

**Companies and Intellectual Property Commission**

**Republic of South Africa**

**MEMORANDUM OF INCORPORATION**

**OF**

**THE RACING ASSOCIATION NPC**

(Registration number: 1997/019092/08)

("the Company")

**A Non-Profit Company**

The amendments to this Memorandum of Incorporation were approved in terms of special resolutions adopted by Members at a general meeting of the Company held on

\_\_\_\_\_ **2020**

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Chairperson

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## 1 INTERPRETATION

- 1.1 In this MOI, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate words and expressions shall have a corresponding meaning, namely:
- 1.1.1 “**the Act**” means the Companies Act, 71 of 2008, as amended;
- 1.1.2 “**AGM**” means the annual general meeting of the Company;
- 1.1.3 “**Alterable Provision**” means a provision of the Act in which it is expressly contemplated that its effect on the Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI;
- 1.1.4 “**Board**” means the board of Directors of the Company, for the time being;
- 1.1.5 “**Business Day**” means any day that is not a Saturday, Sunday or official public holiday in South Africa;
- 1.1.6 “**CC Act**” means the Close Corporations Act, 69 of 1984, as amended;
- 1.1.7 “**Commission**” means the Companies and Intellectual Property Commission;
- 1.1.8 “**Commissioner**” means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 34 of 1997;
- 1.1.9 “**Director**” means a director of the Company;
- 1.1.10 “**Electronic Communication**” means a communication by means of data generated, sent, received or stored by electronic means and includes voice, where the voice is used in an automated transaction and a stored record;
- 1.1.11 “**General Meeting**” means any general meeting of the Company, and includes an AGM;
- 1.1.12 “**Income Tax Act**” means the Income Tax Act, 58 of 1962, as amended or any legislation which replaces it;
- 1.1.13 “**Member**” means a person defined in **clause 6** who holds membership in the Company;
- 1.1.14 “**MOI**” means this memorandum of incorporation of the Company;
- 1.1.15 “**NHA**” means the National Horseracing Authority or any successor thereto;
- 1.1.16 “**Objects**” means the stated objects of the Company set out in **clause 5.1**;

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- 1.1.17            **“Record Date”**            means the date upon which the Company determines the identity of its Members;
- 1.1.18            **“Regulations”**            means the Companies Regulations, 2011, published in terms of General Notice R351 in Government Gazette 34239 of 26 April 2011, and any further regulations made in terms of the Act from time to time;
- 1.1.19            **“South Africa”**            means the Republic of South Africa; and
- 1.1.20            **“Unalterable Provision”**            means a provision of the Act that does not expressly contemplate that its effect on the Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI.
- 1.2            All other words and expressions defined in the Act shall, unless the context indicates otherwise, bear the same meanings in this MOI.
- 1.3            In this MOI, unless the context requires otherwise:
- 1.3.1            words importing any one gender shall include the other gender;
- 1.3.2            the singular shall include the plural and *vice versa*;
- 1.3.3            a reference to natural persons shall include created entities (corporate or unincorporated) and *vice versa*;
- 1.3.4            reference to any provision of the Act or Regulations shall include such provision as it may be modified or re-enacted from time to time;
- 1.3.5            any reference to any agreement or document shall be construed as a reference to such agreement or document as may have been, or may from time to time be, amended, varied, novated or supplemented; and
- 1.3.6            any number of prescribed days shall be determined by excluding the first and including the last day or, where the last day is a day that is not a Business Day, the next Business Day.
- 1.4            In any instance where there is a conflict between a provision of this MOI and:
- 1.4.1            an Alterable Provision, the provisions of this MOI shall prevail to the extent of the conflict; and
- 1.4.2            an Unalterable Provision, the Unalterable Provision shall prevail to the extent of the conflict unless this MOI imposes on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.
- 1.5            In this MOI, the headings have been inserted for convenience only and shall not be used for nor affect its interpretation.

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- 1.6 If anything in a definition is a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of this MOI.

## 2 STATUS

- 2.1 The Company is a pre-existing company, as defined in the Act, and continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act. This MOI replaces and supersedes the memorandum of incorporation of the Company applicable immediately prior to the filing of this MOI.

- 2.2 The Company is a non-profit company in terms of section 1 of the Act, and accordingly:

- 2.2.1 the Objects for which the Company was incorporated relate to communal or group interests;

- 2.2.2 must apply all of its assets and income, however derived, to advance its Objects;

- 2.2.3 subject to **clause 2.2.2**, may acquire and hold securities issued by a profit company or directly or indirectly, alone or in conjunction with any person, carry on any business, trade or undertaking consistent with or ancillary to its Objects;

- 2.2.4 may not distribute directly or indirectly pay any portion of its income or transfer any of its assets to any person who is or was an incorporator of the Company, a Member or Director or a person appointing a Director, except:

- 2.2.4.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company or as reasonable payment of, or reimbursement for, expenses incurred to advance its Objects;

- 2.2.4.2 as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;

- 2.2.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company, in order to advance its Objects; or

- 2.2.4.4 in respect of any legal obligation binding on the Company.

- 2.3 This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.

- 2.4 The Company is incorporated in accordance with, and governed by:

- 2.4.1.1 the Unalterable Provisions that are applicable to non-profit companies;

- 2.4.1.2 the Alterable Provisions that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI;

- 2.4.1.3 the provisions of this MOI; and

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2.4.1.4 the provisions of section 30B of the Income Tax Act.

### 3 **AMENDMENT AND ALTERATION OF THIS MOI**

3.1 This MOI may only be amended:

3.1.1 in compliance with a court order, which amendment shall be effected by a resolution of the Board and does not require a special resolution as contemplated in **clause 3.1.3** below;

3.1.2 in the manner contemplated in section 152(6)(b) of the Act; and

3.1.3 at any other time if a special resolution to amend this MOI:

3.1.3.1 is proposed by the Board, or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and

3.1.3.2 is adopted at a General Meeting, or in accordance with **clause 12**;

3.2 The Board, or any individual authorised by the Board, may alter this MOI in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by:

3.2.1 publishing a notice of alteration by delivering a copy of such alteration to each Member by hand or e-mail; and

3.2.2 filing a notice of alteration with the Commission.

3.3 The Board shall ensure that a copy of any amendments that have been made to the MOI is given to the Commissioner within 10 (ten) Business Days of such amendments being effected.

### 4 **APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

The Company, being a non-profit company, elects in terms of section 34(2) of the Act, to voluntarily appoint an auditor, which satisfies the requirements of **clause 26**, each year at its AGM and to submit to the extended accountability requirements set out in Chapter 3 of the Act, to the extent set out in **clauses 25** and **26**.

### 5 **OBJECTS AND POWERS OF THE COMPANY**

5.1 The Company has the following Objects:

5.1.1 to promote the sport of horseracing;

5.1.2 to use all reasonable endeavours to ensure that the infrastructure of horseracing is satisfactorily maintained and operated;

5.1.3 to promote the welfare and upkeep of racehorses;

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- 5.1.4 to advance and promote the interests of the body of Members and to ensure they enjoy adequate facilities at racing venues, clubs and courses;
  - 5.1.5 to negotiate on behalf of owners the basis on which stakes are to be paid;
  - 5.1.6 to use all reasonable endeavours to ensure stakes are paid on the basis agreed by the Company;
  - 5.1.7 to supplement stakes and pay such supplemented stakes to owners should it be deemed appropriate by the Board to do so;
  - 5.1.8 to pay grants or any other contributions to assist owners, trainers and/or grooms should it be deemed appropriate by the Board to do so;
  - 5.1.9 to advance loans to any subsidiary or related company should it be deemed appropriate by the Board to do so;
  - 5.1.10 to use all reasonable endeavours to protect the copyrights of audio and audio-visual transmission of horseracing;
  - 5.1.11 to support and encourage broad based transformation throughout the horseracing industry; and
  - 5.1.12 to strive towards a more diverse membership of the Company and participation in the sport of horseracing.
- 5.2 The Company has all the legal powers and capacities of an individual, except to the extent that a juristic person is incapable of exercising such power or having any such capacity. No provision in this MOI shall be interpreted or construed as restricting, limiting or qualifying the legal powers or capacity of the Company.
- 5.3 Save to the extent necessarily implied by its Objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.

## 6 MEMBERSHIP

- 6.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has two classes of Members, being non-voting Members and voting Members, with each of the voting Members having an equal vote in any matter to be decided on by members of the Company.
- 6.2 The Members shall be such people who, at the time of the registration of this MOI, are Members of the Company.
- 6.3 Additional Members shall be admitted in accordance with the MOI, provided that, unless otherwise determined by the Board in its sole discretion:

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- 6.3.1 an intending voting Member shall hold colours registered with the NHA in terms of its rules and have an interest in racehorse ownership; and
- 6.3.2 an intending non-voting Member shall not be required to hold colours registered with the NHA or have an interest in racehorse ownership.
- 6.4 All applications for membership shall be made in such manner and form and on such conditions as may be prescribed by the Directors. Any application submitted to the Directors may be refused if, in the opinion of the Directors, such refusal would be in the best interest of the Company and/or the sport of horseracing.
- 6.5 The Directors shall, in their sole discretion, determine the amount of any entrance fee payable by an applicant for membership. All Members, with the exclusion of life-time Members shall be obliged to pay an annual subscription to the Company, the amount of which shall be determined by the Directors in their sole discretion. The subscription shall be payable on, or before, the 1<sup>st</sup> (first) day of August in each year. It is recorded that the amount of the annual subscription may vary depending on the regional area within which a Member is domiciled. The Board shall be entitled to raise interest on arrear subscriptions for the period from 1 August until date of receipt of payment of the arrear subscriptions in full, both dates inclusive.
- 6.6 Life-time Members may from time to time be admitted by the Directors on such terms and conditions as the Directors, in their sole discretion may decide, for service to the Company or to the Objects set out in the MOI and with their consent, provided that such persons shall not be obliged to pay annual subscriptions following their admission as a life-time Member.
- 6.7 All Members who at the date of registration of this MOI, have been admitted as life-time Members shall remain life-time Members, and as such enjoy all the privileges of membership but shall not be required to pay any annual subscription.
- 6.8 Membership may not be assigned or transferred.
- 6.9 The Company shall give regard to Members' rights not to be discriminated against unfairly as provided in Section 9 of the Constitution of the Republic.

## 7 CESSATION OF MEMBERSHIP

- 7.1 Membership of the Company shall automatically be terminated:
- 7.1.1 upon receipt by the Company, at its registered office, of a notice, in writing, of resignation from the Member concerned;
- 7.1.2 upon the issue of a provisional or final order of sequestration of the Member concerned;
- 7.1.3 upon the death of any Member, or upon any Member being declared insane or incapable of managing his own affairs;
- 7.1.4 upon the passing of a resolution to that effect by a duly convened general meeting of Members;



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- 7.1.5 upon a Member, other than a Member who was a Member at the date of incorporation of the Company, becoming ineligible in terms of **clause 6.3** or
- 7.1.6 upon termination in terms of **clause 7.5.5**.
- 7.2 Membership of a Member, who was a member at the date of incorporation of the Company, shall not be terminated, notwithstanding the fact that he has become ineligible for membership in terms of **clause 6.3**. Such Members shall not be deemed to be life-time Members, and shall be required to pay the subscription fees referred to in **clause 6.5**.
- 7.3 Membership of the Company shall automatically be suspended should a Member fail to pay his annual subscription by 31 August each year to the Company. A Member shall not be entitled to enjoy any of the privileges of membership during the suspension of his membership.
- 7.4 Membership of the Company shall be terminated in the event of:
- 7.4.1 non-compliance by a Member with any such obligations as may attach to his membership; and
- 7.4.2 the failure to remedy such non-compliance upon the expiration of a period of 30 (thirty) days, reckoned from the date of written notice by the Company to the Member concerned, requiring the remedying of such default, save that the Directors shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as they may in their sole and absolute discretion deem fit.
- 7.5 If the Directors deem it to be in the best interests of the Company, and/or the sport of horseracing:
- 7.5.1 The Directors may, by written notice to a Member, inform the Member that, subject to **clause 7.5.2** they shall be terminating his membership of the Company. The notice shall state the reasons for the Directors' decision, which may include *inter alia*:
- 7.5.1.1 the Directors believe the Member to be acting contrary to the best interest of the Company, or the sport of horseracing; and/or
- 7.5.1.2 the Member's conduct is bringing the Company, or the sport of horseracing, into disrepute; and/or
- 7.5.1.3 the Member's conduct is unbecoming of a Member of the Company.
- 7.5.2 Upon receipt of such notice, the Member may accept, or dispute, the intended termination of his membership.
- 7.5.3 Should the Member dispute the intended termination of his membership, he shall inform the Company, in writing, within 10 (ten) Business Days of receipt thereof.

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- 7.5.4 Within 5 (five) Business Days of receiving the notice of dispute, the Directors shall refer the dispute to a director of the NHA agreed upon by the Directors and the Member or, failing agreement, nominated on the request of the Company by the chairman for the time being of the NHA, who shall act as an expert and not as an arbitrator and whose determination of whether the recommendation is fair or not shall, in the absence of any manifest error, be final and binding on the Company and the Member.
- 7.5.5 As at the date of the notice by the Directors of the intended termination, the Member's membership of the Company shall be suspended –
- 7.5.5.1 if, after the notice period referred to in **clause 7.5.3** the Member does not dispute the intended termination, his membership shall be terminated; or
- 7.5.5.2 if the Member disputes the intended termination within the notice period referred to in **clause 7.5.3** after determination by the director or chairperson of the NHA his membership shall either be restored or terminated.
- 7.5.6 All Members who have been suspended, or whose membership has been terminated, in terms of this MOI, shall not be a Member in good standing.
- 7.6 Notwithstanding anything to the contrary contained, or implied, in the MOI, the cessation of membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of membership.

## 8 MEMBERSHIP REGISTER

- 8.1 The Company shall maintain a register of all of the Members in the form prescribed by the Act.
- 8.2 The Company may also establish and maintain a branch register or branch registers.
- 8.3 The membership register and branch register/s shall, in the absence of evidence to the contrary, be sufficient proof of the facts recorded therein.

## 9 MEMBERS RIGHT TO INFORMATION

Each Member has the right to inspect and copy without any charge for any such inspection or on payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:

- 9.1 this MOI, any amendments thereto and any rules made in respect of the Company;
- 9.2 the records in respect of the Directors contemplated in section 24(3)(b) of the Act;
- 9.3 the reports to AGMs, and annual financial statements of the Company;

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- 9.4 the notices and minutes of all General Meetings, including all resolutions adopted by them at such meetings and any document made available by the Company to Members in relation to each such resolution;
- 9.5 copies of any written communications sent generally by the Company to Members; and
- 9.6 the membership register.

## 10 GENERAL MEETINGS

### 10.1 Requirement to Hold Meetings

- 10.1.1 The Board may call a General Meeting at any time.
- 10.1.2 The Company shall hold a General Meeting:
- 10.1.2.1 at least once a year, provided that the AGM shall be held within 5 (five) months of the date of approval of the AFS for the previous financial year by the Board;
- 10.1.2.2 at any time that the Board is required by the Act or this MOI to refer a matter to Members for decision;
- 10.1.2.3 whenever required in terms of section 70(3)(b) of the Act to fill a vacancy on the Board; and
- 10.1.2.4 when otherwise required in terms of **clause 10.2**.

### 10.2 Members' Right to Requisition a Meeting

The Board shall call a General Meeting if 1 (one) or more written and signed demands for such a meeting are delivered to the Company and:

- 10.2.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 10.2.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

### 10.3 Location of General Meetings

The Board shall determine the location for any General Meeting.

### 10.4 Notice of General Meetings

- 10.4.1 The Company shall deliver a notice of each General Meeting to all of the Members as of the record date of the meeting, in written and/or electronic form, at least 10 (ten) Business Days before the meeting is to begin.

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- 10.4.2 The notice contemplated in **clause 10.4.1** shall include the following information:
- 10.4.2.1 the date, time, place and record date of the General Meeting;
- 10.4.2.2 the general purpose of the meeting, and any specific purpose contemplated in **clause 10.4.1**;
- 10.4.2.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- 10.4.2.4 in the case of an AGM, the financial statements to be presented or a summarised form thereof and directions for obtaining a copy of the complete annual financial statements for the preceding financial year in question; and
- 10.4.2.5 a reasonably prominent statement that:
- 10.4.2.5.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;
- 10.4.2.5.2 a proxy need not also be a Member; and
- 10.4.2.5.3 section 63(1) of the Act requires participants to provide satisfactory identification to verify their right to participate at the General Meeting.
- 10.4.3 The Company may call a General Meeting on shorter notice than required in terms of **clause 10.4.1**, provided that such a meeting may only proceed if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at that meeting and votes to waive the required minimum notice of the meeting (in accordance with the provisions of section 62(2A) of the Act).
- 10.4.4 An immaterial defect in the form or manner of giving notice of a General Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member or Members shall not invalidate any action taken at such meeting. In the event of a dispute as to whether the omission was accidental or not, the decision of the Board shall be final and binding on the Members.
- 10.5 Electronic Participation
- A General Meeting may be conducted entirely by Electronic Communication or provide for participation in a General Meeting by Electronic Communication by one or more Members, or proxies for Members, in all or in part of a General Meeting as long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.
- 10.6 Quorum for General Meetings

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The quorum requirements for a General Meeting to begin or for a matter to be considered are as follows:

- 10.6.1 a General Meeting shall not begin until sufficient persons are present at the meeting, in person or by proxy, to exercise, in aggregate, at least 2% (two percent) of all of the voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at that meeting; and
- 10.6.2 a matter to be decided at the General Meeting may not begin to be considered unless sufficient persons are present at that meeting, in person or by proxy, to exercise, in aggregate, at least 2% (two percent) of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda,

provided that, even if the requirements in **clause 10.6.1** or **10.6.2** are satisfied, a General Meeting shall only begin, or a matter shall only begin to be debated, if at least 3 (three) Members are present at the meeting.

10.7 Chairperson

- 10.7.1 The chairperson of the Board shall preside as chairperson at every General Meeting.
- 10.7.2 If there is no such chairperson, or if at any General Meeting he is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting, or if he is unwilling to act as chairperson, the Directors shall choose one of their number to act as chairperson and, failing any Director present and willing to act, the Members present shall elect 1 (one) of their number to be the chairperson of the meeting.
- 10.7.3 The chairperson of a General Meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned, it shall not be necessary to give notice thereof.

10.8 Postponement and Adjournment of General Meetings

- 10.8.1 Business may be transacted at a General Meeting only while a quorum of Members is present.
- 10.8.2 If, within one hour after the time appointed for the General Meeting, a quorum is not present, the General Meeting, if convened upon requisition of the Members, shall be dissolved. In any other case the General Meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a Business Day, to the next succeeding Business Day, and if at such adjourned General Meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person shall constitute a quorum.
- 10.8.3 At any General Meeting, each voting Member present in person or by proxy shall be entitled to exercise 1 (one) vote. Any voting Member who is not duly registered or has

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not paid every subscription and other sum or fine which shall be due and payable by him to the Company shall not be entitled to vote either personally or by proxy at any General Meeting.

## 10.9 Proceedings at General Meetings

10.9.1 The AGM shall deal with, and dispose of, all matters prescribed by the Act, including but not limited to:

10.9.1.1 the presentation of the annual financial statements;

10.9.1.2 the appointment of an auditor;

10.9.1.3 the fixing of the remuneration of the auditor; and

10.9.1.4 may deal with any other business laid before it and of which notice has been duly given in terms of this MOI or in respect of which notice has been waived in terms of **clause 10.4.3**.

10.9.2 At a General Meeting, voting shall be conducted by poll in accordance with the following:

10.9.2.1 The poll is to be conducted in such a manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the General Meeting concerned.

10.9.2.2 The chairperson shall be entitled, but not required, to appoint scrutineers to declare the result of the poll and, if appointed, their decision, which shall be given by the chairperson, shall be deemed to be the resolution of the General Meeting concerned.

10.9.3 In the case of an equality of votes, the chairperson of the General Meeting at which the poll is taken, shall, if he is a voting Member, have a casting vote.

10.9.4 Any objection to the admissibility of a vote on a poll shall be raised at the General Meeting at which the poll is to take place or takes place. The chairperson of that General Meeting shall determine that objection and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.

10.9.5 A resolution shall not be invalid because a vote that should not have been included has been taken into account unless, in the opinion of the chairperson of that General Meeting (whose decision thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the chairperson of that General Meeting (whose decision thereon shall be final and binding), the inclusion of that vote would have altered the resolution of the voting on that resolution.

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## 10.10 Members Resolutions

10.10.1 For an ordinary resolution to be adopted by Members, it must be supported by more than 50% (fifty percent) of the voting rights exercised by voting Members on the resolution.

10.10.2 For a special resolution to be adopted at a General Meeting, it must be supported by at least 75% (seventy five) percent) of the voting rights exercised by voting Members on the resolution.

## 10.11 Minutes

10.11.1 The Board shall cause a record to be made of all resolutions of the Company in a General Meeting in a book provided for that purpose.

10.11.2 The minutes kept in terms of **clause 10.11.1** (or any extract therefrom) which is signed by the chairperson of the Board or by any Director shall be prima facie evidence of the matters therein stated.

## 11 **PROXIES**

### 11.1 Proxy Appointment

11.1.1 A voting Member may, at any time, appoint any individual who is a voting Member in good standing, as a proxy to:

11.1.1.1 participate in, and speak and vote at, a General Meeting on behalf of the voting Member;

11.1.1.2 give or withhold written consent on behalf of the voting Member to a decision contemplated in **clause 12**.

11.1.2 A proxy appointment is required to be in writing, dated and signed by the Member and remains valid for 1 (one) year after the date on which it was signed or any longer or shorter period expressly set out in the appointment, unless:

11.1.2.1 the appointment is revoked by the Member cancelling it in writing or making a later inconsistent appointment and delivering a copy of the revocation instrument to the proxy and to the Company; or

11.1.2.2 the Company issues an invitation to Members to appoint 1 (one) or more persons named by the Company as a proxy or supplies a form of instrument for appointing a proxy, in which case the proxy appointment shall expire at the end of the meeting it was intended to be used, subject to section 58(5) of the Act.

### 11.2 Requirement to Deliver Proxy Instrument

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A copy of the instrument appointing a proxy must be delivered to the Company, or to any other person on behalf of the Company, before the proxy exercises any rights of the voting Member at a General Meeting.

11.3 Representation by Concurrent Proxies

A voting Member may not appoint 2 (two) or more persons concurrently as proxies.

11.4 Authority of Proxy to Delegate

A proxy may not delegate his authority to act on behalf of a voting Member to another person.

11.5 Deliberative Authority of Proxy

A proxy shall be entitled to exercise or abstain from exercising any voting right of the Member without written directions from that Member, except to the extent that the instrument appointing the proxy provides otherwise.

12 **MEMBERS ACTING OTHER THAN AT MEETING**

12.1 A resolution that could be voted on at a General Meeting may instead be:

12.1.1 submitted for consideration to Members entitled to exercise voting rights in relation to the resolution; and

12.1.2 voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 (twenty) Business Days after the resolution was submitted to them.

12.2 A resolution contemplated in **clause 12.1**:

12.2.1 shall be adopted if it is supported by Members 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 General Meeting; and

12.2.2 if adopted, shall have the same effect as if it had been approved by voting at a General Meeting.

13 **RECORD DATE FOR EXERCISE OF MEMBER RIGHTS**

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

13.1 in the case of a General Meeting, the latest date by which the Company is required to give Members notice of that meeting; or

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



## 14 DIRECTORS

### 14.1 Composition of the Board

14.1.1 Until otherwise determined by the Company in a General Meeting, the number of Directors shall be not less than 5 (five) and not more than 10 (ten), comprising one ex officio seat for the Chief Executive Officer, if any, and the Directors to be elected in accordance with **clauses 14.1.2** and **14.1.3**.

14.1.2 At the AGM following the AGM at which this MOI is adopted, Directors domiciled in the applicable regional areas of South Africa shall be appointed by Members in the following proportions:

14.1.2.1 Eastern Cape: 2 (two);

14.1.2.2 Western Cape: 3 (three); and

14.1.2.3 Gauteng: 4 (four).

14.1.3 Thereafter, the representation of Directors appointed from each regional area of South Africa shall be proportionate to the value of revenue in the form of nominations and declarations received by the Company in and from such regional area as reflected in the audited financial statements of the Company for the preceding financial year.

14.1.4 Should it be necessary for Directors domiciled in a regional area to resign in order to give effect to **clause 14.1.3**, those Directors shall do so at the AGM in question.

### 14.2 Rotation of Directors

14.2.1 At each AGM, one-third of the elected Directors for the time being, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office.

14.2.2 Notwithstanding anything to the contrary herein contained:

14.2.2.1 no elected Director shall be entitled to serve as a Director for a consecutive period of more than 5 (five) years or for a period in excess of 10 (ten) years in total; and

14.2.2.2 any Director may be removed or replaced in the manner provided for by the Act.

14.2.3 Subject to **clause 14.2.2**, all retiring elected Directors shall be eligible for re-election.

14.2.4 The Members may, at any AGM at which a Director retires pursuant to **clause 14.2.1**, fill the vacancy office by re-electing that Director or electing another person thereto in accordance with **clause 14.3**.

14.2.5 Any person nominated for election as a Director must be a Member in good standing.

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14.2.6 Members shall be entitled to vote on the appointment of any nominee for election as a Director, even though such nominee is domiciled in a different regional area in South Africa from the Members concerned.

#### 14.3 Election of Directors

14.3.1 On or before 15 August of each year the Company shall send to each Member entitled to vote on the election of Directors a notice calling for nominations for election to the Board to fill any vacancies on the Board. Subject to **clause 14.2.2**, a retiring Director shall be deemed to be duly nominated unless he had notified the Company in writing that he is not prepared to stand for re-election.

14.3.2 The completed nomination form, signed by the proposer and seconder, must reach the Company not later than noon on 15 September. A Member may nominate as many Members as there are vacancies for Directors, provided that each such nominee is domiciled in the region concerned. Signed acceptance of such nomination by the person nominated must reach the Company by not later than noon on 1 October.

14.3.3 The list of eligible nominees shall be determined by the Company from time to time.

14.3.4 The election of Directors shall be conducted as follows:

14.3.4.1 the election is to be conducted by a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and

14.3.4.2 in each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.

#### 14.4 Alternate Directors

A Director shall not be entitled to appoint one or more persons to act as an as an alternate member of the Board in substitution for that Director.

#### 14.5 Vacancies

The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on a temporary basis until the vacancy has been filled by election in terms of **clause 14.3**, and during that period any person so appointed shall have all of the powers functions and duties, and is subject to all of the liabilities, of any other Director.

#### 14.6 Ineligibility and Disqualification of Directors

14.6.1 A person who is ineligible or disqualified in terms of this **clause 14.6** shall not be appointed or elected as a Director, consent to being appointed or elected as a Director or act as a Director.

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- 14.6.2 The Company shall not knowingly permit an ineligible or disqualified person to serve or act as a Director.
- 14.6.3 A Director who becomes ineligible or disqualified in terms of this **clause 14.6** whilst serving as a Director shall, subject to section 70(2) of the Act, cease to be entitled to continue to act as a Director with immediate effect.
- 14.6.4 A person who has been placed under probation by a court in terms of section 162 of the Act or section 47 of the CC Act, shall not serve as a Director except to the extent permitted by the order of probation.
- 14.6.5 A person is ineligible to be a Director if the person is a juristic person, is an unemancipated minor or is under a similar legal disability.
- 14.6.6 A person shall be disqualified to be a Director if:
- 14.6.6.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162 of the Act or section 47 of the CC Act;
- 14.6.6.2 subject to **clause 14.6.7** and section 69(10) and (11) of the Act, that person:
- 14.6.6.2.1 is an unrehabilitated insolvent;
- 14.6.6.2.2 is prohibited in terms of any public regulation to be a Director;
- 14.6.6.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 14.6.6.2.4 has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
- 14.6.6.2.4.1 involving fraud, misrepresentation or dishonesty;
- 14.6.6.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in **clause 14.6.1** or **14.6.4**; or
- 14.6.6.2.4.3 under the Act, the Insolvency Act, 24 of 1936, the CC Act, the Financial Intelligence Centre Act, 38 of 2001, the Securities Services Act, 36 of 2004, or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
- 14.6.7 A disqualification in terms of **clause 14.6.6.2.3** or **14.6.6.2.4** ends at the later of:
- 14.6.7.1 5 (five) years after the date of removal from office or the completion of the sentence imposed for the relevant offence, as the case may be; or

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14.6.7.2 at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of section 69(10) of the Act.

14.6.8 This **clause 14.6** shall also apply to a prescribed officer of the Company or a person who is a member of a committee of the Board.

## 15 PRIVILEGES OF DIRECTORS

Provided he has, in terms of the Act, disclosed his interest in the relevant contract or arrangement, no Director shall be disqualified from:

15.1 being or becoming interested in any manner whatsoever in any contract with the Company or in any other company, enterprise or business whatsoever;

15.2 representing the Company in any way whatsoever;

15.3 holding any office of profit in the Company or accepting office as a Director or officer of any subsidiary of the Company or of any company controlled by the Company or of any company of which the company is a Member or in which it holds a financial interest;

15.4 receiving any remuneration in consideration of the office referred to in **clause 15.3**

15.5 acting, and no firm of which a Director is a member shall be disqualified from acting, in any professional capacity or holding any office of profit (other than that of Auditor) in the Company or in any company of which the Company is a member or disqualified from receiving remuneration for those professional or other services; and

15.6 receiving any benefits whatsoever by virtue of any interest or office referred to above or any other interest or office whatsoever that the Director may have and will not be accountable to the Company therefor.

## 16 PROCEEDINGS OF DIRECTORS

16.1 The chairperson, Chief Executive Officer or any 2 (two) other Directors may call a meeting of the Board at any time.

16.2 The Board may determine the form and time for giving notice of its meetings, but, subject to **clause 16.3** below, no meeting of the Board may be convened without notice to all of the Directors.

16.3 If all of the Directors acknowledge receipt of the notice or are present at the meeting or waive notice of the meeting, the meeting of the Board may proceed even if requisite notice of that meeting has not been given, or there was a defect in the giving of the notice.

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

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- 16.5 Each Director has 1 (one) vote on a matter before the Board. Questions arising at any meetings of the Board shall be decided by a majority of votes. The chairperson shall have a casting vote in the case of an equality of votes.
- 16.6 At least a majority of the Directors must be present at a Board meeting before a vote may be called at that meeting.
- 16.7 The Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below a quorum, the Directors may act for the purpose of appointing further Directors and/or making the arrangements for the election of additional Directors so as to enable a quorum to be constituted and/or for summoning a General Meeting for that purpose.
- 16.8 A resolution in writing (which may be contained in counterparts) signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. Signature of a copy of the resolution shall be deemed to be signature of the original resolution itself.
- 16.9 A chairperson shall be elected annually after the new Board has been constituted. No Director may hold office as chairperson for a period of more than 6 (six) years in total.

## 17 **VALIDITY OF ACTS OF DIRECTOR(S) AND COMMITTEES**

All acts done by any meeting of the Board or of a committee appointed by the Board or by any person acting as a Director shall, notwithstanding the fact that it is afterwards discovered that there was some defect in the appointment or continuation in office of any such Directors or persons or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

## 18 **REMUNERATION OF DIRECTORS**

- 18.1 This MOI does not limit the authority of the Company to pay remuneration to the Directors, in accordance with a special resolution approved by the Members within the previous two years, as set out in section 66(9) of the Act, provided that the Company acts at all times within the scope of **clause 28.8** and any other applicable section of the Income Tax Act.
- 18.2 Any Director who serves on any committee or otherwise performs services which the Directors consider outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of fees, salary, commission or otherwise as the Board may approve, confirm or ratify.
- 18.3 The Directors shall be entitled to be reimbursed for all travelling, hotel and other expenses of whatsoever nature properly incurred by them (and their spouses where, with the prior approval of the Board, they are accompanied by their spouses) in or about the performance of their duties as Directors, including, but not limited to, the reasonable cost of attending and

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travelling from their normal place of residence to and from meetings of Directors or any committee of Directors or any General Meetings.

## 19 GENERAL POWERS AND DUTIES OF DIRECTORS

19.1 The business of the Company shall be managed by the Directors who may pay all expenses incurred and shall exercise all such powers of the Company as are not, by the Act, or by this MOI, required to be exercised by the Company in a General Meeting.

19.2 The Directors shall be entitled to:

19.2.1 establish and maintain and/or contribute any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of the employees of the Company; and

19.2.2 grant pensions, gratuities and allowances to and make payments for or toward the liability or similar insurance of any persons who are employees or ex-employees (including any Chief Executive Officer, managing Director, ex-Chief Executive Officer or ex-managing Director) of the Company or of any company which is or was a subsidiary of the Company .

19.2.3 authorise payment of any members' of a committee reasonable expenses upon a similar basis as set out in **clause 18.3** as and when such expenses are incurred.

## 20 BORROWING POWERS OF DIRECTORS

20.1 The Board may in its discretion borrow any sums of money for the purposes of the Company provided that the aggregate amount borrowed shall not exceed R1,000,000 (one million Rand), or such higher amount as may be approved by Members in a General Meeting. The amount stipulated in this **clause 20.1** shall escalate on 1 August of each year at a percentage equal to the percentage increase in the prevailing headline Consumer Price Index in January of that year published from time to time by Statistics South Africa. The first escalation shall take effect on 1 August 2021.

20.2 The Board may secure the payment or repayment of any money borrowed in terms of **clause 20.1** and/or the payment of any debt, liability or obligation whatsoever of the Company or of any third party in such manner and upon such terms and conditions, in all respects, as it approves, by the execution of mortgage bonds or other securities or the issue of debenture and debenture stock of the Company upon the security of all or any part of the property or rights of the Company present or future.

20.3 **Clauses 20.1** and **20.2** above are subject at all times to the Company satisfying the solvency and liquidity test set out in the Act.

## 21 GOVERNANCE RULES

21.1 The Board may make, amend or repeal any necessary or incidental rules relating to the governance of the Company by publishing a copy of these rules via electronic mail to the

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Members. Any rule published in this manner shall take effect on the date specified in the actual rule.

21.2 The rule will be binding:

21.2.1 on an interim basis from the time it takes effect to the next General Meeting of the Company; and

21.2.2 on a permanent basis only if it has been ratified by an ordinary resolution of Members at a General Meeting.

## 22 CHIEF EXECUTIVE OFFICER

22.1 The Directors may from time to time appoint a person to the office of Chief Executive Officer in which case such person shall *ex officio* be a Director, or any other person as chief executive or general manager for such period and at such remuneration (including, without detracting from the generality of the foregoing, by way of fees, salary, commission or partly in one way and partly in another) and generally upon such terms as the Directors think fit. It may be a term of the appointment of any such person that he be paid a pension, gratuity or other benefit on his retirement from office. The Directors may revoke any such appointment and any such appointment shall terminate *ipso facto* if the appointee shall cease for any reason to be qualified as a Director subject to the rights of the appointee in terms of any agreement entered into between him and the Company in the particular case.

22.2 The Directors may from time to time entrust or confer upon the Chief Executive Officer for the time being such of the powers and authorities vested in them for such objects and purposes and upon such terms and conditions and with such restriction as they may think fit. Such powers and authorities may be conferred either collaterally or to the exclusion of or, in substitution for, all or any of the powers or authorities of the Directors, but without in any way absolving the Directors from their fiduciary duties or responsibilities as Directors. The Directors may at any time revoke or vary any powers or authorities conferred by them in terms of this clause provided that the revocation of such powers or authorities shall not invalidate any act performed prior to such revocation in terms thereof.

## 23 ACCOUNTING RECORDS

23.1 The Directors shall cause to be kept such accounting records as are prescribed by the Act and in particular such accounting records as are necessary, fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the activities or business of the Company.

23.2 The Company's records shall be kept at the Company's office or such other place or places as the Directors think fit and shall at all reasonable times be open to inspection by the Directors and by past Directors but, in the case of the latter, only in respect of the period during which they held office as Directors.

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## 24 FINANCIAL YEAR END

The financial year end of the Company shall be the last day of July each year.

## 25 AUDITED FINANCIAL STATEMENTS

25.1 The Directors shall from time to time and in accordance with the Act, cause the audited annual financial statements to be prepared and laid before the Company in an AGM.

25.2 A copy of the audited annual financial statements which are to be laid before the Company at the AGM shall, not less than 10 (ten) Business Days before the date of that meeting, be made available to every Member. The provisions of this MOI shall not require a copy of those documents to be sent to any person who has not furnished an electronic mail address to the Company.

## 26 AUDIT

### 26.1 Appointment of Auditors

26.1.1 To be appointed as an auditor of the Company, a person or a firm is required to be a registered auditor, who is not:

26.1.1.1 a Director or prescribed officer of the Company;

26.1.1.2 an employee or consultant of the Company;

26.1.1.3 a director, officer or employee of a person appointed as company secretary of the Company;

26.1.1.4 a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the Company;

26.1.1.5 a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was a person contemplated in **clauses 26.1.1.1 to 26.1.1.4**; or

26.1.1.6 a person related to a person contemplated in **clauses 26.1.1.1 to 26.1.1.5** above.

26.1.2 If the Company appoints a firm as an auditor, the individual determined by that firm to be responsible for performing the functions of auditor is required to satisfy the requirements set out in **clause 26.1.1**.

26.1.3 A retiring auditor may be automatically reappointed at the AGM without any resolution being passed, unless:



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26.1.3.1 the retiring auditor is no longer qualified for the appointment or is no longer willing to accept the appointment; or

26.1.3.2 the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring auditor.

26.1.4 If, at an AGM, an auditor is not appointed or reappointed, the Directors are required, within 40 (forty) Business Days of the date of such meeting, to fill the vacancy.

## 26.2 Resignation of Auditors and Vacancies

26.2.1 An auditor of the Company may resign from office by giving the Company 1 (one) month written notice or less than 1 (one) month written notice, with the approval of the Board. The resignation of an auditor shall be effective when the notice is filed.

26.2.2 If a vacancy arises in the office of auditor of the Company, the Board:

26.2.2.1 if there was only 1 (one) incumbent auditor of the Company, shall appoint a new auditor within 40 (forty) Business Days; and

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

26.2.3 In the event that the Company appoints a firm as its auditor, any change in the composition of the members of that firm does not by itself create a vacancy in the office of auditor for that year, subject to **clause 26.2.4**.

26.2.4 If, by comparison with the membership of a firm at the time of its latest appointment, less than one half of the members remain after a change contemplated in **clause 26.2.3**, that change constitutes the resignation of the firm as the auditor of the Company, giving rise to a vacancy.

26.2.5 If the auditor is removed from office by the Board, the auditor may require the Company to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the auditor's contention as to the circumstances that resulted in the removal. Should the auditor of the Company wish to exercise the power referred to in this **clause 26.2.5**, the auditor shall give written notice to that effect to the Company by not later than the end of the financial year in which the removal took place and that notice shall include the statement referred to in this **clause 26.2.5**.

26.2.6 The statement of the auditor referred to in **clause 26.2.5** shall be included in the Directors' report in the Company's annual financial statements.

## 26.3 Rotation of Auditors

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- 26.3.1 The same individual or firm of auditor may not serve as the designated auditor of the Company for more than 5 (five) consecutive years.
- 26.3.2 The auditor of the Company shall:
- 26.3.2.1 have the right of access at all times to the accounting records and all books and documents of the Company, and shall be entitled to require from the Directors or prescribed officers of the Company any information and explanations necessary for the performance of the auditor's duties; and
- 26.3.2.2 be entitled to attend any General Meeting, receive all notices of and other communications relating to such meetings and be heard at such meetings on any part of the business of the meeting that concerns the auditor's duties or functions.

## 27 **INDEMNITY**

Every Director, manager and officer of the Company and every other person (whether an officer of the Company or not) employed by the Company, shall be indemnified out of the funds of the Company against all liability incurred by him as such Director, manager, officer or employee in defending any proceedings, whether civil or criminal, where the court in question finds that the Director, manager, officer or employee acted on the instructions of, or with the permission of, or in the course and scope of his duty to the Company.

## 28 **COMPLIANCE AND TAX EXEMPTION: SECTION 30B OF THE INCOME TAX ACT**

In amplification of that which has been set out above, and in order to comply with the provisions of section 30B of the Income Tax Act with regard to the tax-exempt status of the Company, it is recorded as follows:

- 28.1 the Company has a Board consisting of at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company;
- 28.2 no single person may directly or indirectly control the decision-making powers relating to the Company;
- 28.3 the Company may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its Objects;
- 28.4 the Company is required to utilise substantially the whole of its funds for the sole or principal Objects for which it has been established;
- 28.5 no Member may directly or indirectly have any personal or private interest in the Company;
- 28.6 substantially the whole of the activities of the Company must be directed to the furtherance of its sole or principal Objects and not for the specific benefit of an individual Member or minority group;

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- 28.7 the Company may not have a share or other interest in any business, profession or occupation which is carried on by its Members;
- 28.8 the Company must not pay to any employee, office bearer, Member or other person any remuneration, as defined in the Fourth Schedule of the Income Tax Act, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- 28.9 substantially the whole of the Company's funding must be derived from its annual or other long-term Members or from an appropriation by the government of South Africa in the national, provincial or local sphere;
- 28.10 The Company must as part of its dissolution transfer its assets to –
- 28.10.1 another entity approved by the Commissioner in terms of section 30B of the Income Tax Act;
- 28.10.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act;
- 28.10.3 an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or
- 28.10.4 the Government of South Africa in the national, provincial or local sphere;
- 28.11 the Board of Directors will submit any amendment of this MOI to the Commissioner within 30 (thirty) days of its amendment;
- 28.12 the Company will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- 28.13 the Company is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

## 29 WINDING-UP OR DISSOLUTION

Upon the winding-up or dissolution of the Company, no past or present Member, Director or person appointing a Director, shall be entitled to any part of the net value of the Company after the obligations and liabilities of the Company have been satisfied.

## 30 NOTICES

- 30.1 All notices required to be given by the Company to any Member shall be given in writing in any manner authorised by the Regulations and particularly Table CR3 annexed to the Regulations.
- 30.2 Each Member shall notify in writing to the Company:

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- 30.2.1 a physical address, which shall be such Member's *domicilium citandi et executandi* for the purposes of service of legal process in respect of any legal proceedings which may be instituted by the Company in terms of this MOI;
  - 30.2.2 a postal address, which address shall be such Member's registered address for the purposes of receiving written notices from the Company by post; and
  - 30.2.3 an e-mail address and/or facsimile number, which address shall be such Member's address for the purposes of receiving notices by way of Electronic Communication.
- 30.3 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in that table.