

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT NO. 71 OF 2008 AS AMENDED

MEMORANDUM OF INCORPORATION

OF

RHODES FOOD GROUP HOLDINGS LIMITED

registration number 2012/074392/06

(which is referred to in the rest of this memorandum of incorporation as
the "**Company**")

(as adopted by special resolution of the shareholders of the Company passed on
1 August 2014 and in substitution for the existing memorandum of incorporation of the
Company)

WEBBER WENTZEL

in alliance with > **Linklaters**

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Interpretation

- (a) In this Memorandum of Incorporation and unless contrary to the context:
- i. **"A Preference Shares"** means the "A" redeemable convertible preference no par value shares in the Company, having the rights and privileges as set out in Schedule 1;
 - ii. **"B Preference Shares"** means the "B" redeemable convertible preference no par value shares in the Company, having the rights and privileges set out in Schedule 1;
 - iii. **"Board"** means the board of Directors of the Company acting as a board or a duly appointed committee of the Board, from time to time;
 - iv. **"Board Charters"** shall mean the board charter adopted by the Board on 1 August 2014, and the charters adopted by all committees of the Board, all as amended from time to time;
 - v. **"CEO"** shall mean the chief executive officer of the Company from time to time;
 - vi. **"Commission"** means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
 - vii. **"Companies Act"** means the Companies Act, No. 71 of 2008, as amended from time to time;
 - viii. **"Companies Regulations"** means the Companies Regulations of 2011 promulgated by the Minister in terms of section 223, as amended from time to time;
 - ix. **"CSD"** means the Central Securities Depository as defined in section 1 of the Financial Markets Act;
 - x. **"CSDP"** means a depository institution accepted by a CSD as a "participant" in terms of section 31 of the Financial Markets Act;

- xi. "**Director**" means a member of the Board as contemplated in section 66, or an alternate Director, and includes any person occupying the position of a Director or alternate Director, by whatever name designated;
- xii. "**Distribution**" shall bear the meaning ascribed to such term in the Companies Act, being a direct or indirect -

- (a) transfer by the Company of money or other property of the Company, other than its own Shares, to or for the benefit of one or more holders of any of the Shares, or to the holder of a beneficial interest in any such Shares, of the Company or of another company within the Company's group of companies, whether -

- (i) in the form of a dividend;

- (ii) as a payment in lieu of a capitalisation share, as contemplated in section 46;

- (iii) as consideration for the acquisition-

- (aa) by the Company of any of its Shares, as contemplated in section 48; or

- (bb) by any company within the Company's group of companies, of any shares of a company within that group of companies; or

- (iv) otherwise in respect of any of the Shares of the Company or of another company within the Company's group of companies, subject to section 164(19);

- (b) inurrence of a debt or other obligation by the Company for the benefit of one or more holders of any of the Shares of the Company or of another company within the same group of companies; or

- (c) forgiveness or waiver by the Company of a debt or other obligation owed to the Company by one or more holders of any of the Shares of the Company or of another company within the Company's group of companies,

but does not include any such action taken upon the final liquidation of the Company;

- xiii. "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, as amended from time to time;
- xiv. "**General Meeting**" means an annual general meeting or other general meeting, not being an annual general meeting, of the Company duly constituted and any adjournment thereof;
- xv. "**JSE**" means the JSE Limited, registration number 2005/022939/06, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, which is licensed as an exchange under the Financial Markets Act;
- xvi. "**Listings Requirements**" means the listings requirements of the JSE, as amended from time to time;
- xvii. "**MOI**" means this memorandum of incorporation of the Company as amended from time to time, including all schedules or annexures hereto;
- xviii. "**Ordinary Shareholder**" means a Shareholder reflected in the securities register as holding Ordinary Shares;
- xix. "**Ordinary Shares**" means the ordinary shares in the capital of the Company, having the rights and privileges set out in Schedule 1;
- xx. "**publish**" or "**deliver**" means, in relation to any document that is required to be published or delivered to Shareholders in terms of this MOI, that the document in question is prepared in plain language and, if applicable, in the prescribed form, in accordance with section 6(4) and (5), and is delivered to each Shareholders at that Shareholder's registered address (either its business or postal or residential address, or by e-mail) as recorded in the securities register of the Company (Regulation 32(2)(a), paragraph 28.2);

- xxi. "**Securities**" means any Shares, debentures, debenture stock, debenture bonds, loan stock, notes or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- xxii. "**Shareholder**" means the holder of a Share issued by the Company and who is entered as such in the securities register of the Company, being the person who shall be regarded for purposes of this MOI as the person who, in relation to the Company, is the person entitled to exercise the rights (including voting rights) attaching to the Shares registered in its name (Sections 1 and 57(1));
- xxiii. "**Shares**" means the Ordinary Shares, "A" Preference Shares, "B" Preference Shares and any other shares issued in the capital of the Company, from to time;
- xxiv. "**Special Resolution**" means a special resolution as defined in the Listings Requirements;
- xxv. a reference to a "**paragraph**" by number refers to the corresponding paragraph in this MOI and a reference to a paragraph in brackets at the end of a paragraph is for cross-referencing and convenience purposes only, and the paragraph so referenced is not incorporated by reference into this MOI;
- xxvi. a reference to a "**Regulation**" by number refers to the corresponding regulation in the Companies Regulations and a reference to a regulation in brackets at the end of a paragraph is for cross-referencing and convenience purposes only, and the regulation so referenced is not incorporated by reference into this MOI;
- xxvii. a reference to a "**section**" by number refers to the corresponding section of the Companies Act notwithstanding the renumbering of such section after the date on which this MOI was filed, and a reference to a section in brackets at the end of a paragraph is for cross-referencing and convenience purposes only, and the section is not incorporated by reference into this MOI;

- xxviii. a reference to "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- xxix. a reference to "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- xxx. a reference to "**person**" includes a natural person and/or a juristic person, as applicable;
- xxxi. a reference to "**writing**" means legible writing in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;
- xxxii. words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this MOI in a similar context bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;
- xxxiii. the provisions of this MOI shall be interpreted in the same way as the provisions of the Companies Act, which forms part of the constitution of the Company in terms of the section 19(1)(c), are interpreted;
- xxxiv. where 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 excluding the day on which the first event occurs and including the day on which or by which the second event is to occur;

- xxxv. any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;
- xxxvi. each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void (provided that for the purposes of applying paragraph 1.3.3, the operation and effect of this severability provision will be deemed temporarily suspended until paragraph 1.3.3 has been implemented;
- xxxvii. words signifying the singular shall include the plural, and *vice versa*; and
- xxxviii. words signifying one gender include the other genders.
- (b) The schedules attached to this MOI form part of this MOI, and the MOI and the schedules attached hereto shall always be read and interpreted together and shall form part of one and the same document. Any references to "**the MOI**" contained herein shall include a reference to the schedules attached hereto.
- (c) The standard form of Memorandum of Incorporation for a public company referred to in Regulation 15(1)(b) shall not apply to the Company.
- (d) This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii).

1. **Juristic Personality**

1.1 **incorporation and nature of the Company**

The Company is a public company and this MOI replaces and supersedes the memorandum of incorporation of the Company applicable immediately

prior to the filing hereof with the Commission. The Company may offer its Securities to the public and the transferability of the Securities of the Company is not restricted.

1.2 constitution of the Company

In terms of section 19(1)(c) read with section 15(2), the Company is incorporated in accordance with, and governed by:

- 1.2.1 the unalterable and alterable provisions of the Companies Act which have not been altered in terms of this MOI;
- 1.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions with respect to such alterable provisions set out in this MOI;
- 1.2.3 the provisions of this MOI; and
- 1.2.4 the provisions of the Board Charters.

This MOI does not necessarily refer to or address any of the provisions of the constitution of the Company contemplated by paragraph 1.2.1. The persons bound by this MOI in terms of section 15(6), being for the time being the Company and each Shareholder, Director and prescribed officer of the Company and each member of a Board committee or, in terms of section 57(1), including any person who is entitled to exercise any voting rights in relation to the Company, are required to familiarise themselves with the relevant provisions of the Companies Act including those contemplated by paragraph 1.2.1 and the provisions of this MOI, as this MOI read together with the provisions of the Companies Act contemplated by paragraph 1.2.1 forms the constitution of the Company. (Section 15(1), (2) and (6) read with section 19(1)(c))

1.3 conflicts with the Companies Act

- 1.3.1 Notwithstanding anything to the contrary contained elsewhere in this MOI, no person bound by this MOI shall be required, obliged or entitled in terms of this MOI to do or omit to do something in terms of

this MOI that is inconsistent with or contravenes any provision of the Companies Act. Any person who does something or fails to do something so as not to be inconsistent with or contravene any provision of the Companies Act or to avoid personal liability under section 218(2), but as a result thereof contravenes any provision of this MOI which provision of the MOI could be declared void by a court in terms of section 218(1), shall not for that reason alone be liable or responsible therefor under this MOI with respect to any claim by any person bound by this MOI entitled to do so in terms of this MOI, arising out of or in connection with any such act or omission. (Sections 15(6) and 218).

1.3.2 Any person bound by this MOI who is of the view or forms the view that any provision of this MOI contravenes or is or has become inconsistent with any provision of the Companies Act (as amended from time to time), whether or not such provision could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2), shall within 10 business days of forming that view in writing inform the Board of such view and the reasons for such view. (Section 15(1)).

1.3.3 If any provision of the Companies Act is amended, or the Board is aware of or informed of any inconsistency or contravention in terms of paragraph 1.3.2, or otherwise, then in addition to and without limiting the rights or remedies of any other person, the Board shall be responsible for expeditiously assessing that amendment to the Companies Act and/or that inconsistency or contravention and, if required, expeditiously proposing the appropriate Special Resolutions required to amend the MOI so as to remove or eliminate any applicable contraventions or inconsistencies.

1.4 **amending the MOI**

1.4.1 **by Special Resolution**

Without limiting or detracting from any other provision in the Companies Act providing for the amendment of this MOI:

1.4.1.1 the Board must, while the Shares of the Company remain admitted to the list maintained by the JSE, and prior to submitting any amendments for approval by the Shareholders in terms of 1.4.1.2 below, submit any proposed amendments to the MOI to the JSE for approval in accordance with the Listings Requirements;

1.4.1.2 subject to 1.4.1.1, any provision of this MOI may be amended by a Special Resolution of Shareholders in terms of section 16(1)(c),

for the avoidance of doubt it is recorded that:

1.4.1.2.1 if any proposed amendment to this MOI relates to the variation of any preferences, rights, limitations and/or other terms attaching to any class of Securities other than the Ordinary Shares, such amendment must be approved by a Special Resolution of the holders of Securities in that class at a separate meeting of such holders of Securities. In such instances, no resolution of the Ordinary Shareholders of the Company shall be proposed at a meeting or passed unless a Special Resolution of the holders of the Securities in such class have passed a Special Resolution approving the relevant amendment to this MOI,

1.4.1.2.2 it shall not be competent for the preferences, rights, limitations or other terms of any class of Securities to be varied, nor shall it be competent for any resolution to be proposed to Shareholders, for rights to include such variation in response to any ascertainable external fact or facts as provided for in section 37(6) and (7) of the Companies Act. In this regard, the special rights attached to any class of Securities shall not unless expressly provided by the terms of issue thereof be regarded as having been varied by:

1.4.1.2.2.1 the purchase by the Company of any of its own Securities; or

1.4.1.2.2.2 the redemption by the Company of any redeemable Securities.

1.4.2 **by court order**

If an amendment to the MOI is required by any court order as contemplated by section 16(1)(a) read with section 16(4), then that amendment must be effected by a resolution of the Board in terms of section 16(4)(a) and, notwithstanding any provision in this MOI to the contrary, does not require a Special Resolution as contemplated in section 16(1)(c)(ii).

1.5 **powers of the Company**

1.5.1 The Company has all the legal powers and capacity of an individual, in terms of section 19(1)(b) except to the extent that:

1.5.1.1 a juristic person is incapable of exercising any such power, or having any such capacity; or

1.5.1.2 this MOI provides otherwise.

1.6 **name of the Company**

1.6.1 **provision of the name by the Company**

The Company must provide its full registered name or registration number to any person on demand. (Section 32(1)(a))

1.6.2 **no misstatements by the Company**

The Company must not misstate its name or registration number in a manner likely to mislead or deceive any person. (Section 32(1)(b))

1.6.3 **false forms of the name**

A person must not use a form of name for any purpose if, in the circumstances, the use of that form of name is likely to convey a false impression that the name is the name of the Company or the name of another company. (Section 32(3)(b))

1.6.4 **use of the Company name**

The Company must have its name and registration number mentioned in legible characters in all notices and other official publications of the Company, including such notices and publications in electronic format as contemplated in the Electronic Communications and Transactions Act No. 25 of 2002 as amended, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all letters, delivery notes, invoices, receipts and letters of credit of the Company. (Section 32(4))

1.6.5 **persons acting on behalf of the Company**

1.6.5.1 A person must not use the name or registration number of the Company in a manner likely to convey an impression that the person is acting or communicating on behalf of the Company, unless the Company has authorised that person to do so. (Section 32(3)(a)).

1.6.5.2 Notwithstanding paragraph 1.6.5.1 above, any Director or the company secretary of the Company from time to time, shall have the power to authenticate any document comprising or affecting the constitution of the Company, and any resolution passed at a General Meeting or at any meeting of the Directors or any committee of the Company, and any book, record, document or account relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. A document purporting to be a copy of any such resolution, or the minutes or an extract of the minutes of any such meeting, which is certified as aforesaid, shall be, save in

the case of fraud or manifest error, conclusive evidence in favour of all persons dealing with the Company in reliance on it or them, as the case may be, that such resolution has been duly passed or, as the case may be, that the minutes are, or any minute so extracted is, a true and accurate record of proceedings at a duly constituted meeting.

1.6.6 **change of name**

Any change of the name of the Company must be approved by a Special Resolution of the Shareholders and is subject to compliance with the requirements in respect thereof in terms of the Companies Act.

1.7 **rules**

Save in respect of the Board Charters, provided that the Board Charters and any amendments in respect thereof shall not conflict in any way with the Listings Requirements, the Board may not make, amend or repeal any rules for the Company as contemplated in section 15(3) to (5).

1.8 **registered office**

The registered office of the Company from time to time shall be at such location as the Board may from time to time determine. (Section 23(3))

1.9 **ratification of *ultra vires* acts**

Save to the extent otherwise agreed with the JSE, it shall not be competent for any resolution to be proposed to the Shareholders for adoption in terms of sections 20(2) and/or 20(6) of the Companies Act if such resolutions would lead to the ratification of an act on behalf of the Company that is contrary to the Listings Requirements.

2. **Company particulars**

2.1 The following will apply to the Company:

2.1.1 the Company's name will be Rhodes Food Group Holdings Limited;
and

2.1.2 the Company's registration number will be 2012/074392/06.

3. Company records and accounting records

All Company records contemplated by section 24 and all accounting records contemplated by section 28 and Regulation 25 shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company or in the case of all or any of the company records at or from such other location or locations with the Republic of South Africa as the Board may from time to time determine. (Sections 25 and 28(2))

3.1 access to Company records, accounting records and other information

3.1.1 No person shall have any right to inspect or make copies of any accounting records or document of the Company, other than a Director of the Company in the discharge of his or her services as Director or a person who is granted the right to do so in terms of the Companies Act or other legislation or laws binding on the Company, or as authorised by the Board, or otherwise as permitted in terms of this paragraph 3.1. (Section 26 and Regulation 23)

3.1.2 The Board may from time to time in its discretion, grant any person, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Company, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No. 2 of 2000, as amended, provided further that the confidential information of the Company is adequately safeguarded and protected. (Section 26(3))

3.2 financial year of the Company

The financial year of the Company, or any changes to the financial year, shall be such period or adjusted period as the Board may from time to time approve.

3.3 annual financial statements

3.3.1 Each year the Company shall prepare annual financial statements within 6 months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting of the Company. (Section 30(1) and paragraph 6 of Schedule 1)

3.3.2 The annual financial statements must include all the particulars relating to the remuneration and benefits of Directors and prescribed officers as required in terms of the Companies Act.

3.3.3 The annual financial statements in respect of any financial year of the Company must be audited by the auditor appointed in terms of paragraph 4.4. (Section 30(2)(a))

3.3.4 The Company shall be entitled to:

3.3.4.1 include a summarised form of the annual financial statements of the Company for the preceding year in any relevant notice of annual general meeting, along with directions for obtaining a copy of the complete annual financial statements;

3.3.4.2 make such copy of the complete annual financial statements available on the Company's website; and

3.3.4.3 send any notice of annual general meeting, including any summarised form of the annual financial statements of the Company for the preceding year forming part of such notice, electronically directly to those entitled to receive same and that have provided an address for the purposes of electronic communications as envisaged in paragraph 28 of the MOI,

provided that the annual financial statements, or a summarised form of the annual financial statements, must be distributed to the Shareholders by no less than 15 business days prior to the annual general meeting at which the annual financial statements will be presented.

3.3.5 For so long as the Company's Shares are admitted to the list maintained by the JSE, the annual financial statements of the Company must comply with the relevant provisions of the Listings Requirements, and all subsidiaries of the Company must be audited on an annual basis.

3.4 **annual returns**

3.4.1 The Company shall file an annual return in the prescribed form with the prescribed fee, in compliance with section 33(1).

3.4.2 The annual return of the Company shall include the prescribed information to the extent it applies to the Company, and the audited annual financial statements of the Company. (Section 33(1)(a) and (b))

4. **Extended accountability requirements in Chapter 3**

4.1 **application of Chapter 3 to the Company**

4.1.1 The Company, being a public company, is required in terms of section 34(1) to comply with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Companies Act.

4.1.2 The Company must:

4.1.2.1 appoint a person to serve as company secretary in the manner and for the purposes set out in paragraph 4.3;

4.1.2.2 appoint a person to serve as an auditor, in the manner and for the purposes set out in paragraph 4.4; and

4.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in paragraph 4.5.1,

provided that no person who is ineligible (other than by virtue of being a juristic person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) or paragraph 25.7 shall be appointed as the company secretary, auditor or a member of the statutory audit committee. (Section 84(5))

4.1.3 In terms of section 72(4) read with Regulation 43, the Company will have a social and ethics committee in compliance with the Companies Act read with the Companies Regulations, which is governed by the Board Charters.

4.2 **register of company secretary and auditor**

4.2.1 The Company shall, in accordance with section 85, establish or cause to be established, and maintain, a register of its company secretaries and auditors. (Section 85(1))

4.2.2 Within 10 business days of appointing a company secretary or auditor, or of termination of such an appointment, the Company must file with the Commission a notice of the appointment or termination, as the case may be. (Section 85(3))

4.3 **company secretary**

4.3.1 The Company must appoint a person to serve as company secretary. (Sections 84(4)(a) and 86(1))

4.3.2 The person appointed as company secretary shall be appointed on such terms and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that such person:

4.3.2.1 has the requisite knowledge of, or is experienced with, relevant laws (Section 86(2)(a)); and

4.3.2.2 is a permanent resident of the Republic of South Africa, and remains so while serving in that capacity (Section 86(2)(b)).

4.3.3 Without in any way limiting or excluding any other grounds for removing a person as the company secretary, any person who is the company secretary for the time being who:

4.3.3.1 does not, in the reasonable opinion of the Board, have the requisite knowledge of, or experience with, relevant laws (Section 86(2)(a)); or

4.3.3.2 ceases to be a permanent resident of the Republic of South Africa (Section 86(2)(b)),

shall cease to be the company secretary on delivery to that person in the discretion of the Board of a notice by the Board terminating the appointment as company secretary.

4.3.4 A juristic person or partnership complying with the requirements set out in section 87 may be appointed by the Board to hold the office of company secretary. (Section 87)

4.3.5 The company secretary shall be accountable to the Board. (Section 88(1))

4.3.6 The duties of the company secretary shall be the duties as specified in writing by the Board from time to time, and shall include as a minimum the statutory duties set out in section 88(2).

4.3.7 If the office of company secretary becomes vacant for any reason, the Board must fill that vacancy by appointing a person whom the Directors consider to have the requisite knowledge and experience within 60 business days after the vacancy arises. (Section 86(4))

4.4 **auditors**

4.4.1 Each year at its annual general meeting, the Company must appoint an auditor. (Sections 84(4)(b) and 90(1))

4.4.2 The auditor shall be appointed subject to and in compliance with the requirements and criteria as to auditors set out in sections 90 and 92. (Section 90)

- 4.4.3 A retiring auditor may be automatically reappointed at an annual general meeting without any resolutions being passed, subject to the restrictions set out in sections 90(6) and 92.
- 4.4.4 If the annual general meeting of the Company does not appoint or reappoint an auditor, the Board must fill the vacancy in the office in terms of the procedure set out in paragraph 4.4.6 within 40 business days after the date of the annual general meeting. (Section 90(7))
- 4.4.5 If a vacancy arises in the office of auditor of the Company at any time, the Board:
- 4.4.5.1 must appoint a new auditor within 40 business days, if there was only one incumbent auditor of the Company; and
- 4.4.5.2 may appoint a new auditor at any time, if there was more than one incumbent, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Company.
- 4.4.6 Before making an appointment in terms of paragraph 4.4.4 or 4.4.5:
- 4.4.6.1 the Board must propose to the Company's audit committee, within 15 business days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new auditor; and
- 4.4.6.2 may proceed to make an appointment of a person proposed in terms of paragraph 4.4.6.1 if, within 5 business days after delivering the proposal, the audit committee does not give notice in writing to the Board rejecting the proposed auditor. (Section 91(3)).
- 4.4.7 If the Company appoints a firm as its auditor, a change in more than one half of the composition of the members of that firm will constitute the resignation of the firm as auditor of the Company, giving rise to a vacancy. (Sections 91(4) and (5)).

4.4.8 Any auditors of the Company for the time being shall have the rights and restricted functions set out in section 93.

4.5 **audit committee**

4.5.1 The Company must establish an audit committee comprising of at least three members, all of whom shall be independent non-executive Directors. All members of the audit committee must be independent as envisaged in the Companies Act and the Listings Requirements. (Sections 84(4)(c) and 94(2)).

4.5.2 The members of the audit committee must be elected at each annual general meeting of the Company, in accordance with and subject to the requirements and criteria as to the members and composition of such a committee as set out in section 94. (Section 94(2)).

4.5.3 If a vacancy arises on the audit committee, the Board must fill such vacancy within 40 business days.

4.5.4 Neither the appointment nor the duties of the audit committee of the Company reduce the functions and duties of the Board, except with respect to the appointment, fees and terms of engagement of the auditor. (Section 94(10) read with sections 94(7)(a),(b),(c),(d) and (e), section 90(2)(c) and section 91(3)).

4.5.5 The Company shall pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by that audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, amongst other financial constraints, the solvency and liquidity test as applied to the Company. (Section 94(11) read with section 4)).

4.5.6 The members of the audit committee shall hold and conduct their meetings in accordance with section 94 and the provisions of the Board Charters, which provisions of the Board Charters are binding

on each such member in terms of section 15(6)(c)(ii).
(Paragraph 1.7).

- 4.5.7 At least one third of the members of the Company's audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

5. **Securities of the Company**

The authorised Securities of the Company and the rights and privileges attaching thereto are set out in Schedule 1.

6. **Authority to alter authorised Shares**

- 6.1 The Board shall not have the powers contained in section 36(3), read with those powers listed in paragraph 6.2, nor may the Board take any action in respect of any Shares or classes of Shares dealt with in paragraph 6.2.

- 6.2 The Shareholders shall have the sole authority to undertake the following actions (whether or not referred to in section 36(3)), by a Special Resolution which amends this MOI, namely to:

- 6.2.1 increase or decrease the number of authorised but unissued Shares of any class;

- 6.2.2 create any new class or classes of authorised but unissued Shares;

- 6.2.3 change by way of consolidating or subdividing (or both) any or all:

- 6.2.3.1 authorised but unissued Shares of any class; and

- 6.2.3.2 issued Shares of any class,

provided that the holders of the issued Shares so consolidated or divided, confirm in writing or by resolution, the change by a Special Resolution of the holders of the issued Shares so consolidated or divided;

- 6.2.4 reclassify all or any Shares that have been authorised but not issued;
 - 6.2.5 classify all or any unclassified Shares that have been authorised but are not issued;
 - 6.2.6 determine the preferences, rights, limitations and other terms of all or any Shares that have been authorised but not issued;
 - 6.2.7 vary the preferences, rights, limitations and other terms of any issued or unissued Shares;
 - 6.2.8 vary the preferences, rights, limitations and other terms attaching to any particular class of Shares;
 - 6.2.9 convert any class of Shares into one or more other classes of Shares; and
 - 6.2.10 convert any Shares of par value to Shares of no par value.
- 6.3 If the Shareholders act pursuant to the authority contemplated in paragraph 6.2, the Company must file a Notice of Amendment of this MOI in accordance with section 16(7).
- 6.4 For so long as any of the Company's Securities are listed on the securities exchange operated by the JSE, such Securities, and any variations thereto, shall be subject to any limitations with respect thereto contained in the Listings Requirements, and in particular Schedule 10 of the Listings Requirements, as amended from time to time.
- 6.5 No further Securities ranking in priority to, or *pari passu* with, the existing "A" Preference Shares and/or "B" Preference Shares, shall be created without a Special Resolution passed at a separate general meeting of such "A" Preference Shareholders and/or "B" Preference Shareholders, as applicable.

7. Issue of Shares

- 7.1 Subject to any relevant provisions of this MOI, the Listings Requirements and the Companies Act and without prejudice to any special rights

previously conferred on the holders of any existing Shares or class of Shares in the issued Share capital of the Company, the Board, with the prior approval of an ordinary resolution, or if so required by the Companies Act, with the prior approval of a Special Resolution, adopted at a General Meeting, may issue any Shares in the authorised capital or any debt instrument or grant options to subscribe for unissued Securities, with such preferred, deferred, or other special rights or such restrictions, whether in regard to Distribution, voting, return of capital or otherwise, as the resolution adopted at the General Meeting may from time to time determine. Preference Shares may be issued and existing Shares may be converted into preference Shares on the basis that they are, or at the option of the Company are liable, to be redeemed on such terms and in such manner as shall be prescribed in this MOI or the resolution adopted at the General Meeting authorising or effecting such issue or conversion.

- 7.2 Subject to paragraph 7.1 above and paragraph 7.4 below, the Board may resolve to issue Shares to such person or persons, and on such terms and conditions, and with such rights and privileges, at any time, as the Directors may in their sole discretion determine, but only within the classes and to the extent that those Shares have been authorised by or in terms of this MOI.
- 7.3 Shares or other Securities which are of a class listed on the securities exchange operated by the JSE shall be issued in the form of "uncertificated" Shares or Securities, provided that the Directors shall be entitled to resolve in their sole discretion that Shares or other Securities be issued in the form of "certificated" Shares or Securities.
- 7.4 The Board may issue authorised Shares only:
- 7.4.1 for adequate consideration to the Company as determined by the Board (subject to and in terms of section 40); or
- 7.4.2 in terms of conversion rights associated with previously issued Shares or other Securities (Section 40(1)(b)); or
- 7.4.3 as capitalisation Shares as contemplated in section 47 (Section 40(1)(c)).

- 7.5 The Board may issue options for Shares only for adequate consideration to the Company as determined by the Board (subject to and in terms of section 40 read with section 42).
- 7.6 The Company shall not issue any Shares (or any options for Shares) before the Board has determined the consideration for which, and the terms on which, those Shares (or options) will be issued. (Section 40(2) read with section 43)
- 7.7 When the Company has received the consideration approved by the Board for the issuance of any Shares:
- 7.7.1 those Shares are fully paid (Section 40(4)(a)); and
- 7.7.2 the Company must issue those Shares and cause the name of the holder to be entered on the Company's securities register in accordance with sections 49 to 51. (Section 40(4)(b)) For the sake of clarity, at the time when the Company has received the consideration approved by the Board for the issuance of Shares such Shares shall at that time, in the absence of anything to the contrary specified in the resolution to issue such Shares as to the timing of the issue, be treated as having been issued by the Company.
- 7.8 Notwithstanding anything in this MOI to the contrary, at all times whilst the Company's Shares are listed on the securities exchange operated by the JSE it shall not be competent for the Company to issue any Shares in terms of sections 40(5) to 40(7) of the Companies Act.
- 7.9 The Company shall as soon as practicable after issuing any Shares, enter or cause to be entered in its securities register, in respect of every class of Shares issued, the names and addresses of the persons to whom the Shares were issued and the number of Shares issued to each of them, and such other information that is required to be entered into the securities register in terms of section 50(2). (Section 50(2) and Regulation 32).

8. Rights of pre-emption on issue of Shares

8.1 Shareholders right of pre-emption on issue of unissued Shares of an existing class of Shares

8.1.1 In the event that the Company proposes to issue any Shares (or options) other than:

8.1.1.1 Shares issued in terms of options or conversion rights; or

8.1.1.2 Shares issued in terms of a rights offer to be undertaken by the Company; or

8.1.1.3 Shares to be held under an employee share scheme in terms of section 97, a share incentive scheme which complies with the provisions of Schedule 14 of the Listings Requirements or any other employee share option or incentive scheme; or

8.1.1.4 capitalisation Shares contemplated in section 47; or

8.1.1.5 Shares issued or to be issued as consideration for any assets, corporeal or incorporeal, or for services rendered; or

8.1.1.6 Shares issued for cash pursuant to a general or specific approval given by the Shareholders in General Meeting,

each Shareholder of the Company already holding issued Shares in the class of Shares (or options, where an offer for options shall be pro rata in the same way as an offer for Shares) proposed to be issued has the right, before any other person who is not a Shareholder of the Company of that class of Shares (or options), to be offered, and within 10 business days (or such other period prescribed by the Companies Act or the Listings Requirements) of such offer to subscribe for, that number of the Shares (or options) proposed to be issued which in relation to the total number of Shares (or options) proposed to be issued bears the (as close as possible) same ratio (as determined by the Board) as the number of Shares in that class already registered in the Shareholders name at the time of such offer

bears to the then total number of issued Shares (or options) in that class, calculated at the time the offer was made. The offer to each of the Shareholders(s) concerned shall, in order to be valid, stipulate only the issue price per Share (or option), the number and class of Shares (or options) which the Shareholders concerned is entitled to, the total number of Shares (or options) proposed to be issued.

8.1.2 If all the Shares (or options) of a particular class offered by the Company in terms of any offer made under paragraph 8.1.1 are not taken up and subscribed for by the Shareholders entitled to do so in terms of paragraph 8.1.1, the Board shall be entitled, but not obliged, to then offer the excess Shares (or excess options) which had not been accepted to all the other Shareholders of the Company holding issued Shares of any other class(es) than those offered and to the holders of Shares of that particular class of offered Shares (or options) who did take up and subscribed for Shares (or options) in terms of paragraph 8.1.1, if any, on the same basis as provided for in paragraph 8.1.1.

8.1.3 If all the Shares (or options) of a particular class offered by the Company in terms of any offer made under paragraph 8.1.1 or paragraph 8.1.2 (if the Board has elected to offer excess Shares (or excess options) to Shareholders), are not taken up and subscribed for by the Shareholders entitled to do so, the Board shall be authorised to then offer the remaining Shares (or options) which had not been accepted within the applicable acceptance period referred to in paragraph 8.3 to any person or persons which offer to such person must be made within the 60 days immediately following the expiry of the acceptance period, at the same issue price per Share (or option) and on the same terms and conditions as were offered to the Shareholders in terms of paragraphs 8.1.1 or paragraph 8.1.2 (if the Board has elected to offer excess Shares (or excess options) to Shareholders).

8.2 **issue of a new class of Shares (options)**

8.2.1 Subject to paragraph 1.4.1 above, if the Company proposes to issue Shares of any new class (or any options for Shares of any new class) which class of Shares has not previously been issued, other than Shares or options contemplated in paragraphs 8.1.1.1 to 8.1.1.6, then each Shareholder holding issued Shares of any other class(es) has the right, before any other person who is not a Shareholder of the Company, to be offered and within 10 business days (or such other period prescribed by the Companies Act or the Listings Requirements) of such offer to subscribe for, a percentage of the new class of Shares (or options where an offer for options shall be pro rata in the same way as an offer for Shares) proposed to be issued equal to the percentage of general voting rights which that Shareholder has in relation to the aggregate general voting rights, calculated as at the time the offer was made. The offer to each of the Shareholders concerned in terms of this paragraph shall in order to be valid, stipulate only the issue price per share (or option), the number of Shares (or options) of the new class which the Shareholders in question is entitled to, where applicable the total number of new Shares (or options) proposed to be issued.

8.2.2 If all the Shares (or options) of a new class of Shares offered by the Company in terms of any offer made under paragraph 8.2.1 are not taken up and subscribed for by the Shareholders entitled to do so in terms of paragraph 8.2.1, the Board shall be entitled but not obliged to then offer the excess Shares (or excess options) which had not been accepted to all the Shareholders of the Company who did take up and subscribed for Shares (or options) in terms of 8.2.1, if any, on the same basis as provided for in paragraph 8.2.1.

8.2.3 If all the Shares (or options) of a new class offered by the Company in terms of any offer made under paragraphs 8.2.1 or paragraph 8.2.2 (if the Board has elected to offer excess Shares (or excess options) to Shareholders) are not taken up and subscribed for by the Shareholders entitled to do so, the Board shall be authorised to then

offer the remaining Shares (or options) which had not been accepted within the applicable acceptance period referred to in paragraph 8.3 to any person or persons which offer to such person must be made within the 60 days immediately following the expiry of the acceptance period, at the same issue price per share (or option) and on the same terms and conditions as were offered to the Shareholders in terms of paragraphs 8.2.1 or paragraph 8.2.2 (if the Board has elected to offer excess Shares (or excess options) to Shareholders).

8.3 **delivery of offer and acceptance period**

An offer made by the Company in terms of paragraphs 8.1 or 8.2 shall be delivered to each Shareholder concerned, and, when made by the Company, be irrevocable and open for acceptance by the Shareholders(s) concerned by notice of acceptance in writing delivered by the accepting Shareholders to the Board so as to be received by the Board within 7 business days of the offer being delivered to the Shareholders ("**acceptance period**").

8.4 **acceptance of the offer**

A Shareholder entitled to receive an offer in terms of paragraphs 8.1 or 8.2 shall be entitled to accept the offer in respect of the number of Shares (or options) of the class that Shareholder is entitled to, or fewer than that number by notice of acceptance delivered by the accepting Shareholders to the Board within the acceptance period in terms of paragraph 8.3.

8.5 **pre-emption provisions to apply again**

Should any of the remaining Shares (or options) not be subscribed for and issued to the person(s) as provided for in paragraphs 8.1.2 or 8.2.2 within the applicable 60 day period, or such extended period as may be necessary to allow for any statutory or regulatory approvals to be obtained, if any, then such Shares (or options) shall not be issued except after again following the pre-emption provisions of paragraphs 8.1 or 8.2 (as applicable).

8.6 **issue of Shares during a business rescue**

8.6.1 Except to the extent that an approved business rescue plan provides otherwise and subject to paragraph 8.6.2 below, a pre-emptive right of a Shareholder of the Company as contemplated in this paragraph 8 does not apply with respect of an issue of Shares by the Company in terms of the business rescue plan. (Section 152(7))

8.6.2 An issue of Shares by the Company in terms of a rescue operation (as contemplated by Schedule 13 of the Listings Requirements) may, to the extent necessary and provided that the JSE has provided dispensation and all applicable approvals as contemplated by Schedule 13 of the Listings Requirements have been obtained, be undertaken with the requirements in paragraph 9.20 to 9.29 and 5.51 to 5.53 of the Listings Requirements (regarding the preparation of a circular and the obtaining of Shareholder approval) having been modified.

8.7 **commission and brokerage**

The Company may pay to any person:

8.7.1 a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally); or

8.7.2 a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally);

for any Securities issued or to be issued by the Company, provided that, for so long as any Securities of the Company are listed on the securities exchange operated by the JSE, any such commission or brokerage shall not exceed 10% of the consideration payable for such subscription for any Securities.

9. **Provision of Shareholder information to the Company**

9.1 A person to whom Securities have been issued or transferred shall, in order for that person's name to be entered in the securities register with the

Company or the records to be administered and maintained by a participant or CSD as the Company's uncertificated securities register in terms of section 50(3), provide to the Company or the participant or CSD, as the case may be, all the information relating to that person which is required to be included in the securities register, including the uncertificated securities register, in terms of the Companies Act, the Companies Regulations, the Listings Requirements or in terms of this MOI. (Regulations 32-34)

9.2 If any Securities of the Company are registered in the name of a person who is not the sole holder of the beneficial interest in all of the Securities in the Company held by that person, that registered holder of such Securities must disclose to the Company:

9.2.1 the identity of the person on whose behalf any such Securities are held; and

9.2.2 the identity of each person with a beneficial interest in the Securities so held, the number and class of Securities held for each such person with a beneficial interest, and the extent of each such beneficial interest. (Section 56(3))

9.3 A person is regarded to have a beneficial interest in a Security of the Company if the Security is held *nomine officii* by another person on that first person's behalf, or if that first person falls into the categories set out in section 56(2).

10. Registered Shareholders

A person:

10.1 acquires the rights associated with any particular Securities of the Company when that person's name is entered in the Company's securities register as a person to whom those Securities have been issued or transferred (Section 37(9)(a)); and

10.2 ceases to have the rights associated with any particular Securities of the Company when the transfer to another person, re-acquisition by the

Company, or surrender to the Company of those Securities has been entered in the Company's securities register (Section 37(9)(b)).

11. **Alteration of Ordinary Shareholders' rights (business rescue)**

When, in terms of a business rescue plan as envisaged in the Companies Act, Shares of a particular class of Shares in the Company are issued otherwise than pro rata to existing Shareholders of that class in the proportion of their shareholdings in the Company in that class immediately prior to that issue, or when Shares of a new class are issued other than pro rata to the Ordinary Shareholders in the proportions of their ordinary shareholdings in the Company immediately prior to that issue, such issue shall be regarded as an alteration of the rights of the holders of ordinary Shares for purposes of section 152(3)(c), and the relevant proposed business rescue plan will need to be approved by Ordinary Shareholders in terms of sections 152(3)(c).

12. **Rights offer (exclusion of non-residents)**

12.1 The Company may apply to the Commission to exclude from any rights offer any category of holders of the Company's Securities who are not resident within the Republic, in terms of section 99(7).

12.2 Notwithstanding paragraph 12.1 above, any pro rata offer of any Securities to any person shall be subject to the possible exclusion of any persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer.

13. **Securities register**

13.1 The Company shall, in accordance with sections 24(4)(a) and 50, establish or cause to be established a register of its issued Securities in the prescribed form and maintain its securities register in accordance with the prescribed standards. (Regulations 32, 33 and 34)

13.2 Each Shareholder or Securities holder shall be responsible for providing the Company with all the information relating to that holder required for purposes of maintaining the securities register, including the name, business address, residential address, postal address and e-mail address

and/or fax number of that holder. (Section 50(2)(b)(i) and (iv) read with Regulation 32(2)(a), paragraph 28.2)

- 13.3 In the case of any Security registered in the names of two or more persons as joint holders, the person first-named in the securities register shall, save as is provided in paragraph 13.5 or 16.14, be the only person recognised by the Company as having any title to such Security and to the related certificate of title.
- 13.4 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, shall, save as permitted in paragraphs 13.5 and 16.13, be the only person recognised by the Company as having any title to such security.
- 13.5 The Company shall be entitled to recognise any person who is not a registered security holder in respect of any Securities as the person having title to such Securities or holding or having any beneficial right in or to such Securities, on such terms and subject to such conditions and for such period(s) as the Board deems fit.
- 13.6 The Company shall as soon as practicable after issuing any Securities enter or cause to be entered in its Securities register, in respect of every class of securities issued:
- 13.6.1 the total number of those Securities that are held in uncertificated form; and
- 13.6.2 with respect to certificated Securities, the names and addresses of the persons to whom the certificated Securities were issued and the number of certificated Securities issued to each of them, and such other information that is required to be entered into the certificated securities register in terms of section 50(2). (Section 50(2) and Regulation 32)
- 13.7 A person to whom uncertificated Securities have been issued or transferred shall, in order for that person's name to be entered in the Securities register

with the Company or the records to be administered and maintained by a participant or CSD as the Company's uncertificated securities register in terms of section 50(3), provide to the Company or the participant or CSD, as the case may be, all the information relating to that person which is required to be included in the securities register including the uncertificated securities register in terms of the Companies Act, the Companies Regulations, the Listings Requirements or in terms of this MOI. (Regulations 32-34)

13.8 **recognition of beneficial holders**

- 13.8.1 The Company shall be entitled (but not required or obliged, even if given notice of it, except as required by law or as ordered by a court of competent jurisdiction) to recognise or have any regard to any one or more persons who are not registered Securities holders in respect of any Securities as the person or persons having title (including joint title) to such Securities or holding or having any beneficial right or any other interest (including any joint beneficial right or other interest) in or to such Securities and/or in or to any rights, preferences, privileges or benefits attaching to any such Securities, on such terms and subject to such conditions and for such period(s) as the Board in its discretion may from time to time determine.
- 13.8.2 To the extent required by the Companies Act, the Company shall maintain records of disclosures of beneficial interests made to the Company as contemplated in this MOI.
- 13.8.3 The Board may, in its discretion, record in the securities register of the Company that any Security is held in trust or by a nominee, and may disclose in the securities register for whom that Security is held.
- 13.8.4 Notwithstanding anything to the contrary contained in this MOI or any agreement binding on the Company, the Company shall be under no obligation to verify the existence of the beneficial holder (or registered holder) in respect of any Securities, or to verify the legal status of any person who holds a Security as a trustee or nominee, or to ensure the

carrying out by the trustee or nominee of any trusts or mandates (whether express or implied) in respect of any such Security.

14. Certificates evidencing Securities

- 14.1 Shares or other Securities which are of a class listed on the securities exchange operated by the JSE shall, subject to the Listings Requirements and paragraph 15 below, be issued in the form of "uncertificated" Shares or Securities, provided the Directors shall be entitled to resolve, in their sole discretion, that Shares or other Securities be issued in certificated form.
- 14.2 In respect of existing Securities issued in certificated form, a certificate evidencing any Securities of the Company must comply with the formalities and content prescribed by section 51 and may otherwise be in such form as the Board prescribes from time to time.
- 14.3 The Board shall in respect of the issue of any such Security authorise two persons to issue and sign certificates of title to such Security. (Section 51(1)(b)).
- 14.4 Every registered Securities holder shall be entitled on the initial issue or transfer of Securities to the Securities holder of the initial certificate(s) free of charge, but for every subsequent certificate the Board may make such charge as from time to time the Board may deem fit.
- 14.5 The Company shall as soon as possible after the issue of any Securities or the lodgement of a proper instrument of transfer in terms of paragraph 16.9 for any Securities have ready for delivery the relevant certificate(s) of title.
- 14.6 Every person to whom Securities are issued and whose name is entered in the securities register shall be entitled to one certificate for all the Securities of each class registered in his name, or to several certificates, each for a part of such Securities.
- 14.7 A Securities certificate complying with the provisions of section 51 is proof that the named Security holder owns the Securities specified in the certificate, in the absence of evidence to the contrary. (Section 51(1)(c))

- 14.8 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.
- 14.9 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the securities register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that Security.
- 14.10 The registration and transfer of any uncertificated Securities issued in the Company from time to time shall be dealt with in accordance with the provisions of this MOI, the Act, read with the Regulations, and the Listings Requirements. (Sections 50, 52, 53, 54, 55 and 56).

15. **Uncertificated securities**

15.1 **evidence of uncertificated Securities**

- 15.1.1 In terms of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each person for whom any uncertificated Securities are held in an uncertificated Securities register. The Company shall not issue certificates or statements evidencing or purporting to evidence title to uncertificated Securities of the Company.
- 15.1.2 A person who is entitled to and wishes to inspect an uncertificated Securities register may do so only through the Company in terms of section 52(2) read with section 26 and paragraph 3.1.

15.2 **substitution of certificated or uncertificated Securities**

- 15.2.1 A registered holder of uncertificated Securities may withdraw all or part of the uncertificated Securities held by that person in an uncertificated securities register, and obtain a certificate in respect of those withdrawn Securities, by notifying the applicable CSDP or the CSD only (and not the Company), in terms of section 54(1).

- 15.2.2 If the Company receives from the CSDP or CSD concerned only (not from the registered holder of uncertificated Securities) a notice to provide the relevant certificate in respect of any withdrawn uncertificated Securities in terms of section 54(1)(a), the Company shall make the necessary entries in the securities register of the Company, and prepare and deliver the relevant certificate, in terms of section 54(2):
- 15.2.2.1 against receipt by the Company of any fee charged by the Company from time to time in terms of section 54(3); and
- 15.2.2.2 against the holder of the Securities in question providing to the Company the necessary information required by the Company in terms of paragraph 13.2.

16. **Transfer of Shares**

16.1 **movable property**

A Share issued by the Company is movable property, transferable in any manner provided for or recognised by the Companies Act or other legislation. (Section 35(1)).

16.2 **effect of a transfer**

A person:

- 16.2.1 acquires the rights associated with any particular issued Securities of the Company when that person's name is entered into the Company's securities register as a person to whom those Securities have been transferred (Section 37(9)(a)); and
- 16.2.2 ceases to have the rights associated with any particular Securities of the Company when the transfer to another person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's securities register. (Section 37(a)(b))

16.3 **share certificate to be endorsed**

The certificate evidencing any Shares of the Company must state on its face any restriction on the transfer of the Shares evidenced by that certificate. (Section 51(1)(a)(iv)).

16.4 **restriction on transfer of Shares**

The Shares shall be freely transferable, and the right of any Shareholder to transfer any Shares of any class of Shares shall be limited or restricted only to the extent provided for in respect of that class of Shares or in terms of any applicable law.

16.5 **no liens**

Fully paid up Shares shall not be subject to any lien in favour of the Company.

16.6 **odd-lot offers**

16.6.1 For purposes hereof:

16.6.1.1 "odd lot" means any total holding by a Shareholder (which for the purposes of this paragraph 16.6 shall include a dematerialised Shareholder without "own-name registration" that holds the Shares through a nominee in accordance with the rules and procedures of Strate Limited) of less than 100 Shares (or such other number as may be permitted by the JSE), or any total holding by a Securities holder of less than 100 Securities (or such other number as may be permitted by the JSE) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other rand amount as may be permitted by the JSE);

16.6.1.2 "odd-lot offer" means an offer by the Company, or its nominee (which for the avoidance of doubt shall include any of the Company's subsidiaries from time to time), to the holders of odd-lots in terms of which the holders of the odd-lots may elect

to retain their holdings or sell their odd-lots, subject to the Listings Requirements to the extent applicable.

16.6.2 The Company, or its nominee may make and implement odd-lot offers on such terms and conditions as the Board may determine, in accordance with the Listings Requirements or as otherwise permitted by the JSE and if it does so and any Shareholder or Securities holder who qualifies to participate in that odd-lot offer does not elect any of the election alternatives (namely to retain their odd-lots or to sell their odd-lots) in accordance with the terms of the odd-lot offer, such holders (and any persons with a beneficial interest in such odd-lots) shall be deemed to have agreed to sell their odd-lots, and the Company, or its nominee shall be entitled (on implementation of the odd-lot offer) to cause the odd-lots to be sold on behalf of such persons to any party (including the Company) provided that the Company shall account to the registered holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such odd-lots.

16.6.3 All unclaimed proceeds of odd-lot sales may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, subject to the laws of prescription.

16.6.4 Whenever Shares or other Securities are to be offered or issued by the Company pro rata to any persons, such offer and issue may at the Board's discretion be subject to any rounding off of entitlements to avoid odd-lots of such Securities.

16.7 **fractions**

If, on any issue of Shares or other Securities, or on any consolidation or sub-division of Shares or other Securities, or on any other transaction with the Company, Shareholders or other Securities holders would, but for the provisions of this paragraph, become entitled to fractions of Shares or other Securities, all allocations of such Shares or other Securities shall be rounded up or down based on standard rounding convention (i.e. allocations will be rounded up to the nearest whole number if they are equal

to or greater than 0.5, or rounded down to the nearest whole number if they are less than 0.5) resulting in the allocations of whole Shares or other Securities and no fractional entitlements.

16.8 Board's power to decline to register a transfer

The Board may not decline to register the transfer of any Shares in terms of a proper instrument of transfer except if, and for so long as, the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this MOI with respect to the transfer of the Shares in question. The transferor shall be deemed to remain the holder of and shall remain the Shareholder in respect of such Shares until the name of the transferee is entered in the securities register in respect thereof.

16.9 proper instrument of transfer

The instrument of transfer of any Shares shall be in writing in the usual common form, or in such form as the Board may from time to time determine and shall specify the name of the transferor, the name of the transferee, the date of transfer and the number of Shares being transferred, signed by or on behalf of the Shareholders as transferor and signed by or on behalf of the transferee. An instrument of transfer that complies with these requirements shall constitute a "proper instrument of transfer" for the purposes of section 51(6)(a).

16.10 documents required for registration of transfer

16.10.1 Any person wishing the Company to register the transfer of any Securities shall deliver to the Company for registration:

16.10.1.1 a proper instrument of transfer; and

16.10.1.2 the original certificate (or a duplicate certificate issued pursuant to paragraph 14.8) of the Shares being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Shares.

16.10.2 The instrument of transfer, original or duplicate share certificate and such other documentary evidence shall remain in the custody of the Company at its registered office, or at the offices of the Company's nominated and/or authorised service provider.

16.11 **mandates to sign instruments of transfer**

16.11.1 All mandates or authorities to sign instruments of transfer granted by Shareholders for the purpose of transferring Shares, which have been lodged, produced or exhibited with or to the Company, shall be held in custody by the Company at its registered office.

16.11.2 Such mandates or authorities shall, as between the Company and the grantor of such mandate or authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the Shareholders as transferor pursuant to such mandate or authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Shareholders is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the mandate or authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.

16.12 **transfer of uncertificated Securities**

A transfer of uncertificated Securities of the Company shall be effected in terms of section 53 read with the rules of the relevant CSD.

16.13 **recognition of title**

The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is an insolvent or the *curator bonis* of a Shareholder who is mentally incapacitated or prodigal or any person duly appointed by a competent authority to represent or act for any Shareholder shall, subject to the provisions of paragraphs 13.2 and 13.4 regarding joint holders, be the

only person recognised by the Company as having any title to any Shares registered in the name of such Shareholder, including for voting purposes.

16.14 **transmission of Shares**

16.14.1 Subject to any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of paragraphs 13.2 and 13.4 or paragraph 16.13 as having any title to any Shares (and also the legal guardian of any minor Shareholder and any person who obtains title to any Shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this paragraph or as to his or her title to any Shares, and subject to the transfer provisions in this MOI, transfer such Shares to himself or to any other person.

16.14.2 A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a Shareholder who is deceased or the estate of a Shareholder whose estate has been sequestered or who is otherwise under a disability or of his appointment as the liquidator of any body corporate which is a Shareholder, shall be entered in the securities register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder.

16.15 **capitalisation Shares**

The Board shall have the power and authority to issue capitalisation Shares as envisaged in section 47, subject to compliance with the Listings Requirements, for so long as the Shares remain listed on the securities exchange operated by the JSE.

17. **Beneficial interest in Securities**

17.1 The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1).

- 17.2 The Company shall be entitled (but not required or obliged, even if given notice of it, except as required by law or as ordered by a court of competent jurisdiction) to recognise or have any regard to any one or more persons who is or are not a registered Securities holder(s) in respect of any Securities as the person or persons having title (including joint title) to such Securities or holding or having any beneficial right or any other interest (including any joint beneficial right or other interest) in or to such Securities and/or in or to any rights, preferences, privileges or benefits attaching to any such Securities, on such terms and subject to such conditions and for such period(s) as the Board in its discretion may from time to time determine.
- 17.3 To the extent required by the Companies Act, the Company shall maintain records of disclosures of beneficial interests made to the Company as contemplated in this MOI.
- 17.4 The Board may, in its discretion, record in the Securities register of the Company that any Security is held in trust or by a nominee, and may disclose in the Securities register for whom that Security is held.
- 17.5 Notwithstanding anything to the contrary contained in this MOI or any agreement binding on the Company, the Company shall be under no obligation to verify the existence of the beneficial holder (or registered holder) in respect of any Securities, or to verify the legal status of any person who holds a Security as a trustee or nominee, or to ensure the carrying out by the trustee or nominee of any trusts or mandates (whether express or implied) in respect of any such Security.

18. The Company or a subsidiary acquiring the Company's Shares

- 18.1 Subject to and in accordance with section 48 and paragraph 18.2, and in accordance with the Listings Requirements to the extent applicable, the Board may determine that:
- 18.1.1 the Company will acquire a number of its own Shares;
- 18.1.2 a subsidiary of the Company may acquire a number of the Shares of the Company;

18.1.3 the Company will acquire a number of shares of its holding company(ies).

18.2 If the Company (as a subsidiary) acquires shares in its holding company(ies), or if a subsidiary of the Company acquires Shares in the Company, no voting rights attached to those shares may be exercised while the shares are held by the subsidiary company in question and while that company remains a subsidiary of the company whose shares it holds. (Section 48(2)(b)(ii)).

18.3 If the acquisition by the Company involves the acquisition of more than 5% of any class of the issued Shares of any particular class of shares of the Company, then the acquisition must meet the requirements for a scheme of arrangement set out in section 114 and 115. (Section 48(8)(b) read with section 114(1)(e)).

18.4 The Company, or a subsidiary of the Company, may acquire Shares of the Company, as provided for in section 48.

19. **Financial assistance**

19.1 **for the subscription of options or Securities**

The Board may authorise the Company to provide financial assistance for the purpose of, or in connection with, the subscription for any option or Securities, as contemplated in section 44, subject to and in accordance with section 44.

19.2 **to directors or prescribed officers**

The Board may authorise the Company to provide loans or other financial assistance to persons as contemplated in section 45, subject to and in accordance with section 45.

19.3 **other financial assistance**

The Company may provide any financial assistance whatsoever to any entity without restriction (subject to sections 44 and 45) on such terms and

subject to such conditions as the Board in its discretion may from time to time determine.

20. Compliance with the Listings Requirements

Notwithstanding anything to the contrary in this MOI, the Company and the Board shall, for so long as the Company's Shares are admitted to the list maintained by the JSE, ensure that all corporate actions undertaken by the Company are undertaken in accordance with the Listings Requirements, to the extent applicable. In particular, the Company shall ensure that when it undertakes the following corporate actions, that this is done in compliance with the Listings Requirements:

- 20.1 the issue of Shares for cash and options and convertible Securities granted/issued for cash;
- 20.2 the repurchase of Securities by the Company; and
- 20.3 the alteration of the Company's share capital, authorised Shares and rights attaching to a class/es of Shares.

21. Securities other than Shares (debt instruments)

- 21.1 Subject to paragraph 1.4.1, the Board shall be entitled to authorise and issue any Securities which are not Shares, including any debt instruments, upon such terms and subject to such conditions, as are not precluded or prohibited by the Companies Act or the Listings Requirements, as it may in its discretion determine. (Section 43).
- 21.2 Notwithstanding paragraph 21.1 above, debt instruments shall not be issued with any special privileges, including attending and voting at General Meetings and the appointment of Directors.

22. Distributions

- 22.1 The rights of Shareholders (whether in the same class or different classes of shareholders), to or in respect of any Distribution (if and when declared), shall be as set out in this MOI, including Schedule 1. (Section 37(5)(c) and (d)(1)).

- 22.2 The Company and/or the Directors, as the case may be, shall not declare or make a Distribution except a Distribution in compliance with section 46, and the Listings Requirements, as applicable, and in accordance with the rights of Shareholders to or in respect of Distributions as set out in this MOI. (Section 46 (1)).
- 22.3 In respect of Distributions to Securities holders holding Securities listed on the securities exchange operated by the JSE, payments to such Securities holders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.
- 22.4 The Board, or (on the recommendation of the Board) the Ordinary Shareholders by ordinary resolution, may at any time authorise and/or declare a Distribution (which for the avoidance of doubt shall include a dividend), subject to compliance with section 46, to be paid to the Shareholders of any class in proportion to the number of Shares held by them in that class.
- 22.5 Distributions shall be declared payable or distributable to Shareholders registered as such on the record date with respect to such payment or Distribution determined in terms of paragraph 4 of Schedule 1 hereto, provided that such record date in the case of the payment of any dividend shall be a date subsequent to the date of sanctioning of the dividend or declaring the dividend by the Board, whichever is the later.
- 22.6 Distributions payable in monetary form, shall be declared in the currency of the Republic of South Africa. The Board may, in its discretion and on such terms and conditions as it may determine, authorise the payment of any Distribution to a non-resident Shareholder in any foreign currency requested by the non-resident Shareholder, at the cost, expense and risk of the non-resident Shareholder in question.
- 22.7 Any Distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets, and in particular of paid-up Shares or Securities of any other company, or in cash or in one or more of such ways (which shall include granting Ordinary Shareholders and "A" Preference

Shareholders, in accordance with Schedule 1, a right of election between receiving any Distribution in cash or in the form of the distribution of specific assets), subject to the provisions of the Companies Act, as the Board or the Ordinary Shareholders may at the time of authorising the Distribution determine and direct. If as a result of the declaration of a Distribution any Shareholders that become entitled to fractions of any specific assets of the Company, the Board may, subject to paragraph 16.7 above, sell the assets represented by such fractions and after deducting the expenses of such sale distribute the balance of the proceeds of the sale amongst the Shareholders entitled to the fractions in proportion to their entitlement.

22.8 The Directors may, from time to time, pay to the Shareholders on account of the next forthcoming dividend such interim dividend as in their judgement the position of the Company justifies.

22.9 In the case where several persons are registered as the joint holders of any Shares, any one of such persons may give to the Company effective receipts for all or any Distributions and payments on account of Distributions in respect of such Shares.

22.10 All cash Distributions (including dividends) payable to a Shareholder may be paid by electronic funds transfer (into the bank account recorded in the bank account register of the Company nominated by the Shareholder, or in the case of joint Shareholders into the bank account nominated by the Shareholder whose name stands first in the securities register in respect of the Share) or otherwise, as the Board may at the time of authorising the Distribution determine and direct. The delivery of an irrevocable instruction to the Company's bank to effect payment by electronic transfer into the bank account recorded in the bank account register of the Company specified by the Shareholder, or in the case of joint Shareholders into the bank account nominated by any of the joint Shareholders in respect of the Share, shall be a good discharge by the Company of its obligations to pay such cash Distribution to the Shareholder entitled thereto. For the purpose of this paragraph, any notice of a new registered address(es) or a change of registered address(es) or any notice of new bank account details or a change of bank account details or any instruction as to payment being

made at any other address or into any other bank account, not reflected in the securities register or the bank account register of the Company at the time of sanctioning or declaration of the Distribution by the Ordinary Shareholders, which is received by the Company between the time of such sanctioning or declaration of the Distribution by the Ordinary Shareholders and the applicable record date for payment of the Distribution, and which would have the effect of changing the currency in which such payment would be made, shall become effective only after such time of payment.

- 22.11 Every payment of a Distribution made by electronic funds transfer shall be made at the risk of the Shareholders. The Company shall not be responsible for the loss in transmission of any document sent through the post either to a registered address of any Shareholder or to any other address requested by a Shareholder or for the loss or misdirection of any electronic funds transfer.
- 22.12 Distributions unclaimed for a period of not less than 3 (three) years from the date on which such Distributions became payable by the Company may be declared forfeit by the Board for the benefit of the Company. For the avoidance of doubt it is recorded that any Distributions in the form of monies shall be held by the Company in trust indefinitely in a suitable interest bearing account, as determined by the Board in its discretion, in terms of which interest will accrue for the benefit of the Company, until lawfully claimed by the relevant Shareholders, but subject to the laws of prescription applicable from time to time, or until the Company is wound up.

23. Reserve fund

- 23.1 The Board may, before authorising any Distributions, set aside out of the amount available for dividends such sum as it thinks proper as a reserve fund or as an addition thereto.
- 23.2 The Board may divide the reserve fund into such special funds as it deems fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the assets upon such investments (other than Shares of the Company) as they may select, without being liable for any depreciation of or loss in consequence of such

investments whether the same be usual or authorised investments for trust funds or not.

- 23.3 The reserve fund shall, at the discretion of the Board, be available for the equalisation of dividends or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company, or for any other purpose to which the profits of the Company may be properly applied and the Board may at any time divide among the Shareholders by way of bonus, or special dividends and/or distributions, any part of the reserve funds which it, in its discretion, may determine not to be required for such purposes.

24. **Shareholders**

24.1 **Shareholders' meetings**

The rules and provisions relating to Shareholders' meetings are set out in Schedule 2 (Shareholders' Meetings).

25. **Directors and the Board**

25.1 **powers of the Board**

- 25.1.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise. (Section 66(1)).

- 25.1.2 The Directors may, from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company.

25.2 **composition of the Board**

In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirements in terms of the Companies Act, to appoint on audit committee and a social and ethics committee, the Board shall comprise not less than 4 Directors of which 2 must be executive Directors. (Section 66(2)(b)).

25.3 **election and appointment of Directors**

25.3.1 The Ordinary Shareholders shall be entitled at a General Meeting of the Company to elect all of the Directors of the Company (and their alternates) for the time being and from time to time, by a separate ordinary resolution with respect to each such Director and each alternate, subject to paragraphs 25.3.5 and 25.4.2, provided that if the Ordinary Shareholders do not elect an alternate with respect to any Director, the Board shall be entitled to appoint such alternate(s) provided further that such alternate is not a person previously proposed to the Ordinary Shareholders as an alternate or as a Director but who was not elected by the Ordinary Shareholders when put to the vote. (Section 66(4)(b) and 66(4)(a)(iii)).

25.3.2 The Board has the power to appoint Directors (i) to fill a casual vacancy (being a vacancy on the Board which does not amount to the number of Directors being less than the minimum number of Directors prescribed in terms of this MOI) or (ii) as an addition to the Board (as contemplated in section 66(4)(a)(i)), provided that such appointment must be confirmed by the Shareholders at the next General Meeting (in accordance with paragraph 25.3.1).

25.3.3 If the number of Directors falls below the minimum provided for in paragraph 25.2 above, the remaining Directors must as soon as possible and in any event not later than three months from the date that the number of Directors falls below the minimum fill the vacancies or call a General Meeting for the purpose of filling the vacancies. The failure by the Company to have the minimum number of Directors during the three month period does not limit or negate the

authority of the Board or invalidate anything done by the Board or the Company. After the expiry of the three month period the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling General Meetings of Shareholders.

25.3.4 **Managing Director and/or CEO**

25.3.4.1 The Directors may from time to time appoint a person or persons to be the managing Director, CEO or joint managing Directors/CEOs of the Company and any acting managing Director or CEO, or appoint a person to be the holder of any other executive office in the Company. The Directors may determine the period of office of such appointee and may, subject to any contract between him or them and the Company, from time to time terminate his or their appointment and appoint another or others in his or their place or places. Such persons appointed in terms of this paragraph 25.3.4.1 shall be Directors of the Company. A managing Director, CEO or the holder of any other executive office in the Company may be appointed by contract for a period as determined by the Board, or any other authorised committee of the Board, provided that the managing Director's or CEO's contract may be terminated upon reasonable notice. Subject to the terms of his contract he shall be subject to the same provisions as to removal as the other Directors, and if he ceases to hold the office of Director (which in respect of paragraph 25.6.1 shall mean that the Director retires by rotation and is not re-elected at the annual general meeting) from any cause he shall ipso facto cease to be managing Director or CEO. The managing Director or CEO shall be eligible for re-appointment at the expiry of any period of appointment.

25.3.4.2 A Director who is appointed in terms of the provisions of paragraph 25.3.4.1 to the office of managing Director or CEO of the Company, or to any other executive office in the Company may be paid such remuneration not exceeding a reasonable

maximum in each year in respect of such office or services as may be determined by the Company's Remuneration Committee, or any successor to such committee (which shall constitute a disinterested quorum of the Directors).

25.3.4.3

The Directors may from time to time entrust and confer upon a managing Director or CEO or other executive officer appointed under paragraph 25.3.4.1 from time to time such of the powers and authorities vested in them as they think fit, and may confer such powers and authorities for such time, and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may convert such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Directors, and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities.

25.3.5 **ineligible or disqualified persons: appointment a nullity**

25.3.5.1

No person may be appointed or elected as a Director (or his alternate), or be an *ex officio* Director (or his alternate), or be entitled to serve or continue to serve as a Director (or an alternate Director) of the Company, if that person is or becomes ineligible or disqualified from being entitled to serve as a Director in terms of section 69 read with paragraph 25.7, and if at the time of his appointment or election that person is so ineligible or disqualified then his appointment is a nullity in terms of section 66(6). (Section 66(5)(a), 69 and 66(6))

25.3.5.2

Any person whose appointment as a Director is a nullity in terms of section 66(6), shall not be counted towards a quorum of Directors for purposes of paragraph 6 of Schedule 2, and his vote shall be disregarded with effect from the time it was purportedly cast for purposes of paragraphs 15 and 18 of Schedule 2 with the possible consequence that a decision or

approval by the Board in which such person participated might need to be reversed with effect from the time it was made if the application of this paragraph results in the meeting or resolution of the Directors not being quorate or the decision or vote not being passed by the requisite majority.

25.3.5.3 Any provision of any applicable laws, subject to the provisions of this MOI, that would have the effect of rendering any person ineligible for appointment or election as a Director or liable to vacate office as a Director on account of his having reached any specified age or of requiring special notice or any other special formality in connection with the appointment or election of any Director over a specified age, shall not apply to the Company.

25.3.6 **alternate Directors**

If a person (for whom another person has been appointed or elected as an alternate Director) ceases to be a Director of the Company for any reason, then the person who is his alternate shall hereby automatically and simultaneously at the same time as the first-mentioned person ceased to be a Director, in terms of this paragraph 25.3.6, also cease to be the alternate Director for that first-mentioned person.

25.3.7 **filing a notice with the Commission**

The Company shall file with the Commission a notice within 10 business days after a person becomes or ceases to be a Director of the Company. (Section 70(6)).

25.4 **register of Directors**

25.4.1 The Company must establish and maintain a record of its Directors, including all the details about each Director required in terms of and for the periods stipulated in the Companies Act and the Regulations, in a register of Directors. (Section 24(3)(b) and (5), and Regulation 23)

- 25.4.2 No person shall be entitled to serve or act as a Director (including as an alternate Director) of the Company, or have his name entered in the register of Directors of the Company, unless and until that person has been appointed in terms of paragraph 25.3 and has delivered to the Company:
- 25.4.2.1 all the details about that person which are required to be included in the register of Directors in terms of the Companies Act and the Regulations (paragraph 25.4.1); and
- 25.4.2.2 a written undertaking from that person, signed by that person, representing and warranting to the Company that he is not and will not be, at the time of his proposed appointment, ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve and act as a Director of the Company (Section 66(5)(a) and (6) and section 69(2) read with paragraph 25.7); and
- 25.4.2.3 a written undertaking from that person, signed by that person, undertaking to disclose in writing to the Board any facts, circumstances or events from time to time which might or are likely to result in him being or becoming ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve and act as a Director of the Company, within 5 business days of his becoming aware of any such facts, circumstances or events; and
- 25.4.2.4 a written undertaking from that person, signed by that person, undertaking to disclose in writing to the Board from time to time any facts, circumstances or events from time to time which might or are likely to result in him or a person related to him, having or acquiring a personal financial interest as contemplated in section 75 (including but not limited to as contemplated in section 75(6)), and whether or not such interest is material, within 5 business days of his becoming aware of any such facts, circumstances or events; and

25.4.2.5 a written statement signed by that person, confirming that he has read and is familiar with the provisions of the constitution of the Company and understands that he will in his capacity as a Director of the Company be bound by the terms of this MOI in terms of section 15(6) and the Board Charters, and consenting to serve as a Director of the Company (Section 66(7)(b)).

25.4.3 For purposes of the Companies Act, and in relation to the register of Directors required to be kept by the Company in terms of section 24(3)(b), a Director is defined in section 1 to mean a member of the Board (being a person appointed or elected as a Director of the Company or an *ex officio* Director of the Company, as contemplated in paragraph 25.2) and, accordingly, the prescribed details of each such person is required to be included by the Company in the register of Directors of the Company.

25.5 **remuneration of Directors (and alternate Directors)**

25.5.1 Notwithstanding anything to the contrary contained in this MOI or any agreement, understanding or arrangement with a Director, the Company shall not be obliged or entitled or required to pay any remuneration to a Director for their services as Directors (which shall exclude salaries of executive Directors) except such remuneration as has been approved by and in terms of a Special Resolution of the Ordinary Shareholders adopted within the period of 2 years immediately before the date of any proposed payment of any such remuneration, in compliance with section 66(9). (Section 66(8) and (9)). The remuneration payable in terms of this paragraph and any Special Resolution contemplated by it, shall accrue from day to day and the Directors shall determine when such remuneration shall be paid in respect of any relevant period.

25.5.2 An alternate Director shall not be entitled to any remuneration from the Company, but may be remunerated by the Director for whom he acts as an alternate, provided that the Directors may in their sole discretion resolve that the Company shall pay the remuneration of an

alternate Director, in which case such remuneration will subject to the requirements of paragraph 25.5.1. (Section 66(8)).

25.5.3 A Director may be employed in any other capacity in the Company or as a Director or employee of a company controlled by, or itself a subsidiary of, the Company and in this event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors to the extent required by the Listings Requirements.

25.5.4 The Directors shall be paid all travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Directors or of committees thereof; and if any Director is required to perform extra services or to reside abroad or shall be specifically occupied about the Company's business, they shall be entitled to receive such remuneration as is determined by a disinterested quorum of Directors, which may be either in addition to or in substitution for any other remuneration, subject to paragraph 25.5.1 above.

25.6 **election of Directors by the Ordinary Shareholders**

25.6.1 **fixed term/rotation**

At each annual general meeting one-third of the Directors (not being alternate Directors), or if their number is not a multiple of three then the number nearest to but not less than one-third, shall retire from office. The Directors so to retire at each annual general meeting shall firstly be those retiring in terms of paragraphs 25.3.2 and 25.9 of this MOI and thereafter the Board shall determine which Directors shall retire at each annual general meeting. A retiring Director shall act as a Director throughout the meeting at which he or she retires. For the avoidance of doubt it is recorded that life directorships and directorships for an indefinite period shall not be permitted.

25.6.2 **temporary vacancies on the Board**

Should a Director elected by Ordinary Shareholders in terms of paragraph 25.3 become ineligible or disqualified from serving as a Director in terms of the Companies Act or the MOI and thereby cease to be entitled to be a Director in terms of section 69(4), and consequently cease to be a Director thereby creating a vacancy on the Board in terms of section 70(1)(b)(v) (being a vacancy on the Board which amounts to the number of Directors being less than the minimum number of Directors prescribed in terms of the MOI), then the Board must appoint another person, in accordance with and subject to the provisions of section 68(3), as a Director to fill any such vacancy and serve as a temporary Director on a temporary basis until the vacancy in question has been filled in an election by the Ordinary Shareholders of a new Director in terms of paragraph 25.3 and the Board may also appoint an alternate Director on a similar temporary basis for such temporary Director. (Section 68(3)).

25.6.3 **nominations process**

No person shall be eligible for election as a Director at any annual general meeting or any other General Meeting unless he is then eligible to serve as a Director in terms of paragraph 25.3.5, and his election or re-election (and that of his alternate) has been recommended by the Board; unless the Board recommends otherwise, or unless during the period of 30 days (i) following the end of the financial year of the Company which immediately precedes the annual general meeting; or (ii) immediately preceding the relevant General Meeting, an Ordinary Shareholder who will be entitled to attend and speak at such annual general meeting or General Meeting, as the case may be, shall have lodged at the registered office of the Company:

- 25.6.3.1 a written notice proposing such person as a Director (and his alternate); and

25.6.3.2 the details, written undertakings and consents of the proposed candidate referred to in paragraph 25.4.2.

25.7 **further grounds of ineligibility**

A person is ineligible to be or serve as a Director of the Company for purposes of section 69(7) if the person:

25.7.1 is ineligible in terms of section 69(7)(a) or (b) i.e. where the person is a juristic person, an un-emancipated minor or is under a similar legal disability; or

25.7.2 is, or a related person is, in the reasonable opinion of the Board, a Director of, or employed or otherwise engaged by, or in any way interested in (including but not limited to having a personal financial interest in), in any capacity whatsoever, any person who carries on activities in competition with any of the businesses or activities of the Company (Section 69(7)(c)); or

25.7.3 has at any time been placed under an order of probation in terms of section 162 or in terms of section 47 of the Close Corporations Act, 69 of 1984, as amended (Section 69(7)(c)); or

25.7.4 has, in the reasonable opinion of the Board, not delivered to the Company to the reasonable satisfaction of the Board any of the details, statements, undertakings, indemnities or consents contemplated by paragraph 25.4.2 (Section 69(7)(c)); or

25.7.5 has, in the reasonable opinion of the Board, made any misrepresentation or misled the Company in any way by act or omission or non-disclosure with regard to any aspect of his experience, training, qualifications or skills (Section 69(7)(c)); or

25.7.6 has, in the reasonable opinion of the Board, at any time been involved in, or is involved in, as the subject or one of the subjects of any investigation, audit, enquiry, charge, court proceeding or other proceeding of any nature whatsoever, in any jurisdiction, which is contemplated in or similar to any contemplated in section 69(8),

whether or not that person is or is likely to be disqualified from serving as a Director in terms of section 69(8) (Section 69(7)(c)); or

25.7.7 if the Board resolves that such person is ineligible (Section 69(7)(c)).

25.8 permanent vacancies on the Board

25.8.1 If a person has ceased to be a Director of the Company in terms of section 70, then that fact shall be recorded in the register of Directors and the Company shall file with the Commission a notice within 10 business days of that person ceasing to be a Director, whether or not that person is re-elected with immediate effect as a Director of the Company. (Section 70(6) and section 24(3)(b)).

25.8.2 If a person has ceased to be a Director of the Company and a vacancy on the Board has arisen, other than as a result of an *ex officio* Director ceasing to hold that office as contemplated by section 70(1), (being a vacancy on the Board which amounts to the number of Directors being less than the minimum number of Directors prescribed in terms of the MOI), then such vacancy must be filled as provided for in section 70(3), subject to section 70(4), by an election by the Ordinary Shareholders at the next annual general meeting of the Company.

25.9 removal of an elected Director by Ordinary Shareholders

25.9.1 In terms of section 71(1), a Director may be removed by an ordinary resolution of the Ordinary Shareholders, following the procedure set out in section 71(2), before the expiry of his period of office, and by ordinary resolution the Ordinary Shareholders may elect another person in his stead. A person so elected shall hold office until the next following ordinary meeting of the Company and shall then retire and be eligible for re-election. (Section 71(1)).

25.9.2 In terms of section 71(2), before the Shareholders of the Company may consider a resolution contemplated in section 71(1):

25.9.2.1 the Director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a Shareholder is entitled to receive, irrespective of whether or not the Director is a Shareholder of the Company; and

25.9.2.2 the Director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

25.10 **removal of a Director by the Board**

If a Shareholder or a Director contends that a Director should be removed as a Director of the Company on any of the grounds contemplated in section 71(3), that Shareholder or Director shall first submit to the Board in writing each of its contentions and the specific grounds of each such allegation contemplated in section 71(3) on which reliance is made, and shall submit to the Board all evidence available to that Shareholder or Director on which such Shareholder or Director relies for making the contention and each allegation, and the Board on receipt thereof must study such submission, investigate the allegation(s) and determine the matter by resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

25.11 **resignation by Directors**

A Director shall be entitled to resign as a Director by notice to the Company.

25.12 **personal financial interests of directors**

Subject to compliance by a Director, with respect to any relevant personal financial interest, with the provisions of section 75(5) and (6), that Director shall not be liable (in the absence of any agreement to the contrary) to account to the Company for any profit or other benefit arising out of or in connection with any decision, transaction or agreement in which that Director or a person related or inter-related to that Director has a personal financial interest.

25.13 Board committees

- 25.13.1 Subject to this paragraph 25.13, the Board may appoint any number of committees of Directors and delegate to any such committee any of the authority of the Board, provided that all voting members of these committees must be Directors. (Section 72(1)).
- 25.13.2 Any committee so appointed by the Board shall, in the exercise of the authority so delegated to it, have the full authority of the Board in respect of the matter referred to it, save that it must conform to any rules or regulations or restrictions or other instructions that may from time to time be imposed by the Board on the exercise of such authority by that committee. (Section 72(2)(c)).
- 25.13.3 Any committee appointed by the Board may invite persons who are not Directors of the Company to attend such committee meetings, provided that any such non-Director may not vote on any matter to be decided by the committee at the relevant meeting.
- 25.13.4 A committee appointed by the Board may, with the prior approval in each instance of the Board, (which approval may be a specific or general approval, and may be given in the terms of reference for that committee or from time to time by Board resolution or applicable Board committee resolution, and subject to any appropriate budgetary restrictions), consult with or receive advice from any person at the expense of the Company. (Section 72(2)(b)).
- 25.13.5 The Company has established a social and ethics committee as required by the Minister in terms of section 72(4) and Regulation 43(2), which committee shall comprise not less than three Directors or prescribed officers of the Company, at least one of whom must be a Director who is not involved in the day to day management of the Company's business, and must not have been so involved within the previous three financial years. (Regulations 43(2) and (4)). The social and ethics committee is governed by, and is subject to the terms and conditions of, the Board Charters read with the Companies Act and the Regulations.

25.13.6 The members of each Board committee shall hold and conduct their meetings in accordance with the provisions of the Board Charters and the rules of the Company governing the holding and conduct of such meeting, which provisions are binding on each Board committee member in terms of section 15(6)(c)(ii).

25.14 **Board meetings**

The rules and provisions relating to Board meetings are set out in Schedule 2 (Board Meetings).

25.15 **indemnification and Director's insurance**

The Company may, subject to the limitations set out in section 78:

25.15.1 advance expenses to a Director of the Company to defend litigation in any proceedings arising out of the Director's service, as a Director, to the Company (Section 78(4)(a));

25.15.2 directly or indirectly indemnify a Director for expenses contemplated in paragraph 25.15.1, irrespective of whether the Company has advanced those expenses, if the proceedings in question:

25.15.2.1 are abandoned or exculpate the Director (Section 78(4)(b)(i)); or

25.15.2.2 arise in respect of any liability for which the Company may indemnify the Director in terms of section 78(5) and (6) (Section 78(4)(b)(ii)); and

25.15.3 purchase market related insurance to protect the Directors of the Company as contemplated in section 78(7).

26. **Winding up**

26.1 While the Company is:

26.1.1 solvent, the Company may be wound-up in terms of Part G of Chapter 2 of the Companies Act (Section 79(1)); or

26.1.2 insolvent, the Company may be wound-up as an insolvent company in terms of the applicable laws of insolvency prevailing. (Section 79(3))

26.2 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities (which shall include any liabilities in respect of preference Shares in issue) of the Company and the costs of the liquidation shall be applied as follows:

26.2.1 to repay to the Ordinary Shareholders the amount paid on the Shares held by each of them; and

26.2.2 the balance (if any) shall be distributed among the Ordinary Shareholders in proportion to the number of ordinary Shares held by each of them,

provided that the provisions of this paragraph shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.

26.3 Subject to paragraph 3.4 and 4.4 of Schedule 1, in a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a Special Resolution of the Company, be paid to the Ordinary Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Ordinary Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

27. Remedies and enforcement

27.1 protection for whistle-blowers

The Company must establish and maintain a system to receive disclosures contemplated in section 159 confidentially, and act on them. (Section 159(7))

27.2 dispute resolution

Any dispute between any one or more persons bound by the provisions of this MOI, which cannot be resolved by negotiation and agreement within

7 business days of any party to the dispute or any other person bound by this MOI requesting such resolution, may be dealt with by any such party to the dispute in terms of Chapter 7 (*Remedies and Enforcement*) of the Companies Act. The persons bound by this MOI shall use their respective best endeavours to negotiate in good faith with each other and any applicable third party for purposes of reaching a resolution of the dispute in question within such 7 business day period.

28. Notices

- 28.1 A Shareholder (and a legal representative), a Director, a prescribed officer, a member of a Board committee, and any other person entitled to receive notices from the Company, shall provide the Company with an email address and fax number for this purpose.
- 28.2 A notice required in terms of the Companies Act or this MOI to be given to Shareholders shall be delivered by the Company to all Shareholders either by sending it personally or by post or by electronic media (email or fax) in terms of paragraph 28.10 below, to any of the registered addresses provided by the Shareholders and recorded in the securities register, or provided by the Director concerned and recorded in the register of Directors, or otherwise as provided by the person concerned and recorded in the Company's records as the address for the delivery of notices.
- 28.3 If a manner of delivery of a document, record, statement or notice is prescribed in terms of the Companies Act, then the person authorised by the Board to effect delivery, or the person effecting delivery, must do so in accordance with section 6(a) read with Regulation 7 (delivery of documents) and Annexure 3 (Table CR 3 - Methods and Times for Delivery of Documents) to the Companies Regulations.
- 28.4 All notices with respect to any Shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of paragraph 13.3, as the case may be, and notice so given shall be sufficient notice to all the holders of such Shares.

- 28.5 The notice may be given by the Company to the legal representatives of a Shareholder or the persons entitled to a Share in consequence of the death or insolvency of a Shareholder who is not registered as a Shareholder, by sending it by electronic media or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which same might have been given if the death or insolvency had not occurred.
- 28.6 Any notice by post may be sent by registered post, or ordinary post if a court order has been obtained authorising such method of delivery of notice, to the extent required, and shall be deemed to have been delivered on the 7th day following the date when the letter containing the notice was posted (that is, delivered to the post office where the post office is agent for the Shareholder) and in proving the giving of the notice by post, it shall be sufficient to prove that postage on the letter was prepaid (in the case of registered post) and the letter containing the notice was properly addressed and delivered to the post office.
- 28.7 A notice given to any Shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.
- 28.8 Notices for Shareholders' meetings must be sent to the JSE at the same time as the notice is given to the Shareholders. Notices for Shareholders' meetings must also be published via the Securities Exchange News Services of the JSE, or any successor service.
- 28.9 The signature to any notice given by the Company may be:
- 28.9.1 written or printed, or partly written and partly printed (section 6(12));
- 28.9.2 effected in any manner provided for in the Electronic Communications and Transactions Act No. 25 of 2002 as amended (section 6(12)(a) and section 13 of the Electronic Communications and Transactions Act No. 25 of 2002 as amended).

28.10 Any person shall be entitled to send and receive any notice in terms of this paragraph 28 by electronic media (email or fax), subject to the provisions of Regulation 7. Methods and times for delivery of notices sent by electronic media in terms of this paragraph 28.10 will be governed by Regulation 7 in particular, in accordance with Table CR 3 of the Regulations.

Schedule 1

Authorised Shares of the Company

1. Classes and numbers of authorised Shares

- 1.1 1 800 000 000 no par value Ordinary Shares;
- 1.2 9 000 000 no par value "A" Preference Shares; and
- 1.3 9 000 000 no par value "B" Preference Shares.

Total number of Shares: 1 818 000 000

2. Ordinary shares

- 2.1 The following rights attach to an Ordinary Share:
 - 2.1.1 the right for the owner thereof to be entered in the securities register of the Company as the registered holder thereof;
 - 2.1.2 the right to attend and speak at any meeting of Shareholders;
 - 2.1.3 the right to exercise one vote on any matter to be decided upon by the Shareholders;
 - 2.1.4 the right to receive a portion of a distribution amount determined by the Board, from time to time, if and when declared, calculated by multiplying the aggregate distribution amount in question by the fraction determined by dividing the number one by the then aggregate number of Ordinary Shares and "A" Preference Shares in issue as at the applicable record date with respect to that distribution;
 - 2.1.5 an irrevocable right to vote on any proposal to amend the preferences, rights, limitations and other terms associated with the Ordinary Shares;
 - 2.1.6 subject to paragraph 3.4 and 4.4 of this Schedule 1, the right to receive a portion of the net assets of the Company upon its

liquidation, calculated by multiplying the net assets in question by a fraction determined by dividing the number one by the total number of Ordinary Shares and "A" Preference Shares issued as at the applicable time of the distribution of such net assets.

2.2 Upon being issued, each Ordinary Share will rank *pari passu* with every other issued Ordinary Share in all respects, for which purposes the expression "rank *pari passu*" shall have the meaning attributed to it in paragraph 3.29 of the Listings Requirements.

3. "A" Preference Shares

3.1 Rights and privileges attaching to the "A" Preference Shares

3.1.1 Interpretation

In this paragraph, unless otherwise stated or unless the context indicates otherwise, the following words and expressions will bear the meanings assigned to them:

- | | | |
|---------|-------------------------------|--|
| 3.1.1.1 | "A" Preference Shares" | "A" redeemable convertible preference no par value shares, having the rights and privileges set out in this paragraph 3 of Schedule 1 of this MOI; |
| 3.1.1.2 | "B" Preference Shares" | "B" redeemable convertible preference no par value shares, having the rights and privileges set out in paragraph 4 of Schedule 1 of this MOI; |
| 3.1.1.3 | "Closing Date" | 1 October 2012; |
| 3.1.1.4 | "Companies Act" | the Companies Act, 71 of 2008, as amended or replaced from time to time; |

| | | |
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| 3.1.1.5 | "Company" | Rhodes Food Group Holdings Limited, registration number 2012/074392/06, a public company incorporated in accordance with the laws of the Republic of South Africa; |
| 3.1.1.6 | "Consortium" | collectively, Capitalworks Private Equity GP (Proprietary) Limited, in its capacity as the general partner of Capitalworks Private Equity Partnership, the South African Investment GP Trust, in its capacity as the general partner of the South African Investment Partnership and the South African Investment GP Trust, in its capacity as the general partner of the South African Investment Partnership II; |
| 3.1.1.7 | "Distribution Amount" | the aggregate amount available for distributions to holders of Ordinary Shares, as determined by the Board from time to time; |
| 3.1.1.8 | "EBITDA" | the net income (or loss) of the Group for the relevant financial year, including all the financial effects of exchange rate hedging arrangements (whether a profit or loss), but excluding any interest expense, taxation charges, taxation recouped or recovered, determined in accordance with IFRS, as set out in the most recent audited financial statements |

| | | |
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| | | and/or management accounts of the Group (as applicable); |
| 3.1.1.9 | "Group" | the Company and its Subsidiaries; |
| 3.1.1.10 | "Holder" | a holder of an "A" Preference Share, from time to time; |
| 3.1.1.11 | "IFRS" | International Financial Reporting Standards; |
| 3.1.1.12 | "Income Tax Act" | the Income Tax Act, 58 of 1962, as amended or replaced from time to time; |
| 3.1.1.13 | "Ordinary Shares" | ordinary no par value shares in the capital of the Company; |
| 3.1.1.14 | "Redemption Amount" | in respect of: (i) an "A" Preference Share at any time, R0.8333 and (ii) a "B" Preference Share at any time, R1.00 multiplied by 5/90000; |
| 3.1.1.15 | "Redemption Date" | the date on which the "A" Preference Shares are redeemed or converted, being 5 business days after the determination of the number of "A" Preference Shares that are to be converted or redeemed in terms of paragraph 3.6.2 of this Schedule 1, or if there is a dispute as to the number of "A" Preference Shares to be redeemed or converted, 5 business days after the determination of that dispute in terms of paragraph 3.6.11 of this Schedule 1; |

3.1.1.16

"Management Forecasts" the management forecast attached as Annexe H(1) to the shareholders' agreement in respect of the Company, which was concluded between the Company, Rhodes Food Group Proprietary Limited (formerly Main Street 1006 (Proprietary) Limited), Capitalworks Equity Partners (Proprietary) Limited, The South African Investment GP Trust in its capacity as the general partner of the South African Investment Partnership, The South African Investment GP Trust in its capacity as the general partner of the South African Investment Partnership, the Bruce Henderson Trust, Bruce Alan Scott Henderson, Christiaan Cornelius Schoombie, Constantine Costaras, the Costaras Family Trust, Gerhard Kotze, Richard Phillips, Job Mpele, the Rhodes Food Group Management Trust, the Jacian Trust, the Lahanja Trust and the RK Phillips Family Trust on or about 23 July 2012, as amended by first addendum thereto entered into on or about 20 September 2012 and the second addendum thereto entered into on or about 27 September 2012, which shareholders' agreement has been or shall be terminated and shall be

made available for inspection upon reasonable request to the Company;

- 3.1.1.17 **"Regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, which is customary for the persons to whom it is addressed to comply) of any applicable taxing authority; and
- 3.1.1.18 **"Subsidiary"** as defined in the Companies Act.

3.2 **Distributions**

- 3.2.1 Each "A" Preference Share shall, until it is converted or redeemed in accordance with its terms, rank *pari passu* with an Ordinary Share in regard to distributions.
- 3.2.2 Each "A" Preference Share shall therefore have the right to receive a portion of any distribution, if and when declared, calculated by multiplying the Distribution Amount in question by a fraction determined by dividing the number one by the then total number of Ordinary Shares and "A" Preference Shares in issue as at the applicable record date with respect to that Distribution Amount.

3.3 **Voting rights**

Each "A" Preference Share shall, until it is converted or redeemed in accordance with its terms, rank *pari passu* with an Ordinary Share in regard to voting rights and the Holder shall be entitled to receive all notices of general meetings, to attend all such general meetings, speak at all such general meetings and vote at all such general meetings, provided that in terms of the Listings Requirements, for so long as the "A" Preference Shares remain unlisted, the votes of the holders of "A" Preference Shares will not be taken into account in determining either a quorum or for approval

of any resolution considered at any such general meeting required in terms of the Listings Requirements.

3.4 Winding-up and return of capital

Each "A" Preference Share shall, on a winding-up, liquidation or any other return of capital by the Company, confer on the Holder thereof (registered as such on the relevant date), the right to receive a portion of the net assets of the Company upon its liquidation, calculated by multiplying the net assets in question by a fraction determined by dividing the number one by the total number of Ordinary Shares and "A" Preference Shares issued as at the applicable time of the distribution of such net assets.

3.5 No further participation

Except as provided in paragraphs 3.2 and 3.4 of this Schedule 1, an "A" Preference Share does not confer on its Holder any right to participate in the profits or in any distribution of the assets or capital of the Company.

3.6 Conversion and redemption

3.6.1 Notwithstanding any provision to the contrary in this paragraph 3 (other than the proviso in this paragraph 3.6.1 and the provisions of paragraphs 3.6.2 to 3.6.5 (inclusive)), the Company shall not have any obligation, and no Holder shall have any right to require the Company, to redeem or repurchase any "A" Preference Share prior to three years and one day after the date of issue of the "A" Preference Share concerned. Provided that, in the event that the Consortium unconditionally disposes of 100% of its Ordinary Shares prior to three years and one day after the date of issue of the "A" Preference Share concerned, then the provisions of paragraphs 3.6.2 to 3.6.5 (inclusive) shall be implemented and the Company shall be obliged to redeem all of the "A" Preference Shares then in issue that do not convert in terms of paragraph 3.6.4 of Schedule 1.

3.6.2 After the finalisation by the auditors of the Group's audited financial statements for the financial year ended immediately after the fifth anniversary of the Closing Date (or, if the Consortium unconditionally

disposes of 100% of its Ordinary Shares prior to the fifth anniversary of the Closing Date), then immediately prior to the implementation of such disposal, the Group's cumulative free cash flow (being EBITDA, adjusted for capex and movements in working capital) for the period from the Closing Date to the last day of the most recent financial year ("**Relevant CFC**") and the Group's average EBITDA calculated over the period commencing two years prior to the last day of the most recent financial year ("**Relevant EBITDA**"), (each a "**Relevant Metric**") shall be determined on the basis of the Group's audited financial statements and compared to the Management Forecasts.

- 3.6.3 For the purposes of determining whether the Relevant Metric has exceeded the Management Forecasts and if applicable, the extent to which the Relevant Metric has exceeded the Management Forecasts, the lower of the two Relevant Metrics shall be used for the purposes of determining the number of "A" Preference Shares to be converted into Ordinary Shares and the number of "A" Preference Shares to be redeemed (the "**Applicable Metric**") in terms of paragraph 3.6.4 of Schedule 1. For instance, if the Relevant CFC has exceeded the relevant Management Forecast by 2 per cent, but the Relevant EBITDA has exceeded the relevant Management Forecasts by 5 per cent, the Relevant Metric shall be deemed to have exceeded the Management Forecasts by 2 per cent for the purposes of this paragraph.
- 3.6.4 On the Redemption Date, 20 per cent of the "A" Preference Shares then in issue shall be redeemed at the Redemption Amount for each completed 5 per cent by which the Applicable Metric has exceeded the Management Forecasts.
- 3.6.5 The balance of the "A" Preference Shares which are not so redeemed will convert automatically and compulsorily into Ordinary Shares on a one-for-one basis on the Redemption Date. Any redemption effected pursuant to this paragraph shall be implemented so as to treat all Holders equally.

- 3.6.6 For instance, if the Relevant Metric exceeds the relevant Management Forecast by 10 per cent, 60 per cent of the "A" Preference Shares will convert into Ordinary Shares on a one for one basis and 40 per cent of the "A" Preference Shares shall be redeemed at the Redemption Amount.
- 3.6.7 If an "A" Preference Share is to be redeemed, the Company must redeem that "A" Preference Share for its full Redemption Amount, against the Holder's tender to the Company of the relevant share certificate.
- 3.6.8 The redemption of each "A" Preference Share shall be subject to the provisions of the Companies Act and to the extent that the board of the Company has complied with the provisions of section 46 of the Companies Act and authorised the redemption, no further board or Shareholder resolution shall be required in order for an "A" Preference Share to be redeemed. The Redemption Amount shall be payable in cash.
- 3.6.9 If a share certificate which has been surrendered in relation to the redemption of an "A" Preference Share, includes any shares which are not to be redeemed at that time, the Company must issue a new share certificate to the Holder for the shares that are not to be redeemed, free of charge.
- 3.6.10 Any redemption shall be effected contemporaneously with the conversion.
- 3.6.11 If any party disputes the number of "A" Preference Shares that must be converted or redeemed in accordance with this paragraph, such dispute shall be referred for final determination to an independent firm of auditors ("**Expert**") agreed by the parties or, failing such agreement in writing signed by all the parties within a further period of 5 business days, appointed by the President of the Western Cape Society of Chartered Accountants or its principal successor in title for the time being. Such Expert shall finally determine the number of "A" Preference Shares that must be converted and redeemed for the

purposes of this paragraph and such determination shall be final and binding on the parties, absent a manifest error in calculation. Such Expert shall also decide the allocation of the costs of such determination as between the parties, which decision shall also be final and binding on the parties.

4. "B" Preference Shares

4.1 Rights and privileges attaching to the "B" Preference Shares

4.1.1 Interpretation

In this paragraph, unless otherwise stated or unless the context indicates otherwise, the following words and expressions will bear the meanings assigned to them:

- | | | |
|---------|-------------------------------|--|
| 4.1.1.1 | "A" Preference Shares" | "A" redeemable convertible preference no par value shares, having the rights and privileges set out in paragraph 3 of Schedule 1 of this MOI; |
| 4.1.1.2 | "B" Preference Shares" | "B" redeemable convertible preference no par value shares, having the rights and privileges set out in this paragraph 4 of Schedule 1 of this MOI; |
| 4.1.1.3 | "Closing Date" | means 1 October 2012; |
| 4.1.1.4 | "Companies Act" | the Companies Act, 71 of 2008, as amended or replaced from time to time; |
| 4.1.1.5 | "Company" | Rhodes Food Group Holdings Limited, registration number 2012/074329/06, a public company incorporated in |

| | | |
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| | | accordance with the laws of the Republic of South Africa; |
| 4.1.1.6 | "Consortium" | collectively, Capitalworks Private Equity GP (Proprietary) Limited, in its capacity as the general partner of Capitalworks Private Equity Partnership, the South African Investment GP Trust, in its capacity as the general partner of the South African Investment Partnership and the South African Investment GP Trust, in its capacity as the general partner of the South African Investment Partnership II; |
| 4.1.1.7 | "Distribution Amount" | the aggregate amount available for distributions to holders of Ordinary Shares, as determined by the Board from time to time; |
| 4.1.1.8 | "EBITDA" | the net income (or loss) of the Group for the relevant financial year, including all the financial effects of exchange rate hedging arrangements (whether a profit or loss), but excluding any interest expense, taxation charges, taxation recouped or recovered, determined in accordance with IFRS, as set out in the most recent audited financial statements and/or management accounts of the Group (as applicable); |
| 4.1.1.9 | "Group" | the Company and its Subsidiaries; |

| | | |
|----------|----------------------------|---|
| 4.1.1.10 | "Holder" | a holder of an "B" Preference Share, from time to time; |
| 4.1.1.11 | "IFRS" | International Financial Reporting Standards; |
| 4.1.1.12 | "Income Tax Act" | the Income Tax Act, 58 of 1962, as amended or replaced from time to time; |
| 4.1.1.13 | "Ordinary Shares" | ordinary no par value shares in the capital of the Company; |
| 4.1.1.14 | "Redemption Amount" | in respect of (i) an "A" Preference Share at any time, R0.8333 and (ii) a "B" Preference Share at any time, R1.00 multiplied by 5/90000; |
| 4.1.1.15 | "Redemption Date" | the date on which the "A" Preference Shares are redeemed or converted, being 5 business days after the determination of the number of "A" Preference Shares that are to be converted or redeemed in terms of paragraph 3.6.4 of Schedule 1, or if there is a dispute as to the number of "A" Preference Shares to be redeemed or converted, 5 business days after the determination of that dispute in terms of paragraph 3.6.11 of Schedule 1; |
| 4.1.1.16 | "Regulation" | includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having |

the force of law, which is customary for the persons to whom it is addressed to comply) of any applicable taxing authority; and

4.1.1.17 **"Subsidiary"** as defined in the Companies Act.

4.2 **Distributions**

The "B" Preference Shares shall not, until they are converted in accordance with their terms, confer on the Holders the right to any distribution.

4.3 **Voting rights**

4.3.1 The "B" Preference Shares shall only entitle their Holder to vote where there is a proposed amendment to the terms of the "B" Preference Shares or as specified in the Companies Act but their Holder shall be entitled to receive all notices of general meetings and to attend all such general meetings, provided that in terms of the Listings Requirements, for so long as the "B" Preference Shares remain unlisted, the votes of the holders of "B" Preference Shares will not be taken into account in determining either a quorum or for approval of any resolution considered at any such general meeting required in terms of the Listings Requirements.

4.3.2 At every meeting of Holders, the provisions of this MOI relating to the general meetings of ordinary members shall apply *mutatis mutandis*, except that a quorum at any such general meeting shall be any person or persons holding or representing by proxy at least 75 per cent of the "B" Preference Shares, provided that if at any adjournment of such meeting a quorum is not present, the provisions of this MOI relating to adjourned general meetings shall, *mutatis mutandis*, apply.

4.3.3 At every general meeting of the Company at which a Holder as well as holders of other classes of shares are present and entitled to vote, upon a poll, a Holder shall be entitled to one vote for each "B" Preference Share, provided that in terms of the Listings Requirements, for so long as the "B" Preference Shares remain

unlisted, the votes of the holders of "B" Preference Shares will not be taken into account in determining either a quorum or for approval of any resolution considered at any such general meeting required in terms of the Listings Requirements.

4.4 Winding-up and return of capital

Each "B" Preference Share shall, on a winding-up, liquidation or any other return of capital by the Company, confer on the Holder thereof (registered as such on the relevant date), the right to receive in full out of the assets of the Company, in priority to and before any provision for, or payment of, any distribution on any other class of share in the capital of the Company, *pro rata* with the Holders of all other "B" Preference Shares, an amount equal to the Redemption Amount.

4.5 No further participation

Except as provided in paragraphs 4.2 and 4.4 of Schedule 1, a "B" Preference Share does not confer on its Holder any right to participate in the profits or in any distribution of the assets or capital of the Company.

4.6 Conversion and redemption

4.6.1 Notwithstanding any provision to the contrary in this paragraph 4 (other than the proviso in this paragraph 4.6.1 and the provisions of paragraphs 4.6.4 to 4.6.7 (inclusive)), the Company shall not have any obligation, and no Holder shall have any right to require the Company, to redeem or repurchase any "B" Preference Share prior to three years and one day after the date of issue of the "B" Preference Share concerned. Provided that, in the event that the Consortium unconditionally disposes of 100% of its Ordinary Shares prior to three years and one day after the date of issue of the "B" Preference Share concerned, the provisions of paragraphs 4.6.4 to 4.6.7 (inclusive) shall be implemented and the Company shall be obliged to redeem all of the "B" Preference Shares then in issue that do not convert in terms of paragraph 4.6.6 of Schedule 1.

- 4.6.2 The rights afforded to a Holder pursuant to paragraph 4.6.6 of Schedule 1 shall immediately cease to apply in respect of a "B" Preference Share if its Holder:
- 4.6.2.1 ceases to be a Shareholder in the Company; or
- 4.6.2.2 disposes of the "B" Preference Shares to any person,
- and the Company shall thereafter be entitled to voluntarily and at its discretion redeem such "B" Preference Share.
- 4.6.3 In addition, if a Holder disposes of its Ordinary Shares, the rights afforded to a Holder pursuant to paragraph 4.6.6 shall cease to apply in respect of such number of "B" Preference Shares as bears the same proportion to all the "B" Preference Shares held by the Holder as the proportion which the Ordinary Shares being disposed of bears to all the Ordinary Shares held by such Holder, and the Company shall be entitled to voluntarily and at its discretion redeem that number of "B" Preference Shares.
- 4.6.4 After the finalisation by the auditors of the Group's audited financial statements for the financial year ended immediately after the fifth anniversary of the Closing Date (or, if the Consortium unconditionally disposes of 100% of its Ordinary Shares prior to the fifth anniversary of the Closing Date), then immediately prior to the implementation of such disposal, the Group's cumulative free cash flow (being EBITDA, adjusted for capex and movements in working capital) for the period from the Closing Date to the last day of the most recent financial year ("**Relevant CFC**") and the Group's average EBITDA calculated over the period commencing two years prior to the last day of the most recent financial year ("**Relevant EBITDA**"), (each a "**Relevant Metric**") shall be determined on the basis of the Group's audited financial statements and compared to the relevant Management Forecasts.
- 4.6.5 For the purposes of determining whether the Relevant Metric has exceeded the relevant Management Forecast and if applicable, the

extent to which the Relevant Metric has exceeded the relevant Management Forecast, the lower of the two Relevant Metrics shall be used for the purposes of determining the number of "B" Preference Shares to be converted into Ordinary Shares and the number of "B" Preference Shares to be redeemed (the "**Applicable Metric**"). For instance, if the Relevant CFC has exceeded the relevant Management Forecast by 2 per cent, but the Relevant EBITDA has exceeded the relevant Management Forecast by 5 per cent, the Relevant Metric shall be deemed to exceed the relevant Management Forecasts by 2 per cent for the purposes of this paragraph.

- 4.6.6 On the Redemption Date, 20 per cent of the "B" Preference Shares then in issue shall then compulsorily and automatically convert into Ordinary Shares on a one or one basis for each completed 5 per cent by which the Applicable Metric exceeds the relevant Management Forecast.
- 4.6.7 The balance of the "B" Preference Shares which do not convert will be redeemed at the Redemption Amount on the Redemption Date. Any redemption effected pursuant to this paragraph shall be implemented so as to treat all Holders equally.
- 4.6.8 For instance, if the Relevant Metric exceeds the relevant Management Forecast by 10 per cent, 40 per cent of the "B" Preference Shares then in issue will convert into Ordinary Shares on a one-for-one basis and 60 per cent of the "B" Preference Shares then in issue shall be redeemed at the Redemption Amount.
- 4.6.9 Subject to the provisions of the Companies Act, the Company will be obliged to immediately redeem all "B" Preference Shares which remain in issue if any of the following events occur:
- 4.6.9.1 the Company is placed into liquidation, business rescue or under judicial management, whether provisional or final; or
- 4.6.9.2 a meeting of its Shareholders, directors or other officers is convened for the purpose of considering any resolution for, or

- to bring an application for, or to file documents with a court or any registrar for, its winding-up, judicial management, business rescue or dissolution or any such resolution is passed; or
- 4.6.9.3 the Company makes or attempts to make or recommends any general offer of compromise with any or all of its creditors.
- 4.6.10 If a "B" Preference Share is to be redeemed, the Company must:
- 4.6.10.1 redeem that "B" Preference Share for its full Redemption Amount, against the Holder's tender to the Company of the relevant share certificate; and
- 4.6.10.2 apply amounts standing to the credit of its "B" Preference Share premium account for the purpose of that redemption (except in respect of any portion of the Redemption Amount which constitutes a distribution, which must be funded from the distributable profits of the Company).
- 4.6.11 The redemption of each "B" Preference Share shall be subject to the provisions of the Companies Act and to the extent that the board of the Company has complied with the provisions of section 46 of the Companies Act and authorised the redemption, no further board or Shareholder resolution shall be required in order for an "B" Preference Share to be redeemed. The Redemption Amount shall be payable in cash.
- 4.6.12 If a share certificate which has been surrendered in relation to the redemption of an "B" Preference Share, includes any shares which are not to be redeemed at that time, the Company must issue a new share certificate to the Holder for the shares that are not to be redeemed, free of charge.
- 4.6.13 Any redemption shall be effected contemporaneously with the conversion.
- 4.6.14 If any party disputes the number of "B" Preference Shares that must be converted or redeemed in accordance with this paragraph, such

dispute shall be referred for final determination to an independent firm of auditors ("**Expert**"), agreed by the parties or, failing such agreement in writing signed by all the parties within a further period of 5 business days, appointed by the President of the Western Cape Society of Chartered Accountants or its principal successor in title for the time being. Such Expert shall finally determine the number of "B" Preference Shares that must be converted and redeemed for the purposes of this paragraph and such determination shall be final and binding on the parties, absent a manifest error in calculation. Such Expert shall also decide the allocation of the costs of such determination as between the parties, which decision shall also be final and binding on the parties.

Schedule 2

Shareholders' Meetings

1. Person entitled to attend, speak and vote at meetings

1.1 In relation to the Company, and for purposes of this MOI, no person other than a Shareholder (or its representatives or proxies in terms of paragraph 2 and 3 of this Schedule 2), in respect of a class of Shares held by that Shareholder as reflected in the securities register, shall be entitled to attend, speak and vote at a meeting of that class of Shareholders. (Sections 1 and 57(1)).

1.2 Notwithstanding the provisions of paragraph 1.1, Directors and representatives and advisers of the Company, such as legal and financial advisers or auditors, shall be entitled to attend a meeting but shall have no right to speak (unless invited to speak by the chairman of the meeting) or vote at such meeting.

2. Representation of Shareholders at meetings

2.1 The board of a company that is a Shareholder of the Company in respect of a class of Shares may (in order for that Shareholder to be personally present) authorise any individual to act as the representative of that Shareholder at any meeting of that class of Shareholders. (Section 57(5)).

2.2 The governing body of any other person or group of persons (not being an individual), including but not limited to the trustees for the time being of a trust or the general partner of an *en commandite* partnership or the managing partner(s) of a partnership or the managing members of a close corporation etc, that is a Shareholder of the Company in respect of any class of Shares may (in order for that Shareholder to be personally present) authorise any individual to act as the representative of that Shareholder at any meeting of that class of Shareholders.

2.3 A person authorised to act as a representative of a Shareholder, as contemplated by paragraph 2.1 or 2.2 of this Schedule 2, may exercise the

same powers as the authorising Shareholder could have exercised as if it were the Shareholder. (Section 57(6)).

- 2.4 The Company shall be entitled to disregard any authorisation of a person as the representative of the Shareholder in question, and to disregard the vote of any representative or purported representative, if:
- 2.4.1 the authorisation is not in writing and signed by or on behalf of the Shareholder; or
- 2.4.2 the authorisation does not specify the name of the Shareholder and the names of the members of the board or other governing body of the Shareholder and confirm the power and authority of that board or other governing body to appoint and authorise a representative of the Shareholder to attend, speak and vote at the meeting of Shareholders of the Company (either as a general authority or as a specific authority); or
- 2.4.3 a copy of the written authorisation has not been received by the Company at the registered office of the Company marked for the attention of the Board (or received at such other location and/or received by such other person on behalf of the Company, as may be specified in the notice convening the meeting), before the appointed time for the beginning of the meeting or, if the meeting is adjourned, the appointed time for the resumption of the adjourned meeting.
- 2.5 Any person who is a representative or purported representative specified in a written authorisation which is disregarded, or the voting of whom is disregarded, as contemplated by paragraph 2.4 of this Schedule 2, shall not be entitled to attend or speak or vote at the meeting of Shareholders in question, and shall forthwith remove himself or herself from the meeting in question at the request of the chairman of the meeting or at the request of any one or more Directors or any one or more Shareholders of the Company, failing which he or she may be removed from the meeting at the cost of the Shareholder for whom the representative purports to act.

2.6 A vote given by a representative in accordance with the terms of the written authorisation authorising that representative shall be valid notwithstanding the previous revocation of the authority, unless notice in writing of the revocation has been received by the Company before the commencement of the meeting of Shareholders concerned.

3. Proxies

3.1 At any time, a Shareholder may, in respect of any class of Shares held by that Shareholder, appoint any individual, including an individual who is not a Shareholder of the Company, as a proxy to participate in, and speak and vote at, a meeting of that class of Shareholders, on behalf of the Shareholder, provided that the Shareholder may appoint more than one proxy to exercise voting rights attached to different Shares of that class of Shares held by that Shareholder (Section 58(1)(a)).

3.2 In order for the appointment by a Shareholder of a proxy to be valid, both the appointment and the proxy form (or instrument appointing a proxy), must comply with the requisite formalities, and with the requirements as to content, set out in section 58 read with this paragraph 3 of this Schedule 2.

3.3 If the Company invites Shareholders to appoint proxies, which it may do (but is not obliged to do), then the Company must in relation to such invitation comply with the requisite formalities and requirements as to the content of such proxy forms, as prescribed in section 58(8) read with this paragraph 3 of this Schedule 2.

3.4 If a Shareholder requests a "standard" proxy form from the Company, the company secretary shall prepare or cause to be prepared a standard form of proxy, subject to and in compliance with section 58(9) and paragraph 3.2 of this Schedule 2.

3.5 The following limitations with respect to the appointment and authority of a proxy shall apply (Section 58(3)):

3.5.1 a Shareholder of the Company may not appoint two or more persons concurrently as proxies in respect of the same voting rights (Section 58(3)(a));

- 3.5.2 a proxy may not delegate the proxy's authority to act on behalf of a Shareholder to another person (Section 58(3)(b)); and
- 3.5.3 a copy of the instrument appointing a proxy must be delivered to the registered office of the Company marked for the attention of the company secretary (or delivered to such other location and/or person on behalf of the Company as may be specified in the notice convening the meeting), to be received by the Company before the time specified in the notice convening the meeting or, if the meeting is adjourned the appointed time for the resumption of the adjourned meeting (Section 58 (3)(c)).
- 3.6 The Company shall be entitled to disregard any proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:
 - 3.6.1 the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 or is inconsistent with or contravenes paragraph 3.2 or 3.5 of this Schedule 2 in any way); or
 - 3.6.2 the Shareholder (if applicable, through its authorised representative contemplated by paragraph 2 of this Schedule 2) chooses at any time to exercise all or some of the voting rights attached to the Shares registered in the name of the Shareholder (Section 58(4)(a)); or
 - 3.6.3 the authority of the proxy has been revoked by the Shareholder (if applicable, through its authorised representative contemplated by paragraph 2 of this Schedule 2) in terms of section 58(4)(b) and (c); or
 - 3.6.4 the vote of the proxy is not in accordance with the express directions as to voting on the Shares in question specified by the Shareholder and set out in the applicable proxy form or instrument appointing the proxy (Section 58(7)).
- 3.7 Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which is disregarded, or the voting of whom

is disregarded, as contemplated by paragraph 3.6 of this Schedule 2, shall not be entitled to attend or speak or vote at the meeting of Shareholders in question, and shall forthwith remove himself or herself from the meeting in question at the request of the chairman of the meeting or at the request of any one or more Directors or any one or more Shareholders of the Company, failing which he or she may be removed from the meeting at the cost of the Shareholders for whom the proxy purports to act.

- 3.8 A vote given by a proxy in accordance with the terms of the proxy form or instrument appointing that proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the authority, unless notice in writing of the death, insanity or revocation has been received by the Company before the commencement of the meeting of Shareholders concerned.

4. **Record date for determining Shareholder rights**

- 4.1 Notwithstanding anything contained in this MOI to the contrary, while the Shares of the Company remain admitted to the list maintained by the JSE, the record date for the purposes of determining Shareholder rights shall be determined in accordance with the Listings Requirements.

- 4.2 Should the Listings Requirements not provide a manner for determining the record date in any specific circumstance, or should the Shares of the Company no longer be admitted to the list maintained by the JSE, the Board may in terms of section 59(1) set a record date for the purposes of determining Shareholder rights, in accordance with and as contemplated by section 59, including for purposes of determining those Shareholders who are registered on a particular record date will be entitled to:

- 4.2.1 receive notice of a Shareholders' meeting (Section 59(1)(a)); or

- 4.2.2 participate in and vote at a Shareholders' meeting (Section 59(1)(b)).

- 4.3 The record date shall not be:

- 4.3.1 earlier than the date on which the record date is determined, ie shall not be a "retrospective" date (Section 59(2)(a)(i)); or

- 4.3.2 more than 10 business days before the date on which the event or action for which the date is being set, is scheduled to occur (Section 59(2)(a)(ii)).
- 4.4 The Company shall publish a record date determined by the Board or by the Ordinary Shareholders (in terms of paragraph 4.5 of this Schedule 2) within 5 business days of such determination to every Shareholder.
- 4.5 If:
- 4.5.1 the Board does not specify the applicable record dates in the notice convening the Shareholders' meeting (for a Shareholders' meeting called by the Board) or in any other communication to Shareholders regarding any other event or action, or does not determine and publish to the Shareholders the applicable record dates for any meeting, action or event in terms of paragraph 4.4 of this Schedule 2 within the 2 business days following receipt by the Company of a written request from any Shareholder for such record dates to be determined and published by the Board, then the Ordinary Shareholders may by ordinary resolution determine and publish such record dates, failing which the record date for such action or event shall be as determined in terms of section 59(3); or
- 4.5.2 a Shareholders' meeting has been called by any Directors or Shareholders in terms of this Schedule 2, then the applicable record date(s) shall be determined and published by the Directors or Shareholders calling the meeting, failing which the applicable record date(s) for such meeting shall be as determined in terms of section 59(3).
- 4.6 For the sake of clarity, in relation to each Shareholders' meeting, and having regard to the possible sequence of events, separate record dates shall be specified and published to determine which Shareholders shall be entitled to:
- 4.6.1 receive notice of a Shareholders' meeting;

- 4.6.2 attend and vote at that Shareholders' meeting (as it may be postponed);
- 4.6.3 receive notice of any adjourned Shareholders' meeting (if notice is required to be given); and
- 4.6.4 attend and vote at the resumption of the adjourned meeting.

5. **Calling a Shareholders' meeting**

- 5.1 The Board, any Director of the Company authorised by the Board to do so or the company secretary of the Company authorised by the Board to do so, may call a meeting of any class of Shareholders at any time and must do so if and when required by the Companies Act or this MOI to do so. (Section 61(1) and (2))
- 5.2 The Board must call a meeting of any class of Shareholders if demanded by Shareholders in terms of section 61(3).
- 5.3 If there are no Directors or all of the Directors are incapacitated, the Company hereby authorises the company secretary (or failing him or her, the auditors) for the time being of the Company to call a Shareholders' meeting for purposes of and in the circumstances contemplated in section 61(11).
- 5.4 All Shareholders' meetings that are called for in terms of the Listings Requirements must be convened by the Board (and such Shareholders' meeting shall be held in person) for purposes of the Shareholders considering and, if deemed fit, approving the Shareholders' resolutions required to be passed by the Shareholders in terms of the Listings Requirements (and such Shareholders' resolutions may not be submitted to Shareholders as a round-robin resolution in terms of section 60.)
- 5.5 There is no prohibition or restriction in this MOI on the Company from calling any meeting for the purposes of adhering to the Listings Requirements.

6. Calling an Annual General Meeting (AGM)

The Company must convene an annual general meeting within the times contemplated by section 61(7), for the following purposes:

- 6.1 presentation to the Shareholders of the Directors' report, any company secretary's statement contemplated in section 89(4), the audited financial statements for the immediately preceding financial year, as well as the audit committee report (Section 61(8)(a));
- 6.2 appointment of the Company's auditor and the Company's audit committee for the ensuing financial year (Section 61(8)(c));
- 6.3 approval of the remuneration of Directors for the current and ensuing two financial years of the company (paragraph 25.5.1 of this MOI); and
- 6.4 any other matters raised by any Shareholders in relation to the Company, with or without advance notice to the Company. (Section 61(8)(d))

7. Location of Shareholders' meetings

- 7.1 The Board may determine the location or locations of any Shareholders' meeting, including the location or locations of a meeting which has been adjourned. (Section 61(9)).
- 7.2 With respect to the location(s) and venue(s) of a meeting, the Board may determine that a meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion deems appropriate and practical in any circumstances to address:
 - 7.2.1 the location and venue where the chairman of the meeting will preside ("**the main meeting place**");
 - 7.2.2 the numbers of persons attending at any particular location or venue;
 - 7.2.3 the safety of persons attending at any particular location or venue;
 - 7.2.4 the facilitations of attendance of persons at any particular location or venue;

7.2.5 the entitlement of persons to attend at any particular location or venue;

7.2.6 the electronic participation of persons in the meeting in terms of this MOI;

and may from time to time vary any such arrangements and/or make new arrangements in their place.

7.3 A Shareholder who in person or as represented attends a Shareholders' meeting physically at any of the various scheduled locations and venues for a meeting contemplated in this paragraph shall be deemed to be present at the meeting in question, and counted towards the quorum, while so attending.

8. Electronic participation at Shareholders' meetings

8.1 The Board shall be entitled to determine that:

8.1.1 a meeting of Shareholders is to be conducted entirely by electronic communications; or

8.1.2 one or more Shareholders, or proxies for Shareholders, shall be entitled to participate by electronic communication in all or part of a meeting of Shareholders that is being held in person,

provided that the electronic communication employed by the Company must ordinarily enable all participants in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting and otherwise in compliance with the Companies Act. (Section 63(2)).

8.2 To the extent required by the Companies Act, the Board shall take reasonable steps to ensure that every Shareholders' meeting is reasonably accessible within the Republic of South Africa for electronic participation by Shareholders, irrespective of the physical location of the meeting. (Section 61(10) and 63(2)).

8.3 A Shareholder who in person or as represented participates in a meeting at any time electronically in terms of this paragraph 8 of this Schedule 2 shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

9. Notice of Shareholders' meetings

9.1 A notice of a meeting of Shareholders must be delivered:

9.1.1 to each of the Shareholders as of the applicable record date for delivery of that notice (determined in terms of paragraph 4 of this Schedule 2 read with section 59(1)(a));

9.1.2 to the auditors for the time being of the Company in terms of section 93(1)(c)(ii); and

9.1.3 if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Shareholders (Section 58(6)),

in form and content as prescribed in section 62(3), at least 15 business days before the date on which the meeting is to begin in the case of both ordinary resolutions and Special Resolutions. (Section 62(1)(a)).

9.2 If there is an invitation by the Company to Shareholders to appoint one or more persons named by the Shareholder as a proxy, or if the Company intends to supply a form or instrument for appointing a proxy, then the invitation and/or instrument must accompany the notice calling the Shareholders' meeting in question and must be delivered to all Shareholders entitled from time to time to receive notice of the meeting. (Section 58(8)(a) and 59(1)(a) and paragraph 3.3 of this Schedule 2).

9.3 The notice of a meeting (or of an adjourned meeting):

9.3.1 must inform Shareholders of the availability of participation in the meeting (and in any postponement or adjournment of the meeting), if applicable, by electronic communication and must provide the necessary information to enable Shareholders (or their proxy or

proxies) to access the available medium or means of electronic communication for the meeting and as it may be postponed or adjourned (Section 63(3)(a) and paragraph 8 of this Schedule 2);

- 9.3.2 may specify whether any proposed resolution is to be voted on by polling;
- 9.3.3 must comply with the requirements set out in section 62(3) as to formalities and content; and
- 9.3.4 should, for the sake of clarity, specify the applicable record dates which would be applicable should the meeting be postponed or adjourned (paragraph 4.6 of this Schedule 2).

10. **Chairman of a Shareholders' meeting**

The chairman of the Board for the time being shall be entitled to chair Shareholders' meetings. If, however, there is no chairman of the Board or if he has notified his inability or unwillingness to attend a Shareholders' meeting or if at any meeting he is not present within the 10 minutes after the appointed time for the meeting to begin, then the Shareholders present or represented at the meeting shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Shareholders present or represented at the meeting shall choose any person who is present to chair the meeting.

11. **Identification of attendees before a Shareholders' meeting**

- 11.1 A person wishing to attend or speak at or participate in or vote at a Shareholders' meeting (as a Shareholder personally or as a representative or as a proxy for a Shareholder, or as the parent, guardian, executor, administrator, trustee or curator with respect to a Shareholder as contemplated in paragraph 22.13 of this Schedule 2 or as the auditor or representative of the auditor for purposes of paragraph 11.4 of this Schedule 2) must present reasonably satisfactory identification to the chairman of the meeting 30 (thirty) minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned meeting to resume, as the

case may be, stipulated in the notice of the meeting or adjourned meeting in question. (Section 63(1)(a))

11.2 The chairman of the meeting must be reasonably satisfied that the right of the Shareholder or its representative or proxy/ies or any other person to participate and vote has been reasonably verified. (Section 63(1)(a))

11.3 If the identification process is not completed by the appointed time for that meeting to begin or adjourned meeting to resume (as specified in the notice of that meeting or adjourned meeting if applicable), then the commencement of the meeting or resumption of the adjourned meeting, as the case may be, shall be delayed until the identification process is complete.

11.4 The auditors for the time being of the Company shall be entitled to attend any Shareholders meeting and be heard on any part of the business of the meeting that concerns the auditor's duties or functions. (Section 93(1)(c)(i) and (iii))

12. Quorum

12.1 A Shareholders' meeting may not begin until sufficient Shareholders are present or represented at the meeting to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting. (Section 64(1)(a))

12.2 A matter to be decided at the meeting may not begin to be considered unless sufficient Shareholders are present or represented at the meeting to exercise, in aggregate at least 25% of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda. (Section 64(1)(b))

12.3 If the Company has more than 2 Shareholders then a Shareholders' meeting may not begin, or a matter begin to be debated, unless at least 3 (three) Shareholders are present or represented at the meeting and the requirements of paragraphs 12.1 and 12.2 of this Schedule 2 are satisfied. (Section 64(3))

12.4 For purposes of counting a quorum at any time a Shareholder who is personally present or represented at the meeting at that time, or who participates in person or through a representative electronically in terms of paragraph 8 of this Schedule 2 at that time, shall be counted towards the quorum at that time.

12.5 Once a quorum has been established, all the Shareholders of the quorum must be present at the meeting to hear any matter that must be considered at the meeting.

13. **Automatic postponement of a meeting**

13.1 If within one hour of the appointed time for a meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion vote or further notice) for one week at the same time and venue. (Section 64(4)(a))

13.2 The one-hour limit specified in paragraph 13.1 of this Schedule 2 may be extended for a reasonable period by the chairman of the meeting in the circumstances contemplated in section 64(5).

14. **Automatic adjournment of a meeting**

If at the time a matter will begin to be considered at a meeting, a quorum (determined in terms of paragraph 12.2 of this Schedule 2) is not present with respect to that matter and there is no other business on the agenda, the meeting is automatically adjourned (without any motion, vote or further notice) for one week at the same time and venue. (Section 64(4)(b)(ii))

15. **Voluntary postponement of a particular matter to later in the meeting**

If at the time a particular matter will begin to be considered at the meeting, a quorum (determined in terms of paragraph 12.2 of this Schedule 2) is not present with respect to that matter, but there is other business remaining on the agenda, consideration of that matter may be postponed by the chairman of the meeting (without motion, vote or further notice) to a later time in the meeting. (Section 64(4)(b)(i))

16. Announcement and further notice required for postponed / adjourned meeting

The Company shall issue an announcement *via* the Stock Exchange News Service of the JSE of any adjournment of a General Meeting, however, the Company shall not be required to give further notice of a meeting that is postponed or adjourned unless:

- 16.1 the location for the meeting is different from:
 - 16.1.1 the location of the postponed or adjourned meeting (Section 64(7)(a)); or
 - 16.1.2 the location announced at the time of adjournment, in the case of an adjourned meeting (Section 64(7)(b)); or
- 16.2 it is necessary to inform Shareholders of the availability of participation in the postponed or adjourned meeting by electronic communication as contemplated by paragraph 9.3.1 of this Schedule 2; or
- 16.3 the meeting has been adjourned "until further notice" as contemplated in paragraph 19.3.2 of this Schedule 2.

17. Deemed quorum at a postponed or adjourned meeting

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements (determined in terms of paragraph 12.1 of this Schedule 2) are not met, then those Shareholders present in person or by proxy at the meeting including those participating electronically in terms of paragraph 8 of this Schedule 2, will be deemed to constitute a quorum. (Section 64(8))

18. Continuing quorum during meeting

After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present or represented at the meeting. (Section 64(9))

19. Adjournment of a meeting by Shareholders

19.1 A Shareholders' meeting, or the consideration of any matter being debated at the 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:

19.1.1 held by all of the Shareholders who are present or represented at the meeting at the time (Section 64(1)(a)); and

19.1.2 that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be (Section 64(10)(b)).

19.2 Any voting on a motion by Shareholders for an adjournment in terms of this paragraph 19 of this Schedule 2 shall be decided on a show of hands unless the notice convening such Shareholders' meeting requires such motion to be voted on by polling or the chairman of the meeting or Shareholders demand a poll in terms of paragraph 22 of this Schedule 2.

19.3 Any such adjournment by motion of Shareholders at a meeting may be either:

19.3.1 "to a fixed time and place", in which event no further notice need be given to Shareholders of the adjourned meeting (Sections 64(10) and 64(11)(a)(i)); or

19.3.2 "until further notice", as agreed at the meeting, in which event a further notice of the adjourned meeting must be given to all the Shareholders at the applicable record date for the giving of such notice. (Section 64(11)(a)(ii) and (b) and section 59(1)(a))

20. Limit on period of adjournment

A Shareholders' meeting may not be adjourned beyond the earlier of:

- 20.1 a date that is 30 (thirty) business days after the record date determining which Shareholders are entitled to attend and vote at the meeting (Section 64(12)(a) and (13)); or
- 20.2 a date that is 15 business days after the date on which the adjournment occurred (Section 64(12)(b) and (13)).

21. Business at adjourned meeting

No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting which was adjourned.

22. Shareholders voting (by show of hands or by polling)

- 22.1 At a meeting of Shareholders, voting may either be by show of hands or by polling, provided that if the notice convening a Shareholders' meeting requires a particular motion to be voted on by polling, it shall not be competent for voting on such motion to be conducted by show of hands. (Section 63(4))
- 22.2 If voting on a particular matter is by a show of hands, any person, being a Shareholder or its representative or proxy/ies, who is present at the meeting and is entitled to exercising voting rights, has one vote irrespective of the number of votes that person would otherwise be entitled to exercise. (Section 63(5))
- 22.3 If voting on a particular matter is by polling, any person, being a Shareholder or its representative or proxy/ies, who is present at the meeting and is entitled to exercise voting rights, has the number of votes determined in accordance with the voting rights associated with the Shares registered in the name of the Shareholder in question which that person is entitled to exercise. (Section 63(6))
- 22.4 All questions, matters and resolutions arising at or submitted to any meeting of Shareholders shall be decided by a simple majority of the votes

cast (unless a different majority is required in terms of the Companies Act or this MOI) and shall in the first instance be decided by a show of hands (unless voting by a poll with respect to the resolution in question is specified in the notice calling the meeting, or a poll is demanded or required on that resolution in terms of the Companies Act or this MOI).

22.5 The chairman of the meeting will not in his capacity as chairman have a casting vote in addition to any vote he may have by virtue of being a Shareholder.

22.6 If voting on a resolution is on a show of hands, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact. The chairman of the meeting is not required to record the number of votes (on a show of hands) and percentage of votes cast at the meeting in favour of and against the proposed resolution, or any abstentions.

22.7 In addition to the Shareholders' right to demand a poll on any resolution in terms of section 63(7) at any meeting of Shareholders, a poll on any resolution may also be demanded by:

22.7.1 the chairman of the meeting; or

22.7.2 not less than 5 Shareholders (or their representatives or proxies) having the right to vote at the meeting on that resolution,

provided that (except in terms of section 63(7)) a poll may not be demanded on the question of the election of a chairman for the meeting, and provided further that only the chairman of the meeting (or the Shareholders in terms of section 63(7)) may demand a poll on the question of any adjournment of the meeting.

22.8 If a poll is demanded as provided for in this paragraph 22, it shall be taken immediately if any other resolution is already required to be taken by poll in terms of the notice convening that meeting, or if not then in such manner and at such place and time, either immediately or after an interval or

adjournment not exceeding 30 (thirty) days, as the chairman of the meeting directs. The demand for a poll may be withdrawn.

- 22.9 A poll shall be taken immediately in respect of resolutions included in the notice convening that meeting.
- 22.10 Scrutineers shall be appointed by the chairman to count the votes on a poll and to declare the result of the poll, and their declaration, which shall be announced by the chairman of the meeting at the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In the case of any dispute as to the admission or rejection of a vote, the chairman of the meeting shall determine the dispute and the determination of the chairman made in good faith shall be final and conclusive.
- 22.11 On a poll, a Shareholder (or its representative or proxy) entitled to more than one vote is in relation to the Company free to vote, in his discretion, all or any of his Shares the same way or differently or to abstain from voting in respect of all or any of his Shares, as he chooses.
- 22.12 When there are joint registered holders of any Shares any one of such persons may vote at any meeting in respect of such Shares as if he were solely entitled thereto, but if more than one of such joint holders is present or represented at any meeting, that joint holder whose name appears first in the securities register in respect of such Shares or his proxy, as the case may be, shall alone be entitled to vote in respect of such Shares. Several executors or administrators of a deceased Shareholder in whose name any Shares stand shall for the purpose of this paragraph 22.12 of this Schedule 2 be deemed joint holders thereof.
- 22.13 The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is insolvent and the *curator bonis* of a Shareholder who is mentally incapacitated or prodigal, may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of those Shares; provided that during the business day immediately preceding the date appointed for the meeting to begin or if the meeting is adjourned the date appointed for the resumption of the adjourned meeting, as the

case may be, of the meeting at which he proposes to vote he satisfies the Board that he is such parent, guardian, executor, administrator, trustee or curator or that the Board has previously admitted his right to vote in respect of those Shares.

22.14 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

23. Shareholders' resolutions

23.1 Every resolution of Shareholders is either:

23.1.1 an ordinary resolution (Section 65(1) read with section 65(7)); or

23.1.2 a Special Resolution required in terms of this MOI and/or section 65(9) of the Companies Act and/or the Listings Requirements.

23.2 The Board may propose any resolution to be considered by Shareholders. (Section 65(2)).

23.3 Any Shareholder holding more than 25% of the voting rights may propose a resolution concerning a matter in respect of which it is entitled to exercise voting rights, or any appointed Director (appointed in terms of paragraph 25.3 of this MOI) may propose any resolution to be considered by Shareholders, and when proposing the resolution may require that the resolution be submitted to Shareholders for consideration at a meeting of Shareholders called in terms of paragraph 5 of this Schedule 2, or at the next scheduled Shareholders' meeting. (Section 65(3))

23.4 Any resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in section 65(4).

23.5 The Company is not obliged to file with the Commission any Shareholders' resolution (including any Special Resolution), except if required to do so in terms of the Companies Act or this MOI. (Section 65(11))

Schedule 3**Board Meetings****1. Calling a Board meeting**

A Director authorised by the Board to do so:

- 1.1 may call a Board meeting at any time (Section 73(1)(a)); or
- 1.2 must call a Board meeting if required to do so by at least 1 (one) Director (Section 73(1)(b)(ii) and 73(2)).

2. Location of Board meetings

The Director(s) of the Company convening a Board meeting may determine the location of the meeting (including the location of a meeting which has been adjourned), provided that the location shall be the registered office of the Company or a suitable venue determined by the Directors, reasonably accessible to each Director.

3. Electronic participation at Board meetings

- 3.1 The Board may determine that a meeting of the Board shall be reasonably accessible within the Republic of South Africa for electronic participation by Directors, irrespective of the physical location of the meeting. (Section 73(3))
- 3.2 If the Board determines that a meeting of the Board is to be accessible within the Republic of South Africa for electronic participation, except if the Companies Act provides otherwise, a Director may participate in a Board meeting (including the meeting as adjourned) by electronic communication, at the expense of the Company. (Section 73(3)(b))
- 3.3 The electronic communication facility employed by the Company must ordinarily enable all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. (Section 73(3))

3.4 A resolution adopted by Directors, some or all of whom were connected electronically, where:

3.4.1 Directors connected electronically remained connected for the duration of that part of the meeting when the resolution was discussed;

3.4.2 the subject matter of the resolution has been discussed; and

3.4.3 the chairman of the meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met,

shall be deemed to have been passed on the date on which the resolution was adopted.

3.5 Within 10 business days after the adoption or failing of a resolution at a meeting or where some or all of the Directors were connected and participated electronically in terms of this paragraph 3 of this Schedule 3, the Company shall:

3.5.1 if requested by a Director, deliver a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and

3.5.2 insert a copy of the resolution proposed and statement referred to in paragraph 3.5.1 of this Schedule 3 in the minute book of the Company.

3.6 A Director who participates in a meeting at any time electronically in terms of this paragraph 3 of this Schedule 3 shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

4. **Regulation of Board meeting**

The Directors may regulate the conduct of Board meetings as they think fit, subject to the provisions of the Companies Act and the MOI and the rules governing the holding and conducting of such meetings (if any) – which shall include the Board Charters.

5. Notice of Board meetings

- 5.1 Subject to section 73(5)(a), a notice of a Board meeting must be in writing and delivered (which notice and delivery of same may be given by electronic media) to each Director of the Company (including each alternate Director) so as to be received by the Director in question in the ordinary course not less than 24 hours before the date appointed for the Board meeting, provided that in exceptional circumstances the notice period may be shortened as is necessary to allow the Directors to attend to the exceptional circumstances in question. (Section 73(4) and 5(a))
- 5.2 Such notice of a Board meeting may be in any form determined by the Board but must as a minimum include:
- 5.2.1 the date, time and place for the meeting;
 - 5.2.2 a detailed agenda for the meeting;
 - 5.2.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by electronic communication and the necessary information to enable Directors (including their alternates) to access the available medium or means of communication;
 - 5.2.4 a copy of any proposed resolution which the Board will be asked to consider and, if deemed fit, approve (which proposed resolution must be expressed with sufficient clarity and specificity, and must be accompanied by sufficient information or explanatory material to enable a Director to understand the reason and effect of the resolution and the ramifications for the Company, and to be properly informed about the matter for purposes of section 76(4)(a)(i));
 - 5.2.5 an explanation of a person's ineligibility or disqualification as a Director in terms of paragraph 25.3.5.2 of this MOI, paragraphs 6.4 and 15.6 of this Schedule 3, and as a standing agenda item, an opportunity for any Director to disclose any facts, circumstances or events, or other grounds, for holding that Director to be ineligible or

disqualified from serving as a Director (paragraph 25.4.2.3 of this MOI);

- 5.2.6 an explanation of a Director's duties to disclose, and as a standing agenda item an opportunity for any Director to disclose any personal financial interest and regard being had of any general disclosure by a Director in terms of section 75(4) of any personal financial interest, applicable with respect to any decisions to be taken by the Board, in terms of section 75 and section 76(4)(a)(ii) read with section 73(6)(a); and
- 5.2.7 an explanation of a Director's duties to communicate, and as a standing agenda item an opportunity for any Director to communicate, to the Board at the earliest practicable opportunity any information that has come to the attention of a Director as contemplated by section 76(2)(b).

6. Quorum

- 6.1 A Board meeting may not begin unless a majority of the Directors are present at the meeting and there is at least one executive Director present at the meeting. (Section 73(5)(b))
- 6.2 A matter to be decided at the Board meeting may not begin to be considered unless a majority of the Directors are present at the meeting and there is at least one executive Director present at the meeting.
- 6.3 For purposes of counting a quorum at any time, a Director (or his alternate) who is personally present at the meeting, or who participates in person electronically in terms of paragraph 3 of this Schedule 3 at that time, shall be counted towards a quorum at that time.
- 6.4 A person whose appointment as a Director (including as an alternate Director) is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors. (Paragraph 25.3.5.2 of this MOI)

7. Chairman of the meeting

7.1 The Board may elect a chairman of their meetings, and one or more deputy chairmen to preside in the absence of the chairman, and may determine a period for which the chairman and deputy chairman are to hold office.

7.2 If no such chairman or deputy chairman is elected by the Board or if at any meeting neither the chairman nor a deputy chairman is present within 10 minutes after the time appointed for the beginning of the Board meeting, the Directors then present shall choose one of their number to be chairman of such meeting.

8. Automatic postponement of a meeting

8.1 If within 30 (thirty) minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for one week at the same time and venue.

8.2 The 30 (thirty) minute limit specified in paragraph 8.1 of this Schedule 3 may be extended for a reasonable period not exceeding 2 hours by the chairman of the meeting.

9. Automatic adjournment of a meeting

If at the time a matter will begin to be considered at a meeting, a quorum is not present and there is no other business on the agenda, the meeting is automatically adjourned (without any motion, vote or further notice) for one week at the same time and venue.

10. Voluntary postponement of a particular matter to later in the meeting

If at the time a particular matter will begin to be considered at the meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion, vote or further notice) to a later time during the meeting.

11. Further notice required for postponed/adjourned meeting

The Company shall not be required to give further notice of a Board meeting that is postponed or adjourned unless:

- 11.1 the location for the postponed or adjourned meeting is different from:
 - 11.1.1 the location of the postponed or adjourned meeting; or
 - 11.1.2 the location announced at the time of adjournment, in the case of an adjourned meeting; or
- 11.2 it is necessary to inform Directors of the availability of participation in the postponed or adjourned meeting by electronic communication as contemplated by paragraph 5.2.3 of this Schedule 3.

12. Deemed quorum at a postponed or adjourned meeting

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those Directors present in person at the meeting including those participating electronically in terms of paragraph 3 of this Schedule 3, will be deemed to constitute a quorum.

13. Continuing quorum during meeting

After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one Director is present at the meeting.

14. Adjournment by Directors

A Board meeting may be adjourned by majority vote of the Directors present at the meeting.

15. Voting by Directors

- 15.1 Each Director has one vote on a matter before the Board (Section 73(5)(c)), save that:

- 15.1.1 a Director whose eligibility or ineligibility to serve as a Director is being determined as contemplated in paragraph 25.7 of this MOI or in terms of paragraph 25.10 of this MOI, shall not have a vote in respect of that matter (Section 71(3));
- 15.1.2 a Director who has been suspended in terms of section 70(2), shall not have a vote on any matter before the Board (Section 70(2));
- 15.1.3 a Director who has a personal financial interest in respect of a matter to be considered by the Board, or who knows that a related person has a personal financial interest in the matter as contemplated by section 75(4) or (5), shall not have a vote in respect of that matter (Section 75(5)(f)(ii)).
- 15.2 Subject to paragraph 15.3 of this Schedule 3, a majority of the votes of the Directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board resolution, provided that there is at least a quorum of Directors present and so exercising their votes on the matter. An abstention from voting shall not be counted as the exercise of a vote, and shall be disregarded for purposes of calculating whether or not a majority has been obtained. (Section 73(5)(d))
- 15.3 The Ordinary Shareholders may from time to time determine by Special Resolution any specific matter(s) which the Board may or may not authorise, or the Company may or may not do, except with the prior approval of the Board by a special vote requiring a different majority to the majority specified in paragraph 15.2 of this Schedule 3. (Section 73(5)(d))
- 15.4 Where the vote is tied, the matter being voted on will fail, and the chairman of the meeting shall not in the event of such a tie have a second or casting vote. (Section 73(5)(e)(ii))
- 15.5 If a resolution of the Directors has failed because of a tie contemplated in paragraph 15.4 of this Schedule 3, the Board or any Director of the Company or any Shareholders may refer the matter to the Ordinary Shareholders for the Ordinary Shareholders to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Ordinary

Shareholders and/or Directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).

- 15.6 The vote of any person whose appointment as a Director (including as an alternate Director) is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not with effect from the time that vote is purportedly cast be counted towards any vote of Directors. (Paragraph 25.3.5.2 of this MOI).

16. **Recusal by Directors from Board meetings**

A Director (or in his absence his alternate) shall be required to attend all Board meetings in person or electronically, and to vote on all matters before the Board at Board meetings or by round-robin resolution, as the case may be, unless that Director (and/or his alternate) is required not to do so or to recuse himself in terms of the Companies Act or the MOI, including in circumstances where that Director does not have a vote in terms of paragraph 15 of this Schedule 3, or such director excuses himself from the relevant Board meeting.

17. **Minutes**

- 17.1 Minutes of Board and Board committee meetings must be kept and minutes must include all resolutions adopted by the Board or Board committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75. (Section 73(6)).
- 17.2 Each resolution adopted by the Board must be dated and sequentially numbered. (Section 73(7)(a)).
- 17.3 Signature of the minutes or of a resolution by the chair of the meeting (or by the chair of the next meeting) is evidence of the proceedings of that meeting, or adoption of the resolution, as the case may be. (Section 73(8)).
- 17.4 Any extract from such minutes or extract from any resolution in writing, if signed by any Director or the company secretary, shall be evidence of the matters stated in such minutes or extract.

18. Round-robin resolutions by the Board

- 18.1 A resolution that could be voted on at a Board meeting (other than a Board resolution resolving that the Company voluntarily begin business rescue proceedings and place the Company under supervision as contemplated in section 129(1)) may instead of being voted on at a Board meeting be:
- 18.1.1 submitted (by the Directors proposing the resolution) for consideration to each Director (Section 74(1)); and
- 18.1.2 voted on in writing by Directors entitled to exercise voting rights on that matter within 10 business days after the resolution was submitted to them.
- 18.2 A resolution contemplated in paragraph 18.1 of this Schedule 3 will have been adopted as a Board resolution if it has been supported in writing by the requisite majority (as determined in terms of paragraph 15.2 or 15.3 of this Schedule 3) of the Directors in person who are entitled to exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a Board meeting. (Section 74 (1) and (2)).
- 18.3 A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date on which the resolution was submitted to Directors for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors entitled to do so voting in favour of the resolution within the 10 business days referred to in paragraph 18.1.2 of this Schedule 3, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed. (Section 73(7)(b)).

- 18.4 Within 10 business days after the adoption or failing of a round-robin resolution, the Company shall:
- 18.4.1 if requested by a Director, deliver to such Director a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and
- 18.4.2 insert a copy of the resolution and statement referred to in paragraph 18.1.2 of this Schedule 3 in the minute book of the Company.

WEBBER WENTZEL

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