

Republic of South Africa
Companies Act, 71 of 2008

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

Name of company: **RAILROAD ASSOCIATION OF SOUTH AFRICA NPC**

Registration No. 2008/001810/08

This Memorandum of Incorporation ("MOI") was adopted by a Special Resolution of the Members in accordance with section 16(1)(c) of the Companies Act on 25 June 2020:

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1. INTERPRETATION

In this MOI –

- 1.1. words that are defined in the Companies Act (which are contained in Annexure A for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
 - 1.2.1. "**Address**" shall include Electronic Address, business, residential or postal or any other address furnished by the Member to the Company;
 - 1.2.2. "**Alternate Director**" means a Person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of the Company;
 - 1.2.3. "**Applicant**" means a Person who applies to be a Member of the Company in terms of clauses 12.4 and 12.8;
 - 1.2.4. "**Board of Directors**" or "**Board**" means the board of Directors of the Company from time to time;
 - 1.2.5. "**Business Days**" has the meaning determined in accordance with clause 2;
 - 1.2.6. "**Category**" means a sub-class of membership in the Company into which each Member falls, as more fully contemplated in clause 12.1;
 - 1.2.7. "Chairperson" means the chairperson of the Board of Directors;
 - 1.2.8. "**Chief Executive Officer**" means a Person appointed by the Board as Chief Executive Officer of the Company, as provided for in clause 21.2;
 - 1.2.9. "Commission" means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
 - 1.2.10. "**Companies Act**" means the Companies Act, No 71 of 2008;
 - 1.2.11. "**Company**" means RailRoad Association of South Africa NPC (as identified on the cover page of this MOI), or by whatever other name it may be known from time to time;
 - 1.2.12. "**Connected Person**" shall have the meaning assigned to that term in section 1 of the Income Tax Act;
 - 1.2.13. "**CPIX**" means the Consumer Price Index, being the annual percentage change in respect of a series of figures (numbers) showing how the average price level of the baskets of goods and services determined by Statistics South Africa, bought by a typical consumer or household changes over time (excluding the interest rates on mortgage bonds) as published from time to

time by Statistics South Africa for all items with the base year being 2008 (i.e. 2008 = 100), provided that -

- 1.2.11.1. the base year shall be adjusted to the base year from time to time used by Statistics South Africa;
- 1.2.11.2. if the index is replaced by a consumer price index with a different base, the replacing index shall be used but it shall be adjusted in such a manner as the auditors or accountants of the Company in their discretion consider necessary to correspond to the index as defined and which had similar criteria to the Consumer Price Index as provided herein, as its base;
- 1.2.11.3. if the publication of the index is discontinued or if the index is replaced by an index of a different nature so that the abovementioned does not apply, or if the auditors or accountants of the Company in their discretion consider it impractical to make an adjustment in terms of the abovementioned or any adjustment provided for herein then a suitable substitute index for such index shall be determined by the auditors or accountants of the Company in their discretion;
- 1.2.14. "**Deliver or Delivered**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 27 of this MOI;
- 1.2.15. "**Director**" means a member of the Board, referred to in the Companies Act as a "director", as contemplated in section 66 of the Companies Act, and includes any Person occupying the position of a director or alternate director, as defined in the Companies Act, by whatever name designated;
- 1.2.16. "**Electronic Address**" means with regard to electronic communication, any email or other electronic address furnished to the Company by the Member in writing;
- 1.2.17. "Ex Officio Director" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's memorandum of incorporation;
- 1.2.18. "General Meeting" means any general meeting of the Members, or any adjournment thereof, as the case may be, and all references in this MOI to "General Meeting" shall, where the context so requires, include a reference to an "annual General Meeting";
- 1.2.19. "**Income Tax Act**" means the Income Tax Act, No 58 of 1962, as amended from time to time or any legislation which replaces it;
- 1.2.20. "Individual" means a natural person;

- 1.2.21. "**Industry**" means the rail industry and activities associated therewith;
- 1.2.22. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in Annexure B for easy reference but which do not form part of this MOI for purposes of interpretation) which shall apply not only to Directors and Alternate Directors, but also to members of the Board and statutory committees and prescribed officers of the Company;
- 1.2.23. "**Member**" means a Person who holds membership in, and specified rights in respect of the Company in accordance with the provisions of this MOI;
- 1.2.24. "**Members' Meeting**", with respect to any particular matter concerning the Company, means a meeting of the Members entitled to exercise Voting Rights thereat;
- 1.2.25. "**Membership Fees**" means the annual fees payable by the Members of each Category, in accordance with clause 13;
- 1.2.26. "**Membership Register**" means the register of Members required to be kept in terms of section 24(4) of the Companies Act;
- 1.2.27. "**MOI**" means this Memorandum of Incorporation;
- 1.2.28. "**Person**" includes a Juristic Person as defined in the Companies Act;
- 1.2.29. "**Present at a Meeting**" or "**Present at the Meeting**", depending on the context, means to be present in person, or able to participate in the meeting in question by electronic communication, or to be represented by a proxy or representative who is present in person or able to participate in the meeting in question by electronic communication;
- 1.2.30. "Record Date" means the date established under section 59 of the Companies Act on which a company determines the identity of its members for the purposes of the Act;
- 1.2.31. "**Regulations**" means regulations published pursuant to the Companies Act;
- 1.2.32. "**Round Robin Resolution**" means a resolution passed other than at a Members' Meeting, which –
- 1.2.32.1.1. was submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution;
- 1.2.32.1.2. was voted on by the requisite percentage of the Persons entitled to vote contemplated in clause 16 by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them, and includes Written polling of Persons entitled to vote regarding the election of Directors; and
- 1.2.32.1.3. a meeting of the Board of Directors, in respect of which, subject to clause 23.13, the members of the Board of Directors being not less than a quorum, voted in favour by signing in Writing a

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

- 1.2.33. "Rules" means any rules made by the Institution as contemplated in section 15(3) to (5);
- 1.2.34. "**South Africa**" means the Republic of South Africa;
- 1.2.35. "Sign" includes the reproduction of a signature lithography, printing with an india-rubber stamp, or any other mechanical process, or partly the one and partly the other process and "signature" has the corresponding meaning;
- 1.2.36. "**Special Resolution**" means a resolution adopted with the support of at least 75% of the Voting Rights exercised on a resolution at a Members' Meeting or a Directors' meeting, as the case may be;
- 1.2.37. "**Voting Rights**" means the rights of a Member to vote in connection with a matter in relation to the Company as provided for in this MOI;
- 1.2.38. "**Writing**" or "**Written**" includes electronic communication but, as regards any Member entitled to vote, only to the extent that such Member has notified the Company in writing of an Electronic Address;
- 1.3. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4. references to Members entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representatives or acting in the manner prescribed by the Companies Act;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. references to any legislation is to that piece of legislation as at the date of filing of this MOI and as amended, re-enacted or replaced from time to time and includes any subordinate legislation made from time to time under such legislation. Any reference to a particular section in a piece of legislation is to that section as at the date of filing of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a piece of legislation, provided that if as a result of such amendment or reenactment, 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;
- 1.7. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8. words –
 - 1.8.1. in the singular number shall include the plural number, and words in the plural number shall include the singular number;
 - 1.8.2. importing the masculine gender shall include the female gender; and *vice versa*, and

- 1.8.3. importing Persons shall include created entities (corporate or not);
- 1.9. 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; and
- 1.10. 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.

2. CALCULATION OF BUSINESS DAYS

When a particular number of “business days” is provided for between the happening of one event and another, the number of days must be calculated by –

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

3. NON-PROFIT COMPANY

The Company is incorporated as a Non-Profit Company with Members in terms of the Companies Act and is –

- 3.1. incorporated for objects relating to communal or group interests or other objects as required by item 1(1) of Schedule 1 to the Companies Act;
- 3.2. consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act;
- 3.3. prohibited from directly or indirectly distributing any of its funds to any Person (otherwise than in the course of carrying out its stated objects and to the extent permitted by item 1(3) of Schedule 1 to the Companies Act) and is required to solely utilise its funds for the purpose that it has been established.
- 3.4. Governed by the unalterable provisions of the Companies Act that are applicable to Non-Profit Companies;
- 3.5. The alterable provisions of the Companies Act that are applicable to Non-Profit Companies, subject to any negation, restriction, limitation, qualification, extension, variation or substitution set out in this MOI; and
- 3.6. The provision of this MOI.

4. OBJECTS OF THE COMPANY

- 4.1. The sole or principal object of the Company is to function as a representative body for and promote the common interests of its Members, being Persons engaged in the Industry in South Africa, and to this end and for this purpose the Company shall:
- 4.1.1. promote the interests of Persons and entities (whether incorporated or unincorporated) engaged in the Industry in South Africa and to provide for the Industry the means of formulating, making known, influencing and carrying out policy in regard to industrial, economic, fiscal, legal, technical and other questions relating to the Industry;
 - 4.1.2. promote good relations between the Industry and the public, and to arrange, organise and undertake any public relations activity in the interests of the Industry;
 - 4.1.3. encourage the Industry's efficiency and for such purposes to provide advice, information, and other services for the benefit of the Members;
 - 4.1.4. liaise and co-operate with government departments, and support, oppose or influence any legislative action which may affect the Industry;
 - 4.1.5. represent generally the views of Persons concerned with rail products without in any manner restricting the freedom of action of its Members to make their own representations;
 - 4.1.6. provide services and assistance to Members concerned with rail products and or services;
 - 4.1.7. engage in advertising, make statements to, and prepare material for use by, the mass communication media for any purpose of the Company;
 - 4.1.8. establish and support (or assist therein) arrangements and facilities for the protection and welfare of the community and of the environment in relation to activities and products of the Industry, including but not limited to coordinating rail safety education and training, development of overall safety standards and manufacturing standards;
 - 4.1.9. promote and finance industrial research and efficiency, and to prepare, publish, print, issue, edit, acquire and circulate any documents in writing, or any films, tapes or other documents reproducing information relating to the Industry;
 - 4.1.10. improve methods of education in technology relating to rail products and or services;
 - 4.1.11. initiate, hold, direct or take part in exhibitions, displays, conferences and such other gatherings as may be appropriate for the purpose of advancing any of the objects of the Company;

- 4.1.12. employ or retain skilled professional or technical advisers in connection with the objects of the Company or any of them and to pay such advisers such fees as may be considered appropriate;
 - 4.1.13. further the objects of the Company by liaising, either directly or indirectly, with any Person, group or body, and by appointing Members or other Individuals to represent the Company to such Person or on anybody corporate;
 - 4.1.14. sell, purchase, let, mortgage, or otherwise acquire or dispose of any immovable or movable property as the Company may think necessary or convenient for the promotion of its objects, and to construct, maintain or alter any building necessary or convenient for the work of the Company;
 - 4.1.15. set up trusts for any purpose or objects of the Company and to accept any donation or bequest for any of the purposes or objects thereof;
 - 4.1.16. borrow or raise money for the purposes of the Company on such terms and on such security as the Company may deem fit;
 - 4.1.17. invest the funds of the Company available for investment with registered financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 2001, and in securities;
 - 4.1.18. pay all expenses of and incidental to the establishment of the Company; and
 - 4.1.19. do all such other things as are incidental or conducive to the attainment of the above objects.
 - 4.1.20. Uphold and maintain the concept of the corporate entity as a responsible corporate citizen.
 - 4.1.21. Maintain and strengthen the bonds and reciprocity between the company and stakeholders with similar objectives on the African continent and other parts of the world.
- 4.2. In achieving its objectives, the Company shall comply with the conditions set out in this clause.

5. CONDITIONS

- 5.1. The Company –
 - 5.1.1. must apply all of its assets and income, however derived, and direct the whole of its activities, to advance its stated objects, as set out in clause 4, and not for the specific benefit of an individual Member or minority group; and
 - 5.1.2. subject to clause 5.1.1 and clause 5.7, may with the approval of a Special Resolution of Members and a Special Resolution of Directors –
 - 5.1.2.1. acquire and hold securities issued by a profit company; and

- 5.1.2.2. directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 5.2. The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of whether and how the income or asset was derived, to any Person who is or was an incorporator of the Company, who is a Member or Director of the Company, or Person who is entitled to nominate or appoint a Director to the Board of the Company except –
- 5.2.1. as reasonable –
- 5.2.1.1. remuneration for goods delivered or services rendered to, or at the direction of the Company; or
- 5.2.1.2. payment or advancement of funds, in accordance with any policy relating to expenses as may be determined by the Board from time to time, for expenses incurred, or to be incurred, to advance a stated object of the Company;
- 5.2.2. as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that Person or another; or
- 5.2.3. as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 5.2.4. in respect of any legal obligation binding on the Company, provided that the above exceptions are subject to the restrictions applicable to distributions in clause 5.3 and to the requirement that any such distribution must not directly or indirectly promote the economic self-interest of any Member, Director, employee of the Company, subsidiaries of the Company or any person related to such Persons.
- 5.3. The Company may not directly or indirectly distribute any of its funds or assets to any Person other than in the course of furthering its objectives.
- 5.4. The Company is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established.
- 5.5. No Member may directly or indirectly have any personal or private interest in the Company.
- 5.6. Substantially the whole of the activities of the Company must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual Member or minority group.
- 5.7. The Company may not have a share or other interest in any business, profession or occupation which is carried on by its Members.
- 5.8. The Company must not pay to any employee, office bearer, Member or other person any remuneration, as defined in the Fourth Schedule of the Income Tax Act, which is

excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

- 5.9. Substantially the whole of the Company's funding must be derived from annual or other long-term Members or from an appropriation by the Government of South Africa in the national, provincial or local sphere.
- 5.10. The Company shall comply with such reporting requirements as may be determined by the Commissioner of the South African Revenue Services from time to time.
- 5.11. Notwithstanding anything to the contrary in this MOI, no single person shall directly or indirectly control the decision-making powers of the Company.
- 5.12. The Company will not knowingly become party to and will not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

6. POWERS AND CAPACITY OF THE COMPANY

- 6.1. The Company has the powers and capacity of an individual save to the extent set out in the Companies Act (including as set out in items 1(3) and 1(4) of Schedule 1), the Regulations, and this clause 6, as well as the conditions set out in clause 5.
- 6.2. To the extent that the Companies Act requires a Non-Profit Company to be expressly authorised by its MOI to do anything, the Company is, by this provision, conferred with the requisite authority to do so, subject to any limitations set out in this MOI.
- 6.3. The Company shall not –
 - 6.3.1. carry on any profit-making activities;
 - 6.3.2. participate in any business, profession or occupation carried on by any of its Members;
 - 6.3.3. provide any financial assistance, premises, continuous services, or facilities to its Members for the purpose of carrying on any business, profession or occupation by them; or
 - 6.3.4. have the power to distribute *in specie* or in kind any of its assets among its Members, Directors, employees, incorporators, or persons related to such Persons.

7. RULES AND AMENDMENT OF THE MOI AND RULES

- 7.1. The Board may make, amend or repeal any necessary or incidental Rules relating to the governance of the company by publishing a copy of these Rules and by sending notice thereof by registered post (to any address within the Republic supplied by the

member to) or be electronic transmission (to any electronic address supplied by the member) to each of the Members and by filing a copy of the Rules with the Commission. Any Rules published in this manner take effect on the date specified in that rule and shall be subject to ratification by the Members as set out in section 15(4)(c)(ii).

- 7.2. The Board may propose to amend any of the provisions of the MOI and the Members may by way of special resolution adopt such amendments.
- 7.3. A notice of the proposed alterations of the MOI shall be sent to each Member by registered mail or by electronic transmission at least 15 (fifteen) Business Day before the meeting at which the special resolution to amend the provisions of the MOI is to be passed.
- 7.4. The Board shall ensure that a copy of any amendments that have been made to the MOI have been provided to the Commissioner for the South African Revenue Service within 30 (thirty) days of having effected such amendments.
- 7.5. The Board or a person authorised by the Board may alter the MOI or the Rules to correct any patent errors (spelling, punctuation, grammar or similar defects on the face of the document) by publishing a notice of the alteration on its website or in any other manner required or permitted by the Rules and by filing a notice of the alteration with the Commission.
- 7.6. No amendments to the MOI shall be made which will:
 - 7.6.1 allow any income or other funds or other assets to be applied for a purpose which does not promote the achievement of the objects of the company; or
 - 7.6.2 amend this clause in any manner which would give any proprietary or similar interest in the companys income or other funds or other assets to any individual or any incorporated entity contrary to the provisions of the Income Tax Act.

8. THE MAKING OF RULES

The Board shall, by way of Special Resolution of the Directors, have the capacity to make, amend or repeal any rules relating to the governance of the Company which is in line with best practice and/or the King Codes on Corporate Governance for South Africa , as contemplated in sections 15(3) to (5) of the Companies Act.

9. FINANCIAL YEAR

The financial year end of the Company is 31 March.

10. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 10.1. The Company shall maintain the necessary accounting records which shall be accessible from its registered office.
- 10.2. The Company must maintain adequate records of all revenue received from donations, grants and Members' fees, or in terms of any funding contracts or arrangements with any party or Person for a period of at least 5 (five) years.
- 10.3. The Company shall prepare its financial statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, or, if it qualifies in terms of the regulations, in accordance with the South African Statements of Generally Accepted Accounting Practice or the International Financial Reporting Standards for Small and Medium Enterprises as adopted from time to time by the Accounting Practices Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with such standard as it shall determine, and shall have its annual financial statements audited.
- 10.4. The Board of Directors shall from time to time determine at what times and place/s (save in the case of accounting records which shall be accessible from the registered office) and under what conditions, subject to the requirements of the regulations, the Members are entitled to inspect and take copies of –
 - 10.4.1. the MOI;
 - 10.4.2. amendments to the MOI;
 - 10.4.3. records in respect of Directors;
 - 10.4.4. accounting records required to be maintained by the Company;
 - 10.4.5. reports to annual Members' Meetings;
 - 10.4.6. annual financial statements;
 - 10.4.7. notices and minutes of Members' Meetings;
 - 10.4.8. communications generally to Members;
 - 10.4.9. the Membership Register; and
 - 10.4.10. the rules, if any.
- 10.5. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Company (other than the Membership Register), unless expressly authorised by the Board of Directors or by a court order.

- 10.6. The Board, in accordance with the Companies Act, ensures the preparation and tabling at the Annual General Meeting as a minimum the matters referred to in paragraph 16 and performs all duties in relation to annual financial statements, accounting records and auditors in accordance with the Companies Act and other applicable legislation. A copy of the annual financial statements which are to be tabled at the Annual General Meeting, is to be sent to every Member not less than 15 (fifteen) Business Days before the date of the meeting.

11. AUDITOR

- 11.1. The Company shall appoint an auditor upon its incorporation and at its annual Members' Meeting, provided that if an annual Members' Meeting does not appoint or reappoint an auditor, the Board of Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of such Members' Meeting. A retiring auditor may not be re-appointed at an annual Members' Meeting, the retiring auditor shall be required to cease serving as auditor, in terms of section 92 of the Companies Act, or the Company has given notice of an intended resolution to appoint some other Person or Persons in place of the retiring auditor.
- 11.2. Any firm of auditors appointed by the Company as the auditor shall ensure that the individual responsible for performing the audit must comply with the requirements of section 90(2) of the Companies Act, provided that –
- 11.2.1. the same individual may not serve as the auditor or designated auditor for more than 5 (five) consecutive financial years;
- 11.2.2. if an individual has served as the auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 11.3. The auditor –
- 11.3.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Board of Directors and management any information and explanations necessary for the performance of the auditor's duties;
- 11.3.2. is entitled to –
- 11.3.2.1. attend any Members' Meeting;

- 11.3.2.2. receive all notices of and other communications relating to any Members' Meeting; and
- 11.3.2.3. be heard at any Members' Meeting on any part of the business of the meeting that concerns the auditor's duties or functions.
- 11.4. The auditor may not perform any services for the Company that would place the auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act.
- 11.5. If a vacancy arises in the office of auditor, the Board –
 - 11.5.1. must appoint a new auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent auditor; or
 - 11.5.2. if there was more than 1 (one) incumbent may appoint a new auditor at any time, however while any such vacancy continues, the surviving or continuing auditor may act as the auditor of the Company.
- 11.6. If, by comparison with the membership of a firm of auditors at the time of its latest appointment, less than 50% (fifty per cent) of the members of that firm remain after a change in the composition of the members, that change will constitute the resignation of the firm of auditors as auditor of the Company, giving rise to a vacancy.

12. MEMBERSHIP

- 12.1. The Company has Members, who are classified into 1 (one) of the following Categories –
 - 12.1.1. Category A – Private and Public Companies as defined in the Companies Act; and
 - 12.1.2. Category B – State Owned Companies regulated by agreements entered into with the Company
- 12.2. Category A Members are voting Members, and Category B Members are non-voting Members who have a permanent invite to all Members' Meetings and Directors meetings.
- 12.3. As at date of filing of this MOI, the Members within each Category will be the Persons listed in Annexure C hereto, who have each signed a deed of accession thereby accepting the rights and obligations associated with membership of the Company and binding themselves as Members in terms of this MOI.
- 12.4. At any time after the date of filing of this MOI, any Person may make Written application to become a Member of the Company, by completing the requisite application form (which for ease of reference as at the date of signature of this MOI is contained in Part B of Annexure D (Membership Criteria and Application Form) but which does not form

a part of this MOI and may be amended and updated by the Board from time to time), which application form shall be submitted to the Board for consideration, and that each such Person meets the further criteria for membership of the Company as referred to in clause 12.8.

- 12.5. Persons qualifying for membership in terms of clause 12.1.1 shall be entitled to apply for Category A membership and Persons qualifying for membership in terms of clauses 12.1.2 shall be entitled to apply for Category B membership.
- 12.6. Any Person applying for membership of the Company shall be required to provide Written proof that it complies, where necessary, with the criteria set out in clause 12.4.
- 12.7. The Board may, in their reasonable discretion and having regard to the objects and reputation of the Company, accept a Person qualifying for membership, in accordance with the criteria set out in clause 12.4, as a Member and falling into such Category, as the Board may determine.
- 12.8. The granting of membership of the Company shall be conducted through a process by which an Applicant shall submit an application form to the Board for consideration, subject to such Applicant meeting the criteria for membership of the Company as set out in Part B of Annexure D (Membership Criteria and Application Form), but which annexure does not form a part of this MOI and may be amended and updated by the Board from time to time. After having considered that an Applicant meets the criteria for membership, such determination shall be at the reasonable discretion of the Board and the Board shall provide reasons for any refusal to grant such membership, within a reasonable time.
- 12.9. Once an Applicant has been granted membership of the Company, said Applicant will remain a permanent Member of the Company until the Member gives 60 (sixty) Business Days Written notice of the Members' termination of its membership, said Written notice of termination will only be accepted by the Board if it is given before a financial year end, failing which, the Member will be charge its Membership Fees for the Company's following financial year.
- 12.10. The Company must ensure that Members shall not, directly or indirectly, have any personal or private interest in the Company.
- 12.11. Members have the right to the information as contemplated in section 26 of the Companies Act.
- 12.12. Membership shall not be transferable and shall cease as provided for in clause 15.
- 12.13. Members shall not do any business whatsoever with the Company.
- 12.14. Membership for a determined period becomes effective subject to the following:
- 12.13.1 application in Writing on the prescribed application form;
 - 12.13.2 acceptance of the application; and
 - 12.13.3 payment of the requisite membership fee.

13. MEMBERSHIP FEES

- 13.1. Every Member shall, in respect of each financial year of the Company, at such date as determined by the Board from time to time, pay to the Company a membership fee which shall be determined by the Board in accordance with the provisions of clauses 13.2 and 13.3.
- 13.2. Membership Fees for any year will be based on the Members' turnover, approved by the Board of Directors by way of Special Resolution at its last meeting prior to the beginning of each financial year of the Company.
- 13.3. In their determination of the Membership Fees for any year, the Board shall be guided by the following –
 - 13.3.1. the Membership Fees for a Category A will be based on ; and
 - 13.3.2. the Membership Fees for a Category B will be based on.
- 13.4. In order that the Company may determine the Membership Fees to be paid by each Member, each Member shall submit to the Company (addressed to the Chief Executive Officer) on a confidential basis, by no later than 28 February of each year, the member's Annual Financial Statements and/or their auditors' written confirmation regarding the Annual Financial Statements or any information as may be requested by the Board for the purposes of determining the Membership Fees of each Member. In this regard, each Member shall submit the information requested that, to the best of its knowledge and belief, is true, correct and up-to-date. The Company shall treat such information as confidential and shall not directly or indirectly disclose a Member's information to any other Member or to any third party or to any employees of the Company who do not have a need to know such information.
- 13.5. The Company shall, upon approval of membership of each year, deliver to each Member an invoice which shall specify the Membership Fee to be paid by that Member in respect of that year of the Company's financial year. The Company does not have pro-rata Membership Fees.
- 13.6. Members shall pay their respective annual Membership Fees within 30 (thirty) days of the presentation of the invoice issued by the Company in terms of clause 13.6, or as otherwise directed by the Board from time to time.
- 13.7. In the event that a Member fails to pay its Membership Fees within 60 (sixty) days in respect of payment terms as per membership application form in the relevant financial year of the Company, the Board shall be entitled, in its absolute discretion, to terminate the membership of such a Member, and the Member concerned shall cease to be a Member upon receiving written notice from the Board to this effect.
- 13.8. Membership Fees, as contemplated in this clause 13, shall be payable immediately upon the acceptance by the Board of such Person as a Member and for the avoidance

of doubt, no Person shall be inserted in the Membership Register until it has paid its Membership Fees in full.

14. MEMBERSHIP REGISTER

- 14.1. The Company must maintain a Membership Register in accordance with the provisions of section 24(4) of the Companies Act.
- 14.2. The Company shall cause the Membership Register to reflect –
- 14.2.1. the names and identifying numbers or company registration numbers, if any, of the Members;
 - 14.2.2. the names and contact details of the Chief Executive Officer and President, Chairperson or Vice-Chairperson of the Members;
 - 14.2.3. each Member's business, residential or postal address;
 - 14.2.4. each Member's Electronic Address/es, where these have been furnished;
 - 14.2.5. the date on which the Person became a Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company;
 - 14.2.6. the Category of such Member; and
 - 14.2.7. any other information prescribed in terms of the Companies Act from time to time.
- 14.3. The Company shall not be bound to enter any Person in the Membership Register until that Person gives the Company an Address for entry on the Membership Register.

15. TERMINATION OF MEMBERSHIP

- 15.1. A Member shall *ipso facto* cease to be a Member of the Company if such Member –
- 15.1.1. ceases to be eligible for membership in accordance with clause 12.4;
 - 15.1.2. ceases to exist;
 - 15.1.3. is liquidated or wound up, whether provisionally or finally and whether compulsorily or voluntarily, or commences business rescue proceedings;
 - 15.1.4. is placed under curatorship or administration
 - 15.1.5. receives written notice from the Board terminating its membership in terms of clause 13.8; or
 - 15.1.6. commits an act of insolvency
 - 15.1.7. as otherwise contemplated in this MOI.
- 15.2. Subject to clause 15.7, any Member may resign as a Member of the Company by giving the Chief Executive Officer and the Company Secretary written notice of that Members

intention to resign. The Company will contract in professional secretarial services until such time that a permanent appointment is made.

- 15.3. Any Member ceasing to be eligible for membership in terms of clause 12.4 shall forthwith notify the Board of such circumstance. The Board may at any time by reasonable written notice to any Member require such Member forthwith to supply it with such information and particulars as it may reasonably require in order to determine whether such Member remains eligible for membership.
- 15.4. The Board may, on notice to the relevant Member, terminate, either summarily or after such period as it shall determine, or suspend, the membership of any Member of the Company if such Member fails to abide by the provisions of this MOI, including, but not limited to, the failure to pay any monies owing to the Company, and the Member concerned has failed to remedy the breach concerned within 1 (one) month or within such shorter or longer period as may be determined by the Board in its discretion.
- 15.5. A suspended Member shall not be entitled to attend Member's Meetings, exercise any rights of membership or otherwise participate in the activities of the Company. The membership of a suspended Member shall be automatically terminated if the breach is not remedied in full within 1 (one) month of the suspension, or such other shorter or longer period as determined by the Board.
- 15.6. The Board of Directors shall furnish reasons for any suspension or termination of membership in terms of clause 15.1, 15.4 or 15.5 to the relevant Member in Writing. Such Member shall have the right, exercisable by notice in Writing delivered to the Chairperson of the Board within 14 (fourteen) days of receipt of reasons for termination of membership, to be heard by the Board within 30 (thirty) days of receipt by the Chairperson of the Board of such notice. Within 7 (seven) days of the hearing, the Board of Directors that were present at the hearing may rescind, confirm or amend the termination of membership. Until such rescission, confirmation or amendment is made, the Member shall remain suspended or continue to have its membership terminated, and no public announcement of such decision shall be made within or outside of the Company.
- 15.7. In addition to the causes for termination of membership in terms of clause 15.1, the Board has the power to terminate a Member's membership if, in its sole discretion:
- 15.7.1 the Member is guilty of conduct that is obstructive or harmful to the interests and/or objects of the Company or which contravenes the Company's code of conduct for Members;
- 15.7.2 the Member brings the Company into disrepute;
- 15.7.3 it is obstructive or harmful to the interests and/or objectives of the Company that the Member should continue as a Member of the Company.

15.8 The Board shall, when terminating a Member's membership in terms of clause 15.7, follow due and fair process as determined by the Board from time to time.

15.9 The Company maintains at its registered office a register of members of the Company as required by the Companies Act.

16. MEMBERS' MEETINGS AND ROUND ROBIN RESOLUTIONS CONTEMPLATED IN CLAUSE 1.2.26

16.1. The Company shall convene an annual Members' Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous annual Members' 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 –

16.1.1. presentation of –

16.1.1.1. the annual report;

16.1.1.2. the Board of Directors' report; and

16.1.1.3. audited financial statements for the immediately preceding financial year;

16.1.2. confirmation of the appointment of Directors;

16.1.3. confirmation of the appointment of an auditor for the ensuing year; and

16.1.4. any matters raised by Members or Directors, with advance notice to the Company.

16.2. The Company shall, as determined by the Board, either –

16.2.1. hold a Members' Meeting in order to consider 1 (one) or more resolutions; or

16.2.2. as regards such resolution/s that could be voted on at a Members' Meeting, other than an annual Members' Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in clause 1.2.26.

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

16.4. A Company must hold a Members' Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.26 at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for a decision.

16.5. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information/explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members' Meeting, if applicable, and to seek to influence the outcome of the vote on

the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.

- 16.6. A Members' Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.26 if 1 (one) or more Written and signed demands for such a Members' Meeting or Round Robin Resolution is/are delivered to the Company, and –
- 16.6.1. each such demand describes the specific purpose for which the Members' Meeting is proposed; and
- 16.6.2. in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Members' Meeting.
- 16.7. Round Robin Resolutions contemplated in clause 1.2.26.1 will be passed if signed by a majority of members entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' Meeting.
- 16.8. Every Members' Meeting shall be held at the office of the Company (which as at the date of filing this MOI is situated in Bruma) or where the Board determines from time to time by way of Special Resolution. The authority of the Company to conduct a Members' Meeting entirely by electronic communication, or to provide for participation in a Members' Meeting by electronic communication so long as the electronic communication employed ordinarily enables all Persons participating in that Members' Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members' Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.
- 16.9. A Members' Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company to all Members entitled to vote or otherwise entitled to receive notice.
- 16.10. The Company may call a Members' Meeting with less notice than required by clause 16.9, but such a Members' Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda –
- 16.10.1. is Present at the Meeting; and
- 16.10.2. votes to waive the required minimum notice of the Members' Meeting.
- 16.11. A Member entitled to vote, who is Present at a Meeting –
- 16.11.1. is regarded as having received or waived notice of the Members' Meeting if at least the required minimum notice was given;
- 16.11.2. has a right to –
- 16.11.2.1. allege a material defect in the form of notice for a particular item on the agenda for the Members' Meeting; and

- 16.11.2.2. participate in the determination of whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
 - 16.11.2.3. except to the extent set out in clause 16.12.2 is regarded to have waived any right based on an actual or alleged material defect in the notice of the Members' Meeting.
- 16.12. The Company must hold an Annual General Meeting within 15(fifteen) months of the previous Annual General Meeting. A notice of a Members' Meeting must be in Writing, in plain language and must include –
- 16.12.1. the date, time and place for the Members' Meeting, and the record date for determining the Members entitled to exercise Voting Rights at the Members' Meeting;
 - 16.12.2. the general purpose of the Members' Meeting, and any specific purpose if applicable;
 - 16.12.3. in the case of the annual Members' Meeting, a summarised form of the Financial Statements can be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding financial year;
 - 16.12.4. a copy of any proposed resolution of which the Company has received notice in terms of section 61(3) of the Companies Act, and which is to be considered at the Members' Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
 - 16.12.5. a reasonably prominent statement that –
 - 16.12.5.1. a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or give or withhold written consent on behalf of the Member entitled to vote to a decision by Round Robin Resolution contemplated in clause 1.2.26.1;
 - 16.12.5.2. a proxy shall be a representative of a Member;
 - 16.12.5.3. a proxy may not delegate the authority granted to it as proxy;
 - 16.12.5.4. participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Members' Meeting that the right of that Person to participate and vote either as a Member or as a proxy, has been reasonably verified;

- 16.12.5.5. participation in the Members' Meeting by electronic communication is available, if it is available, and if so, provides any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of electronic communication and advise that access to such medium or means of electronic communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 16.13. A Members' Meeting may proceed notwithstanding a material defect in the giving of the notice, subject to clause 16.14, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Members' Meeting is Present at the Meeting and votes to approve the ratification of the defective notice.
- 16.14. If a material defect in the form or manner of giving notice of a Members' Meeting relates only to 1 (one) or more particular matters on the agenda for the Members' Meeting –
- 16.14.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 16.14.2. the Members' Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 16.15. An immaterial defect in the form or manner of Delivering notice of a Members' Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members' Meeting.
- 16.16. The Board may invite any Person to attend a Members' Meeting, provided that such Person may not participate in the consideration of or vote on any matters to be decided thereat unless that Person is requested to provide insight into the matter to be decided.
- 16.17. Business of the day may only be dealt with at any Members' Meeting only while a quorum is present.
- 16.18. A Members' Meeting may not begin, and a matter to be decided at the Members' Meeting may not begin to be considered, until the representatives of at least 51% (fifty-one percent) of the Members are Present at the Meeting.
- 16.19. A matter to be decided at the Members' Meeting may not begin to be considered unless the quorum requirements contemplated in clause 16.18, continue to be Present at the Meeting.
- 16.20. If within 30 (thirty) minutes from the time appointed for the Members' Meeting to commence, a quorum is not present, the Members' Meeting shall be postponed,

without motion, vote or further notice, subject to clause 16.21, for 1 (one) week to the same day and venue in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Members' Meeting a quorum is not Present within 10 (ten) minutes from the time appointed for the Members' Meeting then, the Person/s entitled to vote Present at the Meeting shall be deemed to be the requisite quorum.

- 16.21. A Members Meeting, or the consideration of any matter being debated at the Members Meeting, may be adjourned from time to time on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights –
- 16.21.1. held by all of the Persons who are Present at the Meeting at the time; and
- 16.21.2. that are entitled to be exercised on at least 1 (one) matter remaining on the agenda of the Members Meeting, or on the matter under debate, as the case may be.
- 16.22. Such adjournment must be to a fixed time, date and place in South Africa, as agreed at the Members Meeting.
- 16.23. A Members' Meeting may not be adjourned beyond the earlier of –
- 16.23.1. the date that is 120 (one hundred and twenty) Business Days after the record date; or
- 16.23.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 16.24. Notice of any postponed or adjourned Members' Meeting is required to be Delivered by the Company to all Members entitled to vote thereat or otherwise entitled to receive notice thereof.
- 16.25. The Chairperson of the Board shall preside as chairperson at every Members' Meeting. If there is no such Chairperson, or if at any Members' Meeting she/he is not present within 15 (fifteen) minutes of the time appointed for holding the Members' Meeting or is unwilling to act as chairperson, the Persons entitled to vote, which are Present at the Meeting shall select a Director Present at the Meeting, or if no Director is present at the Members Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select 1 (one) of their number which is Present at the Meeting to be chairperson of the Members' Meeting.
- 16.26. At any Members' Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by –
- 16.26.1. not less than 2 (two) Members having the right to vote on that matter; or
- 16.26.2. a Person/s entitled to exercise not less than 10% (ten per cent) of the total Voting Rights entitled to vote on that matter,
- 16.26.3. and, unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or

by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members' Meeting or adjourned Members' Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members' Meeting shall be valid for all purposes.

- 16.27. If a poll is duly demanded, it shall be taken in such manner as the Chairperson directs, save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Members' Meeting at which the poll was demanded. An independent scrutineer shall be appointed by the Chairperson to declare the result of the poll and, such decision, shall be deemed to be the resolution of the Members' Meeting at which the poll is demanded.
- 16.28. The demand for a poll shall not prevent the continuation of a Members' Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn at any time prior to the poll being taken as provided for in clause 16.27.
- 16.29. The Members shall endeavour, wherever possible and in the first instance, to reach consensus on all matters to be decided at a Members' Meeting. Any dissent or opposing positions shall be explained by the relevant Member, and where possible, an alternative solution proposed by that Member. In the event that the unanimous approval of the Members is not possible, save in instances where the matter is to be decided by Special Resolution in terms of the Companies Act or this MOI, the matter shall be decided by way of an ordinary resolution, requiring the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution, provided that –
- 16.29.1. any dissent or the view of the minority shall be recorded and clearly set out in the minutes of the Members' Meeting required to be kept in terms of clause 29; and
- 16.29.2. silence or absence of objection will be considered an abstention from voting on the resolution proposed to be passed.
- 16.30. Notwithstanding the provisions of clause 16.29, in respect of any matter to be decided that relates directly or indirectly to compliance with competition law, such matter shall be decided by way of a unanimous resolution of the Members and in respect of any matter to be decided that relates to a matter that is to be decided by a Special Resolution in term of the Companies Act, shall be decided by way of a Special Resolution of Members, taking into account the weighting of Voting Rights in terms of clause 16.31 below.
- 16.31. On a show of hands and on a poll, each Member Present at a Meeting or voting on a Round Robin Resolution shall be entitled to a vote, provided that –

- 16.31.1. shall exercise 70% (seventy percent) of the Voting Rights exercised on any matter, on the basis that each Member has an equal vote amongst the other Members Present at the Meeting or voting on the Round Robin Resolution; and
- 16.31.2. shall exercise 30% (thirty percent) of the Voting Rights exercised on any matter, on the basis that each Member has an equal vote amongst the other Members Present at the Meeting or voting on the Round Robin Resolution.
- 16.32. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the Members' Meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 16.33. No form appointing a proxy shall be valid after the expiration of 2 (two) months from the date when it was signed, unless the proxy form itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the Exercise of any rights as a Member entitled to vote. (proxy must be for a specific purpose and period).
- 16.34. The form appointing a proxy and the special power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be Delivered to the Company up to immediately prior to the Members' Meeting, before the proxy or representative of a Member exercises any rights of the Members entitled to vote at a Members' Meeting.
- 16.35. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the instrument of proxy or of the authority under which the instrument of proxy was executed, provided that no intimation in Writing of such death, insanity or revocation as aforesaid shall have been received by the Company at its registered office before the commencement of the Members' Meeting or adjourned Members' Meeting at which the instrument of proxy is used.
- 16.36. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Member entitled to vote.
- 16.37. If a proxy form is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit unless the proxy form indicates otherwise.

17. FIRST DIRECTORS, ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES

- 17.1. The minimum number of Directors shall be 5 (five) Directors appointed by Category A Members.
- 17.2. There will be 1 (One) Category B Member representatives on the board (with non-voting rights as per their agreements with the Company).
- 17.3. No Directors may be Connected Persons in relation to each other directly or indirectly.
- 17.4. The first Directors of the Company shall be;
- 17.4.1. James Holley;
- 17.4.2. Dion Booyens;
- 17.4.3. Luther Makobe ;
- 17.4.4. Reginald Taylor; and
- 17.4.5. _____.
- 17.5. Each Member shall be entitled, but not obliged –
- 17.5.1. to appoint (nominate) 1 (one) Director and 1 (one) Alternate Director to the Board;
- 17.5.2. on Written notice to the Company and the other Members, to remove any Director of the Company appointed (nominated) by it; and
- 17.5.3. to replace any Director of the Company appointed by it who –
- 17.5.3.1. is removed by them in accordance with the provisions of clause 17.5.2; or
- 17.5.3.2. for any other reason, ceases to be Director/s of the Company.
- 17.6. The Category A Members shall be entitled, collectively –
- 17.6.1. to appoint a minimum of 1 (one), and a maximum of 5 (five) Directors and a minimum of 1 (one), and a maximum of 5 (five), Alternate Directors, in accordance with clause 17.9;
- 17.6.2. on Written notice supported by a majority of Category A Members to the Company and the other Members, to remove any Director/s of the Company appointed by them; and
- 17.6.3. to in accordance with clause 17.9, replace any Director/s of the Company appointed by them who –
- 17.6.3.1. are removed by them in accordance with the provisions of clause 17.6.2; or
- 17.6.3.2. for any other reason, ceases to be Director/s of the Company.
- 17.7. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution appointing her/him during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an

Alternate Director is also a Director, she/he shall have a separate vote, on behalf of each Director she/he is representing in addition to his own vote, if any.

- 17.8. In addition to the requirements prescribed by the Companies Act for a Person to serve as a Director or Alternate Director, every Director and Alternate Director must be a senior representative of a Member.
- 17.9. In any election of Directors and Alternate Directors in terms of clause 17.6, the election is to be conducted as follows –
- 17.9.1. a series of votes of those entitled to exercise votes regarding such election of a Director or Alternate Director, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies at that time have been filled; and
- 17.9.2. in each vote to fill a vacancy –
- 17.9.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 17.9.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 17.10. No Person shall be appointed as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 17.11. No appointment of a Director shall take effect until she/he has Delivered to the Company a Written consent to serve.
- 17.12. Each director shall serve for a term of 3 (three) years. Any non-executive director who has held office for a period of three years since his appointment or his last election shall retire at such Annual General meeting, either as part of the one third of directors retiring by rotation or in addition thereto.
- 17.13. Subject to clause 17.10, the Board may, in its sole discretion, co-opt and appoint additional Directors to its number between Annual General Meetings. Any casual vacancy occurring on the Board between Annual General Meetings may be filled by the Board if the number of remaining Directors are at the minimum or above, but must be filled by the Board if the number of remaining Directors falls below the minimum.
- 17.14. If there is no Director able and willing to act, then any Member may convene a Members' Meeting for the purpose of appointing Directors.

18. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR

- 18.1. A Director or Alternate Director shall cease to hold office as such –
- 18.1.1. immediately when she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director or Alternate Director and/or Member who has made the appointment has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
 - 18.1.2. when she/he dies;
 - 18.1.3. when she/he resigns by Written notice to the Company;
 - 18.1.4. if the Board determines that she/he has 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, and the Director or Alternate Director and/or the Member who has made the appointment has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
 - 18.1.5. if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
 - 18.1.6. if she/he is removed by an ordinary resolution of the Members that elected her/him to the Board;
 - 18.1.7. if she/he is removed by ordinary resolution of the Members for being negligent or derelict in performing the functions of a Director, and the Director or Alternate Director and/or the Member who has made the appointment has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
 - 18.1.8. she/he files a petition for the surrender of her/his estate or an application for an administration order, or if she/he commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he makes any arrangement or composition with her/his creditors generally;
 - 18.1.9. if she/he is absent without permission for more than 6 (six) months from Board meetings held during that period;
 - 18.1.10. if without consent of the Company by Special Resolution of the Members, she/he holds any other office of profit under the Company except that of the Chief Executive Officer or executive manager;

18.1.11. if she/he has a personal financial interest in respect of any contract with the Company and fails to declare her/his interest and the nature thereof in the manner required by the Companies Act; or

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

19. REMUNERATION

The Company may upon a Special Resolution of the Board pay or grant any type of remuneration contemplated in sections 30(6)(a) to (d) of the Companies Act to the Chief Executive Officer.

20. FINANCIAL ASSISTANCE FOR DIRECTORS, ALTERNATE DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES

The Company may not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director, Alternate Director or prescribed officer of the Company or of a Related or Inter-Related company, or to a Person Related to any such Director, Alternate Director or prescribed officer, unless approved upon a Special Resolution of the Board.

21. GENERAL POWERS AND DUTIES OF DIRECTORS

21.1. The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act, is not restricted in this MOI.

21.2. The Board of Directors may with the approval of a Special Resolution of the Members establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of and give pensions, gratuities and allowances to and make payments for or towards the insurance of any Persons who are employees of the Company.

21.3. The Board shall upon the passing of a Special Resolution by it appoint a suitable candidate to the office of Chief Executive Officer, who shall serve as an *ex officio* Director on the Board, and it may be made a term of her/his appointment that she/he be paid a pension, gratuity or other benefit on her/his retirement from office, provided that the Chief Executive Officer shall be entitled to attend all meetings of the Board, but shall not be entitled to vote on any matter to be decided at such meeting and shall not be counted in the determination of a quorum for such meeting.

- 21.4. The Board may from time to time entrust to and confer upon a Chief Executive Officer or other executive manager for the time being such of the powers vested in the Directors as they may think fit and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may deem expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for all or any of the powers of the Directors and may from time to time revoke or vary all or any of such powers. A Chief Executive Officer or other executive manager appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.
- 21.5. Without derogating from the powers of the Company in terms of clause 6, but subject to the furtherance of the objects and if provided for in the Company's annual budget and business plan (where applicable), the Directors on behalf of the Company, should, *inter alia* –
- 21.5.1. manage, insure, purchase, lease, mortgage, acquire, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property and assets;
 - 21.5.2. apply for, purchase or by any other means acquire, protect, prolong, and renew any patents, patent rights, licenses, trademarks, concessions or other rights and deal with or alienate them as provided in clause 21.4.1 hereof;
 - 21.5.3. subject to any restrictions provided for in this MOI, borrow money or, advance loans to third parties;
 - 21.5.4. open and operate banking accounts in the name of the Company;
 - 21.5.5. make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
 - 21.5.6. act as principals, agents, contractors or trustees;
 - 21.5.7. pay salaries, wages, gratuities and pensions to officers and employees;
 - 21.5.8. levy Membership Fees; and
 - 21.5.9. conclude contracts between the Company and Members, subsidiaries and associated entities of Members.
- 21.6. All communications for and on behalf of the Company is strictly regulated by the Company's Communications Policy and must at all times be complied with. Any communication outside of the defined policy will not be binding on the Company.
- 21.7. For banking purposes, the Chief Executive Officer, authorised and informed by the office he/she holds, will be required to sign all documents.

- 21.8. Board members shall attend board induction before assuming directorship.
- 21.9. Annual Board evaluation shall be conducted by a competent person or juristic person. Ideally, in one year the evaluation is conducted internally and in the following year externally.

22. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

- 22.1. For the purposes of this clause 22 –
- 22.1.1. "**Director**" includes an Alternate Director, a prescribed officer, and a Person who is a member of a statutory committee or a committee of the Board, irrespective of whether or not the Person is also a member of the Board of Directors; and
- 22.1.2. "**Related Person**" also includes any other company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is a member.
- 22.2. The remainder of this clause 22 shall not apply to a Director in respect of a decision that may generally affect –
- 22.2.1. all of the Directors in their capacity as Directors; or
- 22.2.2. a class of Persons, despite the fact that the Director is 1 (one) member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-Related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-Related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 22 to apply.
- 22.3. Within a reasonable time, a Director shall disclose any personal financial interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that personal financial interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 22.4. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board of Directors, 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.
- 22.5. If a Director has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a Related Person has a personal financial interest in the matter, the Director –

- 22.5.1. must disclose the personal financial interest and its general nature before the matter is considered at the meeting;
- 22.5.2. must disclose to the meeting any material information relating to the matter, and known to the Director;
- 22.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 22.5.4. if Present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 22.5.2 or 22.5.3;
- 22.5.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 22.5.2 or 22.5.3;
- 22.5.6. while absent from the meeting in terms of this clause 22.5 –
 - 22.5.6.1. is to be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum;
 - 22.5.6.2. is not to be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 22.5.6.3. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 22.6. If a Director acquires a personal financial interest in an agreement or other matter in which the Company has a material interest, or knows that a Related Person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that personal financial interest, and the material circumstances relating to the Director or Related Person's acquisition of that personal financial interest.

23. PROCEEDINGS OF DIRECTORS

- 23.1. The Chairperson of the Board of Directors or the Chief Executive Officer or the Company Secretary –
 - 23.1.1. may at any time summon a meeting of the Board; and
 - 23.1.2. must call a meeting of the Board if required to do so by at least 3 (three) Directors.
- 23.2. The Board of Directors may determine what period of notice (which shall not be less than 15 (fifteen) business days) shall be given of meetings of the Board of Directors and may determine the means of giving such notice, which shall be given either by electronic communication, hand delivery or courier with an acknowledgement of

receipt from a responsible person. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.

- 23.3. If all of the Directors –
- 23.3.1. acknowledge actual receipt of the notice;
 - 23.3.2. are Present at a meeting of the Board; or
 - 23.3.3. waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 23.4. The Directors may meet together for the despatch of business or adjourn a Board meeting, provided that the Board shall meet at least 4 (four) times in each financial year of the Company.
- 23.5. Unless otherwise resolved by the Directors by Special Resolution, all their meetings shall be held in the city or town where the Company's registered office is for the time being situated (which as at the date of filing this MOI is situated in Bruma, South Africa). A meeting of the Board of Directors may be conducted by electronic communication and/or 1 (one) or more Directors may participate in a meeting of the Board of Directors by electronic communication so long as the electronic communication facility employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 23.6. The quorum necessary for the transaction of the business of the Board is a majority of the number of Directors in office, provided that the majority of the Directors present must be non-executive Directors.
- 23.7. If within 30 (thirty) minutes from the time appointed for the Board meeting to commence, a quorum is not present, the Board meeting shall be postponed, without motion, vote or further notice, for 1 (one) week to the same day and venue in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Board meeting a quorum is not Present within 10 (ten) minutes from the time appointed for the Board meeting then, the Directors Present at the meeting shall be deemed to be the requisite quorum.
- 23.8. If at any meeting the Chairperson is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Vice-Chairperson shall be the Chairperson of the meeting, and if the Vice-Chairperson is not Present at the Meeting, Directors Present may choose 1 (one) of their number to be Chairperson of the meeting.
- 23.9. On any matter before the Board, each Director Present at a Meeting or voting on a Round Robin Resolution shall be entitled to a vote.
- 23.10. Every matter to be decided by the Board of Directors shall, wherever possible and in the first instance, be required to be adopted with the unanimous support of the

Directors Present at the Meeting. Any dissent or opposing positions shall be explained by the relevant Director and, where possible, an alternative solution proposed by that Director. In the event that, in the reasonable opinion of the Chairperson, the unanimous approval of the Board of Directors is not possible, the matter shall be decided, subject to the provisions of this clause 23 and any other provisions in this MOI requiring a Special Resolution of Directors, by a majority of the votes cast on the resolution, provided that any dissent or the view of the minority shall be recorded and clearly set out in the minutes of the Board meeting.

- 23.11. Notwithstanding the provisions of this clause 23, in respect of any matter to be decided at a Board meeting that relates directly or indirectly to compliance with competition law, such matter shall be decided by way of a unanimous resolution of the Directors Present at the Meeting.
- 23.12. In the case of a tied vote, the Chairperson may cast a deciding vote.
- 23.13. A Round Robin Resolution of Board of Directors shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided upon. One or more Alternate Directors shall be entitled to sign a Round Robin Resolution in the stead of the Director for which she/he serves as alternate if one or more Directors are not present to sign, and without his/their vote/s the requisite majority cannot be achieved.

24. BOARD AND STATUTORY COMMITTEES AND TASK TEAMS

- 24.1. The Board of Directors may appoint any number of board, statutory and other committees and task teams and delegate to such committees and/or task teams any authority of the Board. The Board may at any time reduce or increase the number of committees and task teams, amend and/or determine their terms of reference. The members of board and statutory committees and task teams may include Persons who are not Directors, provided that such Persons are not Ineligible or Disqualified, but such individuals shall not be able to vote.
- 24.2. No Person shall be appointed as a member of a Board or statutory committee or a task team, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a committee or task team nor act as such a member.
- 24.3. A Person placed under probation by a court must not serve as a member of a board or statutory committee or task team unless the order of court so permits.
- 24.4. A member of a board or statutory committee shall cease to hold office as such immediately when she/he becomes Ineligible or Disqualified in terms of the Companies Act or ceases to hold office for any reason.

- 24.5. Board or statutory committees may consult with or receive advice from an appropriately qualified Person.
- 24.6. Meetings and other proceedings of a board or statutory committee consisting of more than 1 (one) member shall be governed *mutatis mutandis* by the provisions of this MOI regulating the meetings and proceedings of the Board of Directors.
- 24.7. Each Board committee must have a terms of reference dealing with its composition, role and purpose, functions, delegated authorities, tenure, meeting requirements and procedures and reporting mechanism to the Board.
- 24.8. Notwithstanding that it might afterwards be discovered that there has been some defect in the appointment or continuance in office of a Director or person acting as a Director, bona fide decisions by the Board or by any person acting in good faith as a Director of the company are as valid as if every such person had been duly appointed, were qualified and continued to be a Director or were entitled to vote, as the case may be.

25. MEMBER COMMITTEES

- 25.1. The Board of Directors may, in consultation with the Category A and B Members, appoint committees to deal with matters that are exclusive to Category A and B Members, and delegate to such committees any authority (excluding decision making authority) of the Board in respect of matters relating exclusively to the Category A and B Members.
- 25.2. Notwithstanding the provisions of clause 25, a Category A and B Member committee must comprise exclusively of representatives of the Category A and B Members, and may include Persons who are not Directors, provided that such Persons are not Ineligible or Disqualified, but such Individuals shall not be able to vote.
- 25.3. Meetings and other proceedings of a Category A and B Member committee consisting of more than 1 (one) member shall be governed *mutatis mutandis* by the provisions of this MOI regulating the meetings and proceedings of the Board of Directors, save that the quorum for any meeting of such committee shall be at least 3 (three) members of the relevant committee Present at the Meeting.

26. APPOINTMENT OF COMPANY SECRETARY

- 26.1. The Board of Directors shall appoint a Company Secretary from time to time. In the event that the Board appoints a Company Secretary, such Company Secretary –
- 26.1.1. shall be a permanent resident of South Africa and remain so while serving as Company Secretary; and
- 26.1.2. shall have the requisite knowledge of or experience in relevant laws; and
- 26.1.3. may be a Juristic Person subject to the following –

- 26.1.3.1. 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; and
 - 26.1.3.2. at least 1 (one) employee of that Juristic Person, or 1 (one) partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 26.1.1 and 26.1.2.
- 26.2. The Board may fill a vacancy arising in the office of the Company Secretary by appointing a Person whom the Directors consider to have the requisite knowledge and experience in terms of section 88 of the Companies Act. 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 clauses 26.1.1 and 26.1.2.
- 26.3. If at any time a Juristic Person or partnership holds office as Company Secretary of the Company –
- 26.3.1. the Juristic Person or partnership must immediately notify the Board of Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 26.1.3, and is regarded to have resigned as Company Secretary upon giving such notice to the Company;
 - 26.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 26.1.3, until the Company has received a notice contemplated in clause 26.3.1; and
 - 26.3.3. any actions taken by the Juristic Person or partnership in performance of its functions as Company Secretary are not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 26.1.3 at the time of such actions.

27. NOTICES

- 27.1. The Company may give notices, documents, records or notices of availability of the foregoing by personal or courier delivery to the Member and/or Director or by transmitting by electronic communication to such Person's last known address. The Company must give notice of –
- 27.1.1. any Members' Meeting to every Member of the Company; and
 - 27.1.2. the availability of a document, record or statement to the Members.
- 27.2. All Member should furnish an Electronic Address to the Company, by doing so –
- 27.2.1. authorises the Company to use electronic communication to give notices, documents, records or statements or notices of availability of the foregoing to it; and

- 27.2.2. confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 27.3. The Company may post notices on its website from time to time, in addition to Delivering such notices in terms of this clause 27, but the posting of such notices on its website shall not be deemed to constitute proper notice for purposes of this clause 27.
- 27.4. A Member shall be bound by every notice.
- 27.5. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed Delivery.
- 27.6. As regards the signature of an electronic communication by a Member, it shall be in such form as the Board of Directors may specify to demonstrate that the electronic communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the electronic communication that it is the Member's intention to use the electronic communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the electronic communication which contains the name of the Member sending it in the body of the electronic communication.

28. INDEMNITY

- 28.1. For the purposes of this clause 28, "**Director**" includes a former Director, an Alternate Director, a prescribed officer, a Person who is a member of a statutory committee and a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 28.2. The Company may –
- 28.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless that conviction was based on strict liability;
- 28.2.2. cover the costs/legal expenses arising out of a Board member's role as a Company Director ; and
- 28.2.3. not directly or indirectly indemnify a Director for –
- 28.2.3.1. any liability, other than in respect of –
- 28.2.3.1.1. any liability arising in terms of sections 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
- 28.2.3.1.2. any fine contemplated in clause 28.2.1;

- 28.2.3.2. any expenses contemplated in clause 28.2.2, irrespective of whether it has advanced those expenses, if the proceedings –
 - 28.2.3.2.1. are abandoned or exculpate the Director; or
 - 28.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 28.2.3.1.
- 28.3. The Company may upon the passing of a Special Resolution of its Board purchase insurance to protect –
 - 28.3.1. a Director against any liability or expenses for which the Company is permitted to indemnify a Director, as contemplated in clause 28.2.2 or
 - 28.3.2. the Company against any contingency, including but not limited to –
 - 28.3.2.1. any expenses –
 - 28.3.2.1.1. that the Company is permitted to advance in accordance with clause 28.2.2; or
 - 28.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 28.2.3.2; or
 - 28.3.2.1.3. any liability for which the Company is permitted to indemnify a Director in accordance with clause 28.2.3.1.
- 28.4. The Company is entitled to claim restitution from a Director of the Company and from a Director 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.

29. MINUTES AND RECORDS

- 29.1. The Company shall keep minutes of every Members' Meeting, meetings of the Board or board or statutory committee/s and task team/s, and include in the minutes –
 - 29.1.1. any declaration given by notice or made by a Director as required by clause 22; and
 - 29.1.2. every resolution adopted by the Board.
- 29.2. Resolutions adopted by the Board –
 - 29.2.1. must be dated and sequentially numbered; and
 - 29.2.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 29.3. The Chief Executive Officer (or any other Person responsible for the efficient administration of the Company and compliance by the Company with statutory and regulatory requirements) shall table the minutes of each meeting at the next Members' Meeting, Board meeting or committee meeting, as the case may be, unless such

minutes were previously circulated to all Persons that participated in the meeting for comment and approval.

29.4. The Chief Executive Officer (or any other Person responsible for the efficient administration of the Company and compliance by the Company with statutory and regulatory requirements) shall maintain records of all correspondence and any transactions of the Company.

29.5. Any minutes of a meeting or a resolution signed by the Chairperson of the meeting, or by the Chairperson of the next meeting of the Board, are/is evidence of the proceedings of that meeting or adoption of that resolution, as the case may be, without the necessity for further proof of the facts stated.

30. AUTHENTICATION OF DOCUMENTS

30.1. Any Person appointed by the Board of Directors for this purpose shall have power to authenticate any documents affecting the composition of the Company and any resolutions passed by the Company or the Board of Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts.

30.2. A document purporting to be a copy of a resolution of the Board of Directors or an extract from the minutes of a meeting of the Board which is certified as such in accordance with the provisions of clause 30.1 shall be conclusive evidence in favour of all Persons dealing with the Company upon the faith thereof that such resolution has been duly passed, or as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Board of Directors.

31. COMPLIANCE

31.1. The activities and objectives of the Company shall at all times be in compliance with the laws of the Republic of South Africa as may be amended from time to time.

31.2. The Company is committed to promoting competition among its Members and within the Industry, and hereby undertakes to comply with any South African competition law requirements.

32. FUNDAMENTAL TRANSACTIONS AND CONVERSION

32.1. The Company may not –

32.1.1. amalgamate or merge with or convert to a profit company; or

- 32.1.2. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 32.2. Any proposal to –
- 32.2.1. dispose of all or the greater part of its assets or undertaking; or
- 32.2.2. amalgamate or merge with another Non-Profit Company; or
- 32.2.3. voluntarily dissolve the Company,
- must be submitted to the Members for approval by way of Special Resolution, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Companies Act, respectively.
- 32.3. Sections 115 and 116 of the Companies Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in this clause 32.

33. WINDING UP OR DISSOLUTION

- 33.1. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, or within 6 (six) months of the withdrawal of the Company's exemption in terms of section 10(1)(d)(iv) of the Income Tax Act (or such longer period as the Commissioner of the South African Revenue Services may allow), the Company shall transfer its net assets to any similar non-profit entity which has been approved by the Commissioner of the South African Revenue Service in terms of section 30B of the Income Tax Act, or any institution, board, voluntary association or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the aforementioned Act, which has similar objects to those of the Company.
- 33.2. The receiver of the Company's net assets in the event of liquidation shall be determined by the Members by way of Special Resolution immediately before the dissolution of the Company, or failing such determination, by a court order.

34. ANTI-CORRUPTION

A Person, by becoming a Member or a Director of the Company, confirms, warrants and represents that he/she/it will not, and in the case of a Member, that it will ensure that its representatives do not engage in any form of corruption or bribery of any person including (without limitation) designated public officials or to act in contravention of any legislation prohibiting such behaviour. Any contravention of this clause 34 by a Member (or any representative of that Member) or a Director shall be grounds for termination of that Person's membership or Directorship in the Company, as the case may be.

Annexure A – Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;¹

"**audit**" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**board**" means the board of directors, who shall be Non Executive Directors.

"**business days**" has the meaning determined in accordance with section 5(3);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date —
was registered in terms of the —

Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2;

was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"**director**" means a member of the board of a company, as contemplated in section 66 or an alternate director of a company and includes any person occupying the position of a director or alternate director

"**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"**file**", when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

"**financial statement**" includes—

annual financial statements and provisional annual financial statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of companies; and financial information in a circular, prospectus or provisional announcement of results, that an actual or

¹ Regulation 25(3) contains requirements as to what the accounting records must include.

prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

"group of companies" means a holding company and all of its subsidiaries;

"holding company", in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

"incorporator", when used—

with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"individual" means a natural person;

"inter-related", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series; **"juristic person"** includes—

(a) a foreign company; and

(b) a trust, irrespective of whether or not it was established within or outside the Republic;

"knowing", **"knowingly"** or **"knows"**, when used with respect to a person, and in relation to a particular matter, means that the person either—

(a) Had actual knowledge of the matter; or

(b) Was in a position in which the person reasonably ought to have—

had actual knowledge; investigated the matter to an extent that would have provided the person with actual knowledge; or taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

of consequence in determining the matter; or might reasonably affect a person's judgement or decision-making in the matter;

"nominee" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"non-profit company" means a company —

incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1;

"ordinary resolution" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) — at a shareholders meeting; or by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"personal financial interest", when used with respect to any person—

means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but does not include any interest held by a person in a unit trust

or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"prescribed officer" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

"record date" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

"registered auditor" has the meaning set out in the Auditing Profession Act;

"registered office" means the office of a company, or of an external company, that is registered as required by section 23;

"related", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

"rules" and **"rules of a company"** means any rules made by a company as contemplated in section 15(3) to

"subsidiary" has the meaning determined in accordance with section 3;

"voting power", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights; and

"wholly-owned subsidiary" has the meaning determined in accordance with section 3(1)(b).

Annexure B – Ineligible/disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)

1. A Person is ineligible to be a Director if the Person –
 - 1.1. is a Juristic Person;
 - 1.2. is an unemancipated minor, or is under a similar legal disability; or
 - 1.3. does not satisfy any qualification set out in the MOI.

2. A Person is disqualified to be a Director if –
 - 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, 1984 (Act No. 69 of 1984); or
 - 2.2. the Person –
 - 2.2.1. is an unrehabilitated insolvent;
 - 2.2.2. is prohibited in terms of any public regulation to be a Director;
 - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence-
 - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
 - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in sections 69(2) or 69(5); or
 - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

Annexure C – List of Members as at date of filing

1. Category A – Private and Public Companies

1.1 Pandrol

1.2 Timken

1.3 Ndalama Winders

1.4 Swasap

1.5 Traxtion Sheltam

2. Category B – State Owned Companies

2.1 Transnet

Annexure D – Membership Criteria and Application Form

Part A – Membership Criteria

1. Membership of the Company is open only to legally established companies in the Republic of South Africa. Accordingly, membership of the Company is not open to any unincorporated voluntary associations.
2. Applicant accept automatic annual membership renewal, termination of membership shall be in accordance to MOI.
3. Applicant accepts to support Company activities, for the betterment of the industry, that includes but not limited to; Rail industry study, market research, export market access;

Part B – Checklist

Annexure E – Competition law requirements and the guidelines

The Company is committed to promoting competition among its Members and within the Industry. In that regard and in accordance with the provisions of clause 31.2, it is recorded that at meetings of the Company

–

1. the Members shall –
 - 1.1. ensure that their objections (if any) are noted in the minutes of the meetings;
 - 1.2. leave the meeting should the discussion persist, notwithstanding their objection/s;
 - 1.3. ensure that minutes of meetings are properly filed both electronically and in a paper format;
 - 1.4. seek advice from their Company legal committee representative if competitively sensitive information is requested;
 - 1.5. seek advice from their Company legal committee representative before participating in discussions relating to the following –
 - 1.5.1. agreeing to an Industry “code of conduct” or constitution;
 - 1.5.2. collection and dissemination of Industry information (whether publicly available or not);
 - 1.5.3. setting of Industry standards;
 - 1.5.4. setting of membership criteria;
 - 1.5.5. benchmarking; and
 - 1.5.6. Company-sponsored research;
 - 1.6. inform their Company legal committee representative immediately if they are unsure about any issues that were discussed at a Company meeting; and
2. the Members shall not –
 - 2.1. engage in –
 - 2.1.1. fixing prices and/or trading conditions;
 - 2.1.2. allocating or dividing markets, customers, suppliers and/or territories; nor
 - 2.1.3. collusive tendering or bidding;
 - 2.2. discuss or agree on –
 - 2.2.1. competitively sensitive business information;
 - 2.2.2. output levels;
 - 2.2.3. sales volumes;
 - 2.2.4. purchase and selling prices, costs, and/or terms and conditions of supply;

- 2.2.5.matters relating to individual customers or suppliers;
- 2.2.6.advertising policies that reinforce uniformity of prices and products;
- 2.2.7.business plans; nor
- 2.2.8.joining of forces to “hurt” a competitor;
- 2.3. enter into joint buying or selling arrangements without legal advice;
- 2.4. set standard terms and conditions or technical standards that aim to reduce competition between Members;
- 2.5. place pressure on Members to adopt a particular policy in their organisation;
- 2.6. assist Members with problems that are peculiar to a single company or other entity;
- 2.7. participate in unofficial meetings on any subject without legal advice;
- 2.8. exclude competing companies or other entities from a market;
- 2.9. restrict capacity or output; nor
- 2.10. blacklist or boycott customers or suppliers.

Annexure F – Further Minimum Requirements for Directorship

Requirements to become a RRA Director

RRA (the Company) is a Non-Profit Company and the normal governance requirements for Directors under South African law applies. The Company's Board of Directors are registered Non-Executive Directors of the Company for a period of 2 (two) years (or until a person resigns, whichever event is sooner), and said Directors will sign an agreement with the Company in order to be a Director of the Company.

Qualifying Criteria for Board Nomination:

1. Institute of Directors in South Africa (IoDSA)

- 1.1 Nominated Candidates should have active IoDSA membership which IoDSA membership shall be at the cost of the individual and such membership must be valid for the period of their directorship.
- 1.2 Nominated Candidates should have attended a IoDSA course and/or have shown active Continuing Professional Development (CPD) points in governance and risk.
- 1.3 Nominated Candidates should have active membership of a professional, e.g. legal, accountancy, engineering, etc., body and/or relevant Rail Industry experience in the absence of active membership of a professional body.

2. Knowledge, Skill and Experience

- 2.1. Nominated candidates should have appropriate qualifications, expertise knowledge, substantial senior managerial experience and at least 10 (ten) years Rail Industry experience.
- 2.2. Nominated candidates should be visionaries who are able to formulate and implement strategy, define policies and priorities consistent with the good corporate governance.
- 2.3. Nominated candidates must have fair knowledge of risk management, financial management, project management and the business of the Company.
- 2.4. Nominated candidates must have the right level of knowledge, skill and experience in order to fulfil their responsibilities effectively, as this affects governing body effectiveness, which in turn influences organisational success.
- 2.5. Nominated candidates must possess personal competencies to serve effectively and add value, this includes self-awareness, self-management, relationship management, integrity, fairness, professionalism and courage.
- 2.6. Nominated candidates must know that a Board members role is a unique role that requires the ability to provide good leadership and make sound business judgement calls.

3. Diversity

- 3.1. Diversity is relevant in promoting better decision making and effective governance, including the field of knowledge, skill and expertise, as well as age, culture, race and gender.
- 3.2. Nominations should be diverse enough to enable better decision making and to prevent groupthinking.

4. Independence

- 4.1. All Board members, as a matter of law, has a duty to act with independence of mind in the best interest of the organisation.
- 4.2. All Board members must be fit and proper individuals.

5. Legality and Compliance

Nominated candidates and all Board members must qualify to serve on the governing body in terms of the Companies Act as amended, other related laws and good corporate governance.

6. Good standing with the Company

Good standing means any Member who has paid in full his/her Membership Fees, only Members who are in good standing are eligible to be nominated and only Members in good standing are eligible to nominate and vote.

7. Remuneration of Non-Executive Directors

The Company's Board of Directors are volunteers, except for the Chief Executive Officer who is employed by the Company on a full-time basis, and who is *ex officio* Director. The Company's Board members are not allowed to gain directly or indirectly financially from their position on the Company's Board.

NB: Only RRA members in good standing can nominate members in good standing for RRA Director position/s.

Annexure G – Government stakeholders

- 1. Department of Trade and Industry**
- 2. Department of Transport**
- 3. Department of Public Enterprise**
- 4. Railway Safety Regulator**
- 5. Transport Education Training Authority**