

# MEMORANDUM OF INCORPORATION

OF THE

## SOUTHERN AFRICAN EMERGENCY SERVICES INSTITUTE NPC

(REGISTRATION NUMBER: 2014/162285/08)



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FINAL

## **1. OBJECTIVES AND ADOPTION OF MEMORANDUM OF INCORPORATION**

- 1.1 The Company is a non-profit company ('NPC'), with Members, having the following objectives:
  - 1.1.1 to promote emergency services for the people in Southern Africa through advocacy, support and participation in the development of professional standards, policy and legislation within the field of emergency services;
  - 1.1.2 to facilitate training and development of its Members, the community and other relevant structures in the field of emergency services by sharing and publishing relevant research and training materials and facilitating forums for discussion and dissemination of emergency services techniques, methodologies and information;
  - 1.1.3 to serve as an organizational aid to promote the interests of its Members as a whole, and the emergency services, in pursuance of the objects of the emergency services;
  - 1.1.4 to act independently in so far as their actions do not affect the general policy of emergency services;
  - 1.1.5 to do all such other things as are incidental to, or conducive to the attainment of all or any of the above objectives;
- 1.2 The Company has adopted this unique form of Memorandum of Incorporation ('MOI') and, accordingly, the standard form of MOI for non-profit companies as contained in the Regulations to the Companies Act (No.71 of 2008, as amended) shall not apply to the Company;
- 1.3 This MOI was adopted by Special Resolution passed on 26 June 2015, a copy of which was filed herewith, in substitution for the Company's existing Constitution in accordance with Section 16(1)(c) of the Act;
- 1.4 This MOI takes effect (in terms of Section 16(9) (b) (i) of the Act) on the date of filing hereof.

## **2. INTERPRETATION**

In this Memorandum of Incorporation:–

- 2.1 a reference to a section by number refers to the corresponding Section of the Act, and
- 2.2 words that are defined in the Act bear the same meaning in this MOI as in the Act;
- 2.3 "Act" means the Companies Act, 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Regulations promulgated in terms of the Act and Schedules to the Act as amended from time to time;
- 2.4 "AGM" means annual general meeting;
- 2.5 "Board" means the Board of Directors of the Company as constituted from time to time;

- 2.6 “Commission” means the Companies and Intellectual Property Commission established in accordance with Section 185 of the Act;
- 2.7 “Company” means The South African Emergency Services Institute NPC, duly incorporated under registration number 2014/162285/08;
- 2.8 “Company Rules” means any rules made by the Board in respect of the governance of the Company as contemplated in Sections 15(3) to 15(5) of the Act;
- 2.9 “Director” means a member of the Board as contemplated in Section 66 of the Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 2.10 “Executive Director” means a director involved in the day to day management of the company;
- 2.11 “Members” means and include those persons as more fully described in this MOI;
- 2.12 “MOI” means Memorandum of Incorporation as contemplated in Section 15 of the Act;
- 2.13 An expression which denotes any gender includes the other genders;
- 2.14 “Person” means the natural person and includes a juristic person;
- 2.15 “Prescribed Officer” means a person who, within a company, performs any function that has been designated by the Minister of Cabinet responsible for companies in terms of Section 66(10);
- 2.16 The singular includes the plural and vice versa;
- 2.17 The terms ‘business day’ has the meaning referred to in Section 5(3) of the Act and includes any day other than Saturday, Sunday or South African Public Holidays as gazetted from time to time and shall be calculated by excluding the first day and including the last day.

### **3. ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY**

#### **3.1 Incorporation**

- 3.1.1 The Company is incorporated as a Non Profit Company (‘NPC’), as defined in the Act.
- 3.1.2 The Company is incorporated in accordance with and governed by:-
- 3.1.2.1 the unalterable provisions of the Act applicable to Non Profit Companies;
  - 3.1.2.2 the alterable provisions of the Act that are applicable to Non Profit Companies, subject to any limitation, extension, variation or substitution set out in this MOI; and
  - 3.1.2.3 the provisions of this MOI.

### 3.2 Objectives and powers of the Company

- 3.2.1 The objectives of the Company are as set out in paragraph 1 and, except to the extent necessarily implied by the stated objectives, the purposes and powers of the Company are not subject to any restriction, limitation or qualification as contemplated in Section 19(1)(b)(ii) of the Act;
- 3.2.2 The Company is not subject to any provision contemplated in Section 15(2)(b) or (c) of the Act;
- 3.2.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4) (b) of Schedule 1 of the Act.

### 3.3 Memorandum of Incorporation and Company Rules

- 3.3.1 This MOI of the Company may be altered or amended in the manner set out in Section 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in Section 16(1)(c) of the Act;
- 3.3.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in Section 15(3) to (5) of the Act is not limited or restricted in any manner by this MOI;
- 3.3.3 The Board must publish any rules made in terms of Section 15(3) to (5) of the Act by delivering by electronic means, by courier or by registered mail a copy of those rules to each Member;
- 3.3.4 The Company must publish a notice of any alteration of the MOI or the Company Rules, made in terms of Section 17(1) of the Act by delivering a copy of those alterations to each Member by electronic means, by courier or by registered mail;
- 3.4 Application of optional provisions of the Act- the Company elects, in terms of Section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.

### 3.5 Members of the Company

- 3.5.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members who are in either of two classes, being Council Members or Non-Council Members, respectively;
- 3.5.2 The terms and conditions of Membership in the Company are set out in this MOI.

## **4. ARTICLE 2 – MEMBERS AND RIGHTS OF MEMBERS**

### 4.1 Membership

- 4.1.1 The Company shall from time to time keep a register of Members at its registered office;

- 4.1.2 No Member shall be entitled to transfer his Membership to any other person, or to alienate or exercise any rights vested in or controlled by such Member (as required to be so vested or controlled) without the prior written authorization of the Board;
- 4.1.3 Members shall be entitled to enjoy all the privileges and facilities provided by the Company;
- 4.1.4 The Company will comply with all legislation and acknowledges the principles contained in leading governance publications and will, where applicable, either apply the principles of such publications or be able to explain its non-compliance to these principles;
- 4.1.5 Members will be required to adhere to the Company's Rules and Code of Conduct, as well as key policies as adopted by the Board and amended from time to time;
- 4.1.6 Membership of the Company shall be separated into the following categories:
  - 4.1.6.1 Ordinary Members;
  - 4.1.6.2 Council Members;
  - 4.1.6.3 Fellow Members;
  - 4.1.6.4 Life Members;
  - 4.1.6.5 Honorary Members;
  - 4.1.6.6 Corporate Members; and
  - 4.1.6.7 Ex-officio Members.

## 4.2 Ordinary Members

- 4.2.1 Any Member of the public over the age of 16 may on application and subsequent approval become an Ordinary Member;
- 4.2.2 Candidates for Ordinary Membership shall:
  - 4.2.2.1 apply in writing in such manner as may be prescribed by the Board from time to time;
  - 4.2.1.2 be proposed and seconded in writing by 2 (two) Members of a specific Branch as proposer and seconder respectively, and their applications shall be considered and approved by the Branch;
- 4.2.3 Any Ordinary Member shall be entitled to be represented at any general meeting and standing forum or sub-committee meeting of the Company by his duly elected and authorized Council Member;
- 4.2.4 Ordinary Members are eligible to hold office in the Company provided they are elected as Council Members;
- 4.2.5 The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Ordinary Members, including requirements which must be satisfied by



any nominee for appointment as an Ordinary Member. Any such Company Rules adopted by the Board shall be binding on the Company.

#### 4.3 Council Member

- 4.3.1 Council Members will be appointed at the Branch AGM after having their nominations submitted to the Nominations Committee. Nominations must be submitted in writing in the prescribed manner and be proposed and seconded by 2 (two) Branch Members;
- 4.3.2 The Chairperson and Vice Chairperson of each Branch shall be nominated by their Branches as Council Members for a period not exceeding 4 (four) years;
- 4.3.3 Thereafter, for every 100 (one hundred) Branch Members, or portion thereof, a Branch may nominate 1 (one) additional representative as a Council Member for a period not exceeding 4 (four) years;
- 4.3.4 Should a Council Member who is a representative of a Branch, be elected to serve as an Office Bearer of the Company, by serving on one or more of the Company's committees or Working Groups, that Branch may nominate an alternative Branch representative to serve in the Office Bearer's place. The Office Bearer will remain a Council Member until their term of office expires;
- 4.3.5 The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Council Members, including requirements which must be satisfied by any nominee for appointment as a Council Member. Any such Company Rules adopted by the Board shall be binding on the Company.

#### 4.4 Fellow Member

- 4.4.1 Fellow Membership may be awarded to Members of the Company who have actively and effectively furthered the objectives of the Company and who are:
  - 4.4.1.1 proposed and seconded in writing, in the prescribed manner, by 2 (two) Fellow Members or Life Members, as proposer and seconder respectively, and their nominations shall be considered by the Board or a sub-committee thereof;
  - 4.4.1.2 in the case of there being a sub-committee, have their nominations submitted to the Members at the next general meeting when a majority of votes of the Council Members then present shall determine whether or not the applicants shall be admitted as Fellow Members;
- 4.4.2 Any Fellow Member shall be entitled to be represented at any general meeting of the Company by his duly elected and authorized Council Member;
- 4.4.3 Admission to Membership of the Company as a Fellow Member shall be at the sole discretion of the Council Members, who shall not be required to give reasons for their decisions;
- 4.4.4 A Fellow Member is eligible to hold office in the Company provided they are elected as Council Members;

- 4.4.5 The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Fellow Members, including requirements which must be satisfied by any nominee for appointment as a Fellow Member. Any such Company Rules adopted by the Board shall be binding on the Company;
- 4.4.6 Once the Company Rules relating to the appointment of Fellow Members has been adopted by the Board at least 30 (thirty) days prior to an AGM, the Board shall receive, consider and approve nominations for the appointment of Fellow Members and the Board shall present such nominees as approved by the Board for appointment by the Council Members.
- 4.5 Life Member
- 4.5.1 Life Membership may be awarded to Members of the Company in good standing and who have over many years, as a Member of any Emergency Service, rendered outstanding service to the Company and who are:
- 4.5.1.1 proposed and seconded in writing, in the prescribed manner, by 2 (two) serving Council Members, as proposer and seconder respectively, and their nominations shall be considered by the Board or a sub-committee thereof;
- 4.5.1.2 in the case of there being a sub-committee, have their nominations submitted to the Members at the next general meeting when a majority of votes of the Council Members then present shall determine whether or not the applicants shall be admitted as Life Members;
- 4.5.2 Any Life Member shall be entitled to be represented at any general meeting of the Company by his duly elected and authorized Council Member;
- 4.5.3 Admission to Membership of the Company as a Life Member shall be at the sole discretion of the Council Members, which shall not be required to give reasons for its decisions;
- 4.5.4 A Life Member shall be eligible for holding an office of the Company, except that of the President or Vice-President, and provided that he/she is elected as a Council Member;
- 4.5.5 Life Membership could be confirmed at retirement but not exclusively and automatically, notwithstanding meeting the criteria to be eligible for nomination and approval of a Life Membership as prescribed in the Company Rules. Life Members shall not pay any subscriptions to the Company;
- 4.5.6 The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Life Members, including requirements which must be satisfied by any nominee for appointment as a Life Member. Any such Company Rules adopted by the Board shall be binding on the Company;
- 4.5.7 Once the Company Rules relating to the appointment of Life Members has been adopted by the Board at least 30 (thirty) days prior to an AGM, the Board shall receive, consider and approve nominations for the appointment of Life Members and the Board shall present such nominees as approved by the Board for appointment by the Council Members.

#### 4.6 Honorary Member

4.6.1 Honorary Membership may be awarded to non-Members of the Company who have made a significant and valuable personal contribution to the Emergency Services profession and who are:

4.6.1.1 proposed and seconded in writing, in the prescribed manner, by 2 (two) serving Council Members, as proposer and seconder respectively, and their nominations shall be considered by the Board or a sub-committee thereof;

4.6.1.2 in the case of there being a sub-committee, have their nominations submitted to the Members at the next general meeting when a majority of votes of the Council Members then present shall determine whether or not the applicants shall be admitted as Honorary Members;

4.6.2 Admission to Membership of the Company as an Honorary Member shall be at the sole discretion of the Council Members, which shall not be required to give reasons for its decisions;

4.6.3 An Honorary Member shall not be eligible for holding an office of the Company;

4.6.4 An Honorary Member shall not pay any subscriptions;

4.6.5 The Board may from time to time adopt Company Rules regarding the nomination and appointment of Honorary Members, including requirements which must be satisfied by any nominee for appointment as an Honorary Member. Any such Rules adopted by the Board shall be binding on the Company;

4.6.6 In the event that there are no such Company Rules adopted by the Board, the procedure for appointment of Honorary Members shall be the same as that followed for the appointment of Life Members, with such variation as may be required by context;

4.6.7 Once the Company Rules relating to the appointment of Honorary Members has been adopted by the Board at least 30 (thirty) days prior to an AGM, the Board shall receive, consider and approve nominations for the appointment of Honorary Members and the Board shall present such nominees as approved by the Board for appointment by the Council Members.

#### 4.7 Corporate Member

4.7.1 Corporate Membership may be awarded to a private or government institution or organization who shall:

4.7.1.1 apply in writing in such manner as may be prescribed by the Board from time to time;

4.7.1.2 be proposed and seconded in writing by 2 (two) serving Council Members representing a local Branch as proposer and seconder respectively, and their applications shall be considered by the Board or a sub-committee thereof;

- 4.7.1.3 in the case of there being a sub-committee, have their applications submitted to the Members at its next general meeting when a majority of votes of the Council Members then present shall determine whether or not the applicants shall be admitted as Corporate Members;
- 4.7.2 A Corporate Member must submit written confirmation of its duly approved representative to Council. This representative is not eligible to serve as a Council Member or hold office in the Company;
- 4.7.3 Admission to Membership of the Company as a Corporate Member shall be at the sole discretion of the Council Members, who shall not be required to give reasons for their decisions.
- 4.8 Ex officio Member
- 4.8.1 Any person appointed by the Board as a Director shall ex officio be a Member of the Company;
- 4.8.2 Save as set out in clause 4.8.1 above, employees of the Company may not be ex officio Members of the Company.
- 4.9 Subscriptions
- 4.9.1 Subscription fees for Members shall be determined by the Board from time to time;
- 4.9.2 All subscriptions shall be payable annually in advance and shall become due on the date of the new Member's enrolment and thereafter at the beginning of the Company's financial year;
- 4.9.3 A Member's first year of subscriptions fees shall be pro-rated in accordance with his date of enrolment.
- 4.10 Members' Rights
- 4.10.1 If, at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 57(4) of the Act, the authority of the Members to act without notice or compliance with any other internal formalities, is not limited or restricted by this MOI;
- 4.10.2 In addition to rights conferred on it by the Act, Membership of the Company shall confer upon each Member:
- 4.10.2.1 the right to inspect, and to receive copies of, the annual financial statements of the Company; and
- 4.10.2.2 the right to receive notice of and to attend and speak at meetings in accordance with the provisions of this MOI, provided that the right to vote at any such meetings shall only be enjoyed by Council Members. For avoidance of any doubt, the Ordinary, Corporate, Fellow, Life, Honorary and ex-officio Members shall not have any voting rights at Council Meetings.

#### 4.11 Termination of Membership

4.11.1 A Member may terminate their Membership by giving notice to that effect, in writing, to the office of the Executive Director;

4.11.2 Any Member shall *ipso facto* cease to be a Member:

4.11.2.1 if their estate should be sequestrated or, being a company or close corporation, it should be liquidated or placed under business rescue. Upon rehabilitation, a fresh application for Membership must be made if the former Member wishes to become a Member again;

4.11.2.2 if they neglect or refuse to pay their annual subscription, or any other monies which may be due from them to the Company after being required, in writing, so to do, which debts shall, however, remain due to and recoverable by the Company; provided that they may be readmitted to Membership by resolution of the Board upon payment of their subscription and/or other arrears due to the Company;

4.11.2.3 if they neglect or refuse to comply with this MOI, the Company Rules and/or any Code of Conduct adopted by the Board, after being required, in writing to do so; or

4.11.2.4 if they are convicted of any criminal offence involving dishonesty, or any other offence deemed to be serious enough by the Board.

#### 4.12 Branches

4.12.1 The Board may permit the establishment of Branches for the benefit of Members in a particular geographical area or with particular business interests where the Board is satisfied that a reasonable need exists for the establishment of such a Branch;

4.12.2 The Board shall from time to time, invite Members in writing by means of notices on its website and at its office and other venues as determined by the Board, to nominate persons to serve on Branch Committees. The Members of the Branch will at the time of the Branch AGM, vote to appoint nominees approved by the Board to the Branch Committee;

4.12.3 Each Branch, regardless of the number of Members in that Branch, shall be represented by the Chairperson and Vice-Chairperson of the Branch at Council. Thereafter, for every 100 (one hundred) additional Members since the Branch was constituted, such Branch shall have 1 (one) additional representative in Council;

4.12.4 If only 1 (one) person is nominated by a Branch, such nomination shall be deemed to be accepted by the Board unless the Board, by giving written notice (setting out the reasons) to the person so nominated and to the Branch which nominated the said person, objects to the nomination of such person. The Board shall consider any representations made by or on behalf of the person nominated or the Branch which nominated the person and the Board

shall then, on reasonable grounds, make a determination about the suitability of the person to serve as a Member of Council;

- 4.12.5 If a Branch entitled to nominate a Member fails to nominate a person to serve as a member of Council, the Board shall be entitled to appoint a suitable person to represent such Branch at Council;
- 4.12.6 The Branch Committees may make decisions in regard to matters affecting Members of the Branch within its region; provided such decision shall not conflict with this MOI, or with any prior decision or the overall policy of the Company;
- 4.12.7 Branch Committees may appoint representatives to serve on other bodies dealing with matters of concern to the Members in that region;
- 4.12.8 Such Branches shall have the right to raise funds for use by them in relation to their own specific operations, subject to the approval of the Board and within the financial framework of the Company, but the Members of such Branches shall in no way be relieved from their obligation to pay subscriptions and any other charges owing by them to the Company;
- 4.12.9 The nomination and election process as well as the quorum for the Branch meetings shall be determined by the Company Rules or those that will be adopted by the Board from time to time;
- 4.12.10 The size of the Branch Committee will be determined in accordance with the Company Rules or those to be adopted by the Board from time to time;
- 4.12.11 A Branch Committee shall consider any matter peculiar to its Branch, refer appropriate matters to the Board for consideration and action and act in the best interest of Members of the area, subject to this MOI and Company Rules;
- 4.12.12 All the Board Directors of the Company shall be ex officio Members of every Branch Committee and shall be entitled to vote at the meetings of the Branch Committees;
- 4.12.13 The Chairperson of the Board shall have the power to arrange a general meeting of Members of the Branch in any area of the Company for the election of a committee for that Branch;
- 4.12.14 The Branch Committees shall have the power to co-opt from the Membership of the Branch in the area for which it is instituted any additional Members to serve on Branch Working Groups. Branch Committees may also co-opt non-Members from time to time to serve in an advisory capacity on the Branch Working Groups. Such non-Members shall, however, have no voting rights on such working groups;
- 4.12.15 In the event of death, retirement or resignation of a Council Member, the Branch shall nominate an alternative Member and the Board shall in accordance with the provisions of this MOI, make a determination about the suitability of the person to serve as a Council Member for the remaining term of office of the original Council Member;
- 4.12.16 At the Branch AGM, Branch Members shall elect, for a term of 4 (four) years the following officer bearers:

- 4.2.16.1 a Chairperson;
- 4.2.16.2 a Vice-Chairperson; and
- 4.2.16.3 a Secretary/Treasurer or a Secretary and a Treasurer.

4.12.17 The Members of a Branch belonging to each separate Emergency Service in the geographic area of the Branch, shall annually elect for every 50 (fifty) Members or part thereof, belonging to that Emergency Service, a representative to serve on the Branch Committee, provided that every Emergency Service in a Branch shall be entitled to elect 1 (one) representative if the number of Members in that Emergency Service is less than 50 (fifty);

4.12.18 Members who do not belong to an Emergency Service shall be grouped with the Emergency Service closest to the place where they live and shall, for the purposes of the MOI, be regarded as part of that Emergency Service.

#### 4.13 Register of Members

4.13.1 The Company shall maintain a register, in the form of an electronic database or such other form as the Board may determine from time to time, wherein shall be entered the name and contact details of every Member of the Company;

4.13.2 The Company shall regularly update the Register and remove the names of persons or juristic persons who ceased to be Members in accordance with the provisions of this MOI; provided that the Register shall be updated at least once a year;

4.13.3 Subject to this MOI and the Company Rules, the Board shall have the power to remove the name of any Member from the Register; provided that no Member's name shall be removed from the Register except pursuant to a Board resolution which complies with the following prerequisites:

4.13.3.1 not less than 75% (seventy five percent) of the total number of Directors shall be present at the Board meeting;

4.13.3.2 the resolution must be passed by a majority of at least 75% (seventy five percent) of the Directors present in person at the Board meeting;

4.13.4 Not less than 14 (fourteen) calendar days written notice of the Board meeting and its purposes shall be sent to the Member whose name the Board proposes to remove from the Register and such Member shall be given an opportunity to be heard at the Board meeting, and;

4.13.5 The resolution shall only be adopted after the representations (if any) made by the Member referred to in this paragraph have been duly considered.

#### 4.14 Record date for exercise of Member rights

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in Section 59 of the Act, the record date for the relevant matter shall be determined in accordance with Section 59(3) of the Act.

#### 4.15 Proxy representation

4.15.1 A Council Member may, at any time by written proxy appointment (“Proxy Instrument”) which complies with this MOI and the Act, appoint any individual, including an individual who is not a Member of the Company, as a proxy to:

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

4.15.1.2 give or withhold written consent on behalf of the Council Member to a decision contemplated in Section 60 of the Act, and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by Section 58 of the Act and paragraph 5.8 of this MOI;

4.15.2 The Board may determine a standard form of Proxy Instrument and make it available to Council Members on request;

4.15.3 Subject to the provisions of the Act, a Proxy Instrument may be an instrument created or transmitted by electronic or other means, including electronic mail or facsimile;

4.15.4 A Proxy Instrument which complies with the Act and this MOI shall, if any meeting to which it relates is adjourned or postponed, unless the contrary is stated thereon, be valid at that meeting when it resumes after such adjournment or commences after such postponement, even if it had not been lodged timeously for use at the meeting as originally scheduled (prior to the adjournment or postponement);

4.15.5 A Council Member may not appoint more than one Person concurrently as proxies, and may not appoint more than one proxy to exercise Voting Rights held by the Council Member;

4.15.6 A proxy may not delegate the proxy’s authority to act on behalf of the Council Member to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Act and this MOI;

4.15.7 A proxy shall not be entitled to exercise any rights of the Council Member who appointed that proxy:

4.15.7.1 until the expiry of 2 (two) Business Days after the date on which the Proxy Instrument containing the appointment; or

4.15.7.2 after midnight on the day on which the instrument revoking the appointment (if irrevocable), of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the Company Secretary, Chairperson or Executive Director of the Company and accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the Board or the Chairperson of any meeting referred to in the



proviso to this paragraph 4.15.7.2 or to any other Person entitled to accept the Proxy Instrument or revocation on behalf of the Company; provided that the Board, or the Chairperson of any meeting at which the proxy wishes to exercise any rights of the Council Member, may agree to allow any such Proxy Instrument or revocation to become effective prior to the time when it would otherwise have become effective in terms of this paragraph 4.15.7.2;

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

## **5. ARTICLE 3 – MEMBERS MEETINGS**

### **5.1 Requirement to hold meetings**

5.1.1 The Company shall convene an AGM once in every calendar year, but no more than 15 (fifteen) months after the date of the previous AGM, 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:

#### 5.1.1.1 Presentation of:

- 5.1.1.1.1 the Annual report;
- 5.1.1.1.2 financial statements for the immediately preceding financial year;
- 5.1.1.1.3 confirmation of the appointment of the Board to the extent required by the Act and the MOI;
- 5.1.1.1.4 any matters raised for discussion by Members, with or without advance notice to the Company.

5.1.2 Only Council Members are eligible to vote at Members meetings.

### **5.2 Members' right to requisition a meeting**

The right of Members to requisition a meeting, as set out in Section 61(3) of the Act, may be exercised as provided for in that section.

### **5.3 Location of Members meetings**

The authority of the Company's Board as set out in Section 61(9) of the Act to determine the location of any Members meeting, and the authority of the Company to hold any such meeting is restricted in terms of this MOI, to a location within the Republic of South Africa.

#### 5.4 Notice of Members meetings

The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by Section 62 of the Act, is 15 (fifteen) business days before the meeting is to begin.

#### 5.5 Electronic participation in Members meetings

The authority of the Company to conduct meetings entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 63 of the Act, is not limited or restricted by this MOI.

#### 5.6 Quorum for Members meetings

5.6.1 In substitution for the 25% (twenty five percent) required by Section 64(2) of the Act, the quorum requirement for a Members meeting to begin, or for a matter to be considered, shall be 50% (fifty percent) plus 1 one of the voting Membership, of who at least 3 three are personally present and the remainder represented by proxy;

5.6.2 The time periods allowed in Section 64(4) and (5) of the Act apply to the Company;

5.6.3 The authority of a meeting to continue to consider a matter, as set out in Section 64(9) of the Act, is not limited or restricted by this MOI.

#### 5.7 Adjournment of Members meetings

The maximum period allowable for an adjournment of a Members meeting is as set out in Section 64(13) of the Act without variation.

#### 5.8 Members resolutions

5.8.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by at least 50% (fifty percent) of the Members who voted on the resolution, as provided in Section 65(7) of the Act;

5.8.2 For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% (seventy five percent) of the Members who voted on the resolution;

5.8.3 A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in Section 65(11) of the Act.

### 6. **ARTICLE 4 – COUNCIL, BOARD OF DIRECTORS, COMMITTEES, OFFICERS, COMPANY SECRETARY AND AUDITORS**

#### 6.1 Governance of the Company

### 6.1.1 Council

- 6.1.1.1 The AGM shall annually approve the Members of Council, who shall take office at the time of the AGM;
- 6.1.1.2 The Council shall appoint a President and Vice-President who shall be Council Members eligible to take up these positions of office;
- 6.1.1.3 Nominations for the election of President and Vice-President must be submitted to the Nominations Committee at least 60 (sixty) days before the AGM;
- 6.1.1.4 Nominations must be submitted in writing in the prescribed manner and be proposed and seconded by 5 (five) Council Members;
- 6.1.1.5 The President and Vice-President's term of office should not exceed a period of 2 (two) years;
- 6.1.1.6 The President and Vice-President shall be eligible for nomination and re-election; provided that they shall not serve for more than 2 (two) consecutive terms;
- 6.1.1.7 In the event of death, retirement or resignation of the President, the Vice-President shall act as President for the remaining term of office;
- 6.1.1.8 In the event of death, retirement or resignation of the Vice-President. and:
  - 6.1.1.8.1 the office of Vice-President Elect has not yet been retired, then the Vice-President Elect will be appointed to serve the remaining term of office of the Vice-President;
  - 6.1.1.8.2 the office of Vice-President has been retired, the Board shall appoint such Council Member who is eligible for the position, to serve the remaining term of office of the Vice-President;
- 6.1.1.9 The Council shall be constituted of Council Members only and shall be responsible for:
  - 6.1.1.9.1 giving strategic advice to the Board as it pertains to the positions taken by the Council and generally on policy issues;
  - 6.1.1.9.2 the appointment of the Nominations Committee;
  - 6.1.1.9.3 the appointment of the Audit and Risk Committee;
  - 6.1.1.9.4 the nomination of Directors from time to time;
  - 6.1.1.9.5 reviewing the Company Rules proposed by the Board;
  - 6.1.1.9.6 the establishment of Working Groups from time to time. For the purposes of this clause, a "Working Group" is a group of Council Members who will consider and debate issues that impact on business, to develop policy decisions for the Company, and to initiate appropriate action in respect of related business matters when required;
- 6.1.1.10 The quorum for all Council meetings shall be 50% (fifty percent) plus 1

(one) and decisions shall be taken by simple majority of 50% (fifty percent) plus 1 (one), save for such decisions where a higher percent is expressly provided for in terms of this MOI;

6.1.1.11 Council should meet at least once a year and the procedure for such meetings shall be the same as that set out for Board meetings, adjusted as the context requires;

6.1.1.12 In order to regularize the terms of office of the Council Members, the existing Council Members will become the first Council Members in terms of this MOI. These Council Members will remain in office until the next Branch AGM's when new Council Members will be elected.

## 6.1.2 Executive Committee

6.1.2.1 The Board shall appoint an Executive Committee which shall be constituted as follows:

- 6.1.2.1.1 the Immediate Past President;
- 6.1.2.1.2 the President and Vice-President;
- 6.1.2.1.3 the Vice-President Elect (refer paragraph 6.1.2.2);
- 6.1.2.1.4 the Chairpersons of the Working Groups;
- 6.1.2.1.5 the Chairpersons of the Branches;
- 6.1.2.1.6 representatives as appointed by the Board.

6.1.2.2 In order to regularize the Executive Committee, the office of Vice-President Elect will be retired at the first AGM following the adoption of this MOI. Thereafter, there will be no further elections for the office of Vice-President Elect and this office will not form part of the Executive Committee;

6.1.2.3 The Executive Committee shall be responsible for overseeing the implementation of operational decisions relating to the day-to-day running of the Company's affairs in between Board meetings; provided that the role of the Executive Director shall be clearly defined and distinguished from that of the Executive Committee;

6.1.2.4 The Executive Committee shall also be responsible for formulating policies and procedures as they relate to the operational decisions of the Company;

6.1.2.5 The Executive Committee should meet at least 3 (three) times a year and the procedure for such meetings shall be the same as that set out for Board meetings, adjusted as the context requires.

## 6.2 Composition of the Board of Directors

6.2.1 The Board shall consist of a minimum of 5 (five) Directors, which shall include:

- 6.2.1.1 a minimum of 4 (four) Directors appointed by Council as set out in this MOI; and
- 6.2.1.2 1 (one) Executive Director / Chief Executive Officer;
- 6.2.2 All the Members of the Board, save for the Executive Director who shall be appointed by the Board, shall be appointed by Council in terms of this MOI provided:
  - 6.2.2.1 the Board shall co-opt a minimum of 2 (two) independent individuals to be Members of the Board; and
  - 6.2.2.2 such co-opted individuals are eligible to be Directors in terms of this MOI and/or the Act; and
  - 6.2.2.3 such co-opted individuals are not Members of the Company at the time of their co-option;
- 6.2.3 A Director is considered to be independent if:
  - 6.2.3.1 he/she is not a representative of a Member who has the ability to significantly influence management;
  - 6.2.3.2 he/she has not been employed by the Company in an executive capacity for the previous 3 (three) financial years;
  - 6.2.3.3 he/she is not a Member of the immediate family of an individual who has in any of the past 3 (three) financial years, been employed by the Company in an executive capacity;
  - 6.2.3.4 is not a professional advisor to the Company other than in a Director capacity;
  - 6.2.3.5 is free from any business or other relationship which could be seen to materially interfere with an individual's capacity to act in an independent manner;
  - 6.2.3.6 is not a significant supplier or customer of the Company; and
  - 6.2.3.7 has no significant contractual relationship with the Company.
- 6.2.4 The Board, once constituted, shall appoint the Executive Director (if not already in office at the time of the adoption of this MOI) and elect from its number an independent Chairperson, a Deputy Chairperson and an Honorary Treasurer;
- 6.2.5 The Board shall, no later than 60 (sixty) days before the existing Directors are to vacate the office, give notice to Members to invite Members to propose to the Board persons for nomination as Directors;

- 6.2.6 A Member wishing to nominate a person to the Board shall submit to the Nominations Committee the details of the nominee in such form as may be prescribed by the Board from time to time. The said form shall, as a minimum, contain:
- 6.2.6.1 the curriculum vitae of the nominee;
  - 6.2.6.2 the names and signatures of the proposer;
  - 6.2.6.3 the names and signature of the seconder;
  - 6.2.6.4 the name, consent and signature of the person proposed;
  - 6.2.6.5 a declaration by the nominee, stating they have no conflict of interest, neither any civil and / or criminal convictions, and
  - 6.2.6.6 a declaration by the person nominating that, to the best of their knowledge, the nominee is eligible to be a Director;
- 6.2.7 Once the Nominations Committee has completed its work, Council shall be presented with the approved list of nominees and shall determine the number of Board members before the election process starts;
- 6.2.8 An election, by secret ballot, shall be conducted at a Council meeting not less than 60 (sixty) days after it became necessary to fill the vacancy or to replace the retiring Directors;
- 6.2.9 The quorum for Council meetings shall be 50% (fifty percent) plus 1 (one) and decisions shall be taken by simple majority of 50% (fifty percent) plus 1 (one), save for such decisions where a higher percent is expressly provided for in terms of this MOI;
- 6.2.10 The nominees receiving the most number of votes will be appointed in descending order for the positions that are available;
- 6.2.11 The term of office for Directors shall be regulated as follows:
- 6.2.11.1 save for the Executive Director, the Directors shall retire every 2 (two) years by rotation but a retiring Director shall be eligible for nomination and re-election; provided a Director shall not serve for more than 2 (two) consecutive terms;
  - 6.2.11.2 in order to regularize the terms of office of the Directors, for a period of 2 (two) years after the adoption of this MOI:
    - 6.2.11.2.1 at the Board meeting immediately preceding the AGM (provided that such Board meeting is held at least more than 21 (twenty one) calendar days prior to the AGM), half of the Directors (chosen by lot, or volunteering to do so) shall retire from office;
    - 6.2.11.2.2 in the second year after the adoption of this MOI, the remaining Directors from those that were in office at the time of the adoption of this MOI (excluding those contemplated in paragraph 6.2.11.2.1 above) shall retire in the manner set forth above;

- 6.2.12 following the period of 2 (two) years after the adoption of this MOI at the Board meeting immediately preceding the AGM (provided that such meeting is held at least more than 21 (twenty one) calendar days prior to the AGM), half of the Directors (or if the number of Directors at any given time is not divisible by two, not less than half) shall retire from office on the basis that the Directors to retire in each year shall be those who shall have been the longest in office since their appointment or re-appointment (whichever is the later);
- 6.2.13 The Executive Director shall not have a prescribed term of office as a Member of the Board;
- 6.2.14 The Chairperson, Deputy Chairperson and Honorary Treasurer shall not serve in office for a period exceeding 2 (two) years;
- 6.2.15 The general and ultimate management and control of the Company and its affairs shall be vested in and conducted by the Board which shall be appointed in the manner, and have such powers as, set out in this MOI;
- 6.2.16 Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company. For the avoidance of doubt, for as long as the number of Directors is reduced below the minimum number of Directors stipulated above, the continuing Director/s may continue to act, but only:
- 6.2.16.1 to preserve and secure the assets and enterprise of the Company, and to ensure the continuity of its business activities and functions; and/or
  - 6.2.16.2 to cause vacancies to be filled, and the number of Directors to be increased to the required minimum in accordance with the provisions of this MOI; and/or
  - 6.2.16.3 to initiate the process of appointing such additional Directors as may be required, which process may include the summoning of a Council meeting for that purpose; provided that if there is no Director able or willing to act, then any Member may initiate such process and convene such a meeting;
- 6.2.17 Save as provided in this clause, there are no general qualifications prescribed by the Company for a person to serve as a Director in addition to the requirements of the Act;
- 6.2.18 No Alternate Directors may be appointed;
- 6.2.19 No election of a Director shall take effect until he/she has delivered to the Company a written consent to serve;
- 6.2.20 Any casual vacancy occurring on the Board may be filled by the Nominations Committee, but the individual so appointed shall cease to hold office at the termination of the first Council meeting to be held after the appointment of such individual as a Director unless his/her appointment is confirmed at Council meeting;

- 6.2.21 No person shall be elected as a Director if he/she is ineligible or disqualified in terms of the Act or in terms of this MOI, and any such election shall be a nullity. A person who is ineligible or disqualified must not consent to be elected as a Director nor act as a Director. A person placed under probation by a court must not serve as a director unless the order of court so permits;
- 6.2.22 There are no appointed or ex-officio Directors of the Company as contemplated in Section 66(4)(a)(ii) of the Act, and no person shall have a right to effect the direct appointment or removal of one or more Directors as contemplated in Section 66(4)a)(i) of the Act;
- 6.2.23 In addition to the grounds of ineligibility and disqualification of Directors as contained in Section 69 of the Act, a Director shall cease to be eligible to continue acting as such if she / he is absent from 3 (three) consecutive meetings of the Board and all events arranged by the Company occurring within a period of 6 (six) consecutive months without the leave of the Board, and the Board resolves that his/her office shall be vacated;
- 6.2.24 The Board may delegate to any person(s) all such powers and delegate any such person the doing of all such acts; provided that there shall be no right to sub-delegate;
- 6.2.25 The Board shall appoint 1 (one) or more persons to act as the authorized representative(s) of the Company at meetings of the shareholders, Members or Board of Directors, as the case may be, of any company.

### 6.3 Nominations Committee

- 6.3.1 The Nominations Committee shall comprise of not less than 4 (four) and not more than 7 (seven) persons, who are considered to have the requisite industry knowledge, experience and skills, to enable them to assume the responsibility of determining the eligibility and merit of the candidacy of persons to be appointed to the Board and/or to obtain and retain Membership of the Company from time to time;
- 6.3.2 The Nominations Committee shall only take into account the proposals received from Members and vet the candidates against criteria outlined in the Act and in this MOI as well as confirmation from the Executive Director that the candidate is a Member in good standing. Thereafter the committee shall prepare a list of duly vetted persons nominated by the Membership for election as Directors by the Council and submit such a list to Council before the Council meeting is scheduled to elect Directors;
- 6.3.3 The Nominations Committee shall consider and review the composition and performance of the Board from time to time. In order to facilitate and inform such consideration and review, the committee shall, on an annual basis, first determine the number of new Directors who are to be appointed by Council and thereafter cause a written notice to be addressed to all voting Members of the Company, calling for nominations to the Board. Such Notice shall be addressed at least 60 (sixty) days prior to the date of the Council meeting scheduled to appoint Directors;
- 6.3.4 Upon receipt of such notice, any Members may nominate any number of eligible persons to be considered by the committee for appointment to the Board, provided such nominations



must be in writing, and must be delivered to registered office of the Company at least 14 (fourteen) days prior to the date of the forthcoming Council meeting. Any such nomination must also include:

- 6.3.4.1 the written consent of the person/s so nominated; and
  - 6.3.4.2 a motivation indicating the reasons for any such proposal, including particulars as to the attributes, skills, and experience of the person/s so proposed;
- 6.3.5 The Nominations Committee shall consider the candidacy of any eligible persons who may have been duly proposed as aforesaid for appointment to the Board;
- 6.3.6 Upon completion of the review contemplated above, the committee shall issue a further written notice to Council Members at least 7 (seven) days prior to the date of the relevant Council meeting, stating the names of the persons whom it proposes should be appointed to fill the relevant positions on the Board. Such notice shall also state that any Council Member who may be dissatisfied with the names of one or more of the candidates so proposed for appointment by the committee, shall be entitled to, by written notice to this effect, challenge such appointment/s, provided that any such challenge shall only be considered if it:
- 6.3.6.1 is in writing, duly signed by or on behalf of a Council Member; and delivered to registered office of the Company not less than 3 (three) days prior to the date of the forthcoming Council meeting;
  - 6.3.6.2 is supported by at least 2 (two) other Members (regardless of whether they are Council Members or not) (in addition to the Council Member who is the initiator of the challenge);
  - 6.3.6.3 incorporates substantive reasons and motivation for any such challenge;
  - 6.3.6.4 includes the name, and relevant particulars, of an alternative candidate to be considered for appointment;
  - 6.3.6.5 includes the written consent of such alternative candidate to accept appointment, if so invited and subject to the appointment provisions contained in this MOI ;
- 6.3.7 In addition to the requirements itemized above, a challenge shall only be considered as having been validly made at the relevant time if the committee confirms that the proposed alternative candidate is in fact eligible and suitably qualified for appointment to the Board, having regard to, *inter alia*, such eligibility guidelines contained in this MOI as well as the requirements of the Act. Any difference or dispute between the Council Member who initiated the challenge and the committee as to the compliance with such conditions, including the eligibility and suitability of an alternative candidate, shall be referred for final determination by the Board, whose decision shall be final and binding;
- 6.3.8 If no valid challenge is made, the persons proposed by the committee for appointment as Directors shall be considered by the Council in the ordinary course;

6.3.9 If a challenge is validly made, the choice between the candidate proposed by the committee and the alternative candidate proposed by the challenger shall be placed before the Council meeting, and the issue determined by majority vote of all Council Members present at the meeting.

#### 6.4 Authority of the Board of Directors

6.4.1 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in Section 66(1) of the Act is not limited or restricted by this MOI;

6.4.2 The Board may from time to time appoint any person (whether being a Member or not) as Executive Director of the Company for such term and at such remuneration as it may deem fit and generally on such terms as they may think fit, and (subject to any contract entered into between the Board and such Executive Director) may from time to time remove him/her and appoint some other person as Executive Director in his/her place. It may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office;

6.4.3 The Board may from time to time entrust to and confer upon an Executive Director for the time being such of the powers vested in the Board 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 think 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 Board, and may from time to time revoke or vary all or any of such powers. An Executive Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Board and after powers have been conferred upon him/her by the Board in terms hereof he/she shall be deemed to derive such powers directly from this clause;

6.4.4 The Board may regulate the general expenses of the Company and fix the salaries and emoluments of all employees, in consultation with the Executive Director;

6.4.5 The Board shall pay and defray the expenses and liabilities of the Company, incurred in the exercise or enforcement of the rights vested in or controlled by the Company, out of the monies received by the Company in respect of the exercise or enforcement of such rights;

6.4.6 The Board may from time to time borrow, raise or secure the payment of such sum or sums of money as it may deem requisite for any purpose which it may deem expedient in the interests of the Company, but not so as to charge any right or interest of any Member in respect of his works;

6.4.7 The business and operations of the Company shall be conducted and managed by the Board, who may exercise all such powers of the Company as are not, by the Act, or by this MOI, required to be exercised by the Company in general meeting, subject to the provisions of the Act or of this MOI, and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Members in a general meeting. No regulation made

by the Members in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made;

6.4.8 The Board may, from time to time and at any time, by power of attorney appoint any company, corporation, person, or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this MOI), and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him;

6.4.9 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.

#### 6.5 Board Committees

6.5.1 The Board may appoint any number of Board Committees and delegate to such committees any authority of the Board. The Members of such committees may include Persons who are not on the Board, as long as they are not ineligible or disqualified to be on the Board, and provided that no such Person shall have a vote on a matter to be decided by the Board Committee;

6.5.2 No Person shall be appointed as a Member of a Board Committee if he/she is ineligible or disqualified and any such appointment shall be a nullity, and any Person so appointed shall cease to hold office immediately after he/she becomes ineligible or disqualified in terms of the Act and / or this MOI

6.5.3 A Person who is ineligible or disqualified must not consent to be appointed as a Member of a Board Committee nor act as such a Member. A Person placed under probation by a court must not serve as a Member of a Board Committee unless the order of the court so permits;

6.5.4 Subject to the provisions in relation to the Nominations Committee, there are no general qualifications prescribed by the Company for a Person to serve as a Member of a Board Committee, save for the requirements of the Act and this MOI, and the following specific conditions, namely that:

6.5.4.1 the Board shall determine the composition and Membership of each Board Committee, and may review its own decisions with respect thereto, which may involve the appointment of persons who serve as Directors, and may also include Persons who are not Directors provided that, unless the Board shall otherwise determine, the Chairperson of such Board Committee must be a designated Board Member who acts and is seen to be independent of the Company;

- 6.5.4.2 each such Board Committee shall remain at all times accountable to the Board for the performance of its delegated functions and the Board shall not be divested of its overriding substantive powers by reason of any such delegation;
- 6.5.5 Any written reports and/or recommendations issued by any such Board Committee must record any dissenting minority views in relation to the subject matter thereof;
- 6.5.6 Any such Board Committee shall, in the exercise of its powers and functions, conform to all rules, restrictions or procedures imposed upon it by the Board, including such that may relate to quorum, voting, frequency of meetings, and notices, on condition that the Board shall be entitled, should it deem this necessary, to vary its directions, and to disestablish any such committee at any time, without being required to give prior notice, or to give reasons for its decisions; and
- 6.5.7 Without derogating from the generality of the foregoing, the Board has elected as a minimum to appoint the following committees (which committees' names may be changed from time to time, as the circumstances or the context may require):
- 6.5.7.1 a Nominations Committee;
- 6.5.7.2 an Audit & Risk Committee;
- 6.5.8 In terms of Section 72(4) of the Act, if the Company falls within the category of companies that are required to appoint a Social and Ethics Committee, the Board will appoint such a committee;
- 6.5.9 The Board may also at its discretion, appoint such other committees as the Board may deem appropriate, from time to time, and provided always that the Board shall appoint such committees (if any) which it may be obliged to appoint in terms of the Act.
- 6.6 Board of Directors' meetings
- 6.6.1 The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in Section 74 of the Act is not limited or restricted by this MOI;
- 6.6.2 The right of the Company's Directors to requisition a meeting of the Board and constitute a Quorum may be exercised by no less than 50% (Fifty percent) plus 1 (one) of the Directors;
- 6.6.3 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 73(3), is not limited or restricted by this MOI;
- 6.6.4 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in Section 73(4) of the Act, is not limited or restricted by this MOI;

6.6.5 The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in Section 73(5) of Act, is not limited or restricted by this MOI.

6.6.6 The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are set out in Section 73(5) of the Act, namely:

6.6.6.1 if all of the Directors of the Company:

6.6.6.1.1 acknowledge actual receipt of the notice;

6.6.6.1.2 are present at a meeting; or

6.6.6.1.3 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;

6.6.6.2 a majority of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;

6.6.6.3 each Director has one vote on a matter before the Board;

6.6.6.4 a majority of the votes cast on a resolution is sufficient to approve that resolution; and

6.6.6.5 in the case of a tied vote:

6.6.6.5.1 the Chairperson may cast a deciding vote, if the chair did not initially have or cast a vote, otherwise;

6.6.6.5.1 the matter being voted on shall fail.

## 6.7 Minutes and minute books

6.7.1 The Board shall, in accordance with the provisions of Sections 24(3)(d), 24(3)(f) and 73(6) of the Act, cause Minutes to be kept:

6.7.1.1 of the appointments of Prescribed Officers;

6.7.1.2 of names of Members present at every General Meeting of the Company, and of Directors present at every meeting of the Board; and

6.7.1.3 of all proceedings at all General Meetings of the Company, and of the Board;

6.7.2 Such Minutes shall be signed by the Chairperson of the meeting at which the proceedings took place, or by the Chairperson of the next succeeding meeting.

## 6.8 Indemnification of Directors

- 6.8.1 The authority of the Company's Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defense of legal proceedings, as set out in Section 78(3) of the Act, is not limited or restricted by this MOI; provided that such expenses so advanced are recoverable from insurance purchased in terms of paragraph 6.8.3.;
- 6.8.2 The authority of the Company's Board of Directors to indemnify a Director in respect of liability, as set out in Section 78(5) of the Act is not limited or restricted by this MOI;
- 6.8.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a Director, as set out in Section 78(6) of the Act is not limited or restricted by this MOI.

6.9 Cessation of office as a Director

6.9.1 A Director shall cease to hold office as such:

6.9.1.1 immediately when he/she becomes ineligible or disqualified by the Act, or the Board resolves to remove him/her on such basis, and in the latter case the Director 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/she shall be suspended);

6.9.1.2 when he/she dies;

6.9.1.3. when he/she resigns by written notice to the Company;

6.9.1.4 if the Board determines that he/she has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Board has not within the permitted period filed an application for review or has filed such application but the court has not yet confirmed the removal (during which period he/she shall be suspended);

6.9.1.5 if he/she is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director;

6.9.1.6 if he/she is removed by the Nominations Committee;

6.9.1.7 if he/she is removed by the Nominations Committee for being negligent or derelict in performing the functions of a Director, and the Director 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/she shall be suspended);

6.9.1.8 he/she files a petition for the surrender of his/her estate or an application for any administration order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or if he/she makes any arrangement or composition with his/her creditors generally; or

6.9.1.9 he/she is otherwise removed in accordance with any other provisions contained in this MOI;

6.9.1.10 if the Director, without special leave of absence from the Board, absents himself/herself from the meetings of the Board either during a period of 3 (three) successive months or during a period covered by 3 (three) consecutive meetings;

6.9.1.11 when his/her term of office expires;

6.9.2 A Director's removal may be approved by an ordinary resolution of the Council Members or by way of a resolution of the Board of Directors as contemplated in terms of Section 71 of the Act.

#### 6.10 Remuneration and expenses of Directors and Members of Board Committees

6.10.1 The Members of the Board or Members of Board Committees shall at the discretion and approval of the Board, be remunerated for their services as Directors or Members of Board Committees.

6.10.2 The Members of the Board and Board Committees shall be entitled to any reasonable expenses for travelling (including expenses incurred in respect of accommodation) to and from meetings of the Board or Board Committees.

#### 6.11 Financial assistance for Directors and their related and inter-related parties

The Company shall not be entitled to provide financial assistance to any Directors or Prescribed Officers, as contemplated in Section 45 of the Act.

#### 6.12 Officers

The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.

#### 6.13 Auditor

The Company shall appoint an auditor, in the manner and for the purposes set out in Part C of the Act.

#### 6.14 Rotation of auditors

6.14.1 The Company shall adhere to the provisions of Section 92 of the Act in respect of the rotation of auditors, such that:

6.14.1.1 the same individual may not serve as the auditor or designated auditor of the Company for more than 5 (five) consecutive financial years;

6.14.1.2 if an individual has served as the auditor or designated auditor of the Company 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 of the Company until after the expiry of at least 2 (two) further financial years;

6.14.2 If the Company has appointed two or more persons as joint auditors, the Company must manage the rotation required by this section in such a manner that all of the joint auditors do not relinquish office in the same year.

## **7. ARTICLE 5 – GENERAL PROVISIONS**

### **7.1 Protected disclosures**

The Company shall, in terms of Section 159(7) of the Act, establish and maintain a system to receive disclosures contemplated in Section 159 of the Act and will publicize the availability of that system by conspicuously displaying a notice to that effect, setting out the contact details of the person responsible for receiving any such disclosure:

7.1.1 at the registered office of the Company, the principal places of conducting the business activities of the Company, and at any workplace where employees of the Company are employed; and

7.1.2 on the Company's website that is maintained by the Company and intended to be accessible by the categories of persons enumerated in Section 159(4) of the Act.

### **7.2 Financial year-end**

The financial year-end of the Company shall be the 30 (thirty) September, or such other date as may be determined by the Board from time to time.

### **7.3 Accounting records and annual financial statements**

All accounting records and annual financial statements shall be kept in accordance with the Act and the IFRS (International Financial Reporting Standards) shall apply to the Company.

### **7.4 Winding up or dissolution**

7.4.1 Despite any provision in law or agreement to the contrary, upon the winding-up or dissolution of the Company:-

7.4.1.1 no past or present Member or Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

7.4.1.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts:-

7.4.1.3 having objectives similar to those of the Company; and

7.4.1.4 as determined:

7.4.1.4.1 in terms of clause 1 of this MOI;



7.4.1.4.2 by the Members or Directors at, or immediately before the time of its dissolution; or

7.4.1.4.3 by the court if this MOI, or the Members or Directors fail to make such a determination.

7.4.2 The Companies and Intellectual Properties Commission may apply to the court on behalf of the Company for a determination contemplated in 7.4.1.4.3 if the Company has:

7.4.2.1 no remaining Members or Directors; and

7.4.2.2 failed to:

7.4.2.2.1 make a determination contemplated in 7.4.1.4.2; or

7.4.2.2.2 apply to court for such a determination.