

**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**

**REPUBLIC OF SOUTH AFRICA**

**MEMORANDUM OF INCORPORATION**

**of**

**Northam Platinum Holdings Limited**

(Registration number: 2020/905346/06)

being a profit company which is classified as a public company

(the "**Company**")

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

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## PART A – THE MOI AND RULES

### 1. INTERPRETATION

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

- 1.1 an expression that denotes:
  - 1.1.1 any gender, includes the other genders;
  - 1.1.2 a natural Person, includes an artificial or juristic Person and *vice versa*; and
  - 1.1.3 the singular, includes the plural and *vice versa*;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
  - 1.2.1 "**Adoption Date**" means the date upon which this MOI is adopted by the ordinary shareholders by way of a special resolution passed in accordance with section 16(1)(c)(ii) of the Companies Act;
  - 1.2.2 "**Alternate Director**" shall bear the meaning ascribe thereto in article 35.1.1;
  - 1.2.3 "**Board**" means the board of Directors of the Company from time to time;
  - 1.2.4 "**Business Day**" means any day other than a Saturday, Sunday or gazetted, national public holiday in South Africa;
  - 1.2.5 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
  - 1.2.6 "**Commission**" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
  - 1.2.7 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, including all schedules to such act and all regulations promulgated thereunder and for the time being in force (including, as at the date of adoption of this MOI, the Regulations);
  - 1.2.8 "**Company**" means Northam Platinum Holdings Limited with registration number 2020/905346/06 as defined on the front page of this MOI;
  - 1.2.9 "**CSD**" means the Central Securities Depository as defined in section 1 of the Financial Markets Act;
  - 1.2.10 "**CSDP**" means a depository institution accepted by a CSD as a "**participant**" in terms of the Financial Markets Act and the JSE Exchange;
  - 1.2.11 "**Director**" means a director of the Company, from time to time;
  - 1.2.12 "**Dispose**" means to cede, donate, dispose of, distribute, exchange, give, make over, sell, transfer, unbundle or otherwise alienate, or any agreement, arrangement or obligation to do any of the foregoing, and "**Disposal**" shall be construed accordingly;
  - 1.2.13 "**Electronic Communication**" means an electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;

- 1.2.14            "**Encumbrance**" means a mortgage, charge, pledge, loan, option, restriction, right of first refusal, right of pre-emption, third party right or interest or other encumbrance or security interest of any kind, or another type of agreement having a similar effect, and "**Encumber**" and "**Encumbered**" shall be construed accordingly;
- 1.2.15            "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, as amended, including all schedules to such act and all regulations and standards promulgated thereunder and for the time being in force;
- 1.2.16            "**JSE**" means the JSE Limited, registration number 2005/022939/06, a public company incorporated in accordance with the laws of South Africa and licensed as an exchange under the Financial Markets Act;
- 1.2.17            "**JSE Exchange**" means the exchange operated by the JSE;
- 1.2.18            "**JSE Listings Requirements**" means to the extent applicable, the JSE Limited Listings Requirements, as amended from time to time;
- 1.2.19            "**Legal Representative**" means any Person who has submitted proof (which is satisfactory to the Board) of his appointment (and, to the extent required by the Board, the continuation of that appointment) as:
- 1.2.19.1                  an executor of the estate of a deceased Shareholder, or a curator, guardian or trustee of a Shareholder whose estate has been sequestrated or who is otherwise under any disability;
- 1.2.19.2                  the liquidator of any Shareholder that is a body corporate in the course of being wound up; or
- 1.2.19.3                  the business rescue practitioner of any Shareholder which is a company undergoing business rescue proceedings;
- 1.2.20            "**Listing Date**" means the date on which the Ordinary Shares are listed on the JSE Exchange;
- 1.2.21            "**MOI**" means this memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.22            "**Ordinary Share**" means an ordinary share in the Company;
- 1.2.23            "**Ordinary Shareholder**" means a shareholder to the extent that it is entered into the Securities Register as the registered holder of an Ordinary Share;
- 1.2.24            "**Person**" or "**Entity**" includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- 1.2.25            "**Regulations**" means the Companies Regulations, 2011, as amended and any other regulations made from time to time in terms of the Companies Act for so long as they remain of force and effect;
- 1.2.26            "**Securities**" means, collectively:
- 1.2.26.1                  shares (including the Ordinary Shares), debentures, notes, bonds, units or other instruments, irrespective of their form or title (including any options thereon and rights thereto) issued or authorised to be issued by the Company; and

- 1.2.26.2 anything falling within the meaning of the definition of "**securities**" as defined in section 1 of the Financial Markets Act issued or authorised to be issued by the Company;
- 1.2.27 "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1) of the Companies Act;
- 1.2.28 "**Security Holder**" shall bear the meaning ascribed thereto in article 21.1;
- 1.2.29 "**SENS**" means the Stock Exchange News Service established and operated by the JSE;
- 1.2.30 "**Share**" means one of the units into which the proprietary interest in the Company is divided;
- 1.2.31 "**Shareholder**" or "**Registered Holder**" means a holder of a Share or other Security who is entered as such in the Securities Register, including a Legal Representative;
- 1.2.32 "**Shareholders Meeting**" means a meeting at which Shareholders are entitled to exercise voting rights on one or more proposed resolutions;
- 1.2.33 "**Sign**" includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical or electronic process, and "**Signed**" and "**Signature**" have a corresponding meaning;
- 1.2.34 "**South Africa**" means the Republic of South Africa;
- 1.2.35 "**Transfer Office**" means the registered office from time to time of the Company's transfer secretary, or such other office as may be communicated by the Company to the Shareholders from time to time;
- 1.2.36 "**Uncertificated Securities**" means any Securities which are "**uncertificated securities**" defined as such in section 1 of the Financial Markets Act; and
- 1.2.37 "**Uncertificated Securities Register**" means the record of Uncertificated Securities administered and maintained by a CSDP or a CSD, as determined in accordance with the rules of the CSD, and which forms part of the Securities Register;
- 1.3 any reference to "**law**" means law, legislation, statutes, subordinate legislation, regulations, ordinances, treaties, protocols, codes, standards, rules, by-laws, directives, orders, guidelines, notices, promulgations, requirements, orders, judgments, decisions, instructions, injunctions, awards and other decrees of any governmental authority and all codes of practice, statutory guidance and policy notes, which have force of law or which it would be an offence not to obey, and the common law, as amended, supplemented, replaced, re-enacted, restated or re-interpreted from time to time;
- 1.4 any reference to a statute, regulation or the JSE Listings Requirements means that statute or regulation or the JSE Listings Requirements, as amended, supplemented, replaced or re-enacted from time to time, including all schedules thereto, and all regulations promulgated thereunder and for the time being in force;
- 1.5 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;

- 1.6 the use of the words "**including**", "**includes**" or "**include**", followed by a specific example/s, shall not be construed (notwithstanding that in some instances this may have been specifically provided for, but not in others) as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;
- 1.7 where any term is defined within a particular article other than this article 1, that term shall bear the meaning ascribed to it in that article wherever it is used in this MOI;
- 1.8 any word or expression which is defined in the Companies Act or in the JSE Listings Requirements and which is not defined in this MOI shall have the meaning assigned thereto in the Companies Act or the JSE Listings Requirements, as the case may be, as in force on the Adoption Date (but only if and to the extent defined in the Companies Act or in the JSE Listings Requirements in the same context as that in which it is used in this MOI), provided that if a word or expression is defined in both the Companies Act and the JSE Listings Requirements on the Adoption Date, and there is a conflict between such definitions, the definitions contained in the Companies Act on the Adoption Date shall prevail;
- 1.9 any reference to "**present**" in respect of a meeting shall be construed in accordance with the definition of "*present at a meeting*" in the Companies Act;
- 1.10 a reference to a "**section**" refers to the corresponding section of the Companies Act;
- 1.11 when any number of days is prescribed in this MOI, same shall be reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or gazetted, national public holiday, in which case the last day shall be the next Business Day; and
- 1.12 the headings of articles in this MOI are for information purposes only and shall not be used in the interpretation of this MOI.

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

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

- 2.1 an alterable or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict; and
- 2.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict, but without derogating from the validity or enforceability of any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with the provisions of section 15(2)(a)(iii) of the Companies Act.

## 3. **AMENDMENT OF THE MOI**

- 3.1 Every provision of this MOI is capable of amendment in accordance with sections 16(1)(a), 16(1)(c), 16(4), 17 and 152(6)(b) of the Companies Act, read together with the JSE Listings Requirements and, accordingly, there is no provision of this MOI which may not be amended as contemplated in section 15(2)(c) of the Companies Act.
- 3.2 This MOI may only be altered or amended:
- 3.2.1 in compliance with a court order on the basis set out in sections 16(1)(a) and 16(4) of the Companies Act and any other applicable provisions of the Companies Act; or

- 3.2.2 by way of a special resolution of the Ordinary Shareholders passed in accordance with section 16(1)(c) of the Companies Act, read in conjunction with the remaining provisions of the Companies Act and this MOI; or
- 3.2.3 as contemplated in sections 17 and 152(6)(b) of the Companies Act.
- 3.3 With effect from the Listing Date, while the Shares of the Company remain listed on the JSE Exchange, the Board must, prior to proposing any amendments for approval by the Shareholders, submit any such proposed amendments to the MOI to the JSE for approval in accordance with the JSE Listings Requirements.
- 3.4 This MOI is not capable of amendment by any other method other than those set out in article 3.2. Accordingly, the provisions of section 16(1)(b) of the Companies Act shall not apply, nor shall any other alterable provisions of the Companies Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in article 3.2 apply.

#### 4. RULES

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

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

#### 5. STATUS AS A PUBLIC COMPANY

- 5.1 The Securities issued by the Company are fully paid up and freely transferable, subject to compliance with the procedural requirements for transfer contained in article 15.
- 5.2 The Company is incorporated in accordance with and governed by –
- 5.2.1 the unalterable provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with the provisions of section 15(2)(a)(iii) of the Companies Act); and
- 5.2.2 the alterable provisions of the Companies Act, subject to the limitations, restrictions, qualification, extension or other alterations set out in this MOI in accordance with the provisions of the Companies Act.
- 5.3 The Company is entitled to offer its Securities to the public, subject to compliance with this MOI, the Companies Act and the JSE Listings Requirements (to the extent applicable).
- 5.4 The Company is, accordingly, classified as a public company in terms of section 8(2) of the Companies Act.

#### 6. POWERS OF THE COMPANY

- 6.1 The Company has, subject to section 19(1)(b)(i) of the Companies Act, all of the legal powers and capacity of an individual.
- 6.2 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b) of the Companies Act.
- 6.3 To the extent that the Companies Act or the JSE Listings Requirements require a company to be expressly authorised by its memorandum of incorporation to do anything, the Company is, by this provision, conferred with the requisite authority to do so, subject to any express limitations set out in this MOI.



- 6.4 With effect from the Listing Date, no special resolution contemplated in sections 20(2) or 20(6) of the Companies Act to ratify any action which is contrary to the JSE Listings Requirements shall be proposed to the Shareholders unless otherwise agreed to by the JSE.

## 7. LIMITATION OF LIABILITY

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

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

### 8. AUTHORISED SECURITIES

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

### 9. RIGHTS OF THE ORDINARY SHARES

Each Ordinary Share ranks *pari passu* (as defined in the JSE Listings Requirements) with each other Ordinary Share in respect of all rights, and each Ordinary Shareholder is entitled -

- 9.1 to be entered into the Securities Register as the Registered Holder of that Ordinary Share;

- 9.2 (save where its entitlement is removed by an express provision of this MOI, or by law or the JSE Listings Requirements) to exercise voting rights (whether in person, by proxy or by authorised representative) on all resolutions proposed at all meetings of the Shareholders of the Company (other than those resolutions, if any, in relation to which, in terms of the express provisions of this MOI or the terms of law or the JSE Listings Requirements, only Registered Holders of one or more other classes of Shares are entitled to exercise voting rights), as follows:

- 9.2.1 one vote per Ordinary Share (on a matter decided by a poll), or

- 9.2.2 one vote in total in respect of all its Ordinary Shares (on a matter decided by a show of hands); and

- 9.3 to participate equally with every other Ordinary Share in any Distribution taking the form of a transfer by the Company of money or other property (other than its own Shares or other Securities) of the Company, excluding any payment *in lieu* of a capitalisation Share and any consideration payable by the Company for any of its own Shares or other Securities or for any shares or other securities of another company within the same group as contemplated in paragraphs (ii) and (iii) of the definitions of distribution in the Companies Act, to Ordinary Shareholders, whether during the existence of the Company or upon its dissolution.

### 10. VARIATION OF AUTHORISED SHARES

- 10.1 Notwithstanding the provisions of section 36(3) of the Companies Act, the Board shall not have the power to:

- 10.1.1 increase or decrease the number of authorised Shares of any class;

- 10.1.2 reclassify any classified Shares that have been authorised but not issued;

- 10.1.3 classify any unclassified Shares that have been authorised but not issued; or
- 10.1.4 determine the preferences, rights, limitations or other terms of any class of Shares, which powers shall only be capable of being exercised by the Shareholders (by way of special resolution of the Shareholders).
- 10.2 The Shareholders may, by amendment to the MOI by way of a special resolution and in accordance with the JSE Listings Requirements:
- 10.2.1 increase or decrease the number of authorised Shares of any class of Shares;
- 10.2.2 reclassify any classified Shares that have been authorised but not issued;
- 10.2.3 classify any unclassified Shares that have been authorised but not issued;
- 10.2.4 determine or vary the preferences, rights, limitations or other terms of any Shares;
- 10.2.5 create any class of Shares;
- 10.2.6 convert one class of Shares into one or more other classes of Shares;
- 10.2.7 consolidate or subdivide any class of Shares;
- 10.2.8 vary any preferences, rights, limitations or other terms of Ordinary Shares; or
- 10.2.9 vary any preferences rights, limitations or other terms of any class of Shares already in issue, other than Ordinary Shares, but no such variation shall be implemented unless:
- 10.2.9.1 it has been approved by a special resolution upon which only the holders of that class of Shares shall be entitled to exercise voting rights in accordance with the preferences, rights, limitations and other terms attaching to that class; and
- 10.2.9.2 if it has also been approved by a special resolution on which both of the following shall be entitled to exercise voting rights –
- 10.2.9.2.1 the holders of that class of Shares in accordance with the preferences, rights, limitations and other terms attaching to that class; and
- 10.2.9.2.2 the Ordinary Shareholders.
- 10.3 The preferences, rights, limitations or any other terms of any class of Securities may not be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act and the powers of the Board are limited accordingly.

## 11. ISSUE OF SECURITIES

- 11.1 Securities of any class listed on the JSE Exchange may only be issued if they are fully paid up. Classes of Securities listed on the JSE Exchange shall be freely transferable.
- 11.2 The Company may only issue Securities within the classes and to the extent that those Securities have been authorised by or in terms of this MOI.

- 11.3 For the avoidance of doubt, the Company may issue Securities (or be a party to a Disposal by a third party of Securities) to a Person in terms of an agreement between, *inter alia*, the Company and that person in which that person undertakes:
- 11.3.1 to not Dispose of, or Encumber, all or any of those Securities for a specified or ascertainable period of time; or
- 11.3.2 that such Person may only Dispose of and/or Encumber all or any of those Securities in certain specific or ascertainable circumstances.
- 11.4 With effect from the Listing Date, all issues of equity Securities for cash, and all issues of options and convertible Securities for cash, must be in compliance with the JSE Listings Requirements.
- 11.5 Subject to the provisions of articles 11.6 and 11.7, and the JSE Listings Requirements, the Board may only issue unissued equity Securities if such Securities have first been offered on the same terms and conditions to existing holders of that class of Securities *pro-rata* in proportion to their existing holdings of that class of Securities.
- 11.6 The pre-emptive right stipulated in article 11.5 shall not apply if, and to the extent that, the Shareholders authorise the Directors to issue equity Securities, options and/or convertible Securities (i) on specific terms set out in the authorisation, or (ii) in such manner and on such terms as the Directors in their discretion think fit, provided that such authorisation/s/transaction/s has/have been approved by the JSE (if JSE approval is required) and comply/ies with the JSE Listings Requirements.
- 11.7 The pre-emptive right stipulated in article 11.5 shall not apply to any issue of equity Securities in consideration for the subscription or acquisition by the Company of any securities in another company or any other non-cash asset or property, provided that such transaction/s has/have been approved by the JSE (if JSE approval is required) and comply/ies with the JSE Listings Requirements.

## 12. COMMISSION

With effect from the Listing Date, the amount of any commission (if any) paid by the Company to any Person in consideration for that Person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company shall not exceed the maximum amount permitted from time to time in terms of the JSE Listings Requirements, it being recorded that, as at the Adoption Date, the JSE Listings Requirements provide that a "company may not pay commission exceeding 10%".

## 13. REGISTER AND CERTIFICATES

- 13.1 Subject to the relevant JSE Listings Requirements where applicable, the Securities shall be issued in certificated or uncertificated form.
- 13.2 The Company shall establish or cause to be established, and shall maintain, a Securities Register in accordance with the Companies Act and, to the extent that the form of and the manner of maintaining the Securities Register is not prescribed, the Board shall determine the form and manner thereof.
- 13.3 The Company shall enter into its Securities Register the transfer of any Certificated Securities and shall include in such entry the information required by section 51(5) of the Companies Act.
- 13.4 The certificates evidencing any Certificated Securities of the Company shall comply with the requirements set out in section 51(1) of the Companies Act and shall otherwise be in such form as may be determined by the Board.

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

13.6 The conversion of Certificated Securities to Uncertificated Securities or of Uncertificated Securities to Certificated Securities shall occur in accordance with the Regulations, any applicable provisions of the Financial Markets Act and any applicable requirements or rules of the JSE and the relevant CSDP or CSD.

#### 14. **UNCERTIFICATED SECURITIES**

14.1 Without derogating from article 13.2, the Company shall not issue certificates evidencing or purporting to evidence, title to Uncertificated Securities of the Company.

14.2 Any Person who wishes to withdraw its Uncertificated Securities held by a CSDP and to obtain a certificate in respect of all or part of those Securities, shall notify the CSDP thereof, in which case:

14.2.1 the CSDP shall notify the Company to provide such a certificate and shall remove the details of the Uncertificated Security so withdrawn from the Uncertificated Securities Register maintained by the CSDP;

14.2.2 the Company shall, immediately on receipt of such notice from a CSDP, enter the relevant Person's name and details in respect of its holding into the Securities Register and indicate on such Securities Register that the Securities so withdrawn are no longer held in uncertificated form;

14.2.3 the Company shall, within 14 days of receipt of the notice referred to in article 14.2.1, prepare and deliver to the relevant Person a certificate in respect of the Securities so withdrawn, and notify the CSD that the Securities are no longer held in uncertificated form; and

14.2.4 transfer of registered ownership of Securities so withdrawn shall not be capable of being effected through a CSD while they remain in certificated form.

14.3 The Company shall enter in its Securities Register, in respect of every class of Securities, the total number of Securities held in uncertificated form.

#### 15. **TRANSFER OF SECURITIES**

15.1 Save in the case of a transfer which is effected by operation of law and overrides the requirements of this MOI, no Person may transfer the registered ownership of any Securities in the Company to any other Person without first complying with the requirements for transfer as set out in this MOI.

15.2 Subject to the requirements of the Companies Act, the instrument of transfer of a Certificated Security shall be in the usual form or such other form as the Directors may approve and shall be Signed by the transferor and the transferee (to the extent required by law).

15.3 Transfer of registered ownership in any Uncertificated Securities shall be effected in accordance with the provisions of section 53 of the Companies Act, and:

15.3.1 shall be effected upon the debiting and crediting, respectively, of both the account in the Uncertificated Securities Register from which the transfer is effected and the account in the Uncertificated Securities Register to which transfer is to be made, in accordance with the rules of the CSD; and

15.3.2 a transferee shall, upon the entering of its name in an Uncertificated Securities Register, become and be recognised as a Shareholder in respect of the Uncertificated Securities registered in its name.

- 15.4 Only a CSDP may effect transfer of Uncertificated Securities in an Uncertificated Securities Register maintained by it. A CSDP shall transfer Uncertificated Securities in the Uncertificated Securities Register administered and maintained by it only on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of the CSD or by order of court.
- 15.5 The transfer of registered ownership of any Certificated Securities, shall not be entered into the Securities Register unless:
- 15.5.1 the transfer is evidenced by a proper instrument of transfer which has been delivered to the Transfer Office together with:
- 15.5.1.1 such proof as the Board may require of the authority of the signatory/ies to that instrument of transfer; and
- 15.5.1.2 the certificate in respect of the Securities being transferred; or
- 15.5.2 the transfer was effected by operation of law.
- 15.6 Subject to the provisions of this MOI, every instrument of transfer of a Certificated Security shall be left at the Transfer Office accompanied by the certificate of the Security to be transferred and/or such other evidence as the Company may require to prove the title of the transferor or its right to transfer the Securities. Any authority to Sign transfer deeds granted by a Shareholder for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at the Transfer Office shall be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon, until written notice of revocation thereof is lodged at the Transfer Office. Even after the giving and lodging of such notice, the Company may give effect to any instrument Signed under the authority to Sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.
- 15.7 Securities shall not be subject to any lien in favour of the Company.
- 15.8 For the avoidance of doubt, the Company may take, and exercise its rights and obligations under, a pledge and cession in *securitatem debiti* over specified Securities in terms of an agreement between, *inter alia*, the Company and another Person.

## 16. CAPITALISATION SHARES

- 16.1 The Board shall have the power or the authority to:
- 16.1.1 approve the issuing of any authorised Shares as capitalisation shares;
- 16.1.2 issue Shares of one class as capitalisation shares in respect of the Shares of another class; or
- 16.1.3 resolve to permit the Shareholders to elect to receive a cash payment *in lieu* of a capitalisation share,

if such transaction(s) has/have been approved by the JSE (should the JSE's approval be required) and provided the applicable provisions of the Companies Act (including section 47 thereof) and the applicable provisions of the JSE Listings Requirements have been complied with.

- 16.2 The Board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation share, as contemplated in section 47(2) of the Companies Act, unless the Board:
- 16.2.1 has considered the solvency and liquidity test as required by section 46 of the Companies Act, on the assumption that every such Shareholder would elect to receive cash; and
- 16.2.2 is satisfied that the Company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.
- 16.3 If, on any capitalisation issue, Shareholders would, but for the provisions of this article 16.3, become entitled to fractions of Shares, the Board shall, subject to any contrary provisions in the resolutions authorising the capitalisation issue, be entitled to round off the number of capitalisation shares, as permitted in terms of the JSE Listings Requirements.

## 17. ACQUISITION OF SECURITIES ISSUED BY THE COMPANY

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

- 17.1 all or a portion of the price payable on such acquisition may be paid out of the funds of or available to the Company, including whether or not such payment results in a reduction of the share capital, stated capital, reserves, any capital redemption reserve fund and/or any other account of the Company; and
- 17.2 the Securities so acquired shall be restored to the status of unissued Securities and the authorised capital of the Company shall remain unaltered.

## 18. DEBT INSTRUMENTS

- 18.1 The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2) of the Companies Act, provided that the debt instruments may not grant special privileges as contemplated in section 43(3) of the Companies Act.
- 18.2 The foregoing provision of this article 18 shall not prevent the Company from redeeming debt instruments held by a Person simultaneously with the issue of Shares or other Securities to that Person or its nominee.
- 18.3 The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Companies Act, is accordingly limited or restricted by this MOI.

## 19. BENEFICIAL INTERESTS

Securities issued by the Company may be held by, and registered in the name of, one Person for the beneficial interest of another Person, as set out in section 56(1) of the Companies Act, but no Person other than the Registered Holder of a Security shall (save to the extent expressly provided for otherwise in this MOI) be entitled to exercise any of the rights associated with that Security and the Company shall not recognise any Person other than the Registered Holder of a Security as the holder of that Security save to the extent it is required to so recognise any such Person by the Companies Act.

## 20. JOINT HOLDERS OF SECURITIES

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

- 20.1 notwithstanding anything to the contrary contained anywhere else in this MOI, on the death, sequestration, liquidation, winding-up, dissolution or legal disability of any one of those joint holders who is not represented by a Legal Representative as referred to in article 21, the remaining joint holders may be recognised, at the discretion of the Board, as the only Persons having title to that Security;
- 20.2 any one of those joint holders may give effective receipts for any distributions or other payments or accruals payable to those joint holders;
- 20.3 only the joint holder whose name stands first in the Securities Register shall be entitled to delivery of a certificate relating to that Security if required in terms of article 13.4, or to receive notices or payments from the Company (and any notice or payment given to that joint holder shall be deemed to be notice or payment, as the case may be to all of the joint holders); and
- 20.4 any one of the joint holders of any Security conferring a right to vote an entitlement to exercise voting rights on a resolution may vote either personally, by proxy or by authorised representative at any Shareholders Meeting in respect of that resolution as if it were solely entitled to exercise those voting rights, and, if more than one of those joint holders is present at any Shareholders Meeting, either personally, by proxy, or by authorised representative and votes, the joint holder who tenders a vote (including an abstention) and whose name stands in the Securities Register before the other joint holders who are present, in person or by proxy or authorised representative, shall be deemed to be the only joint holder who is entitled to exercise voting rights in respect of that Security.

## 21. LEGAL REPRESENTATIVES

- 21.1 A Legal Representative of the Registered Holder of any Security issued by the Company ("**Security Holder**") shall:
  - 21.1.1 be the only Person recognised by the Company as having any rights in respect of or title to a security registered in the name of the Security Holder whom it represents, provided that if a Security Holder or its Legal Representative is a joint holder of that Security, then this article 21.1.1 shall not detract from article 20 and this article 21.1.1 shall be read together with article 20;
  - 21.1.2 be entitled to transfer registered ownership of any such Securities to himself or to another Person who is entitled to become the Registered Holder of that Security; and
  - 21.1.3 if so required by that Legal Representative or by the Board, be entered into the Securities Register *nomine officio* in the place and on behalf of that Security Holder,

provided that:

  - 21.1.4 if the Legal Representative so entered into the Securities Register ceases to be the Legal Representative of that Security Holder, the Board shall, pending transfer of that Security to the Security Holder or another Legal Representative of that Security Holder or any other Person who is entitled to become the Registered Holder of that Security, be entitled to suspend the rights of the Registered Holder of that Security to vote and shall be entitled to withhold (and retain until such transfer has occurred) all distributions payable to the Registered Holder of that Security;

- 21.1.5 the Directors shall in any of such cases have the same right to decline or suspend registration as they would have had in the case of a transfer of the Security by the Security Holder in whose name it is registered; and
- 21.1.6 should any Legal Representative fail to elect either to be registered as a Shareholder or to transfer any such Security to himself or any other Person who is entitled to become the Registered Holder of that Security within 90 days after the Directors have given such Person notice requiring such Person to do so, then the Directors shall be entitled to withhold any distributions in respect of such Security until compliance with the notice, provided that distributions in relation to Securities registered in the name of a deceased or insolvent estate shall not be withheld in the event that the executor fails to register such Securities in his own name or the name of the heir(s) or legatees within 90 days after the Directors have given it notice requiring it to do so.
- 21.2 Any Security Holder who is represented by a Legal Representative shall not be released from any obligation arising out of or in connection with the holding of that Security.

## **PART D – SHAREHOLDERS RIGHTS AND PROCEEDINGS**

### **22. SINGLE SHAREHOLDER'S AUTHORITY TO ACT**

If, at any time, as contemplated in section 57(2), the Company has only 1 Shareholder, subject to the requirements of the JSE Listing Requirements, –

- 22.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this MOI; and
- 22.2 the provisions of articles 24 (*PROXY REPRESENTATION*), 25 (*RECORD DATES*), 26 (*SHAREHOLDERS MEETINGS*), 27 (*NOTICE OF SHAREHOLDERS MEETINGS*), 28 (*SHAREHOLDERS MEETING QUORUM, ADJOURNMENT AND CANCELLATION*), 29 (*SHAREHOLDERS MEETINGS BY ELECTRONIC COMMUNICATION*), 30 (*CHAIRPERSON OF SHAREHOLDERS MEETING*) and 32 (*WRITTEN RESOLUTIONS BY SHAREHOLDERS*) shall not apply to the Company.

### **23. SHAREHOLDERS RIGHTS TO INFORMATION**

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

### **24. PROXY REPRESENTATION**

- 24.1 A Shareholder may, at any time by written proxy appointment ("**Proxy Instrument**") which complies with this MOI, the Companies Act and the relevant JSE Listings Requirements, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to:
- 24.1.1 participate in, and speak and vote at, a Shareholders Meeting on behalf of that Shareholder; or
- 24.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in article 32,

and any such Proxy Instrument (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by section 58 of the Companies Act and this article 24.



- 24.2 The Board may determine a standard form of Proxy Instrument and make it available to Shareholders on request.
- 24.3 Subject to the provisions of the Companies Act, a proxy:
- 24.3.1 need not, subject to article 24.3.2, bear a handwritten Signature of the Shareholder appointing the proxy and may be an instrument created by electronic or other means, including, without limitation, electronic mail;
  - 24.3.2 shall be in such form as is approved or accepted by the Directors and shall be accompanied by such documentary or other evidence as may be required by the Directors in order to establish the validity and/or authenticity thereof, including the authority of the Person appointing the proxy;
  - 24.3.3 shall be received at the Transfer Office not less than 48 hours before the time appointed for the holding of the Shareholders Meeting, or resumption of an adjourned Shareholders Meeting or re-commencement of a postponed Shareholders Meeting at which the Person named therein proposes to vote; provided that a proxy may also be handed to the chairperson at the Shareholders Meeting before the Person named therein exercises, at that meeting, the rights of the Shareholder appointing the proxy;
  - 24.3.4 shall not be valid after the expiry of two months after the date when it was deposited at the Transfer Office unless it specifically provides otherwise;
  - 24.3.5 shall in addition to the authority conferred by the Companies Act, except insofar as it provides otherwise, be deemed to confer the power generally to act at the Shareholders Meeting in question, subject to any specific direction contained in the Proxy Instrument as to the manner of voting or as to an abstention;
  - 24.3.6 shall be valid at every resumption of an adjourned Shareholders Meeting, and at each re-commencement of a Shareholders Meeting that has been postponed, to which it relates, unless the contrary is stated thereon; and
  - 24.3.7 shall not be used at the resumption of an adjourned Shareholders Meeting or at the re-commencement of a postponed Shareholders Meeting if it could not have been used at the Shareholders Meeting that was adjourned or at the Shareholders Meeting that was postponed for any reason other than that it was not lodged timeously for the Shareholders Meeting from which the adjournment or postponement took place.
- 24.4 A Shareholder may not appoint more than one Person concurrently as a proxy, and may not appoint more than one proxy to exercise voting rights attached to different Securities held by the Shareholder.
- 24.5 A proxy may not delegate the proxy's authority to act on behalf of the Shareholder to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Companies Act and this MOI for a proxy instrument.

24.6 A proxy shall not be entitled to exercise any rights of the Shareholder who appointed that proxy:

24.6.1 until the commencement of the 48 hour period referred to in article 24.3.3; or

24.6.2 after midnight on the day on which the instrument revoking the appointment (if revocable) of that proxy was delivered to the Transfer Office,

provided that the Board, or the chairperson of any Shareholders Meeting at which the proxy wishes to exercise any rights of the Shareholder, may agree to allow any such Proxy Instrument or revocation to be effective at a different time to that when, or over an extended period to that in which, it would otherwise have been effective in terms of this article 24.6.

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

## 25. RECORD DATES

The Board may, in accordance with section 59 of the Companies Act, determine and publish a record date for the purposes of determining which Shareholders are entitled to:

25.1 receive a notice of a Shareholders Meeting;

25.2 participate in and vote at a Shareholders Meeting;

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

25.4 receive a distribution; or

25.5 be allotted or exercise any other rights,

provided that:

25.5.1 if the Board does not determine a record date for any action or event, as contemplated in this article 25, the record date shall, subject to article 25.5.2, be as determined in accordance with section 59(3) of the Companies Act; and

25.5.2 whilst the Shares are listed on the JSE Exchange or any other securities exchange, the record date shall be determined in accordance with the relevant JSE Listings Requirements.

## 26. SHAREHOLDERS MEETINGS

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

26.2 Without limiting the foregoing, the Company shall hold a Shareholders Meeting in the circumstances contemplated in section 61(2) of the Companies Act and/or circumstances contemplated in the JSE Listings Requirements.

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

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

## 27. NOTICE OF SHAREHOLDERS MEETINGS

- 27.1 Not less than 15 Business Days' notice (as required in terms of the Companies Act) of each Shareholders Meeting shall be provided to the Shareholders who are entitled to vote at such meeting and who have elected to receive notice, irrespective of whether Ordinary Resolutions or special resolutions or both are being proposed at that meeting; provided that the 15 Business Day notice period is not applicable where the Company adheres to section 62(2A) of the Companies Act.
- 27.2 With effect from the Listing Date, the notice of a Shareholders Meeting shall be announced through SENS in accordance with the JSE Listings Requirements.
- 27.3 The notice of a Shareholders Meeting shall be in writing and shall include the items set out in section 62(3) of the Companies Act.
- 27.4 The notice of a Shareholders Meeting must be delivered in accordance with the provisions of article 47.
- 27.5 The notice of a Shareholders Meeting shall be delivered to the JSE at the same time as it is sent to the Shareholders.

## 28. SHAREHOLDERS MEETING QUORUM, ADJOURNMENT AND CANCELLATION

- 28.1 The quorum requirements for Shareholders Meetings (including resumptions of adjourned meetings and re-commencements of postponed meetings) shall, subject to article 28.5, be that:
- 28.1.1 such a Shareholders Meeting shall not begin, and a matter to be considered at such a Shareholders Meeting may not begin to be debated, unless at least three Shareholders entitled to attend and exercise voting rights, present in person or by proxy or represented by an authorised representative, are present at such Shareholders Meeting;
- 28.1.2 such a Shareholders Meeting shall not begin until sufficient persons are present at such Shareholders Meeting (in person or by proxy or represented by an authorised representative) to exercise, in aggregate, at least 25% of all voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting; and
- 28.1.3 the consideration of a matter to be decided at the Shareholders Meeting shall not begin unless sufficient persons are present at such Shareholders Meeting at the time when that matter is called for consideration to exercise, in aggregate, at least 25% of all voting rights that are entitled to be exercised on that matter.
- 28.2 Notwithstanding the provisions of section 64(4) of the Companies Act and article 28.1, if, within 30 minutes after the appointed time for a shareholders meeting or 30 minutes after the time when a matter is called for consideration:
- 28.2.1 the quorum requirements for a Shareholders Meeting to begin have not been satisfied, the Shareholders Meeting shall automatically be postponed without motion or vote to the same day in the next week (or if that day is not a Business Day, the next Business Day after that day);
- 28.2.2 the quorum requirements for consideration of that particular matter to begin have not been satisfied, then:
- 28.2.2.1 if there is other business on the agenda of the Shareholders Meeting, consideration of that matter may be postponed to a later time in the Shareholders Meeting without motion or vote; or

- 28.2.2.2 if there is no other business on the agenda of the Shareholders Meeting, the Shareholders Meeting shall be adjourned, without motion or vote, to the same day in the next week (or if that day is not a Business Day, the next Business Day after that day).
- 28.3 The resumed or re-commenced Shareholders Meeting may only deal with the matters that were on the agenda of the Shareholders Meeting that was adjourned or postponed.
- 28.4 The chairperson of the Shareholders Meeting shall be entitled to extend the thirty minute limit referred to in article 28.2 in the circumstances contemplated in section 64(5) of the Companies Act.
- 28.5 If, within thirty minutes after the appointed time for the resumption of an adjourned meeting or the re-commencements of a postponed meeting or thirty minutes after the time when a matter is called for consideration at such resumed or recommenced meeting, the quorum requirements in article 28.1 have not been satisfied, the Shareholders present in person or by proxy or authorised representative will be deemed to constitute a quorum.
- 28.6 After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, including a resumed meeting and re-commencements of a postponed meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least one Shareholder entitled to exercise voting rights at the Shareholders Meeting, or on that matter, is present at such Shareholders Meeting.
- 28.7 A Shareholders Meeting, or the consideration of any matter being debated at a Shareholders Meeting, including a resumed meeting and re-commencement of a postponed meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Companies Act, it being recorded that the periods of adjournment set out in section 64(12) of the Companies Act shall apply without variation.
- 28.8 The Board may, at any time after notice of a Shareholders Meeting (including a resumed meeting and recommencement of a postponed meeting) has been given but prior to the commencement of that meeting, -
- 28.8.1 postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or postpone that meeting to an unspecified date to be decided by the Board at a later stage; provided that the Board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Companies Act, the JSE Listings Requirements or this MOI to be held; or
- 28.8.2 withdraw the notice and cancel the proposed meeting (or withdraw any proposed resolution of which notice was given), provided that, where the meeting (or any proposed resolution to be voted on at such meeting) was called pursuant to a demand in terms of article 26.2, then the meeting (or the relevant resolution(s)) may only be withdrawn or cancelled (as applicable) with the consent of the Shareholders that demanded that meeting or resolution.
- 28.9 If a Shareholders Meeting is postponed, adjourned or cancelled, whether in terms of article 28.2 or otherwise, the Company must, by announcement on SENS, give notice of the postponement, adjournment or cancellation and, in the case of a postponement or adjournment, that notice must contain the time and date of, and the location for, the continuation or re-commencement of the meeting and any other information which the Board may decide to include therein.

28.10 The chairperson of the Shareholders Meeting shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at all Shareholders Meetings.

28.11 Even if a Person is not a Shareholder:

28.11.1 any Director; or

28.11.2 the Company's attorney (or where the Company's attorney is a firm, any partner or director thereof), or other person admitted by the chairperson of the Shareholders Meeting,

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

## 29. SHAREHOLDERS MEETINGS BY ELECTRONIC COMMUNICATION

29.1 The Company may conduct a Shareholders Meeting entirely by Electronic Communication or provide for participation in a Shareholders Meeting by Electronic Communication, as set out in section 63 of the Companies Act, and the power of the Company to do so is not limited or restricted by this MOI. Accordingly:

29.1.1 any Shareholders Meeting may be conducted entirely by Electronic Communication; or

29.1.2 one or more Shareholders, or proxies or authorised representatives for Shareholders, may participate by Electronic Communication in all or part of any Shareholders Meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

29.2 Any notice of any Shareholders Meeting at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies or authorised representatives to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

29.3 If a provision has been made for a Shareholders Meeting to be conducted by Electronic Communication or for participation in a Shareholders Meeting by Electronic Communication and the medium or means of such Electronic Communication is available and functioning, then the Shareholders Meeting shall be entitled to proceed even if a Shareholder, proxy or authorised representative is not able to gain access to the medium or means of Electronic Communication so employed.

29.4 A resolution passed at any Shareholders Meeting that employs Electronic Communication shall, notwithstanding that the Shareholders are not present together in one place at the time of the Shareholders Meeting, be deemed to have been passed at a Shareholders Meeting duly called and constituted on the day on which, and at the time at which, the Shareholders Meeting was so held.

### 30. CHAIRPERSON OF SHAREHOLDERS MEETING

- 30.1 The chairperson of the Board or, failing him, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each Shareholders Meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the Shareholders present shall elect one of the Directors or, if no Director is present and willing to act, a Shareholder, to be the chairperson of that Shareholders Meeting.
- 30.2 The chairperson of a Shareholders Meeting shall, subject to the Companies Act and this MOI, determine the procedure to be followed at that meeting but shall not have a second or casting vote at any Shareholders Meeting.

### 31. SHAREHOLDERS RESOLUTION

- 31.1 At a Shareholders Meeting, a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (on or before the declaration of the result of a show of hands) by:
- 31.1.1 the chairperson of the Shareholders Meeting;
  - 31.1.2 not less than five Shareholders present at the Shareholders Meeting having the entitlement to exercise voting rights on that resolution; or
  - 31.1.3 a Shareholder or Shareholders present at the Shareholders Meeting having the entitlement to exercise at least 10% of the total voting rights of all Shareholders having the entitlement to exercise voting rights on that resolution.
- 31.2 At any Shareholders Meeting, any person who is present at the Shareholders Meeting, whether as a Shareholder or as a proxy for, or authorised representative of, a Shareholder, shall be entitled to exercise the following voting rights –
- 31.2.1 an Ordinary Shareholder shall be entitled to:
    - 31.2.1.1 one vote in total in respect of all his Ordinary Shares on a show of hands; and
    - 31.2.1.2 exercise one vote per Ordinary Share on a poll;
  - 31.2.2 a Registered Holder of any special class of Shares created for the purposes of black economic empowerment shall be entitled to exercise such voting rights (if any) as it is permitted to exercise under the preferences, rights, limitations or other terms of that special class of Shares; and
  - 31.2.3 a Shareholder other than those referred to in articles 31.2.1 and 31.2.2 shall not be entitled to exercise voting rights, except as provided for in article 31.3.

- 31.3 The Registered Holders of a class of Shares, other than Ordinary Shares and any special class of Shares created for the purposes of black economic empowerment, shall not be entitled to exercise voting rights on any resolution at Shareholders Meetings, save:
- 31.3.1 as permitted to do so from time to time in terms of the provisions of this MOI pursuant to article 31.4;
- 31.3.2 insofar as the right to do so is conferred on them in terms of section 37(3) of the Companies Act; or
- 31.3.3 as otherwise permitted to do so from time to time in terms of a provision in this MOI which has been approved by the JSE.
- 31.4 The Company may, in terms of the preferences, rights, limitations or other terms attaching to a class of preference shares in this MOI, grant Registered Holders of that class of preference shares the entitlement to exercise voting rights on resolutions at Shareholders Meetings, as follows:
- 31.4.1 during any special period contemplated in this article 31.4.1 during which any dividend or other distribution or any part of any dividend or other distribution on such class of preference shares or any redemption payment thereon remains in arrears and unpaid. The special period contemplated in this article 31.4.1 shall be the period commencing on a day specified in this MOI, not being more than six months after the due date of the dividend or other distribution or redemption payment in question or, where no due date is specified, after the end of the financial year of the Company in respect of which such dividend or other distribution accrued or such redemption payment became due;
- 31.4.2 in regard to any resolution proposed for the winding up of the Company or the reduction of its share capital, stated capital, capital redemption reserve fund or any other reduction in capital; and/or
- 31.4.3 as otherwise permitted from time to time in terms of a provision in this MOI which has been approved by the JSE.
- 31.5 In instances where the Registered Holders of a class of shares ("**Participating Shares**"), other than Ordinary Shares and any special class of Shares created for the purposes of black economic empowerment, are entitled to exercise voting rights on any resolution at a Shareholders Meeting):
- 31.5.1 the votes of the Participating Shares shall not carry any special rights or privileges; and
- 31.5.2 a Registered Holder of Participating Shares shall be entitled to one vote for every Participating Share held (on a matter to be decided by a poll) or one vote in total in respect of all its Participating Shares (on a matter to be decided by a show of hands),
- provided that the total votes attaching to the Participating Shares at a Shareholders Meeting shall not be more than 24.99% of the total votes (including the votes of the Ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Participating Shares held by a Shareholder rounded down to the nearest whole number).
- 31.6 In order for:
- 31.6.1 an ordinary resolution to be approved, it must be supported by a majority of the voting rights exercised on the ordinary resolution, as contemplated in section 65(7) of the Companies Act;

31.6.2 a special resolution to be approved, it must be supported by at least 75% of the voting rights exercised on the special resolution, as provided in section 65(9) of the Companies Act; and

31.6.3 an ordinary resolution or special resolution required by the JSE Listings Requirements to be approved, it must meet the voting threshold, if any, imposed by the JSE Listings Requirements,

provided that this article 31 shall not detract from the Shareholders' ability to adopt resolutions by written vote as referred to in article 32.

31.7 As at the Adoption Date, the JSE Listings Requirements state that a “special resolution may, for purposes of the JSE Listings Requirements, be passed only with the support of at least 75% of the votes cast by all equity securities holders present in person, or represented by proxy, at the general meeting/annual general meeting convened to approve such resolution”.

31.8 If any Shareholder abstains from voting in respect of any resolution, that Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.

31.9 Except for those matters which require the approval or authority of a special resolution in terms of this MOI, section 65(11) of the Companies Act, any other section of the Companies Act or any provision of the regulations to the Companies Act, no other matters which the Company may undertake requires the approval or authority by way of a “*special resolution*” (as defined in the Companies Act) of the Shareholders.

## 32. WRITTEN RESOLUTIONS BY SHAREHOLDERS

32.1 A resolution relating to the following matters that could be voted on at a Shareholders Meeting may instead be adopted by written vote of the Shareholders, as contemplated in section 60 of the Companies Act, if it is supported by Persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders Meeting:

32.1.1 a change of the Company's name;

32.1.2 odd lot offers;

32.1.3 an increase or decrease in the number of authorised Shares of any class of Shares;

32.1.4 amendments to this MOI; and/or

32.1.5 any other matter if the JSE approves the consideration of that matter by way of a written vote of the Shareholders as contemplated in section 60 of the Companies Act.

32.2 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 Shareholder or the proxy or authorised representative of the Shareholder whose vote resulted in the resolution being supported by sufficient votes for its adoption.

## 33. AUTHORITY OF THE BOARD OF DIRECTORS

33.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.



- 33.2 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, as the Board determines in its discretion.

#### 34. APPOINTMENT OF DIRECTORS

- 34.1 With effect from the Listing Date, the Board shall comprise not less than four Directors.
- 34.2 All of the Directors shall be elected by an ordinary resolution of the Shareholders. There shall be no *ex officio* directors, as contemplated in section 66(4)(a)(ii) of the Companies Act, and no person shall have the right to effect the direct appointment or removal of one or more Directors as contemplated in section 66(4)(a)(i) of the Companies Act.
- 34.3 The provisions of section 68(2) of the Companies Act shall apply to the election of Directors, provided that any Shareholder will have the right to nominate Directors and provided further that, with effect from the Listing Date, a Director may not be elected by written vote of the Shareholders, as contemplated in section 60 of the Companies Act.
- 34.4 Notwithstanding anything in this MOI to the contrary, the Board may appoint a Person who satisfies the requirements for election as a Director to fill any vacancy or to serve as a Director of the Company (or to the extent permitted in law, serve as an additional Director) on a temporary basis until the earlier of the date of the next annual general meeting of the Company and the date on which the vacancy has been filled by election in terms of article 34.2. During that period any Person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company. The authority of the Board in this regard is not limited or restricted by this MOI.
- 34.5 The Directors shall retire from office in accordance with the following provisions of this article 34.5:
- 34.5.1 at each annual general meeting Directors comprising one third of the aggregate number of Directors (excluding executive Directors) or, if their number is not three or a multiple thereof, then the number nearest to but not less than one third of the aggregate number of Directors (excluding executive Directors) shall retire from office;
- 34.5.2 the Directors to retire in terms of article 34.5.1 shall exclude executive Directors and shall be those who have been longest in office since their last election, provided that if more than one of them were elected Directors on the same day and at the same time, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;
- 34.5.3 if, after the retirement of Directors in terms of article 34.5.1, there would remain in office any Director (excluding any executive Director) who would have held office for three years since his last election, he shall also retire, in addition to the Directors retiring in terms of article 34.5.1, at such annual general meeting;
- 34.5.4 any Director appointed as such by the Directors after the conclusion of the Company's preceding annual general meeting shall, in addition to the Directors retiring in terms of article 34.5.1 and article 34.5.3, retire from office at the conclusion of the annual general meeting held immediately after his appointment;

- 34.5.5 a retiring Director shall be eligible for re-election and, if re-elected, shall be deemed for all purposes other than articles 34.5.1 to 34.5.4 not to have vacated his office;
- 34.5.6 the annual general meeting at which a Director retires may elect another person to fill the vacated office, and if it is not so filled, the retiring Director shall, if he has offered himself for re-election, be deemed to have been re-elected unless the annual general meeting expressly resolves not to fill such vacated office or not to re-elect such retiring Director and provided that the Company shall not be entitled to fill the vacancy in accordance with article 32;
- 34.5.7 no person other than a retiring Director shall be eligible for election as a Director at any annual general meeting unless the Directors recommend otherwise, or unless during the period of 30 days following the end of the financial year of the Company which immediately precedes such annual general meeting a Shareholder, who will be entitled to attend and exercise voting rights at such annual general meeting, shall have lodged at the registered office of the Company written notice proposing such person as a Director, together with the consent of that person to be elected as a Director; and
- 34.5.8 a retiring Director shall continue to act as Director throughout the annual general meeting at which he retires and his retirement shall become effective only at the end of such meeting.
- 34.6 The Board shall provide the Shareholders with a recommendation in the notice of the annual general meeting at which the re-election of a retiring Director is proposed, as to the re-election of that retiring Director, taking into account that Director's past performance and contribution. Sufficient time shall be allowed between the date of such notice and the date of the annual general meeting at which the re-election of the Director is to be proposed to allow nominations to reach the Company's registered office from any part of South Africa.
- 34.7 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Companies Act.
- 34.8 Life directorships and directorships for an indefinite period are not permissible.
- 34.9 In addition to the grounds of ineligibility and disqualification of Directors as contained in section 69 of the Companies Act, a Director shall cease to be eligible to continue to act as a Director if he absents himself from three consecutive meetings of the Board without the leave of the Board, and the Board resolves that his office shall be vacated; provided that this article 34.9 shall not apply to a Director who is represented by an Alternate Director who does not so absent himself.
- 34.10 This MOI does not impose any minimum shareholding or other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Companies Act and article 34.9.
- 34.11 Section 70 of the Companies Act shall apply to any vacancy on the Board which may arise from time to time.
- 34.12 If the minimum requirement in article 34.1 ceases to be met, the remaining Directors must as soon as possible, and in any event not later than three months from the date that that minimum requirement ceases to be met, meet the minimum requirement by, *inter alia*, acting in terms of article 34.3 or holding a Shareholders Meeting for the purpose of filling the vacancies or appointing additional Directors, and the failure by the Company to meet those minimum requirements during the said three month period does not limit or negate the authority of the Board or invalidate anything done by the Board.

- 34.13 If the Board continues not to meet the minimum requirement in article 34.1 after the expiry of the three month period contemplated in article 34.12, it may, for as long after the expiry of that three month period as it fails to meet those requirements, act only for the purpose of meeting the minimum requirements or in the preservation and necessary formal administration of the Company, but not for any other purpose.
- 34.14 A Director may hold any other office or place of profit under the Company (except that of auditor), any subsidiary of the Company, any company controlled by the Company, any company promoted by the Company, or any company in which the Company may be interested, whether as Shareholder or otherwise, in conjunction with the office of Director, and in this event, his appointment for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise must be determined or agreed to by a disinterested quorum of the Directors.
- 34.15 Except insofar as otherwise decided by the Board, a Director of the Company who holds an office or place of profit contemplated in article 34.14 shall not be required to account to the Company for any remuneration or other benefits received by him by reason of such office or place of profit.

### 35. ALTERNATE DIRECTORS

- 35.1 Each Director may, by notice to the Company at any time:
- 35.1.1 nominate any one or more than one person in the alternative (including any of his co-directors) to be his alternate director ("**Alternate Director**"); and
- 35.1.2 terminate any such appointment.
- 35.2 The appointment of an Alternate Director shall terminate:
- 35.2.1 when the Director to whom he is an Alternate Director ceases to be a Director; or
- 35.2.2 upon the removal of that Alternate Director from his office as such.
- 35.3 An Alternate Director shall, subject to this MOI:
- 35.3.1 in the place and stead of the Director to whom he is an Alternate Director, act as a Director and generally exercise all the rights of a Director, but only:
- 35.3.1.1 at any meeting of the Board during the absence of that Director from such meeting; or
- 35.3.1.2 otherwise than at a meeting of the Board, during the incapacity of that Director or to the extent authorised by that Director in writing,
- and if more than one Alternate Director to a Director is present at a meeting or able to act in the place of that Director and that Director has not indicated in writing who should act in his place, then those Alternate Directors may agree as to which of them should act in the place of that Director and in the absence of such agreement between them, the Alternate Director to act in the place of that Director shall be determined by lot; and
- 35.3.2 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.

## 36. BOARD COMMITTEES

- 36.1 Without limiting article 34.2, the Board may:
- 36.1.1 appoint any number of committees of Directors;
  - 36.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate); and
  - 36.1.3 include any Person who is not a Director of the Company in such committees,
- and, accordingly, the authority of the Board in this regard is not limited or restricted by this MOI.
- 36.2 The authority and power of any committees established by the Board as contemplated in section 72(2) of the Companies Act is not limited or restricted by this MOI, but may, subject to the requirements of the JSE Listing Requirements and the Companies Act in respect of committees required to be established by the JSE Listing Requirements and the Companies Act, be restricted by the Board when establishing any committee or by subsequent resolution.
- 36.3 No Person shall be appointed as a member of a Board committee if that person is ineligible or disqualified to act as Director for purposes of section 69 of the Companies Act and any such appointment shall be a nullity. A Person who is ineligible or disqualified for purposes of section 69 of the Companies Act 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.
- 36.4 A member of a Board committee shall cease to hold office as such immediately upon becoming ineligible or disqualified to act as Director for purposes of the Companies Act.

## 37. CHAIRPERSON OF THE BOARD

- 37.1 The Board shall be entitled, from time to time, to appoint a Director to act as the chairperson or deputy chairperson of the Board for such period as may be determined by the Board. The Board shall be entitled, from time to time, to remove that chairperson or deputy chairperson from his post, so long as, in the case of the removal of the chairperson, the board appoints a replacement chairperson.
- 37.2 The chairperson of the Board or, failing him, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board; provided that, if no chairperson or deputy chairperson is present and willing to act, the Board present shall elect one of the Directors to be the chairperson of that meeting of the Board.
- 37.3 The chairperson of the Board shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at all meetings of the Board.
- 37.4 Notwithstanding the provisions of section 73(5)(e) of the Companies Act, the chairperson of the Board shall not have a second or casting vote in addition to his deliberative vote on any matter referred to the Board.

## 38. DIRECTORS MEETINGS

38.1 The Board may:

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

38.1.2 from time to time determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Companies Act; provided that:

38.1.2.1 no meeting may be convened without notice to all of the Directors (but subject to article 38.2); and

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

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

38.2 If all of the Directors of the Company:

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

38.2.2 are present at a meeting; or

38.2.3 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.

38.3 The Board:

38.3.1 may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and

38.3.2 must always make provision for any Director to participate by Electronic Communication in every Board meeting that is held in Person at any place other than the registered office of the Company,

and any Electronic Communication facility so employed must ordinarily enable all Persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Board in this regard is not limited or restricted by this MOI.

38.4 As set out in section 73(5)(b) of the Companies Act, the quorum for meetings of the Board shall be a majority in number of the Directors then in office; provided that unless the Board decides otherwise:

38.4.1 if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed or re-commenced meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and

- 38.4.2 if at any such postponed or re-commenced meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Companies Act, the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.
- 38.5 If a meeting of the Board is postponed or adjourned, whether in terms of article 38.4 or otherwise, the Company must, within forty-eight hours thereafter, send notice of the postponement or adjournment to all Directors who are entitled to receive notice of the meeting (excluding those of the Directors who have agreed not to receive such notice of postponement or adjournment or agreed that the meeting may proceed without them) and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and the business to be dealt with thereat. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh notice has been given in accordance with this MOI.
- 38.6 At any meeting of the Board:
- 38.6.1 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;
- 38.6.2 each Director has one vote on every matter to be decided by the Board; and
- 38.6.3 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in article 38.6.1 at a quorate meeting of the Board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This article 38.6.3 shall not detract from the Board's ability to adopt resolutions as set out in article 39.
- 38.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes:
- 38.7.1 any declaration given by notice or made by a Director, as required by section 75 of the Companies Act; and
- 38.7.2 every resolution adopted by the Board.
- 38.8 Resolutions adopted by the Board:
- 38.8.1 must be dated and sequentially numbered; and
- 38.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 38.9 Any minutes of a meeting, or a resolution, Signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

### 39. WRITTEN RESOLUTIONS BY DIRECTORS

- 39.1 A decision that could be voted on at a meeting of the Board may instead be:
- 39.1.1 submitted for consideration to each Director; and
- 39.1.2 voted on in writing by Directors (or their Alternate Directors) entitled to exercise voting rights on that matter within 10 Business Days after the resolution was submitted to them, or such other period as may be specified in the notice,
- and shall be deemed to have been adopted if a majority of Directors (or their Alternate Directors) entitled to exercise voting rights on that matter vote in favour of the relevant resolution.
- 39.2 Any such resolution, inserted in the minute book, shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors.
- 39.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which the resolution was approved in writing by the majority of Directors entitled to vote thereon, within the 10 Business Days period (or other applicable period).
- 39.4 The resolution may consist of one or more counterpart documents, each Signed by one or more Directors (or their Alternate Directors).
- 39.5 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 South Africa, or is incapacitated.

### 40. EXECUTIVE DIRECTORS

- 40.1 Without limiting article 34.14, the Board may appoint, from time to time, one or more of the Directors as executive directors, who shall be employees of the Company or its Subsidiary, on such terms and conditions of employment as to remuneration and otherwise as may be determined from time to time by a disinterested quorum of the Board, and may from time to time remove or dismiss such Persons from office as an executive Director and appoint another or others in his or their place or places.
- 40.2 Any Director appointed in terms of article 40.1:
- 40.2.1 shall not (subject to the provisions of the contract under which he is appointed) whilst he continues to hold that position or office, be subject to retirement by rotation;
- 40.2.2 shall not, during the currency of such appointment, be taken into account in determining the rotation of retirement of Directors; and
- 40.2.3 shall be subject to the same provisions as to the removal as the other Directors of the Company.

### 41. PAYMENTS TO DIRECTORS

- 41.1 The Company may pay remuneration to its Directors for their services as such and, without detracting from the foregoing, may pay any additional remuneration as referred to in article 41.3; and the authority of the Board in this regard is not restricted or limited by this MOI; provided that such remuneration must be approved by a special resolution passed by the Shareholders within the previous two years. For the avoidance of doubt, it is recorded that this article 41 does not apply to remuneration paid to executive Directors for their services as employees of the Company or its Subsidiary which is governed by article 40.1.

41.2 Each Director shall be paid all travelling, subsistence and other expenses properly and necessarily incurred by him in the execution of his duties as a Director; provided that such expenses shall first have been authorised or subsequently ratified by an executive Director.

41.3 Any Director who:

41.3.1 performs extra services;

41.3.2 serves on any executive or other committee;

41.3.3 devotes special attention to the business of the Company;

41.3.4 travels or resides outside South Africa for the purpose of the Company; or

41.3.5 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances (either in addition to or in substitution for any other remuneration to which he may be entitled as a Director), as a disinterested quorum of the Board may from time to time determine.

## 42. **BORROWING POWERS**

42.1 The:

42.1.1 borrowing powers of the Company; and

42.1.2 powers of the Company to Encumber its undertaking and property or any part thereof and to issue debt instruments (whether secured or unsecured), whether outright or as security for any debt, liability or obligation of the Company or of any third party,

shall be unlimited (subject to compliance with section 43 of the Companies Act to the extent applicable) and shall be exercised by the Directors.

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

43.1 For the purposes of this article 43, a Director includes:

43.1.1 a former Director and an Alternate Director;

43.1.2 a Prescribed Officer; and

43.1.3 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.

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

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



- 43.2.2 directly or indirectly indemnify a Director for expenses contemplated in article 43.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings:
- 43.2.2.1 are abandoned or exculpate that Director; or
- 43.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 43.2.3;
- 43.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Companies Act;
- 43.2.4 purchase or pay for insurance to protect:
- 43.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with article 43.2.3;
- 43.2.4.2 the Company against any contingency, including:
- 43.2.4.2.1 any expenses:
- 43.2.4.2.1.1 that the Company is permitted to advance in accordance with article 43.2.1; or
- 43.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with article 43.2.2; or
- 43.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 43.2.3,
- and the authority of the Board in this regard is not limited or restricted by this MOI.
- 43.3 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:
- 43.3.1 this indemnity shall not extend to any Loss:
- 43.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Companies Act;
- 43.3.1.2 arising from any gross negligence or recklessness on the part of that Director;
- 43.3.1.3 arising from any loss of or damage to reputation; or
- 43.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),
- and Directors shall not be entitled to recover the Losses referred to in this article 43.3.1 from the Company. All losses other than those referred to in this article 43.3.1 are referred to herein as "**Indemnified Losses**";

- 43.3.2 each Director's right to be indemnified by the Company in terms of this article 43 shall exist automatically upon his becoming a Director and shall endure even after he ceases to be a Director until he can no longer suffer or incur any Indemnified Loss;
- 43.3.3 if any claim is made against a Director in respect of any Indemnified Loss, then:
- 43.3.3.1 the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this article 43.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this article 43.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this article 43.3.3;
- 43.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisors, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or 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:
- 43.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisors) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;
- 43.3.3.2.2 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; and
- 43.3.3.2.3 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;
- 43.3.4 to the extent that any Indemnified Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;
- 43.3.5 if this article 43 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this article in respect of any period prior to the date on which the required resolution effecting such amendment is adopted by the Shareholders;
- 43.3.6 all provisions of this article 43.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this article 43.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI shall remain of full force and effect; and
- 43.3.7 this indemnity shall not detract from any separate indemnity that the Company may Sign in favour of the Director.

## **PART F – GENERAL PROVISIONS**

### **44. FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION**

- 44.1 The Company shall:
- 44.1.1 prepare annual financial statements in accordance with the Companies Act and shall, to the extent required by the Companies Act or the JSE Listings Requirements, have those annual financial statements audited or reviewed; and
- 44.1.2 ensure that all subsidiaries of the Company prepare annual financial statements in accordance with the Companies Act, and shall, to the extent required by the Companies Act or the JSE Listings Requirements, have those annual financial statements audited.
- 44.2 A copy of the abridged annual financial statements of the Company shall be distributed to Shareholders as soon as possible after the annual financial statements have been approved by the Board, but in any event at least 15 Business Days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.

### **45. FINANCIAL ASSISTANCE**

#### **45.1 Financial assistance for subscription for or purchase of securities**

The Board may, as contemplated in section 44 of the Companies Act and subject to the requirements of that section, authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise, to any Person for the purpose of, or in connection with, the subscription for any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities. The authority of the Board in this regard is accordingly not limited or restricted by this MOI.

#### **45.2 Financial assistance to Directors, Prescribed Officers and related and inter-related companies**

- 45.2.1 The Board may, as contemplated in section 45 of the Companies Act and subject to the requirements of that section, authorise the Company to provide direct or indirect financial assistance to a Director or prescribed officer of the Company, or of a related or inter-related company, or to a related or inter-related company or corporation, or to a member of a related or inter-related corporation, or to a Person related to any such company, corporation, director, prescribed officer or member. The authority of the Board in this regard is accordingly not limited or restricted by this MOI.
- 45.2.2 To the extent permissible in law and without limitation, the obligation to provide notice to Shareholders contemplated in section 45(5) of the Companies Act may, at the Board's election, be discharged by way of an announcement on SENS.

### **46. DISTRIBUTIONS**

- 46.1 Subject to the provisions of the Companies Act and this MOI, the Board may declare any Distribution. With effect from the Listing Date, all Distributions shall comply with the JSE Listings Requirements. The Company may not make it a condition to a distribution that all or part of the amount of that Distribution may be called up again by the Company in its discretion.
- 46.2 Distributions (in the form of a dividend or otherwise) are to be declared by the Board in accordance with the Companies Act.

- 46.3 The Company shall transmit any Distribution or amount payable in respect of a Share by electronic bank transfer to such bank account as the Registered Holder thereof may have notified the Company in writing for this purpose, and the Company shall not be responsible for any loss in transmission. In the case of joint holders, the bank account of the first named in the Securities Register (or sub-register, as the case may be) in respect of such joint holdings, the details of which bank account were furnished to the Company by such person, and the electronic transfer of the Distribution or amount payable into such bank account shall be a good discharge by the Company in respect thereof. For the purposes of this article 46.3, no notice of change of bank account or instructions as to payment being made into any other bank account which is received by the Company after the date on which a holder must be registered in order to qualify for a Distribution or other amount payable or which would have the effect of changing the currency in which such payment would be made, shall be effective in respect of such payment. A Shareholder who is a South African resident shall only be entitled to supply a Rand denominated bank account of a bank registered to operate such account in South Africa. In the event that a Shareholder has failed to furnish the Company with a valid bank account as envisaged in this article 46.3, the Distribution or other amount payable shall be deemed unclaimed distributions in accordance with article 46.5.
- 46.4 The Company shall not be responsible for a Shareholder's loss arising from any fraudulent, diverted or incorrect electronic funds transfer of Distributions or other amounts payable to a Shareholder unless such loss was due to the Company's gross negligence or wilful default.
- 46.5 Any Distribution or other money payable on or in respect of a Share:
- 46.5.1 which is unclaimed, may be retained by the Company and held in trust indefinitely until lawfully claimed by such Shareholder/s or until the Shareholder's claim therefor prescribes in terms of article 46.5.2;
- 46.5.2 which is unclaimed for a period of three years from the date on which they were declared may be declared forfeited by the Board for the benefit of the Company. The Directors shall be entitled at any time to annul such forfeiture upon such conditions (if any) as the Board deems fit;
- 46.5.3 which is retained and unclaimed for three years, should the Company be wound-up or deregistered, after the payment date of the Distribution or money in question, shall be forfeited and revert to the Company or its assigns and may be dealt with by the Directors or such assigns as they deem fit; and
- 46.5.4 shall not bear interest against the Company and the Board shall, for the purpose of facilitating the winding-up or deregistration of the Company before the date of any such forfeit, be entitled to delegate to any bank, registered as such in accordance with the laws of South Africa, the liability for payment of any such Distribution or other money, payment of which has not been forfeited in terms of the foregoing.
- 46.6 Distributions (in the form of a dividend or otherwise) shall be paid to Shareholders registered as at a relevant record date subsequent to the date of declaration or, if applicable, date of confirmation of the Distribution, whichever is the later date.

#### 47. **NOTICES**

- 47.1 Without derogating from article 45.2.2, any notice that is required to be given and any document required to be delivered or distributed to Shareholders or Directors:
- 47.1.1 may be given, delivered or distributed in any manner prescribed in the Table CR3 to the Regulations and that notice or document shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery; and

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

47.2 Each Shareholder and Director shall:

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

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

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

47.3 The postal address notified by any Shareholder to the Company in terms of article 47.2.1 may be a postal address within or outside South Africa.

**SCHEDULE 1****AUTHORISED SHARES**

The Company is authorised to issue 2 000 000 000 Ordinary Shares, having no par value and having the rights and limitations set out in the MOI to which this Schedule is attached.