

MEMORANDUM OF INCORPORATION

of

NATIONAL SEA RESCUE INSTITUTE OF SOUTH AFRICA "NPC"

(registration number 1967/013618/08)

being a non-profit company

("the Company")

The Company has adopted this unique form of Memorandum of Incorporation and, accordingly, the prescribed standard form of Memorandum of Incorporation for non-profit companies with members which is contained in the Companies Regulations shall not apply to the Company.

TABLE OF CONTENTS

PART A – THE MOI AND RULES	4
1 INTERPRETATION	4
2 CONFLICTS WITH THE MOI	6
3 AMENDMENT OF THE MOI.....	7
4 RULES	8
PART B – STATUS, OBJECTS AND POWERS OF THE COMPANY.....	8
5 STATUS AS NON-PROFIT COMPANY.....	8
6 OBJECTS AND POWERS OF THE COMPANY.....	10
7 LIMITATION OF LIABILITY	13
8 ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT	13
PART C – MEMBERSHIP AND REGISTER	13
9 MEMBERSHIP	13
10 REGISTER.....	15
PART D – MEMBERS RIGHTS AND PROCEEDINGS	15
11 VOTING RIGHTS.....	15
12 MEMBERS RIGHT TO INFORMATION.....	16
13 PROXY REPRESENTATION	16
14 RECORD DATES	17
15 MEMBERS MEETINGS.....	18
16 NOTICE OF MEMBERS MEETINGS.....	19
17 CONDUCT OF MEETINGS.....	19
18 MEMBERS MEETING QUORUM AND ADJOURNMENT	20
19 ANNUAL GENERAL MEETING.....	23
20 CHAIRPERSON	23
21 MEMBER RESOLUTIONS.....	23
22 WRITTEN RESOLUTIONS BY MEMBERS.....	24

PART E – DIRECTORS POWERS AND PROCEEDINGS	25
23 AUTHORITY OF THE BOARD OF DIRECTORS	25
24 APPOINTMENT OF DIRECTORS	25
25 ALTERNATE DIRECTOR.....	28
26 BOARD COMMITTEES.....	29
27 CHAIRPERSON	29
28 DIRECTORS MEETINGS.....	30
29 WRITTEN RESOLUTIONS BY DIRECTORS.....	33
30 INDEMNIFICATION AND INSURANCE FOR DIRECTORS	33
PART F – GENERAL PROVISIONS	37
31 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION	37
32 FINANCIAL ASSISTANCE TO DIRECTORS	38
33 FUNDAMENTAL TRANSACTIONS	38
34 NOTICES	38
35 RECORDS.....	39

PART A – THE MOI AND RULES

1 INTERPRETATION

In this MOI, clause 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 "**Act**" - the Companies Act 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;

1.2.2 "**Board**" - the board of Directors of the Company as elected from time to time with the composition as set out in this MOI;

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

1.2.4 "**Connected Person**" means a connected person as defined in the Income Tax Act;

1.2.5 "**Director/s**" – a director of the Company and includes the *Ex Officio* Directors, depending on the context;

1.2.6 "**Ex Officio Directors**" - the Managing Director, the Chief Operating Officer, the Chief Financial Officer and the Marketing and Fund raising Officer;

- 1.2.7 **"Filing Date"** - the date on which this MOI is filed with the Companies and Intellectual Property Commission in accordance with section 16(7) of the Act;
- 1.2.8 **"Member"** - a Person who holds membership in and specified rights in respect of the Company as contemplated in schedule 1 of the Act and in this MOI;
- 1.2.9 **"Honorary Membership"** - those Persons listed or approved as Honorary Members of the Company from time to time;
- 1.2.10 **"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;
- 1.2.11 **"Person/s"** – a person as defined in section 1 of the Act;
- 1.2.12 **"Public Benefit Activity"** means a public benefit activity as defined in the Income Tax Act;
- 1.2.13 **"Public Benefit Organisation"** means a public benefit organisation as defined in the Income Tax Act;
- 1.2.14 **"Income Tax Act"** means the Income Tax Act 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;
- 1.2.15 **"Independent Non-Executive Director"** – eight (8) Persons who shall not be required to have membership in the Company and who are independent of management, who shall be elected to the Board of the Company by the Members in the manner as set out in this MOI; a person as defined in section 1 of the Act;
- 1.2.16 **"Institute"** – the National Sea Rescue Institute of South Africa, a body corporate, not for gain with perpetual succession;

- 1.2.17 **"Regulations"** - the Companies Regulations of 2011 for so long as they remain of force and effect and any other regulations made in terms of the Act;
- 1.2.18 **"Republic"** - the Republic of South Africa;
- 1.3 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;
- 1.4 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;
- 1.5 where any term is defined within a particular clause other than this 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this MOI;
- 1.6 any capitalised word or expression that is not otherwise defined in this MOI shall be construed in accordance with the 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 Act;
- 1.7 a reference to a "**section**" refers to the corresponding section of the Act; and
- 1.8 references in the left-hand margins to sections of the Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only.

2 **CONFLICTS WITH THE MOI**

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

3 **AMENDMENT OF THE MOI**

- S15(2)(b) 3.1 Every provision of this MOI shall be capable of amendment in accordance with
S15(2)(c) sections 16, 17 and 152(6)(b) of the Act, unless expressly indicated otherwise
S16 herein and/or being incapable of amendment in terms of the Act, and there is
S17 no provision of this MOI which may not be amended as contemplated in
S152(6)(b) section 15(2)(b) or 15(2)(c) of the 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)
of the Act and any other applicable provisions of the Act;
 - 3.2.2 by way of a Special Resolution of the Members passed in accordance with
S16(1)(c) section 16(1)(c) of the Act, read in conjunction with the remaining
provisions of the Act and this MOI; or
 - S17 3.2.3 as contemplated in section 17 and 152(6)(b) of the Act.
S152(6)(b)
- 3.3 Save as specifically provided for in 3.2, this MOI is not capable of amendment by any other method. Accordingly, the provision of section 16(1)(b) of the Act shall not apply, nor shall any other alterable provisions of the Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in clause 3.2 apply.
- S17 (1) 3.4 The Company must publish a notice of any alteration made to this MOI in order to correct this MOI in accordance with section 17(1) of the Act by delivering notice thereof to the Members in accordance with clause 34.

3.5 A copy of any amendment to this MOI must be submitted to the Commissioner for the South African Revenue Service.

4 **RULES**

S15(3) 4.1 The Board may, subject to section 15(4) of the Act, make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI, and the authority of the Board in this regard is not limited or restricted in any manner by this MOI.

S17(1) 4.2 The Company shall publish a copy of those Rules and a notice of any alteration to those Rules in accordance with section 17(1) of the Act by delivering a copy thereof to each Member in accordance with 34 or in such other manner as may be required by those Rules.

PART B – STATUS, OBJECTS AND POWERS OF THE COMPANY

5 **STATUS AS NON-PROFIT COMPANY**

5.1 The Company shall -

S1(2)
Schedule
1 5.1.1 apply all of its assets and income, however derived, to advance its stated objects, as set out in this MOI;

5.1.2 comply with any reporting requirements determined by the Commissioner for the South African Revenue Service; and

5.1.3 subject to 5.1.1, may -

5.1.3.1 acquire and hold securities issued by a profit company; or

5.1.3.2 directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

S1(3)
Schedule
1 5.2 The Company shall not, directly or indirectly, pay any portion of its funds, income or transfer any of its assets, regardless how the funds, income or asset

was derived, to any Person (including a 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 –

5.2.1 as reasonable –

5.2.1.1 remuneration for goods delivered or services rendered to, or at the direction of, the Company, provided that, to ensure that such remuneration will not benefit any such Person in a manner which is not consistent with or is detrimental to the Company's objects, in determining the remuneration for goods delivered or services rendered the Company shall have regard to what is generally considered reasonable in the applicable sector; or

5.2.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

5.2.2 as a 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;

5.2.3 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

5.2.4 in respect of any legal obligation binding on the Company,

provided that such payment furthers the principal object of the Company.

S1(4)
Schedule 1

5.3 Upon the winding-up or dissolution of the Company, no past or present Member or Director of the Company, or a Person appointing a Director of the Company, shall be entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied and the entire net value of the Company shall be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts ("**Entities**") having objects similar to the Company's main object and as determined by the Directors, provided that the Entities qualify as Public Benefit Organisations at or immediately

before the Company's dissolution. For the avoidance of doubt, the recipient of the net value of the Company shall be required to use those assets solely for the purposes of carrying out a Public Benefit Activity.

5.4 The Company may not: -

5.4.1 accept a donation which is recoverable at the instance of the donor for reasons other than to conform to the designated purpose and conditions of the donation, including misrepresentation with regard to the tax deductibility of the aforesaid donation;

5.4.2 accept a donation from a donor who has imposed conditions on such donation that would enable the donor or any Connected Person of the donor to derive a direct or indirect benefit from the application of such donation unless the donor is an approved Public Benefit Organisation or is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act;

5.4.3 knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which would have been payable to the South African Revenue Service but for the transaction, operation or scheme; or

5.4.4 use any of its income, funds, or assets, directly or indirectly, to support, advance or oppose any political party.

5.5 The Company is, accordingly, classified as a non-profit company, in terms of section 8(1) of the Act.

6 OBJECTS AND POWERS OF THE COMPANY

6.1 The Company is governed by, -

6.1.1 the unalterable provisions of the Act, that are applicable to non-profit companies;

S8(1)

6.1.2 the alterable provisions of the Act, that are applicable to non-profit companies, 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 is a non-profit company with Members.

6.3 The principal object of the Company is to establish efficient life-saving craft at specific points on South African waters, and to undertake to organise and train crews capable of manning such life-saving craft and boats at all times in case of rescue or disaster.

S1(1)
Schedule 1

6.4 In order to achieve its principal objective, the Company may undertake any of the following ancillary objectives -

6.4.1 to encourage boat owners operating along the South African coastline and inland waters to accept safety standards and equipment of boats to prevent disasters at sea, and to foster the adherence to rules of conduct, seamanship and safety precautions;

6.4.2 to divide the coastline and inland waters of South Africa into "zones" and to establish efficient life-saving craft at specific points in each "zone";

6.4.3 to institute training centres at specific points in each "zone" to train crews capable of manning the life-saving craft and boats at all times;

6.4.4 to raise money by way of public subscription, donations and any other means provided that such activity is for the purpose of carrying out the objects of the Company;

6.4.5 to acquire, dispose of, and in any other manner whatsoever deal in property;

- 6.4.6 to invest any money and to secure the repayment thereof by mortgage, hypothecations, debentures, debenture bonds or pledge of any of the assets of the Company, movable or immovable;
- 6.4.7 any funds available for investment may be transferred to a trust in which the Company is the sole beneficiary, provided that such trust invests the aforementioned funds with any registered financial institution as long as the Investment Committee has undertaken a suitable due diligence;
- 6.4.8 generally to carry on, do or transact any act, scheme or enterprise calculated to further the main object of the Company, including transferring any income, funds, or assets to a trust in which the Company is the sole beneficiary, provided that such income, funds or assets shall be used to further the objects of the Company; and
- 6.4.9 notwithstanding any of the aforementioned, to do any of the above things as principals, or as trustees providing the conditions attached to any trust are not in conflict with the main object of the Company and the Company is the sole beneficiary of any such trust.
- 6.5 It is specifically recorded that the objects of the Company, as listed in clauses 6.3 and 6.4, are to be carried out in an altruistic manner only and that none of the aforementioned objectives are intended, whether directly or indirectly, to promote the self-interest of any fiduciary or member of the Company.
- S19(1)(b)(ii) 6.6 Except to the extent implied by the stated objects in 6.2, the Company has, subject to section 19(1)(b)(i) of the Act, all of the legal powers and capacity of an individual, and the purposes, 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 Act.
- S15(2)(b) 6.7 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b) of the Act.

7 **LIMITATION OF LIABILITY**

S19(2) No Person shall, solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities or obligations of the Company.

8 **ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT**

S30(2)(b)(ii)(aa) 8.1 The Company does not elect, in terms of section 30(2)(b)(ii)(aa) of the Act, to voluntarily require an audit of its annual Financial Statements.

S34(2) 8.2 The Company does not elect, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act, unless otherwise provided herein.

PART C – MEMBERSHIP AND REGISTER

9 **MEMBERSHIP**

9.1 As contemplated in section 4(1) of Schedule 1 of the Act, the Company has members, who are in either of two classes, being voting and non-voting members, respectively, as more fully set out in 9.6 below.

9.2 Membership of the Company shall not be restricted or regulated in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution of the Republic of South Africa, Act 108 of 1996.

9.3 No Person shall be presumed or regarded to be a Member of the Company nor acquire automatic or ex officio membership of the Company on any basis other than life-time membership awarded to such Person:

9.3.1 for service to the Company or to the public benefit objects set out in this MOI; and

9.3.2 with that Person's consent.

9.4 The Company shall have the following categories of membership –

9.4.1 Crew members who shall be Full Members;

- 9.4.2 Directors who shall be Full Members;
- 9.4.3 A representative of a Platinum Sponsor who shall be a Full Member;
- 9.4.4 A Honorary Member who shall be a Full Member.
- 9.5 A Person who applies for Honorary membership shall become a Member of the Company as and when membership is granted by the Board, who shall have the right to, in its sole discretion, elect any Person as a Member or refuse to admit any person as a Member.
- 9.6 Only Members having Full Membership shall be entitled to vote ("**Voting Members**").
- 9.7 The rights of a Member set out in this MOI shall be personal, shall not be transferable unless the Board otherwise determine, and shall terminate –
- 9.7.1 upon receipt by the Company at its registered office of notice in writing to this effect from the Member concerned;
- 9.7.2 upon the issue of a final order of liquidation or sequestration of the Member concerned, or upon the Member being dissolved, as the case may be;
- 9.7.3 upon the death of a Member, or upon a Member being declared insane or incapable of managing his/her own affairs;
- 9.7.4 in the event of non-compliance by a Member with any such obligations as may attach to his/her membership, upon the expiration of a period of thirty (30) days reckoned from the date of written notice by the Company to the Member concerned, requiring the remedying of such default; save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate;

9.7.5 upon the passing of a resolution to this effect by a duly convened General Meeting of the Company;

9.7.6 upon resignation as a member of the Company or upon being removed as a Member from the list of members by the Company, or if the Member ceases to comply with any of the qualifications of membership as set out in clause 9.4 above.

10 REGISTER

S1(9)
Schedule
1

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

10.2 No Person to whom membership has been granted in terms of clause 9.5 shall become a Member unless and until that Person's name has been entered in the Members Register.

PART D – MEMBERS RIGHTS AND PROCEEDINGS

11 VOTING RIGHTS

S1(7)
Schedule
1

11.1 Voting Members shall be entitled to exercise one vote on any matter to be decided by Members of the Company, whether voting takes place on a show of hands or on a poll.

11.2 The aforesaid rights may likewise be exercised by the authorised representative of any Member who is not a natural Person, which Member shall be entitled, under the hand of its secretary, president, chairman, director or other chief executive, to appoint a representative to act and vote on its behalf at a general meeting, provided that the chairman of the meeting shall be entitled to permit participation in the deliberations of the meeting of any Person who is an office bearer in any Member of the Company and who has been appointed as a representative of such Member in accordance with this MOI.

12 MEMBERS RIGHT TO INFORMATION

S26(1) Each Member shall have the information rights set out in section 26(1) of the Act.

13 PROXY REPRESENTATION

S58(1) 13.1 A Member may, at any time by written proxy appointment, appoint any individual, including an individual who is not a Member of the Company, as a proxy to -

13.1.1 participate in, and speak and vote at, a Members Meeting on behalf of the Member; or

13.1.2 give or withhold written consent on behalf of the Member to a decision contemplated in clause 22,

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for the appointment of a proxy) shall be governed by section 58 of the Act and this clause 13.

13.2 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his/her agent duly authorised in writing or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate. The holder of a general or special power of attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.

S58(3)(a) 13.3 The Board may determine a standard form of proxy appointment and make it available to Members on request.

S58(3)(a) 13.4 A Member may not appoint more than one Person concurrently as proxies.

S58(3)(b) 13.5 A proxy may not delegate the proxy's authority to act on behalf of the Member to another Person, unless the right to delegate is specifically contained in the proxy appointment and the delegation occurs by way of a further proxy appointment which itself complies with the requirements of the Act and this MOI for a proxy appointment.

S58(3)(c) 13.6 A proxy shall not be entitled to exercise any rights of the Member who appointed that proxy –

13.6.1 until the expiry of two Business Days after the date on which the instrument containing; or

13.6.2 after midnight on the day on which the instrument revoking,

the appointment of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the Company Secretary, 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 referred to in the proviso to this clause 13.6) or to any other Person entitled to accept the proxy appointment or revocation on behalf of the Company; provided that the Board, or the chairperson of any meeting at which the proxy wishes to exercise any rights of the Member, may agree to allow any such proxy appointment or revocation to become effective prior to the time when it would otherwise have become effective in terms of this clause 13.

S58(7) 13.7 A proxy shall, as contemplated in section 58(7) of the Act, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the Member; provided that if the instrument appointing the proxy specifically provides otherwise then the specific provisions of the proxy appointment shall prevail.

14 **RECORD DATES**

S59(1) 14.1 The Board may, in accordance with section 59 of the Act and the Regulations, determine and publish a Record Date for the purposes of determining which Members are entitled to -

14.1.1 receive a notice of a Members Meeting;

14.1.2 participate in and vote at a Members Meeting;

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

14.1.4 be allotted or exercise any other rights;

provided that if the Board does not determine a Record Date for any action or event, as contemplated in this clause 14, the Record Date shall be as determined in accordance with section 59(3) of the Act.

S59(2) 14.2 In the event of the Board determining a Record Date for any action or event, such Record Date shall not be –

14.2.1 earlier than the date on which the record date is determined; or

14.2.2 more than 10 Business Days before the date on which the event or action, for which the record date is being set, is scheduled to occur.

15 MEMBERS MEETINGS

S61(2) 15.1 The Company shall not be required to hold any meetings of Members other than those required by the Act or this MOI.

15.2 The Board or a Member (subject to 15.4) may call a Members meeting at any time.

15.3 The Company shall hold a Members meeting in the circumstances contemplated in section 61(2) of the Act.

S61(3) 15.4 The Board shall convene a Members Meeting if requested to do so by means of one or more written signed demands for such meeting by any Member, provided that –

15.4.1 each such demand describes the specific purpose for which the meeting is proposed; and

15.4.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

- s61(9) 15.5 The Board shall determine the location for any Members 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 Act, is not limited or restricted by this MOI.
- 15.6 The Board shall be entitled to receive notice of and to attend and speak at every Members meeting.

16 NOTICE OF MEMBERS MEETINGS

- S62(1)(b) 16.1 The Company must deliver notice of each Members meeting to all Members as of the Record Date for the meeting at least fifteen (15) 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 that Members meeting is to begin.
- S62(2A) 16.2 The Company may call a meeting with less notice than required by the Act or this MOI, but such a meeting may proceed only if every Person who is entitled to exercise voting rights in respect of any item on the meeting agenda –
- 16.2.1 is present at the meeting; and
- 16.2.2 votes to waive the required minimum notice of the meeting.
- S62(3) 16.3 The notice of a Members meeting shall be in writing and shall include the items set out in section 62(3) of the Act.
- 16.4 The notice of a Members Meeting must be delivered in accordance with the provisions of clause 34.

17 CONDUCT OF MEETINGS

- 17.1 The Company -
- S63(2)(a) 17.1.1 may, as contemplated in section 63 of the Act, provide for a Members meeting to be conducted in whole or in part by Electronic Communication; and

S63(2)(b) 17.1.2 may make provision for any Member, or proxy for a Member, to participate by Electronic Communication in every Members meeting that is being held in Person,

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.

S63(3)(b) 17.2 The responsibility for any expense of gaining access to the medium or means of Electronic Communication employed for any Members meeting shall be that of the Member or proxy.

S63(3)(a) 17.3 The Company shall ensure that any notice of any meeting of Members, at which it will be possible for Members to participate by way of Electronic Communication, shall inform Members of that form of participation and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication.

17.4 A resolution passed at any meeting that employs Electronic Communication shall, notwithstanding that the Members 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 clauses 17 to 22 shall apply to these meetings.

S63(4) 17.5 At a meeting of Members, voting shall be conducted by way of a poll or by way of a show of hands. In the event that voting takes place by means of a poll, the poll shall be conducted in such manner as the chairperson of the meeting directs.

18 MEMBERS MEETING QUORUM AND ADJOURNMENT

S64(1) 18.1 The quorum requirements for meetings of Members shall, subject to clause 18.5, be that –

- 18.1.1 such a meeting shall not begin until sufficient Persons are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Act) to exercise, in aggregate, at least 2% of all Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 18.1.2 the consideration of a matter to be decided at the meeting shall not begin unless sufficient Persons are present at such meeting at the time when that matter is called for consideration to exercise, in aggregate, at least 2% of all Voting Rights that are entitled to be exercised on that matter,
- S64(3) and provided that at all times when the Company has more than two (2) Members, at least three (3) Members must be present at the meeting in order to constitute a quorum for that meeting or particular matter. Due to the fact that the aforementioned proviso constitutes an unalterable provision of the Act, notwithstanding the provisions of clause 3.1, this proviso shall only be capable of amendment if such amendment results in a higher number of Members required to be present.
- S64(4) 18.2 Notwithstanding the provisions of section 64(4) of the Act and clause 18.1, if, within one (1) hour after the appointed time for a meeting, -
- 18.2.1 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;
- 18.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -
- 18.2.2.1 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
- 18.2.2.2 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.

- 18.3 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) 18.4 The chairperson of the meeting shall be entitled to extend the thirty (30) minute limit referred to in clause 18.2 in the circumstances contemplated in section 64(5) of the Act.
- S64(8) 18.5 If, at the time appointed in terms of this clause 18 for an adjourned meeting to resume, or for a postponed meeting to begin, the quorum requirements have not been satisfied, the Members present in Person or by proxy will be deemed to constitute a quorum.
- S64(9) 18.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one Member with Voting Rights entitled to be exercised at the meeting, or on that matter, is Present at the Meeting.
- S64(10)
S64(11)
S64(12) 18.7 A Members Meeting, or the consideration of any matter being debated at a Members Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Act, it being recorded that the periods of adjournment set out in section 64(12) shall not apply and that the meeting may be adjourned for an unlimited time as provided for in section 64 (12).
- 18.8 The Board may, at any time after notice of a Members Meeting (other than a Members Meeting required to be held in terms of clause 15.4) 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 Act or this MOI to be held.
- S64(7)(a)
S64(7)(b) 18.9 If a Members Meeting is postponed or adjourned, whether in terms of clause 18.2 or otherwise, the Company must give notice to all Members 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.

19 ANNUAL GENERAL MEETING

19.1 The Company shall hold its Annual General Meeting in each year, provided that not more than fifteen (15) months shall elapse between the date of one Annual General Meeting and that of the next, and that an Annual General Meeting shall be held within nine (9) months after the expiration of the financial year of the Company.

19.2 Other Members Meetings of the Company may at any time be convened by the Board.

20 CHAIRPERSON

20.1 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 Members Meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the Members present shall elect one of the Directors or, if no Director is present and willing to act, a Member, to be the chairperson of that Members Meeting.

20.2 The chairperson of a meeting referred to in clause 20.1 shall, subject to the Act and this MOI and any Rules, determine the procedure to be followed at that meeting.

21 MEMBER RESOLUTIONS

21.1 At any meeting of Members, any Person who is present at the meeting, whether as a Member or as a proxy for a Member, and who is entitled to exercise voting rights in accordance with 9.6 above, ie a Voting Member, shall be entitled to exercise one vote, whether voting takes place by a show of hands or by polling.

S63(5)

- S65(7) 21.2 In order for -
- 21.2.1 an Ordinary Resolution to be approved, it must be supported by a majority (more than 50%) of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or
- S65(9) 21.2.2 a Special Resolution to be approved, it must be supported by 75% of the Voting Rights exercised on the Special Resolution, as provided in section 65(9),
- at a quorate meeting of Members which is quorate in relation to that resolution; provided that this clause 21.2 shall not detract from the Members' ability to adopt resolutions by written vote as referred to in clause 22.
- 21.3 If any Member abstains from voting in respect of any resolution, that Member 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) 21.4 Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11) or any other section of the Act or any provision of the Regulations or this MOI, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Members.

22 WRITTEN RESOLUTIONS BY MEMBERS

- S60(1) 22.1 A resolution that could be voted on at a Members meeting may instead be adopted by written vote of the Voting Members, as contemplated in section 60 of the 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 Members meeting.
- 22.2 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the Company received the written vote of the Voting Member or the proxy of the Voting Member whose

vote resulted in the resolution by being supported by sufficient votes for its adoption.

PART E – DIRECTORS POWERS AND PROCEEDINGS

23 AUTHORITY OF THE BOARD OF DIRECTORS

- S66(1) 23.1 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 Act or this MOI provides otherwise.
- 23.2 The Board may delegate to any one or more Persons all such powers and delegate to any one or more Persons the doing of all such acts (including the right to sub-delegate).

24 APPOINTMENT OF DIRECTORS

- 24.1 The Board shall comprise of the following individuals:
- 24.1.1 The *Ex Officio* Directors;
 - 24.1.2 The Chairman of the Operations Board;
 - 24.1.3 (eight) 8 Independent Non-Executive Directors;
 - 24.1.4 Any additional Director so appointed by the Board.
- 24.2 The members of the Board shall hold office until the conclusion of the Annual General Meeting of the Company in the second year following upon the year in which they were elected, provided that a minimum of one third of the Members' Directors shall retire at the end of each Annual General Meeting of the Company. Should any of the Members' Directors' period in office at the time of the Annual General Meeting not yet have elapsed, the Directors to retire shall be determined by means of who had held office the longest, or in the absence thereof, determined by lot. The Directors so retiring shall be eligible for re-election by the Members.
- S5(1)(a) Schedule 1 24.3 The Independent Non-Executive Directors shall be elected by an ordinary resolution.

- 24.4 The Independent Non-Executive Directors shall be elected as follows -
- 24.4.1 at least twenty five (25) 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**");
- 24.4.2 The Call for Nominations shall stipulate at least that -
- 24.4.2.1 Voting Members are to nominate candidate(s) to fill the eight (8) Independent Non-Executive Director positions on the Board;
- 24.4.2.2 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;
- 24.4.2.3 Nomination forms shall be available from the registered office of the Company for the convenience of Members; and
- 24.4.2.4 Completed nomination forms be lodged with the Company at its registered office at least twenty (20) Business Days prior to the Annual General Meeting of the Company;
- 24.4.3 If the number of candidates nominated for the Non-Executive Directors in terms of paragraphs **Error! Reference source not found.** 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;
- 24.4.4 If the number of candidates nominated for any class of Non-Executive Directors in terms of paragraphs **Error! Reference source not found.** 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;

24.4.5 If the number of candidates nominated for any class of Non-Executive Directors in terms of paragraphs **Error! Reference source not found.** is more than the number of vacancies, then election of Non-Executive Directors shall –

24.4.5.1 take place at the Annual General Meeting;

24.4.5.2 shall be conducted in the manner as determined by the Chairperson of the Meeting; and

24.4.5.3 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.

24.5 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 vacancy has been filled by –

24.5.1 nomination or replacement;

24.5.2 direct appointment; or

24.5.3 election in terms of 24.4,

with regard to the *Ex Officio* Directors and the Directly Appointed Directors, respectively, and 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.

S69(3) 24.6 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Act.

S69(6)
S70 24.7 In addition to the grounds of ineligibility and disqualification of Directors as contained in sections 69 and 70 of the Act, –

24.7.1 a Director shall cease to be eligible to continue to hold office 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 the Board resolves that his office shall be vacated; provided that this clause 24.7.2 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself.

S70

24.8 Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time in terms thereof or otherwise.

24.9 Notwithstanding any of the aforementioned, a Person may not serve as a Director of the Company if a Connected Person of the aforementioned Person is already a Director of the Company.

25 **ALTERNATE DIRECTOR**

25.1 Each Director may, by notice to the Company at any time -

S66(4)(iii)

25.1.1 nominate a Person in the alternative (including any of his co-Directors) to be his Alternate Director;

25.1.2 terminate any such appointment.

25.2 The appointment of an Alternate Director shall terminate when the Director to whom he is an Alternate Director -

25.2.1 ceases to be a Director; or

25.2.2 terminates his appointment.

25.3 An Alternate Director shall subject to this MOI -

25.3.1 act as a Director and generally exercise all the rights of the Director to whom he is an Alternate Director, but only during the absence or incapacity of that Director; and

25.3.2 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.

26 **BOARD COMMITTEES**

- S72(1) 26.1 The Board may -
- 26.1.1 appoint any number of committees of Directors;
 - 26.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate); and
 - 26.1.3 include any Person who is not a Director of the Company in such committees.
- 26.2 Provided that decisions taken by any committee must be reported for ratification to the next meeting of the Board, this MOI does not limit or restrict the authority and power of any committees established by the Board, but such power or authority may be restricted by the Board when establishing any committee or by subsequent resolution.

27 **CHAIRPERSON**

- 27.1 The Board shall at their first Board meeting of each year elect from amongst their number a chairperson and deputy chairperson.
- 27.2 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 members of the Board who are present shall elect one of the Directors to be the chairperson of that meeting of the Board.

27.3 The chairperson of a meeting referred to in clause 27.2 shall, subject to the Act and this MOI and any Rules or decision of the Board, determine the procedure to be followed at that meeting.

27.4 In the case of a tied vote or any situation arising in which the Board can not reach decision on a matter at a Board meeting, the chairperson shall have a second or casting vote in addition to his deliberative vote.

28 DIRECTORS MEETINGS

28.1 The Board may -

S73(1)(b)
S73(2)

28.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that any two (2) Directors or the chairperson shall be entitled to convene or direct the director authorised by the Board to convene a meeting of the Board;

S73(4)

28.1.2 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 Act; provided that -

28.1.2.1 no meeting may be convened without notice to all of the Directors; and

any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question.

S73(5)(a)

28.2 If all of the Directors of the Company -

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

28.2.2 are present at a meeting; or

28.2.3 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)
- 28.3 The Board -
- 28.3.1 may, as contemplated in section 73 of the Act, provide for a Board meeting to be conducted in whole or in part by Electronic Communication; and
- 28.3.2 may make provision for any Director, or Alternate Director, to participate by Electronic Communication in every Board meeting that is being held in Person,
- 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.
- S73(5)(b)
- 28.4 The quorum for meetings of the Board shall be a minimum of six (6) of the Directors then in office or their alternates; provided that unless the Board decides otherwise -
- 28.4.1 if the chairperson is satisfied that any absent Directors have received the requisite notice of the meeting and have not furnished adequate reasons for their absence, the chairman may declare a quorum to be present and proceed with the business of the meeting;
- 28.4.2 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;
- 28.4.3 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 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.

- S73(5) 28.5 At any meeting of the Board, -
- 28.5.1 an Alternate Director shall not be entitled to attend, speak or vote unless the Director to whom he is an Alternate Director is absent from that meeting;
- 28.5.2 each Director has one vote on every matter to be decided by the Board; and
- 28.5.3 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in clause 28.5.2 at a quorate meeting of the Board. This clause 28.5.3 shall not detract from the Board's ability to adopt resolutions as set out in clause 29.
- S73(6) 28.6 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes -
- 28.6.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and
- 28.6.2 every resolution adopted by the Board.
- S73(7) 28.7 Resolutions adopted by the Board -
- 28.7.1 must be dated and sequentially numbered; and
- 28.7.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- S73(8) 28.8 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.

29 WRITTEN RESOLUTIONS BY DIRECTORS

- S74
- 29.1 A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been submitted to all of the Directors and signed by at least that number of the Directors (or their Alternate Directors) having a majority of the voting rights that could be exercised upon that resolution if it were considered by a meeting of the Board.
- 29.2 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors.
- 29.3 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.
- 29.4 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternates).
- 29.5 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.

30 INDEMNIFICATION AND INSURANCE FOR DIRECTORS

- 30.1 For the purposes of this 30, a Director includes -

S78(1)

- 30.1.1 a former Director and an Alternate Director;
- 30.1.2 a Prescribed Officer; and
- 30.1.3 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.

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

S78(4)

S78(5)

S78(7)

- 30.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 30.2.2 directly or indirectly indemnify a Director for expenses contemplated in 30.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -
 - 30.2.2.1 are abandoned or exculpate that Director; or
 - 30.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of 30.2.3;
- 30.2.3 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 Act;
- 30.2.4 purchase insurance to protect -
 - 30.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with 30.2.3;
 - 30.2.4.2 the Company against any contingency, including -
 - 30.2.4.2.1 any expenses -
 - 30.2.4.2.1.1 that the Company is permitted to advance in accordance with 30.2.1; or
 - 30.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with 30.2.2; or
 - 30.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with 30.2.3,

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

30.3 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 –

30.3.1 this indemnity shall not extend to any Loss –

30.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Act; or

30.3.1.2 any Loss arising from any gross negligence or recklessness on the part of that Director, or

30.3.1.3 any loss of or damage to reputation;

30.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise);

and Directors shall not be entitled to recover the Losses referred to in this clause 30.3.1 from the Company. All losses other than those referred to in this 30.3.1 are referred to herein as "**Indemnified Losses**";

30.3.2 each Director's right to be indemnified by the Company in terms of this indemnity 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;

30.3.3 then –

30.3.3.1 if any claim is made against a Director in respect of any Indemnified Loss, 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 30.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this 30.3.3, 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 clause 30.3.3;

30.3.3.2 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 -

30.3.3.2.1 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;

30.3.3.2.2 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;

30.3.3.2.3 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;

30.3.4 to the extent that any 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;

30.3.5 if this clause 30 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this clause in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the Members;

30.3.6 all provisions of this clause 30.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this clause 30.3 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 clause 30.3 shall remain of full force and effect;

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

PART F – GENERAL PROVISIONS

31 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION

S29 31.1 The Company shall prepare annual Financial Statements in accordance with
S30 the Act and the Regulations and shall, only to the extent required by the Act or the Regulations, have those annual Financial Statements audited or reviewed.

S30 31.2 A copy of the annual Financial Statements of the Company shall be delivered to all Members in accordance with clause 34 as soon as possible after those annual Financial Statements have been approved by the Board.

S26(3) 31.3 Except as set out in this clause 31, no information rights are established by this MOI in favour of any Person in addition to those rights created by section 26 of the Act.

32 FINANCIAL ASSISTANCE TO DIRECTORS

S5(3) and
S5(4)
Schedule 1

32.1 The Company shall 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 unless the transaction –

32.1.1 is in the ordinary course of the Company's business and for fair value;

32.1.2 constitutes an accountable advance to meet (i) legal expenses in relation to a matter concerning the Company or (ii) anticipated expenses to be incurred by the Person on behalf of the Company;

32.1.3 is to defray the Person's expenses for removal at the Company's request;
or

32.1.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

33 FUNDAMENTAL TRANSACTIONS

S2
Schedule 1

The Company shall not –

33.1 amalgamate or merge with, or convert to, a profit company; or

33.2 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.

34 NOTICES

34.1 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.

34.2 Each Member and Director shall –

- 34.2.1 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
- 34.2.2 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.

35 **RECORDS**

- 35.1 The Company shall keep all books of account, records and other documents relating to the company carefully preserved:
- 35.1.1 for a period of four years after the date of the last entry in any book where such records are kept in a book form; or
- 35.1.2 for a period of four years after the completion of the transaction, act or operations to which they relate.
- 35.2 Notwithstanding anything to the contrary contained in this article 35:
- 35.2.1 any documents in relation to capital gains tax in terms of the Income Tax Act in relation to the Company shall be retained by the Company indefinitely;
- 35.2.2 all original books of prime entry and supporting schedules (where applicable) shall be retained by the Company for a period of fifteen years; and
- 35.2.3 any vouchers, documents and employee records shall be retained by the Company for a period of five years calculated from the date of the tax assessment for the financial year to which such vouchers, documents and employee records relate.