

This Memorandum of Incorporation was submitted and adopted by Special Resolution passed by the Shareholder of the Company on 3/2/22 and initialed by the Chairperson for the purpose of identification.


.....
Chairperson

MEMORANDUM OF INCORPORATION
OF
NATIONAL TRANSMISSION
COMPANY SOUTH AFRICA SOC LTD

**Registration
number:**

2021/539129/30

which is a state-owned company, may have up to 10 directors who shall not be entitled to appoint alternate directors, is authorised to issue securities as described in clause 6, and is referred to in the rest of this Memorandum of Incorporation ("MOI") as "the Company".

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

Adoption of MOI

This MOI is proposed and adopted by Special Resolution of Shareholder of the Company, Eskom Holdings SOC Ltd on 3/2/22 in accordance with section 15 of the Companies Act.

Preamble

Eskom Holding SOC Ltd is the sole Shareholder of the Shares in the Company and the rights attached to those Shares are exercised by the Shareholder. This MOI regulates the Company and its relationship with its Shareholder, subject to the provisions of the Legislative and Policy Frameworks.



TABLE OF CONTENTS

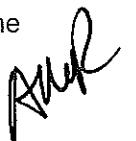
Clause number and description	Page
1 INTERPRETATION.....	3
2 INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS.....	8
3 PURPOSE, POWERS AND CAPACITY OF THE COMPANY.....	9
4 AMENDMENTS TO MOI.....	12
5 THE MAKING OF RULES.....	12
6 AUTHORISED SHARES IN THE COMPANY, ALLOTMENT AND ISSUE.....	12
7 PRE-EMPTION ON ISSUE OF ORDINARY SHARES.....	13
8 PROHIBITION REGARDING BENEFICIAL INTERESTS.....	14
9 RESTRICTION ON THE TRANSFER OF SHARES.....	14
10 TRANSFER OF SECURITIES.....	14
11 SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION.....	15
12 RECORD DATE.....	15
13 SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS.....	15
14 DIRECTORS.....	19
15 FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES.....	26
16 PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS.....	27
17 INDEMNIFICATION AND DIRECTORS' INSURANCE.....	29
18 AUDITORS.....	30
19 AUDIT COMMITTEE.....	31
20 SOCIAL AND ETHICS COMMITTEE.....	32
21 BOARD COMMITTEES.....	32
22 PRESCRIBED OFFICERS.....	33
23 COMPANY SECRETARY.....	33
24 DISTRIBUTIONS TO THE SHAREHOLDER.....	34
25 ACCOUNTS.....	34
26 NOTICES.....	35
27 FINANCIAL YEAR.....	35
28 WINDING UP.....	35
29 SUBSIDIARIES.....	35
30 PROTECTION OF WHISTLE-BLOWERS.....	35



1 INTERPRETATION

In this Memorandum of Incorporation-

- 1.1 Capitalised words that are not defined in this MOI will bear the same meaning as in the Companies Act or the PFMA, unless the context provides otherwise.
- 1.2 Unless the context provides or requires otherwise, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings: –
- 1.2.1 "Ad Hoc Committee" means an ad hoc committee established by the Board from time to time for a specific task or objective and dissolved after the completion of the task or the achievement of the objective;
- 1.2.2 "Administrator" means the person appointed by the Shareholder in terms of clause 3 of this MOI;
- 1.2.3 "Approval of the Shareholder" means a signed round robin resolution delivered to the Company recording the Shareholder's approval of a matter.
- 1.2.4 "Auditing Profession Act" means the Auditing Profession Act, No. 26 of 2005;
- 1.2.5 "Board" means the "board" of the Company from time to time, as defined in the Companies Act, which is also the Accounting Authority for purposes of the PFMA;
- 1.2.6 "Board Performance Evaluation Framework" means the framework developed by the Department;
- 1.2.7 "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Republic;
- 1.2.8 "Chief Executive Officer" or "CEO" means the chief executive of the Company and includes an individual appointed as the chief executive of the Company, whether on a fixed term contract or in a permanent, acting or interim capacity;
- 1.2.9 "Chief Financial Officer" or "CFO" means the chief financial officer of the Company and includes an individual appointed as the chief financial officer of the Company, whether on a fixed term contract or in a permanent, acting or interim capacity;
- 1.2.10 "Companies Act" means the Companies Act, No. 71 of 2008 as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;
- 1.2.11 "Company" means National Transmission Company South Africa SOC Ltd, Registration number 2021/539129/30 or whatever other name it may be known by from time to time;
- 1.2.12 "Company in general meeting" means a formal meeting of, or a resolution passed by the Shareholder;
- 1.2.13 "Consultation/Consult" means a formal engagement requested by one party, at such time, in such manner and at such place agreed to between the parties, having first provided the other party, in Writing, with such relevant information as the party might reasonably require, including information that the party may specifically request, to allow the party to consider the matter upon which the party is being Consulted.
- 1.2.14 "Corporate Plan" means the three-year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, which plan must include (but is not limited to):
- 1.2.14.1 strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder's Compact;



- 1.2.14.2 strategic and business initiatives as embodied in business function strategies;
- 1.2.14.3 key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;
- 1.2.14.4 a risk management plan;
- 1.2.14.5 a fraud prevention plan;
- 1.2.14.6 the SMF;
- 1.2.14.7 a financial plan addressing –
 - 1.2.14.7.1 quarterly projections (for the first year) of revenue, expenditure and borrowings against annual targets;
 - 1.2.14.7.2 asset and liability management;
 - 1.2.14.7.3 cash flow projections;
 - 1.2.14.7.4 capital expenditure programs;
 - 1.2.14.7.5 dividend policies; and
 - 1.2.14.7.6 such other issues as may be required in terms of the PFMA from time to time;

- 1.2.15 "Deliver" means in the manner in which the Company is entitled to give Notice or deliver documents in accordance with clause 26 of this MOI and the Companies Act, including Table CR3 of the Regulations, and "Delivered" and "Delivering" shall have the corresponding meaning as the context may indicate;
- 1.2.16 "Directors" means the "directors" of the Company from time to time, as defined in the Companies Act;
- 1.2.17 "Directive" means the directive given by the Shareholder in terms of clause 3 of this MOI in which the Shareholder states the steps to be undertaken to remedy a situation contemplated in clause 3.8 and which will include the reasons for issuing the directive and time within which the steps must be taken;
- 1.2.18 "Distribution" means a "distribution" as defined in the Companies Act and "Distribute" and "Distributed" shall have the corresponding meaning as the context may indicate;
- 1.2.19 "DoA" means the Delegation of Authority Policy approved by the Board from time to time governing the principles and conditions upon which the Board shall delegate authority;
- 1.2.20 "Effective Date" with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act otherwise the date set out as the Effective Date in the Shareholders' resolution adopting this MOI;
- 1.2.21 "Electronic Address" means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;
- 1.2.22 "Electronic Communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.2.23 "Enabling Legislation" means the Eskom Conversion Act No. 13 of 2001 as amended or any legislation that replaces it;
- 1.2.24 "Eskom" means the Eskom Holdings SOC Ltd, Registration no 2002/015527/30 ;
- 1.2.25 "Exco" means the members of the Executive Management Committee of the Company from time to time;



- 1.2.26 "Ex Officio Director" means an "ex officio director" of the Company from time to time, as defined in the Companies Act;
- 1.2.27 "Financial Assistance" has the meaning set out in section 45(1) of the Companies Act;
- 1.2.28 "Financial Year" has the meaning set out in clause 27 of this MOI;
- 1.2.29 "Gazette" means the Government Gazette of the Republic;
- 1.2.30 "Government" means the Government of the Republic;
- 1.2.31 "Guidelines" means the 'guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Shareholder from time to time;
- 1.2.32 "Ineligible or Disqualified" means "ineligible" or "disqualified" as contemplated in the section 69 of the Companies Act or as contemplated in clause 14.13 of this MOI which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.2.33 "King Report" means the King IV Report on Corporate Governance for South Africa, 2016, as amended from time to time;
- 1.2.34 "Law" means any law of general application, as amended and re-enacted from time to time, and includes the common law, constitution, decree, treaty, ordinance, by-law, order, regulation or any other enactment of legislative measure of Government (including local and provincial Government) statutory or regulatory body which has the force of law;
- 1.2.35 "Legislative Framework" means the legislative and regulatory framework from time to time in force which relates to or affects the Company including, the Companies Act, the PFMA, the Treasury Regulations; the Enabling Legislation and any every other Law, which relates to or affects the Company;
- 1.2.36 "Material" means "material" as defined in the Companies Act;
- 1.2.37 "Memorandum of Incorporation" or "MOI" means this Memorandum of Incorporation of the Company, as amended from time to time;
- 1.2.38 "Shareholder" means Eskom Holding SOC Ltd.
- 1.2.39 "Month" means a calendar month;
- 1.2.40 "Notice" means notice in Writing and delivered according to the provisions of the MOI and more particularly the provisions of clause 26 of the MOI;
- 1.2.41 "Office" means the registered office of the Company, as defined in the Companies Act;
- 1.2.42 "Ordinary Resolution" means a resolution adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.43 "Ownership Control", in relation to the Company, means the ability of the Shareholder, in accordance with the provisions of section 1 of the PFMA, to exercise any of the following powers to govern the financial and operating policies of the Company in order to obtain benefits from its activities:
- 1.2.43.1 to appoint or remove all or the majority of the Directors;
- 1.2.43.2 to appoint or remove the Company's Chief Executive Officer in relation to the appointment guidelines and Clause ;
- 1.2.43.3 to cast all, or the majority of, the votes at meetings of the Board;
- 1.2.43.4 to control all, or a majority of, the voting rights at a general meeting of the Company

- 1.2.44 "Person" includes a Juristic Person, as defined in the Companies Act;
- 1.2.45 "PFMA" means the Public Finance Management Act, No. 1 of 1999, as amended;
- 1.2.46 "Policy Framework" means any and every directive, guideline, framework or policy, from time to time in force concerning and affecting the Company and the relationship between the Shareholder, the Company and the Board from time to time
- 1.2.47 "Prescribed Officer" means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(10) of the Companies Act.;
- 1.2.48 "Present" shall have the meaning ascribed to the term "present at a meeting" in the Companies Act;
- 1.2.49 "Public Audit Act" means the Public Audit Act, No. 25 of 2004;
- 1.2.50 "Regulations" means the regulations published pursuant to the Companies Act from time to time;
- 1.2.51 "Remuneration Policy" means the Remuneration Policy of the Company which will incorporate any "Remuneration Guidelines" and/or "Standards" published by the Shareholder from time to time which will be confirmed by the Company on an annual or biennial basis as contemplated in clause 13.1.1.3 of this MOI;
- 1.2.52 "Republic" means the Republic of South Africa;
- 1.2.53 "Revenue Fund" has the meaning set out in section 1 of the PFMA;
- 1.2.54 "Round Robin Resolution" means a resolution passed other than at a –
- 1.2.55.1 Shareholder's Meeting, which –
- 1.2.55.1.1 was submitted for consideration to the Shareholder; and
- 1.2.55.1.2 was voted on in Writing by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after the resolution was submitted to the Shareholder as contemplated in section 60 (1) of the Companies Act;
- 1.2.55.2 meeting of Directors, in respect of which 75% (seventy five per cent) of the Directors voted on in Writing by signing a resolution, within 10 (ten) Business Days after the resolution was submitted to them as contemplated in section 74 of the Companies Act;
- 1.2.56 "Securities" means "securities" as defined in the Companies Act;
- 1.2.57 "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 and referred to in clause 8 hereof;
- 1.2.58 "Shareholder" means the Eskom holdings SOC Ltd;
- 1.2.59 "Shareholder's Compact" means the agreement, entered into pursuant to the Treasury Regulations, between the Shareholder and the Board annually;
- 1.2.60 "Shareholder's Meeting" means with respect to any particular matter concerning the Company, a meeting of the Shareholder who is entitled to Exercise Voting Rights in relation to that matter;
- 1.2.61 "Shareholder representative" means the duly appointed representative of the Shareholder from time to time.
- 1.2.62 "Special Resolution" means a resolution adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;

- 1.2.63 "Standing Committee" means a permanent committee of the Board with a continued existence established by the Board or in accordance with the Legislative or Policy Frameworks to deal with a specified set of duties. This excludes Ad Hoc Committees;
- 1.2.64 "Subsidiary" means a "subsidiary" of the Company, as defined in the Companies Act;
- 1.2.65 "Treasury Regulations" means the regulations made by the National Treasury of the Republic in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time;
- 1.2.66 "Voting Rights", with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter; and
- 1.2.67 "Writing" includes Electronic Communication.
- 1.3 In this MOI, unless the context clearly indicates otherwise:
- 1.3.1 Words importing the singular number shall include the plural number and vice versa.
- 1.3.2 Words importing any one gender shall include other genders.
- 1.3.3 Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.
- 1.3.4 References to the Shareholder entitled to vote Present at a meeting or acting in person shall include the Shareholder represented by duly authorised representative/s (which duly authorised representatives may be natural or Juristic Persons) as contemplated in this MOI or acting in the manner prescribed in the Companies Act.
- 1.3.5 Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act and or the PFMA, as applicable, unless otherwise stated.
- 1.3.6 A reference to a clause by number refers to a corresponding provision of this MOI.
- 1.3.7 Clause headings are for convenience only and are not to be used in its interpretation.
- 1.3.8 Reference to any provision of any Law shall include such provision as amended or re- enacted from time to time and includes any subordinate legislation made from time to time under such Law. Any reference to a particular section in a Law is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Law, provided that if as a result of such amendment or re- enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.
- 1.3.9 Subject to the preceding clause, any words or expressions defined in any Law shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Law in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.3.10 Reference to a Shareholder represented by a proxy shall include a Shareholder represented by (i) an agent appointed under a general or special power of attorney; or (ii) the Shareholder (Shareholder representative).

- 1.3.11 Any reference to a Notice shall be construed as a reference to a Written notice, and shall include a Notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations.
- 1.3.12 If the Companies Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such amendment to the Companies Act.
- 1.4 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.5 The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 1.6 The words "other" and "otherwise" shall not be construed eiusdem generis with any preceding words where a wider construction is possible.
- 1.7 Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.9 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.10 This MOI shall be deemed to authorise the Company to do anything which the Companies Act empowers a Company to do if so authorised by its MOI unless that authority is expressly excluded.

2 INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS

2.1 Juristic Personality

- 2.1.1 The Company is incorporated as a state owned company in terms of the Enabling Legislation and operates as a State Owned Company as defined in Section 1 of the Companies Act.

2.2 Governing Provisions

The Company shall be governed by:

- 2.2.1 the unalterable provisions of the Companies Act subject to:
- 2.2.1.1 any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii)); and
- 2.2.1.2 any exemption granted in accordance with the provisions of section 9;
- 2.2.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 15(2)(a)(ii));
- 2.2.3 the provisions of this MOI (subject to and in accordance with section 15(2) of the Companies Act);
- 2.2.4 the provisions of the Legislative Framework; and
- 2.2.5 the provisions of the Policy Framework.

2.3 Conflicting Provisions with the Companies Act

In any instance where there is an inconsistency between a provision, be it express or tacit, of the Companies



Act and:

2.3.1 A provision of the PFMA then:

2.3.1.1 the provision of both the Companies Act and the PFMA apply concurrently, to the extent that is possible to apply and comply with the one inconsistent provision without contravening the second (section 5(4)(a)); and

2.3.1.2 to the extent that it is impossible to apply or comply with the inconsistent provision without contravening the second the applicable provision of the PFMA shall prevail except to the extent provided otherwise in sections 30(8) or 49(4) as provided for in section 5(4)(a) of the PFMA.

2.3.2 a provision of the Policy Framework then the provision of the Companies Act shall apply to the extent it has not been altered by the MOI in which case the provisions of clause 2.4.4 of the MOI shall apply.

2.4 Conflicting Provisions with the MOI

In any instance where there is a conflict between a provision, be it express or tacit, of this MOI

2.4.1 an unalterable provision of the Companies Act; the unalterable provision of the Companies Act shall prevail:

2.4.2 an alterable provision of the Companies Act: the provisions of this MOI shall prevail;

2.4.3 a provision of the PFMA: the provisions of the PFMA shall prevail; and

2.4.4 a provision of the Policy Framework: the provisions of this MOI shall prevail, provided that if:

2.4.4.1 the provision of the Policy Framework simply adds to but is not inconsistent with this MOI; or

2.4.4.2 the provisions of this MOI provide for the Policy Framework to prevail; or

2.4.4.3 the Companies Act does not require the MOI to take precedence over that provision of the Policy Framework: the provisions of the Policy Framework shall prevail.

3 PURPOSE, POWERS AND CAPACITY OF THE COMPANY

3.1 The objective of the Company is to provide a reliable and efficient transmission network system operator and energy network services in South Africa and designated electricity markets. In doing so it has all the powers to implement this mandate subject to any limitations set out herein, the Shareholder's Compact and any other limitations imposed by the Shareholder. In fulfilling its obligations, it is specifically acknowledged that the Company has a developmental role and will through its activities promote transformation, economic development, broad based black economic empowerment and may support relevant national initiatives, in a manner that is sustainable and financially responsible.

3.2 In addition to the Strategic Intent Statement which shall be issued by the Shareholder by 30 April each year, the Shareholder may, after Consultation with the Board, require changes to the mandate and objectives of the Company if-

3.2.1 it is reasonably necessary to do so; or

3.2.2 it is in the best interest of the Company.

3.3 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c) of the Companies Act;

3.4 The Company has, subject to section 19(1)(b)(i) of the Companies Act, all of the legal powers and capacity of an individual which are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Companies Act;

- 3.5 Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the provisions of the Legislative Framework or the Policy Framework empower it to do if not expressly prohibited in terms thereof.
- 3.6 The Board shall not:
- 3.6.1 appoint to or remove a Director from the Board; or
- 3.6.2 appoint or remove the Chairperson of the Board, CEO and CFO other than as provided for in terms of this MOI.
- 3.7 It is specifically recorded that only the Shareholder, in exercising its Ownership Control in terms of section 63(2) of the PFMA, may appoint or remove Directors in accordance with the provisions of section 66(4)(a)(i) of the Companies Act.
- 3.8 The Shareholder may issue a Directive to the Board to take any action specified by the Shareholder if the Company:
- 3.8.1 is in financial difficulty or is being mismanaged;
- 3.8.2 fails to perform its functions effectively or efficiently;
- 3.8.3 has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under the Legislative or Policy Frameworks;
- 3.8.4 has failed to comply with any law or any policy envisaged in the Legislative or Policy Framework;
- 3.9 A Directive contemplated in clause 3.8 must state in Writing:
- 3.9.1 the reasons for issuing the Directive;
- 3.9.2 the steps which must be taken to remedy the situation; and
- 3.9.3 a reasonable period within which the steps contemplated in clause 3.9.2 must be taken.
- 3.10 If the Board fails to comply with the Directive as contemplated in clause 3.8 within the stated period, the Shareholder may:
- 3.10.1 after having given the Board a reasonable opportunity to be heard; and
- 3.10.2 after having afforded the Company a hearing on any submissions received,
- 3.10.2.1 initiate an investigation into the matter in accordance with terms of reference determined by the Shareholder; and /or
- 3.10.2.2 where circumstances so require, appoint a person as Administrator to assume responsibility for and to ensure fulfilment of the Directive to the extent as may be further determined in Writing by the Shareholder from time to time..
- 3.11 If the Shareholder appoints an Administrator in terms of clause 3.10.2.2:
- 3.11.1 the Administrator may do anything which the Company might otherwise be empowered or required to do by or under the Legislative or Policy Framework and this MOI to the exclusion of the Company and any of its Directors, Prescribed Officers or employees;
- 3.11.2 the Board may not, while the Administrator is responsible for fulfilling the Directive, exercise any of its powers or perform any of its duties relating to the Directive or matters incidental thereto;
- 3.11.3 a Director, Prescribed Officer, employee or a contractor of the Company must comply with a valid instruction given by the Administrator.
- 3.12 The Shareholder shall:
- 3.12.1 review the performance of the Company regularly whilst it is under administration of the Administrator; and
- 3.12.2 while the intervention continues, review the intervention and the performance of the Administrator regularly; and
- 3.12.3 within six months or any shorter period of time as may be determined by the Shareholder in Writing, of appointing the Administrator and thereafter at intervals of every three months,

table a report on the Administrator's findings in the National Assembly of Government.

- 3.13 Once the situation has been remedied to the satisfaction of the Shareholder and the Company is able to perform its functions effectively, the Shareholder shall terminate the appointment of the Administrator, in Writing.
- 3.14 Notwithstanding clause 3.10, the Shareholder may dissolve the Board if the Shareholder, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently. The Shareholder may dissolve the Board only:
- 3.14.1 after having given the Board a reasonable opportunity to be heard; and
- 3.14.2 after having afforded the Board a hearing on any submissions received.
- 3.15 If the Shareholder dissolves the Board, the Shareholder
- 3.15.1 may appoint an Administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under the Legislative and Policy frameworks, subject to such conditions as the Shareholder may determine; and
- 3.15.2 shall, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the manner as contemplated in this MOI.
- 3.16 The costs associated with the appointment of an Administrator shall be for the account of the Company.
- 3.17 The appointment of the Administrator terminates in accordance with the provisions of clause 3.13 or when a new Board is in place in terms of clause 3.15.2.
- 3.18 If the Board, or any Prescribed Officer or employee of the Company is alleged to have committed financial misconduct as contemplated in Chapter 10 of the PFMA then the Shareholder must initiate an investigation into the matter and if the allegations are confirmed, the Shareholder must ensure that appropriate disciplinary proceedings are initiated immediately.
- 3.19 Notwithstanding this clause, the Shareholder retains the right at any time to approach a competent court for relief in any matter the Shareholder considers appropriate.
- 3.20 Besides the Shareholder reserved matters contained elsewhere in this MOI or in the Legislative and Policy Frameworks, the Board shall not, without the prior Written approval of the Shareholder: --
- 3.20.1 enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF;
- 3.20.2 establish or participate in --
- 3.20.2.1 the establishment of a company; or
- 3.20.2.2 a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.20.3 acquire or dispose of a significant shareholding in a company or a significant asset;
- 3.20.4 commence or cease a significant business activity;
- 3.20.5 commit the Company to borrowings which confer rights to a lender to convert debt into Shares of any kind;
- 3.20.6 undertake or agree to a significant change in the nature or extent of the Company's interest



in a significant partnership, trust, unincorporated joint venture or similar arrangement;

- 3.20.7 approve the candidate nominated by Board for the position of the CFO;
- 3.20.8 issue, or approve the transfer of, any Shares in the Company; and
- 3.20.9 subject to clauses 4.1 and 4.2 below, amend the provisions of this MOI, provided that the provisions of the PFMA are not contravened.
- 3.21 In addition to the limitations and restrictions set out in clause 3.6 and 3.20 above, the Board shall ensure that –
 - 3.21.1 the proposed Board-approved Shareholder's Compact for the following Financial Year be submitted to the Shareholder by 30 September of each year;
 - 3.21.2 the annual budget, the Corporate Plan and the Shareholder's Compact of the Company shall be presented and/or submitted to the Shareholder prior to 28 February of each year; and
 - 3.21.3 the Company discloses to the Shareholder all changes to terms and conditions of trade which may have a Material impact on the Company.
- 3.22 Subject at all times to the PFMA, the Shareholder may, in exceptional circumstances specify any limitations regarding the general authority of the Company to raise or borrow funds from time to time for the purposes of the Company, or secure the payment of such sums provided that the borrowing programme in terms of the Shareholder's Compact is not affected.

4 AMENDMENTS TO MOI

- 4.1 Save for correcting patent errors in spelling, punctuation, reference, grammar or similar defects on the face of the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.
- 4.2 The Board shall publish a Notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI on the Company's website, furnish a copy of the alteration to the Shareholder, and file the Notice of such alteration as contemplated in section 17(1) of the Companies Act.


5 THE MAKING OF RULES

The Board is prohibited from making, amending or appealing any rules contemplated in section 15(3) of the Companies Act and the Board's capacity to make such rules is hereby excluded.

6 AUTHORISED SHARES IN THE COMPANY, ALLOTMENT AND ISSUE

6.1 Authorised Shares in the capital of the Company

- 6.1.1 Subject to Enabling legislation the Company is authorised to issue no more than 1000 (one thousand) ordinary Shares of no par value and the same class, which shall rank *pari passu* in all respects and each such ordinary Share entitles the Shareholder to:-
 - 6.1.1.1 attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholder;
 - 6.1.1.2 vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;
 - 6.1.1.3 participate proportionally in any Distribution made by the Company to the



- Shareholder;
 - 6.1.1.4 participate in Distributions to the Shareholder;
 - 6.1.1.5 receive proportionally the net assets of the Company upon its liquidation/dissolution; and
 - 6.1.1.6 Exercise any other rights attaching to the ordinary Shares in terms of the Companies Act or any other law.
- 6.2 At the date of this MOI, there are **no** ordinary Shares in issue. The issued ordinary Shares are held by the Shareholder.
- 6.3 The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) read with section 36(3) of the Companies Act.
- 6.4 Subject to provisions of the Companies Act and Enabling Legislation, the Company may from time to time by Special Resolution passed by the Shareholder: -
- 6.4.1 increase or decrease the number of its authorised Shares;
 - 6.4.2 reclassify any Shares that have been authorised but not issued;
 - 6.4.3 classify any unclassified Shares;
 - 6.4.4 create any class of Shares and establish any preferences, rights, limitation or other terms in respect of any class of Shares so created, in terms of section 37 of the Companies Act;
 - 6.4.5 alter the provisions of this MOI with respect to the objects and powers of the Company;
 - 6.4.6 convert any Shares in the Company to Shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary Shares or preference Shares to redeemable preference Shares, provided that moneys other than dividends due to the Shareholder or the amount payable on the redemption of any preference Shares shall be held in trust by the Company indefinitely until lawfully claimed by the Shareholder; and
 - 6.4.7 to the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, issue the unissued Shares of that class at par or at a premium or at a discount.
- 6.5 The Board shall not have the power to issue: -
- 6.5.1 authorised Shares as contemplated in section 38 of the Companies Act; or
 - 6.5.2 options relating to the allotment or subscription of authorised Shares or other Securities and secured and unsecured debt instruments as contemplated in sections 42 and 43 of the Companies Act; or
 - 6.5.3 capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act, without an Ordinary Resolution of the Shareholder.

6.6 Certificates of Securities

The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and which shall be issued in the manner prescribed in section 51 of the Companies Act.

6.7 Register of Securities

The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act.

7 PRE-EMPTION ON ISSUE OF ORDINARY SHARES

- 7.1 Save if –

- 7.1.1 ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;
- 7.1.2 the Shareholder by Ordinary Resolution approves the issue of ordinary Shares for any other purpose without this clause applying;
- 7.1.3 a capitalisation issue of ordinary Shares is to be undertaken;
- 7.1.4 ordinary Shares are to be issued in terms of option or conversion rights;
- 7.1.5 ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription, the Shareholder has a right, before any other Person to be offered and within a reasonable time, to subscribe for all the ordinary Shares to be issued. The offer to the Shareholder shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 14 (fourteen) Business Days after the date of the offer) by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it shall be deemed to be rejected. After the expiration of the time within which an offer may be accepted, or on the receipt of a response from the Shareholder that it declines to accept the ordinary Shares offered, the Board may, subject to the a foregoing provisions and clause 3.20.8 of this MOI, issue such ordinary Shares.

8 PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit its Shares to 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.

9 RESTRICTION ON THE TRANSFER OF SHARES

In addition to any other prescribed obligations which the Shareholder may agree to, no Shares shall be transferred without the prior Written consent of the Shareholder.

10 TRANSFER OF SECURITIES

- 10.1 The Shareholder is the holder of all the issued Shares which relate to the Company as set out in clause 6.2 above.
- 10.2 Where the Shareholder may elect to sell, cede or transfer any of the Securities in the Company the instrument of transfer of any such Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Securities until the name of the transferee is entered in the Securities Register.
- 10.3 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of Securities may transfer all or any of its Securities by instrument in Writing in any usual or common form or any other form which the Board may approve.
- 10.4 Every instrument of transfer shall be Delivered to the Office of the Company, accompanied by:
 - 10.4.1 the certificate issued in respect of the Securities to be transferred; and/or
 - 10.4.2 such other evidence as the Company may require to prove the title of the transferor, or her/his right to transfer the Securities.
- 10.5 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Shares for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at its Office shall, as between the Company and the grantor of such authorities, 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 such time as express Notice in writing of the revocation of the same shall have been given and lodged at such of the Company's Office at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such Notice, the Company shall be entitled to give effect to any instruments 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.
- 10.6 All instruments of transfer, when registered, shall either be retained by the Company or

disposed of in such manner as the Board shall from time to time decide. Any instrument of transfer which the Board may decline to register shall (unless the Board shall resolve otherwise) be returned on demand to the person who lodged it.

- 10.7 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this MOI will be paid by the Company to the extent that the Company is liable therefore in Law, but shall, to that extent, be recoverable from the person acquiring such Securities.

11 SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION

- 11.1 The Shareholder shall have the rights to all such information relating to the Company as contemplated in this MOI, or in accordance with the Legislative or Policy Framework.
- 11.2 The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter or such other period as may be agreed by the Shareholder and the Company in Writing in respect of which such accounts are being prepared. Any Director or the Shareholder shall be entitled to request from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

12 RECORD DATE

If, at any time, the Board fails to determine a Record Date as contemplated in section 59(1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3) of the Companies Act.

13 SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS

13.1 Convening of Shareholder's Meetings and Annual General Meetings

- 13.1.1 Subject to any exemption which may be granted to the Company in terms of the Companies Act, the Board shall convene an Annual General Meeting at least once a year but no later than 15 (fifteen) Months after the date of the previous Annual General Meeting or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –
- 13.1.1.1 presentation of the following documents for the immediately preceding Financial Year –
- 13.1.1.1.1 the Directors' report;
 - 13.1.1.1.2 report of the external auditors;
 - 13.1.1.1.3 audited Financial Statements, subject to the provisions of section 84(3) of the Companies Act;
 - 13.1.1.1.4 an audit committee report;
 - 13.1.1.1.5 the social and ethics committee report; and
 - 13.1.1.1.6 the integrated report.
- 13.1.1.2 appointment of Directors by the Shareholder, to the extent required by the Companies Act, this MOI or the PFMA;
- 13.1.1.3 consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in accordance with any "Remuneration Guidelines" published by the Shareholder from time to time;

- 13.1.1.4 approval of the remuneration payable to non-executive Directors by Special Resolution (except where such remuneration has been approved by the Shareholder by Special Resolution within the previous two years, although this may be considered on an annual basis if so required by the Shareholder);
- 13.1.1.5 approval of the remuneration payable to executive Directors and members of Exco by Ordinary Resolution;
- 13.1.1.6 appointment of an Auditor for the current Financial Year, subject to the provisions of section 84(3) of the Companies Act;
- 13.1.1.7 noting of the audit fees for the previous Financial Year under review;
- 13.1.1.8 authorising the Audit Committee to determine the audit fees for the current Financial Year;
- 13.1.1.9 appointment of an audit committee, subject to clause 19 below;
- 13.1.1.10 approval of the Distribution to the Shareholder, if any, which shall have been recommended by the Board in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 24 of this MOI and any applicable provisions of the PFMA, on condition that the Shareholder may not approve a Distribution higher than that recommended by the Board. In the event Board resolving not to declare a Distribution such resolution to be noted by the Shareholder;
 - 13.1.1.11 noting of the Shareholder's Compact for the current Financial Year;
 - 13.1.1.12 consideration and/or approval of the SMF;
 - 13.1.1.13 any matters raised by the Shareholder, with or without advance Notice to the Company.
- 13.1.2 The Shareholder or Board may, subject to the provisions of section 61 of the Companies Act, convene a Shareholder's Meeting at any time.
- 13.1.3 The Company authorises the Shareholder to call a Shareholder's Meeting for the purposes of section 61(11) of the Companies Act.
- 13.1.4 The Shareholder's Meetings referred to in clauses 13.1, 13.1.2 and 13.1.3 above shall be held in Johannesburg, Pretoria or Cape Town, provided however, that in exceptional circumstances, such meetings shall be held at any other place as the Shareholder deems fit.
- 13.1.5 The Company shall, as determined by the Board, either –
 - 13.1.5.1 hold a Shareholder's Meeting in order to consider one or more resolutions; or
 - 13.1.5.2 as regards such resolution/s that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by Round Robin Resolution of the Shareholder.
- 13.1.6 Within 10 (ten) Business Days after the Shareholder adopts a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or appointment to the Shareholder.
- 13.1.7 The Company must hold a Shareholder's Meeting or put the proposed resolution to the Shareholder by way of a Round Robin Resolution: --
 - 13.1.7.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholder for decision; or
 - 13.1.7.2 whenever required to fill a vacancy on the Board; and

13.1.7.3 when otherwise required in terms of section 61(3) of the Companies Act or by this MOI.

13.2 Notice of meetings of the Shareholder

13.2.1 Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholder shall be convened by giving Notice of at least 15 (fifteen) Business Days to the Shareholder.

13.2.2 A Notice of a Shareholder's Meeting must be in Writing, in plain language and must include:

13.2.2.1 the date, time and place for the meeting, and the Record Date for the meeting;

13.2.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3) (a) of the Companies Act if applicable;

13.2.2.3 in the case of the Annual General Meeting, the complete Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

13.2.2.4 a copy of any proposed resolution of which the Company has received Notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

13.2.2.5 a reasonably prominent statement that: --

13.2.2.5.1 the Shareholder shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Shareholder or give or withhold Written consent on behalf of the Shareholder to a decision by Round Robin Resolution of the relevant Shareholder;

13.2.2.5.2 a proxy need not be a Shareholder;

13.2.2.5.3 a Shareholder may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Securities held by that Shareholder in respect of any Shareholder's Meeting;

13.2.2.5.4 the proxy may delegate the authority granted to her/him as proxy, subject to any restriction in the instrument appointing the proxy her/himself;

13.2.2.5.5 participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Shareholder's Meeting that the right of that person to participate and vote, either as the Shareholder, or as a proxy for the Shareholder, has been reasonably verified; and

13.2.2.5.6 participation in the Shareholder's Meeting by Electronic Communication is available, and provide any necessary information to enable the Shareholder or its proxy to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Shareholder or proxy, except to the extent that the Company determines otherwise.

13.2.3 A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the Notice, subject to clause 13.2.4 below, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective Notice.

13.2.4 If a Material defect in the form or manner of giving Notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting:

13.2.4.1 any such matter may be severed from the agenda, and the Notice remains valid with respect to any remaining matters on the agenda; and

13.2.4.2 the Shareholder's Meeting may proceed to consider a severed matter, if the defective Notice in respect of that matter has been ratified in terms of clause 13.2.3 above.

13.2.5 A non-Material defect in the form or manner of Delivering Notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the Notice to the Shareholder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.

13.2.6 The Shareholder or its proxy, who is Present at a Shareholder's Meeting: —

13.2.6.1 is regarded as having received or waived Notice of the Shareholder's Meeting if at least the required minimum Notice was given;

13.2.6.2 has a right to: —

13.2.6.2.1 allege a Material defect in the form of Notice for a particular item on the agenda for the Shareholder's Meeting; and

13.2.6.2.2 participate in the determination whether to waive the requirements for Notice, if less than the required minimum Notice was given, or to ratify a defective Notice; and

13.2.6.3 except to the extent set out in clause 13.2.6.2 above, is regarded to have waived any right based on an actual or alleged Material defect in the Notice of the Shareholder's Meeting.

13.3 Proceedings at meetings of the Shareholder

13.3.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholder or any other business laid before it.

13.3.2 The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholder's Meeting shall be the Shareholder Present in person or represented by proxy. Business at any Shareholder's Meeting may only be conducted while a quorum is Present.

13.3.3 The appointment of a proxy to represent the Shareholder in any Shareholder's Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.

13.3.4 A Shareholder's Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholder's Meeting by Electronic Communication.

13.3.5 Any Shareholder's Meeting may be postponed or adjourned as provided for in the Companies Act.

13.3.6 If within 1 (one) hour from the time appointed for the Shareholder's Meeting, a quorum is not Present,

13.3.6.1 for the meeting to begin, the Shareholder's Meeting shall be postponed, without motion or

A handwritten signature in black ink, appearing to be 'AWR', is located in the bottom right corner of the page.

vote or further Notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting;

- 13.3.6.2 for consideration of a particular matter to begin, if there is no other business on the agenda of the meeting, consideration of the matter may be postponed without motion or vote or further Notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting.
- 13.3.7 No further Notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 13.3.6 above, unless the location or time for the Shareholder's Meeting is different from a location or time announced at the time of postponement or adjournment, in the case of a postponed or adjourned Shareholder's Meeting.
- 13.3.8 The Chairperson of the Board shall preside as Chairperson at every Shareholder's Meeting of the Company. If the Chairperson is not Present at the Shareholder's Meeting, or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting, the Shareholder shall choose any non-executive Director Present to be Chairperson of the Shareholder's Meeting. If no such Director is Present or if none of the non-executive Directors Present are willing to chair the meeting, then the Shareholder (or a duly authorised representative thereof) shall be entitled to chair the Shareholder's meeting.
- 13.3.9 The Chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholder's Meeting at which a quorum is Present (and shall if so directed by the Shareholder's Meeting), adjourn the Shareholder's Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Shareholder's Meeting other than the business left unfinished at the Shareholder's Meeting from which the adjournment took place.
- 13.3.10 When a Shareholder's Meeting is adjourned as a result of a direction given in terms of any applicable provision in the Companies Act, Notice of the adjourned Shareholder's Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any Notice of an adjournment or of the business to be transacted at an adjourned Shareholder's Meeting. No Shareholder's Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment occurred.
- 13.3.11 Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.
- 13.3.12 A Round Robin Resolution signed by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after it has been submitted to the Shareholder in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholder's Meeting of the Company duly convened and held.

14 DIRECTORS

14.1 General

- 14.1.1 The Shareholder shall, subject to clause 14.1.4 below, have the exclusive power to appoint Directors pursuant to the provisions of section 66(4)(a)(i) of the Companies Act and section 63(2) of the PFMA.
- 14.1.2 The Board shall consist of a minimum of 3 (three) Directors and a maximum of 15 (fifteen) Directors, the majority of which shall be non-executive Directors and from which the



- Shareholder shall designate one as the Chairperson of the Board.
- 14.1.3 At least 2 (two) of the Directors may be employees of the Company, namely the CEO) and the CFO ("Executive Directors").
- 14.1.4 It is specifically recorded that the executive Directors are Ex Officio Directors as contemplated in section 66 (4) (a) (ii) of the Companies Act.
- 14.1.5 No Director shall be entitled to appoint an Alternate Director.
- 14.1.6 The Board performance evaluation report for the previous Financial Year, in line with the DPE Board Performance Evaluation Framework, be submitted from the Board to the Shareholder, by the first week of June each year;
- 14.1.7 The Shareholder shall endeavour to ensure that the Board shall: -
- 14.1.7.1 be appropriately balanced in terms of executive and non-executive Directors;
- 14.1.7.2 be representative of the gender and race demographics of the Republic;
- 14.1.7.3 be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objectives of the Company;
- 14.1.7.4 when viewed collectively, possess appropriate skills and experience relevant to the business of the Company; and
- 14.1.7.5 not include persons who are Ineligible or Disqualified, as set out in section 69 of the Companies Act.
- 14.2 Term of Office of Directors
- 14.2.1 The non-executive Directors shall be appointed by the Shareholder for a period of 3 (three) years at a time ("a term"), which appointment is reviewable annually, provided that no non-executive Director is appointed for longer than 3 (three) consecutive terms.
- 14.2.2 The executive Directors shall be appointed by the Shareholder for a period of 5 (five) years, or such shorter period as agreed between the parties, subject to annual performance reviews
- 14.3 Process for appointment and removal of the CEO as an employee
- 14.3.1 The Shareholder shall, in exercising its Ownership Control, have the exclusive power pursuant to the provisions of sec 63 (2) of the PFMA, to appoint and remove the MD as an employee of the Company in accordance with the Guidelines.
- 14.3.2 The Board shall identify, nominate and evaluate potential candidates for appointment as the CEO in accordance with the Guidelines and submit a shortlist of 3 (three) candidates, who are not ineligible or disqualified from serving as directors, to the Shareholder to assist the Shareholder with the appointment.
- 14.3.3 The CEO shall report to the Board, which remains responsible for the CEO's performance.
- 14.3.4 Where the CEO is suspended as an employee as contemplated in clause 14.12.4.3 below or in the event of a similar unusual absence from office, the Board may authorise the CFO to act in the stead of the CEO until the Shareholder appoints an acting or interim CEO.
- 14.3.5 During the absence of the CEO as contemplated in clause 14.3.6 above, the CEO shall not be entitled to attend meetings, vote at or have access to Board and Exco meeting documentation for the duration of such absence.
- 14.4 Process of appointment of the CFO as an employee

- 14.4.1 The Board shall identify, nominate, evaluate and appoint a candidate for the position of CFO, provided that the Shareholder shall, in Writing, approve such candidate prior to the appointment by the Board.
- 14.4.2 If the Shareholder does not approve the candidate nominated by the Board for the position of the CFO, the Shareholder shall be required to provide a Written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board.
- 14.4.3 Provided the Shareholder provides such Written substantive motivation to the Board, such candidate shall not be appointed as the CFO and the Board shall identify and nominate an alternative candidate for appointment as the CFO and the process contemplated in this clause 14.4 shall be repeated until such time as an appointment has been made.

14.5 Chairperson of the Board

- 14.5.1 The Chairperson of the Board shall be appointed by the Shareholder in terms of clause 14.1.2 above.
- 14.5.2 The Board shall be entitled to designate an acting Chairperson (from any of the non-executive Directors) and determine the period for which such acting Chairperson is to hold office and any other terms and conditions applicable to such appointment until the Shareholder appoints the Chairperson.
- 14.5.3 The Chairperson of the Board shall chair all the meetings of the Board. If the Chairperson is not Present at any such meeting or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be Chairperson of the meeting.
- 14.5.4 The Director appointed as Chairperson of the meeting in terms of clause 14.5.3 above shall act as Chairperson: -
- 14.5.4.1 for the duration of the meeting until the meeting is postponed or terminated; or
- 14.5.4.2 for such a period of time after the adjournment of the meeting at which such Director was appointed as Chairperson until the Chairperson of the Board becomes available.
- 14.5.5 The Chairperson of the Board shall not be appointed or serve as the Chairperson of a Standing Committee (save for the People and Governance Committee) or as the Chairperson of a Subsidiary board.

14.7 Remuneration of Directors

- 14.7.1 The Board or the committee of the Board responsible for remuneration matters of the Company may determine the remuneration of the individual Directors within the framework of the Remuneration Policy and which remuneration shall be approved by Special Resolution or Ordinary Resolution as contemplated in clauses 13.1.1.4 and 13.1.1.5 respectively of this MOI.
- 14.7.2 Non-executive Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including, those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholder's Meeting.
- 14.7.3 No employee of the Company shall be entitled to receive, over and above her/his remuneration package, any additional fees for participating in the Board or committees of the Company or any board or committees of a Subsidiary of the Company or any general meetings of the Company or a Subsidiary of the Company.

14.8 Powers of Directors

- 14.8.1 Subject to clause 3.8, the management and control of the Company shall be vested in the Board which may, in addition to the powers and authorities expressly conferred upon it by section 66(1) of the Companies Act, sections 49 to 55 of the PFMA and this MOI, Exercise all such powers, and do all such acts and things, as may be Exercised or done by the Company and are not, in terms of the Legislative and Policy Frameworks, expressly directed or required to be Exercised or done by the Company in general meeting or with the prior Written consent of the Shareholder.
- 14.8.2 The Board may, subject to the provisions of section 56 of the PFMA, delegate, any of its powers or functions to any Directors, employee(s) and/or to committees comprising Directors or employees. The delegation shall be exercised lawfully, within prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.
- 14.8.3 The delegation: -
- 14.8.3.1 at a meeting of Directors shall be made on and subject to any conditions determined by the Board;
- 14.8.3.2 may be given together with the power to further delegate subject to the provisions of the PFMA and the Companies Act and further subject to any conditions so determined (if any);
- 14.8.3.3 shall be communicated to the delegatee in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clauses 14.8.3.1 and 14.8.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 14.8.3.3 if any; and
- 14.8.3.4 shall be reviewed on a regular basis.
- 14.8.4 The Board may, without requiring the consent of the Shareholder, and in accordance with clause 14.8.3 above from time to time revoke, withdraw or vary such powers contemplated in this clause 14.8.

14.9 Recognition of the DoA

It is recorded that the DoA records (but does not create) certain limitations on the powers of the Directors, which limitations arise as a result of this MOI, the Companies Act and the PFMA. It is further recorded that it is the intention of the Board that it shall delegate certain of its powers and functions to Directors, employees and/or committees comprising Directors or employees as contemplated in the DoA by passing a resolution of the Board adopting the DoA in accordance with the principles set out in clause 14.8 above.

14.10 Proceedings at Meetings of Directors

- 14.10.1 The Directors may meet for the dispatch of business and otherwise regulate their meetings as they think fit.
- 14.10.2 The company secretary or a Director may at any time: -
- 14.10.2.1 when authorised by the Board; or
- 14.10.2.2 if requested by at least 1 (one) Director which request shall also be approved by the Chairperson of the Board; or
- 14.10.2.3 if requested by at least 2 (two) Directors of the Company convene a meeting of the Board.

- 14.10.3 The Board shall determine the period of Notice which shall be given for meetings of Directors and/or for Round Robin Resolutions and may determine the form or medium of giving such Notice, which may include Electronic Communication. It shall be necessary to give Notice of a meeting of Directors and/or for Round Robin Resolutions to all Directors even those for the time being absent from the Republic.
- 14.10.4 A meeting of Directors shall proceed even if the Company has not given the required Notice of such meeting in accordance with clause 14.10.3 above or if there was a defect in the giving of the Notice, provided that all Directors: -
- 14.10.4.1 acknowledge actual receipt of the Notice of the meeting concerned; and
- 14.10.4.2 are Present at the meeting; or
- 14.10.4.3 waive Notice of the meeting.
- 14.10.5 A meeting of Directors may be conducted by one or more Directors participating in the meeting by Electronic Communication.
- 14.10.6 The quorum necessary for the transaction of business majority of Directors.
- 14.10.7 If any Director is unable to attend a meeting of Directors, such Director shall notify the Chairperson and/or the company secretary of her/his inability to attend as soon as such Director becomes aware of the fact.
- 14.10.8 Any Director who does not attend a meeting of Directors and fails to provide the requisite notification referred to in clause 14.10.7 above, shall be recorded in the minutes of such meeting as absent.
- 14.10.9 Subject to exclusions in the Companies Act, each Director shall have 1 (one) vote on a matter before a meeting of Directors.
- 14.10.10 Resolutions of the Directors in a meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairperson shall not have a casting vote (in addition to her/his vote as a member of the Board or a Board committee) and the matter being voted on fails.
- 14.10.11 Subject to the Companies Act and this MOI, a Round Robin Resolution, signed and approved by not less than 75% (seventy five per cent) of the Directors shall be as valid and effective as if it had been passed at a Board or Board committee meeting, duly called and constituted.
- 14.10.12 Resolutions adopted by the Directors –
- 14.10.12.1 must be dated and sequentially numbered; and
- 14.10.12.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 14.10.13 The company secretary or her/his designate shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Board or Board committee, as the case may be, shall ensure that minutes are recorded, kept and prepared for that meeting. The Director or any other person elected by the Board or Board committee to record and keep minutes of a meeting held by making use of Electronic Communication shall, as soon as is reasonably possible after such meeting has been held, provide the company secretary with a copy of the minutes of the meeting.

14.11 Removal of Directors

- 14.11.1 Despite anything to the contrary in the Companies Act, this MOI, or any agreement

between the Company and a Director, or between any Shareholder and a Director, the Shareholder shall be solely responsible for the removal of a Director in accordance with the provisions of Section 63(2) of the PFMA, provided that the Director concerned shall:

- 14.11.1.1 be removed by an Ordinary Resolution adopted at a Shareholder's Meeting as provided for in section 71 (1) of the Companies Act; and
 - 14.11.1.2 have been given 15 (fifteen) Business Days Written Notice of the meeting and the resolution; and
 - 14.11.1.3 be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to the vote.
- 14.11.2 Where an allegation contemplated in section 71(3) of the Companies Act has been made, the Board must determine, by resolution, whether the Director has either:
- 14.11.2.1 become Ineligible or Disqualified to be a Director of the Company in terms of the Companies Act; or
 - 14.11.2.2 become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or
 - 14.11.2.3 neglected or been derelict in the performance of the functions of a Director.
- 14.11.3 Before the Board may consider a resolution contemplated in clause 14.11.2 above, the Director concerned must be given:
- 14.11.3.1 Notice of the meeting and the resolution proposed to be passed at such meeting and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and
 - 14.11.3.2 a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to the vote.
- 14.11.4 Where the Board has made a determination as contemplated in 14.11.2 then the Board, having regard to the provisions of section 5(4) of the Companies Act, shall not remove the Director but must, within 24 hours of having made its determination, refer its determination to the Shareholder in which case the provisions of clause 14.11.1 shall apply mutatis mutandis.
- 14.12 Filling of vacancies
- 14.12.1 If a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70 of the Companies Act, ensure that necessary steps are taken to appoint the requisite number of persons, who are not ineligible or disqualified to serve as Directors, to fill the vacancy as soon as possible. In this regard the Board shall, where possible, advise the Shareholder within a reasonable time of such impending vacancy.
 - 14.12.2 The Shareholder shall fill in any vacancy that arose on the Board by a new appointment as contemplated in terms of section 70(3) (a) of the Companies Act.
 - 14.12.3 A person shall cease to be a Director and a vacancy on the Board shall arise: -
 - 14.12.3.1 when the Director's term of office expires as contemplated in clause 14.12.3.3 below;
 - 14.12.3.2 if, subject to the provisions of 14.11.2, any of the circumstances referred to in section 70(1)(b) of the Companies Act occur, which include the following, if the Director: -
 - 14.12.3.2.1 resigns (provided that such resignation is given by Written Notice to the Shareholder and the Company);



- 14.12.3.2.2 dies;
- 14.12.3.2.3 in the case of an *Ex Officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *Ex Officio* Director of the Company;
- 14.12.3.2.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period, subject to section 71(3) of the Companies Act;
- 14.12.3.2.5 is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act;
- 14.12.3.2.6 becomes Ineligible or Disqualified in terms of section 69, subject to section 71(3) of the Companies Act; or
- 14.12.3.2.7 is removed as a Director by: -
- 14.12.3.2.7.1 a resolution of the Shareholder in terms of section 63(2) of the PFMA and in accordance with the provisions of 14.11.1; or
- 14.12.3.2.7.2 a resolution of the Shareholder in terms of section 63(2) of the PFMA and in accordance with the provisions of 14.11.2; or
- 14.12.3.2.7.3 an order of the court in terms of section 71(5) or (6) of the Companies Act; or
- 14.12.3.2.7.4 if s/he is absent from Board meetings for 3 (three) consecutive meetings without leave of the Board and the Shareholder resolves that the office be vacated;
- 14.12.3.3 in the case of non-executive Directors: -
- 14.12.3.3.1 a Director's appointment is reviewed and her/his term is terminated prematurely to the 3 (three) year term;
- 14.12.3.3.2 a Director has served for a 3 (three) year term, and fails to be re-appointed as Director for a 2nd (second) term; or
- 14.12.3.3.3 a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;
- 14.12.3.3.4 a Director has served for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.
- 14.12.4 Unless the Shareholder resolves otherwise, a Director shall also cease to hold office and a vacancy shall arise if s/he: -
- 14.12.4.1 is Knowingly interested in any contract or proposed contract with the Company and fails to declare her/his interest and its nature in the manner required by the Companies Act and the PFMA; or
- 14.12.4.2 assigns her/his estate for the benefit of her/his creditors, or suspends payment or files a petition for the liquidation of her/his affairs, or compounds generally with her/his creditors; or
- 14.12.4.3 ceases to be an employee of the Company or is suspended as an employee of the Company.
- 14.12.5 In addition, if the CE or CFO ceases to hold office as a Director for any reason whatsoever, her/his appointment as CE or CFO (as the case may be) shall *ipso facto* terminate without prejudice to any claims for damages which may accrue to her/him as a result of such termination in accordance with applicable employment laws; provided however, that s/he shall not be precluded from being employed in any other position of the Company by virtue

of the fact that s/he is no longer a Director.

14.13 Ineligibility or Disqualification of Directors

14.13.1 A person is Ineligible to be a Director of the Company if the person-

14.13.1.1 is a Juristic Person;

14.13.1.2 is an unemancipated minor, or is under a similar legal disability; or

14.13.1.3 does not satisfy any qualification set out in the MOI.

14.13.2 A person is Disqualified to be a Director of the Company if-

14.13.2.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 69 of 1984; or

14.13.2.2 save under authority of the court, the person -

14.13.2.2.1 is an unrehabilitated insolvent;

14.13.2.2.2 is prohibited in terms of any public regulation to be a Director of the Company;

14.13.2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty;

14.13.2.2.4 has been convicted, in the Republic 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: -

14.13.2.2.4.1 involving fraud, misrepresentation or dishonesty;

14.13.2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act; or

14.13.2.2.4.3 under the Companies Act, Insolvency Act, 1936; Close Corporation Act, 1984; Competition Act, 1998; Financial Intelligence Centre Act, 2001; Securities Services Act, 2004; or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.

15 **FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES**

15.1 Financial Assistance

15.1.1 The Board is prohibited from and shall not have the power to –

15.1.1.1 Authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;

15.1.1.2 provide any direct or indirect Financial Assistance 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, or member, except, in each case, where –

15.1.1.2.1 the Shareholder has approved such Financial Assistance, either for the specific

recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous two years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may require, to satisfy the Shareholder that the conditions set out in clauses 15.1.1.2.2, 15.1.1.2.3 and 15.1.1.2.4 below have been met, or will be met; and

- 15.1.1.2.2 the provisions of the PFMA have been met; and
- 15.1.1.2.3 the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and
- 15.1.1.2.4 the Board is satisfied that –
 - 15.1.1.2.4.1 immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4 of the Companies Act; and
 - 15.1.1.2.4.2 the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.
- 15.1.2 The Board shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer save in respect of any Financial Assistance which has been approved in terms of section 45 of the Companies Act and in terms of clause 15.1.1.2 above and contemplated in accordance with the terms of employment applicable to Prescribed Officers, subject always to the provisions of section 45 of the Companies Act.
- 15.2 Board's power to effect borrowing

Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA), the Board may raise or borrow funds from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Shareholder, unless otherwise determined by the Shareholder subject to clause 3.22 of this MOI.
- 15.3 Company's power to issue guarantees, indemnities, security or to enter into other transactions that bind the Company to any future financial commitment

The Company may not –

 - 15.3.1 issue a guarantee, indemnity or security; or
 - 15.3.2 enter into any other transactions that bind, or may bind, the Company or the Revenue Fund, as defined in the PFMA, to any future financial commitment, unless the provisions of the PFMA, in particular, section 66 thereof, are complied with.
- 15.4 Financing and funding structures

The Board shall, in accordance with the PFMA and Enabling Legislation, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

16 PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS

- 16.1 For purposes of this clause 16, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

- 16.2 The Company has a policy that deals with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.
- 16.3 If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director: -
- 16.3.1 must disclose the interest and its general nature in Writing before the matter is considered at the meeting;
- 16.3.2 must disclose to the meeting any Material information relating to the matter, and that is known to the Director;
- 16.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 16.3.4 if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 16.3.2 or 16.3.3 above;
- 16.3.5 must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 16.3.2 or 16.3.3 above;
- 16.3.6 while absent from the meeting as provided in clause 16.3.4 above: -
- 16.3.6.1 Shall be regarded as being as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting
- 16.3.6.2 shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 16.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 16.4 If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.
- 16.5 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director, has a Material interest in the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 16.6 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person related to the Director, only if: -
- 16.6.1 it was approved following disclosure of that interest in the manner contemplated in section 75 of the Companies Act; or
- 16.6.2 despite having been approved without disclosure of that Personal Financial Interest, it
- 16.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholder following disclosure of that Personal Financial Interest; or
- 16.6.2.2 has been declared to be valid by the court in terms of section 75(8) of the Companies Act.

- 16.7 A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written Notice to the Board setting out the nature and extent of that interest for the purposes of this clause 16 until changed or withdrawn by such Director in Writing.
- 16.8 Directors have a duty to avoid conflicts of interest in terms of the Legislative and Policy Frameworks. Accordingly, Directors must, in addition to making the requisite disclosures set out in clauses 16.3 to 16.7 above, disclose any conflict of interest in accordance with the policy referred to in clause 16.2, as may be amended from time to time.
- 16.9 A court, on application by any interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause 16 and section 75 of the Companies Act.
- 16.10 The provisions of this clause 16 do not derogate from those Directors' duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 16 and the provisions of the PFMA.

17 INDEMNIFICATION AND DIRECTORS' INSURANCE

- 17.1 For the purposes of this clause 17, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.
- 17.2 Subject to the provisions of the PFMA, the Company may –
- 17.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;
- 17.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 17, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and
- 17.2.3 directly or indirectly indemnify a Director for –
- 17.2.3.1 any liability, other than in respect of –
- 17.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 86(2) or (3) of the PFMA, or from willful misconduct or willful breach of trust on the part of the Director; or
- 17.2.3.1.2 any fine contemplated in clause 17.2.1 above;
- 17.2.3.2 any expenses contemplated in clause 17.2.2 above, irrespective of whether it has advanced those expenses, if the proceedings –
- 17.2.3.2.1 are abandoned or exculpate the Director; or
- 17.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 17.2.3.1 above.
- 17.3 Subject to the provisions of the PFMA, the Company may purchase insurance to protect –
- 17.3.1 a Director against any liability or expenses contemplated in clause 17.2.2 or 17.2.3 above; or

- 17.3.2 the Company against any contingency including but not limited to –
 - 17.3.2.1 any expenses –
 - 17.3.2.1.1 that the Company is permitted to advance in accordance with clause 17.2.2 above; or
 - 17.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.2 above; or
 - 17.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.1 above.
- 17.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

18 AUDITORS

- 18.1 Subject to clause 18.2 of this MOI, Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.
- 18.2 The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.
- 18.3 Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.
- 18.4 Subject to the Public Audit Act, nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee referred to in clause 19 below, but if such an Auditor is elected, the appointment is valid only if the audit committee is satisfied that the proposed Auditor is independent of the Company.
- 18.5 In considering whether, for the purposes of the Companies Act, a Registered Auditor is independent of the Company, the audit committee must –
 - 18.5.1 ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
 - 18.5.1.1 as Auditor; or
 - 18.5.1.2 for rendering other services to the Company, to the extent permitted in terms of the Companies Act;
 - 18.5.2 consider whether the Auditor's independence may have been prejudiced –
 - 18.5.2.1 as a result of any previous appointment as Auditor; or
 - 18.5.2.2 having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and
 - 18.5.3 consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,
- 18.6 in relation to the Company, and if the Company is a member of a Group of Companies, any

other company within that Group of Companies.

19 AUDIT COMMITTEE

- 19.1 In terms of section 94 of the Companies Act, the Board shall propose, and the Shareholder shall appoint, an audit committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit committee, the Board shall propose an alternate person for appointment by the Shareholder.
- 19.2 The audit committee shall comprise at least 3 (three) members, all of whom shall, subject to clauses 19.5 and 19.6 below, be non-executive Directors of the Company and whose appointment shall comply with
- 19.2.1 section 77 of the PFMA read with the Treasury Regulations; and
- 19.2.2 to the extent that the provisions of section 94(5) of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 94(5) of the Companies Act and Regulation 42.
- 19.3 The audit committee shall meet at least 4 (four) times in a year to execute its duties.
- 19.4 The Board shall, subject to clause 19.5 below, propose a Chairperson for the audit committee, for approval by the Shareholder at the Annual General Meeting.
- 19.5 In accordance with the Treasury Regulations the Chairperson of the audit committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the Chairperson of the Board or a person who fulfils an executive function in the Company.
- 19.6 Each member of the audit committee must –
- 19.7 satisfy any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 94(5) of the Companies Act.
- 19.7.1 not be –
- 19.7.1.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;
- 19.7.1.2 a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or
- 19.7.1.3 a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and
- 19.7.2 not be a Related Person to any person who falls within the criteria in clauses 19.7.1.1 to 19.7.1.3 above.
- 19.8 The Board must propose and the Shareholder must appoint a person to fill any vacancy on the audit committee within 40 (forty) Business Days after the vacancy arises.
- 19.9 The audit committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).
- 19.10 The Company may determine that its audit committee will perform the functions required by section 94 of the Companies Act on behalf its Subsidiaries.
- 19.11 The Company must pay all expenses reasonably incurred by its audit committee, including, if



the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

- 19.12 No person shall be elected as a member of the audit committee, if s/he is Ineligible or Disqualified and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected as a member of the audit committee nor act as a member of the audit committee. A person placed under probation by a court must not serve as a member of the audit committee unless the order of court so permits.

20 SOCIAL AND ETHICS COMMITTEE

- 20.1 In terms of section 72 (4) of the Companies Act, the Board must appoint a social and ethics committee unless it has been exempted in terms of the Companies Act from having to have a social and ethics committee.
- 20.2 The Company may determine that its social and ethics committee will perform the functions required by Regulation 43 on behalf of its Subsidiaries.
- 20.3 The social and ethics committee shall comprise at least 3 (three) members, all of whom shall be Directors of the Company, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and any regulations published thereunder.
- 20.4 The social and ethics committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and any regulations published thereunder.
- 20.5 The social and ethics committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).
- 20.6 The social and ethics committee of the Company is entitled to –
- 20.6.1 Attend any Shareholder's Meeting;
- 20.6.2 receive all Notices of and other communications relating to any Shareholder's Meeting; and
- 20.6.3 be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.

21 BOARD COMMITTEES

- 21.1 Other than the statutory committees of the Audit Committee and the Social and Ethics Committee the Board may, in terms of section 72 of the Companies Act, establish Standing Committees and Ad Hoc Committees.
- 21.2 Furthermore, in the application by the Board to the Shareholder of a new Standing Committee, the Board must submit Written terms of reference including *inter alia* the need for such a committee, the functions of the committee and any other information required by the Shareholder. The number of Directors appointed to serve on the committee will be at the discretion of the Shareholder.
- 21.3 No person shall be appointed as a member of a Board committee, if s/he is not a Director on the Board and s/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a



Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

- 21.4 Meetings of a committee of the Board shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

22 PRESCRIBED OFFICERS

- 22.1 No person shall hold office as a Prescribed Officer, if s/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 22.2 A Prescribed Officer shall cease to hold office as such immediately s/he becomes Ineligible or Disqualified in terms of the Companies Act.

23 COMPANY SECRETARY

- 23.1 The Board must appoint the company secretary from time to time, who –
- 23.1.1 shall be a permanent resident of the Republic and remain so while serving as company secretary; and
- 23.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and
- 23.1.3 may be a Juristic Person subject to the following: -
- 23.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
- 23.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 23.1.1 and 23.1.2 above.
- 23.2 The company secretary shall not be a Director.
- 23.3 Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 23.1.3 above.
- 23.4 If at any time a Juristic Person or partnership holds office as company secretary of the Company –
- 23.4.1 the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 23.1.3 above, and is regarded to have resigned as company secretary upon giving that Notice to the Company;
- 23.4.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 23.1.3 above, until the Company has received a Notice contemplated in clause 23.4.1 above; and

- 23.4.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 23.1.3 above at the time of that action.
- 23.5 The company secretary may resign from office by giving the Company 1 (one) month's Written Notice or less than that with the prior Written approval of the Board.
- 23.6 If the company secretary is removed from office by the Board, the company secretary may, by giving Written Notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

24 DISTRIBUTIONS TO THE SHAREHOLDER

- 24.1 The Board may make Distributions to the Shareholder from time to time in accordance with the Enabling Legislation and the Distributions or similar policy of the Company from time to time, subject to the provisions of clauses 13.1.1.10 and 24 of this MOI, the provisions of section 46 of the Companies Act and any applicable provisions of the PFMA.
- 24.2 The Board, after Consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalisation and on-going investment in Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any Distribution and other payments payable to the Shareholder.
- 24.3 Without derogating from the provisions of clause 24.1 above and subject to the requirements of the Companies Act and clause 13.1.1.10 of this MOI, the Board may resolve to Distribute or deal with, in any way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

25 ACCOUNTS

- 25.1 The Board shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.
- 25.2 The Financial Statements, books of account and other books and documents of the Company shall be kept at, or be accessible from, the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place as the Board thinks fit, and shall be open to inspection by the Shareholder and the Board during normal business hours.
- 25.3 The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Company's Annual General Meeting such reports as are referred to in those sections and required in terms of this MOI.
- 25.4 Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 25.3 above shall be Delivered or sent by post to the registered address of the Shareholder at least 15 (fifteen) Business Days before the Annual General Meeting, so that such period shall



not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the Shareholder may give the Company an Electronic Address in which case a copy of the said documents may be Delivered to the Shareholder at that address.

26 NOTICES

- 26.1 Notices and documents required to be published as contemplated in section 17(1)(a) of the Companies Act shall be Delivered by the Company to the Shareholder by hand delivery to the registered address of the Shareholder or by transmission through the post in a prepaid letter, or any Electronic Communication addressed to the Shareholder at its registered address or Electronic Address (as the case may be).
- 26.2 The Shareholder chooses the address of the permanent office of the Shareholder in Pretoria as its registered address or such other address (including an Electronic Address) as the Shareholder shall upon Written Notice be entitled to change.
- 26.3 The Shareholder after having furnished an Electronic Address to the Company, by doing so-
- 26.3.1 authorises the Company to use Electronic Communication to give Notices, documents, Records or statements; and
- 26.3.2 confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.
- 26.4 Every Notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Board.

27 FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4) of the Companies Act.

28 WINDING UP

Subject to the provisions of the Companies Act, the Company shall not be wound up or be placed into "business rescue" as contemplated in the Companies Act without the prior Written consent of the Shareholder.

29 SUBSIDIARIES

The Company may, from time to time, form or acquire Subsidiaries, subject to the provisions of this MOI, the PFMA and Enabling Legislation.

30 PROTECTION OF WHISTLE-BLOWERS

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.