Company may purchase insurance to protect:

28.3.1 a Director against any liability or expenses contemplated in clause 28.2.2 or 28.2.3; or

28.3.2 the Company against any contingency including but not limited to:

28.3.2.1 any expenses:

28.3.2.1.1 that the Company is permitted to advance in accordance with clause 28.2.2; or

28.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 28.2.3.2; or

28.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 28.2.3.1.

28.4 The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with Section 75 of the Companies Act.

## 29. FUNDAMENTAL TRANSACTIONS AND CONVERSION

29.1 The Company may not:

29.1.1 amalgamate or merge with, or convert to, a Profit Company; or

- 29.1.2 dispose of any part of its assets, undertaking or business to a Profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 29.2 If the Company has voting members, any proposal to:
- 29.2.1 dispose of all or the greater part of its assets or undertaking; or
- 29.2.2 amalgamate or merge with another Non-Profit Company,
- must be submitted to the Members for approval, in a manner comparable to that required of Profit Companies in accordance with sections 112 and 113, respectively.
- 29.3 Sections 115 and 116 of the Companies Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 29.2.
- 29.4 The Company does not elect, in terms of Section 118(1)(c)(ii) of the Companies Act, to submit itself voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and to the Takeover Regulations.

### **30. WINDING UP OR DISSOLUTION**

Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, distribute the net value of the Company to any similar public benefit organisation which has been approved by the Commissioner: South African Revenue Service in terms of Section 30 of the Income Tax Act or any institution, board or body which is exempt from tax under the provisions of Section 10(1)(cA)(i) of the Income Tax Act, which has as its sole object the carrying on of any public benefit activity and which has similar objects to those of the Company.

### **31. FUNDRAISING NUMBER**

- 31.1 Should the services of a fundraiser be made use of for the collection of contributions, the expenses (remuneration and/or commission included) may not exceed 40% (forty percent) of the total turnover of the collection.
- 31.2 No competition, contest, game, scheme, arrangement or system in connection with which any prize may be won shall be conducted or caused to be conducted by the Company unless any authority which may be required in terms of any other act has been obtained beforehand.

## 32. TAX EXEMPTION

- 32.1 It is recorded that the Company is registered as a public benefit organisation under Section 30 of the Income Tax Act and the provisions of this MOI reflect the requirements of this Section. The Company shall accordingly comply with the provisions of Section 30 of the Income Tax Act, such conditions may prescribed, from time to time, by way of regulation pursuant to the Income Tax Act to ensure that the activities and resources of public benefit organisation are directed in the furtherance of their object, and with such reporting and record retention requirements as may be determined by the Commissioner.
- 32.2 The Company shall only be entitled to carry on business or trading activities in compliance with the provisions of Section 10(1)(cN) and Section 30 of the Income Tax Act and where the business activity is utilised as a source of funding for the Company.
- 32.3 As contemplated in Section 18A (1C) of the Income Act, the Company (as a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule of the Income Tax Act (being the establishment and management of a transfrontier area)):
- 32.3.1 may not issue a Section 18A receipt in respect of any donation made by a person to the Company, unless:
- 32.3.1.1 that donation was made by that person on or after 1 August 2002;
- 32.3.1.2 that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 000 000 (one million Rand) to the Company;
- 32.3.2 must ensure that every donation contemplated in clause 32.3.1 above, in respect of which such a receipt has been issued, will be matched by a donation to the Company of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and
- 32.3.3 must utilise the amount of:
- 32.3.3.1 all donations contemplated in clause 32.3.1 above, in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity.