

**DRAFT FOR DISCUSSION
PURPOSES ONLY**

Amendments to the previous draft are marked up.
Insertions are **underlined and shaded**. Deletions
are indicated **by a line through the text**.

Republic of South Africa

Companies Act 71 of 2008

MEMORANDUM OF INCORPORATION OF A PUBLIC COMPANY

ADCOCK INGRAM HOLDINGS LIMITED

Registration Number: 2007/016236/06

This Memorandum of Incorporation was adopted by a special resolution passed on Thursday, 31 January 2013
in substitution for the existing Memorandum of Incorporation of the company and subsequently amended by
special resolution on or about 2016.

CD Raphiri KDK Mokhele
(Chairman)

NE Simelane
Group Company Secretary
(Witness)

1. PREAMBLE

- 1.1. The company is a pre-existing company as defined in the Companies Act, 2008 and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in item 2 of the Fifth Schedule to the Companies Act, and this MOI replaces and supersedes the Memorandum of Incorporation of the company applicable immediately prior to the filing hereof, as contemplated in item 4(2)(a) of Schedule 5 to the Companies Act.
- 1.2. The company is incorporated in accordance with and governed by -
 - 1.2.1. the unalterable provisions of the Companies Act; and
 - 1.2.2. the alterable provisions of the Companies Act, subject to any negations, restrictions, limitations, qualifications, alterations, extensions, variations or substitutions set out in this MOI; and
 - 1.2.3. the other provisions of this MOI.

2. DEFINITIONS AND INTERPRETATION

In this MOI, unless the context otherwise requires -

- 2.1. "**address**" shall include, in regard to electronic mail, any address furnished by a holder for such purpose;
- 2.2. "**beneficial interest**", bears the meaning ascribed to that term in section 1 of the Companies Act from time to time, which, as at the date of filing of this MOI, means, when used in relation to securities, the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to -
 - 2.2.1. receive or participate in any distribution in respect of the securities;
 - 2.2.2. exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the securities;
 - 2.2.3. dispose or direct the disposition of the securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act 45 of 2002;

- 2.3. "**board**" means the board of directors of the company;

- 2.4. "**business day**" means any day of the week other than a Saturday, Sunday or official public holiday in the Republic;
- 2.5. "**Companies Act**" means the Companies Act, 71 of 2008;
- 2.6. "**Companies Regulations**" means the Companies Regulations, 2011 promulgated in accordance with section 223 of the Companies Act;
- 2.7. "**company**" means the company named on the first page of this document, duly incorporated under the registration number set out on that page;
- 2.8. "**central securities depository**" means a central securities depository as defined in section 1 of the Securities Act;
- 2.9. "**certificated securities**" means securities evidenced by a certificate or written instrument;
- 2.10. "**electronic**" means any form of electronic transmission or communication, including electronic mail, consistent with the Statutes (and where applicable the Electronic Communications and Transactions Act 25 of 2002), utilised *inter alia* –
 - 2.10.1. to issue, present, deliver, serve and record documentation or information pertaining to the company;
 - 2.10.2. to communicate; or
 - 2.10.3. to make payment;
- 2.11. "**holder**" includes a securities-holder and a rights-holder;
- 2.12. "**in writing**" includes telefax to the extent the use of such medium is consistent with the Statutes, and electronic mail to the extent the use of such medium is consistent with the Statutes and the Electronic Communications and Transactions Act 25 of 2002;
- 2.13. "**JSE**" means JSE Limited, registration number 2005/022939/06, a company duly registered and incorporated with limited liability under the company laws of the Republic and licensed as an exchange under the Securities Act;
- 2.14. "**JSE Listings Requirements**" means the listings requirements issued by the JSE from time to time for companies listed on the exchange operated by JSE;
- 2.15. "**MOI**" means this Memorandum of Incorporation of the company;

- 2.16. "**ordinary resolution**" means a resolution adopted with the support of more than 50% of the voting rights exercised on that resolution, as contemplated in section 65(7) of the Companies Act;
- 2.17. "**participant**" means a depository institution accepted by a central securities depository as a participant in terms of the Securities Act;
- 2.18. "**participating rights-holder**" means a rights-holder holding a beneficial interest contemplated in part "(a)" of the definition of "beneficial interest" in section 1 of the Companies Act, in relation to distributions by the company;
- 2.19. "**profits**" includes revenue and capital profits;
- 2.20. "**register**" means a register to be maintained by the company in terms of the Statutes, including a securities register or register of disclosures or other register;
- 2.21. "**register of disclosures**" means the register to be maintained by the company in a manner consistent with section 56(7)(a) of the Companies Act and Regulation 32(3) of the Companies Regulations;
- 2.22. "**rights-holder**" means the holder of a beneficial interest in securities issued by the company, to the extent such beneficial interest is recorded in the register of disclosures maintained by the company in a manner consistent with the Statutes, failing which the company shall be entitled to act on the basis that the securities-holder retains all such beneficial interests in the relevant securities;
- 2.23. "**the Republic**" means the Republic of South Africa;
- 2.24. ~~"**Schedule AB**" means the schedule attached to and incorporated in this MOI entitled "Schedule AB: A Ordinary and B Ordinary Shares";~~
- 2.25.~~2.24.~~ "**Securities Act**" means the Securities Services Act, 36 of 2004;
- 2.26.~~2.25.~~ "**securities-holder**" means a registered holder of securities issued by the company, who is entered as such in the certificated or uncertificated securities register (as the case may be) of the company, and includes a shareholder;
- 2.27.~~2.26.~~ "**securities register**" means the register to be maintained by the company in a manner consistent with section 50(1) of the Companies Act and Regulation 32 of the Companies Regulations;
- 2.28.~~2.27.~~ "**SENS**" means the SECURITIES EXCHANGE NEWS SERVICE, or its successor;

2.29.2.28. **"shareholder"** means a registered holder of shares issued by the company, who is entered as such in the certificated or uncertificated securities register (as the case may be) of the company;

2.30.2.29. **"special resolution"** means a resolution adopted with the support of at least 75% of the voting rights exercised on that resolution, as contemplated in section 65(9) of the Companies Act;

2.31.2.30. **"the Statutes"** means the Companies Act, the Companies Regulations, the Securities Act, the rules of the central securities depository and every other statute, ordinance, regulation or rules from time to time, including the JSE Listings Requirements, with which the company must comply, subject to paragraphs 1.1, 1.2 and 3.1;

2.32.2.31. **"sub-register"** means the record of uncertificated securities administered and maintained by a participant which forms part of the securities register;

2.33.2.32. **"uncertificated securities"** means uncertificated securities as defined in the Companies Act, being securities which are not evidenced by a certificate;

2.34.2.33. **"voting member"** means a voting rights-holder in respect of voting rights that are entitled to be exercised on every matter at any general meeting of the company;

2.35.2.34. **"voting rights-holder"** means a rights-holder holding a beneficial interest contemplated in part "(b)" of the definition of "beneficial interest" in section 1 of the Companies Act in relation to the voting rights attaching to securities in the company, and this definition embraces also a "voting member";

2.36.2.35. references to securities-holders or voting rights-holders represented by proxy shall include such holders represented by an individual in terms of a valid proxy appointment;

2.37.2.36. references to securities-holders or voting rights-holders present or acting in person shall include corporations represented or acting in the manner prescribed in the Statutes;

2.38.2.37. words or expressions not defined in this MOI but defined in the Companies Act or the Companies Regulations or any statutory modification thereof, in force at the date on which this MOI becomes binding on the company, shall have the meanings as ascribed to those words or expressions in the Companies Act or Companies Regulations (as the case may be) from time to time;

2.39.2.38. other two genders, and words importing persons shall, where applicable, include juristic persons (corporate or not);

2.40.2.39. where figures are referred to in numerals and in words, if there is any conflict between the two, the figures represented in words shall prevail;

2.41.2.40. any schedule or annexure to this MOI shall form an integral part of this MOI;

2.42.2.41. each expression defined in the body of this MOI shall bear the meaning so assigned to it in schedules or annexures to this MOI save and to the extent such expression is assigned a different meaning in that schedule or annexure, and *vice versa*;

2.43.2.42. the word "share" shall where appropriate include options or any rights to or interests in shares;

2.44.2.43. where any term is defined within the context of any particular paragraph in this MOI, the term so defined, unless it is clear from the paragraph in question that the term so defined has limited application to the relevant paragraph, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that the term has not been defined in this paragraph 2;

2.45.2.44. a reference to "law" is a reference to 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 of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

2.46.2.45. the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;

2.47.2.46. a reference to any statutory enactment, ordinance, regulations or rules shall be construed as a reference to that enactment, ordinance, or those rules or regulations, as amended or substituted from time to time;

2.48.2.47. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

3. PRELIMINARY

3.1. If any provision of this MOI is in any way inconsistent with or contravenes the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act.

3.2. The company has all the legal powers and capacity of an individual, except to the extent that -

3.2.1. a juristic person is incapable of exercising any such power or having any such capacity; or

3.2.2. this MOI provides otherwise.

3.3. No person shall, solely by reason of being a director or a holder, be liable for any liabilities or obligations of the company.

4. SHARES, ISSUE OF SHARES AND VARIATION OF RIGHTS

4.1. The company is authorised to issue 250 000 000 ordinary shares with a par value of R0.10 each.

4.1.1. 250 000 000 ordinary shares with a par value of R0.10 each;

4.1.2. 19 458 196 automatically convertible A ordinary shares with a par value of R0.10 each; and

4.1.3. 6 486 065 automatically convertible B ordinary shares with a par value of R0.10 each.

4.2. The ordinary shares rank *pari passu* in all respects, must be fully paid up, are freely transferable and are subject to the rights, preferences and limitations as set forth in paragraph 13 and the remaining provisions of this MOI. Without limiting the foregoing, subject to the provisions of Schedule AB, the ordinary shares further entitle -

4.2.1. the voting rights-holders (being voting members) in respect of such ordinary shares to one (1) vote per ordinary share on a poll in respect of every matter at every general meeting of the company;

4.2.2. the participating rights-holders in respect of such ordinary shares to participate proportionally to their rights *inter se* in any distribution made by the company, and to receive proportionally to their rights *inter se* the net assets of the company upon its liquidation;

4.2.3. subject to the conditions stipulated in paragraphs 4.4 and 4.5 below, nothing in this MOI prohibits the company from offering its ordinary shares to the public.

4.3. The A ordinary shares are subject to the rights, preferences and limitations contemplated in part A of Schedule AB read with paragraph 1 of Schedule AB.

4.4. The B ordinary shares are subject to the rights, preferences and limitations contemplated in part B of Schedule AB read with paragraph 1 of Schedule AB.

4.5.4.3. Without prejudice to its powers generally (and in particular to its powers under paragraph 10), the board may, subject to the provisions of paragraph 4.7 and the Statutes, and subject (save in the circumstances of a court order contemplated in section 16(4) of the Companies Act) to approval of such matter by way of a special resolution authorising the consequential amendment of this MOI -

4.5.1.4.3.1. create any new class of shares;

4.5.2.4.3.2. vary or amend any rights, privileges, preferences, limitations, conditions and/or other terms attaching to any class of shares;

4.5.3.4.3.3. convert any shares in the company, whether issued or not, to shares of one or more different classes, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary shares or preference shares to redeemable preference shares or other redeemable securities;

4.5.4.4.3.4. change the name of the company;

4.5.5.4.3.5. reclassify any classified shares that have been authorised but not issued;

4.5.6.4.3.6. classify any unclassified shares that have been authorised as contemplated in section 36(1)(c) of the Companies Act and identified in this MOI but not issued; or

4.5.7.4.3.7. determine the preferences, rights, limitations or other terms of shares of any class identified in this MOI in terms of section 36(1)(d) of the Companies Act.

4.6.4.4. Subject to the Statutes and the approval of the JSE (where necessary), and subject to the provisions of paragraph 4.5 below, any securities in the company authorised but unissued from time to time may be issued by the board to such persons on such terms and conditions as the board may determine at any time, but only within the classes, and to the extent, that the securities have been authorised by or in terms of this MOI.

4.7.4.5. The provisions of section 39 of the Companies Act apply to the company without limitation or restriction, to the extent that those provisions are consistent with the following -

Shares which are authorised but unissued shall be offered to the existing holders *pro rata* to their respective holdings in the company (and such offers may be renounceable, or if not taken up within a reasonable period stipulated by the board, or if taken up in part only, the remainder may be extended to other persons, on such terms as may be stipulated by the board), unless

same are issued for the acquisition of assets¹⁷ provided that, the voting rights-holders in general meeting may, to the extent required by the JSE Listings Requirements, authorise the directors to issue unissued shares (whether for cash or otherwise), and/or grant options to subscribe for unissued shares (whether for cash or otherwise), ~~in respect of a specific transaction or~~ as the directors in their discretion deem fit, subject to approval of such corporate actions by the JSE and compliance with the provisions of the JSE Listings Requirements¹⁸ where applicable.

4.8.4.6. The company is, subject to the provisions of the Companies Act, empowered to provide financial assistance for the purchase of or subscription for securities of the company or any related or inter-related company, or otherwise to provide financial assistance to its directors, prescribed officers or to entities related or inter-related to or with such directors or officers, provided that the provisions of the Statutes and in particular the relevant provisions of the Companies Act are complied with.

4.9.4.7. None of the rights, privileges, preferences, limitations, conditions and/or other terms for the time being attached to any class of shares already in issue may, whether or not the company is being wound up, be varied or amended in any manner without the sanction –

4.9.1.4.7.1. of a special resolution contemplated in paragraph 4.3.2 above (and the voting rights-holders in respect of such shares will be allowed to vote at the general meeting convened to pass such special resolution, save in the case of special shares not permitted to vote by virtue of the JSE Listings Requirements); and

4.9.2.4.7.2. a special resolution of a separate general meeting of the voting rights-holders in respect of the shares of that class, provided that the resolutions contemplated in paragraph 4.7.1 above may not provide for a variation of preferences, rights, limitations or other terms of any class of securities in response to any objectively ascertainable external fact or facts as provided for in section 37(6) and 37(7) of the Companies Act.

4.10.4.8. Unless otherwise provided in respect of any class of securities, the provisions of this MOI relating to a general meeting shall *mutatis mutandis* apply to any meeting of the voting rights holders in respect of that class ("class meeting") except that -

4.10.1.4.8.1. the necessary quorum for such class meeting shall be determined in accordance with section 64(1) of the Companies Act, provided that the reference to "shareholders" in section 64(3)(a) of the Companies Act is taken to refer to voting-rights holders of that class;

4.10.2.4.8.2. if at any such class meeting a quorum is not present within 1 (one) hour after the appointed time for the meeting to begin, it shall, subject *mutatis mutandis* to the provisions of paragraph 12.742.712.6, be adjourned until the same time on the 5th (fifth) business day after the date the meeting was scheduled to begin, and if at such adjourned meeting a quorum as above determined is not present, those voting rights-holders who are present shall be a quorum.

4.11. ~~Subject to the provisions of paragraph 4.12 and the provisions of Schedule AB in relation to the A ordinary shares and the B ordinary shares, the company's issued securities may be registered in the name of one person while one or other beneficial interest in those securities may be held by another person.~~

4.12.4.9. No person shall be recognised by the company as holding any beneficial interest in any securities or holding any right therein upon any trust, and the company shall not, except only as otherwise provided for in this MOI or in the Statutes or in any order of a Court of competent jurisdiction, be bound by or compelled in any way to recognise any beneficial interest or other equitable, contingent, future, partial or representative interest in any securities or any right in or in respect of any securities, other than as reflected in the securities register read with the register of disclosures, and such other rights in case of transmission thereof as are contemplated in paragraph 7.

5. CERTIFICATES

5.1. In relation to securities of the company held in certificated form –

- 5.1.1. certificates shall be issued in terms of the requirements of the Statutes and under the authority of the board and otherwise in such manner and form as the board shall from time to time prescribe;
- 5.1.2. each securities-holder shall be entitled to 1 (one) certificate for all the securities of a particular class registered in his name, or to several certificates, each for a part of such securities. Every certificate shall specify the number of securities in respect of which it is issued;
- 5.1.3. a certificate for securities registered in the names of 2 (two) or more persons shall be delivered to the person first named in the securities register as the securities-holder in respect thereof and delivery of a certificate for any securities to that person shall be a sufficient delivery to all joint securities-holders in respect of those securities;

- 5.1.4. in the case of any securities or rights therein registered in the names of 2 (two) or more persons as joint holders, the person first named in the register shall, save as may otherwise be provided in this MOI, be the only person recognised by the company as having any title to such securities (and where appropriate the certificate therefor) or the relevant rights therein; and
 - 5.1.5. if any certificate be worn out or defaced then upon production thereof to the company the same must be cancelled by mutilation (a rubber stamp or statement in ink to the effect that the certificate has been cancelled will not suffice) and a new certificate in lieu thereof be issued, and if any certificate be lost or destroyed then upon proof thereof to the satisfaction of the board and on such indemnity being given and after such advertisement (if any) of the loss or destruction as the board deems adequate at the expense of the party claiming the new certificate, a new certificate in lieu thereof may be given to the party entitled to such lost or destroyed certificate. In case of loss or destruction the securities-holder to whom the new certificate is given shall repay to the company all expenses incidental to the investigation by the company of the evidence of such destruction or loss and to such indemnity. If a warrant to bearer is lost, it may not be renewed unless suitable documentation is provided to the satisfaction of the company.
- 5.2. Notwithstanding any provisions to the contrary contained in any law, the common law, an agreement or this MOI -
- 5.2.1. the relevant provisions of the Statutes shall apply to the uncertificated securities of the company;
 - 5.2.2. a securities-holder in respect of uncertificated securities in the company shall not be entitled to certificates and the company shall not issue certificates evidencing or purporting to evidence title to uncertificated securities of the company, unless the securities-holder gives the participant and/or the central securities depository notice (in a manner consistent with the Statutes) that such securities-holder wishes to withdraw all or a part of the uncertificated securities held by it in an uncertificated securities register and to obtain a certificate in respect of those withdrawn securities;
 - 5.2.3. if the company is notified of a withdrawal in accordance with the Statutes, the company will comply with its obligations to issue one or more certificates for the security so withdrawn, in a manner consistent with the Statutes; and
 - 5.2.4. each original certificate issued to a securities-holder of specific securities in certificated form in the company shall be issued without charge, but for every

subsequent certificate issued in respect of the same securities to the same securities-holder or every certificate issued in terms of paragraph 5.2.3, the board shall be entitled, as it deems fit, to require a charge in settlement of the reasonable costs included in such issue.

5.3. Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any -

5.3.1. joint securities-holder of any securities, the sole remaining joint securities holder or the first named in the securities register of 2 (two) or more remaining joint securities-holders, as the case may be, shall be the only person recognised by the company as having any title to such securities;

5.3.2. joint rights-holders in respect of any right in any securities, the sole remaining joint rights-holder or the first named in the register of disclosures of 2 (two) or more remaining joint rights-holders, as the case may be, shall be the only person recognised by the company as having any title to such right.

6. COMMISSION

Subject to the Companies Act, the company may pay commission not exceeding 10% (ten per cent) of the issue price to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company or of his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any securities of the company.

7. TRANSMISSION OF SECURITIES

7.1. The executor or administrator of the estate of a deceased holder; the trustee of an insolvent holder; or the curator of any insane or prodigal holder; or any person duly appointed by a competent authority to represent or act for any holder shall, subject to the provisions of paragraphs 5.1.3, 5.1.4 and 5.3, regarding joint holders, be the only person other than the relevant holders thereof recognised by the company as having any title to any securities or rights therein registered in the name of such holder.

7.2. Subject to the laws relating to tax on the transfer of securities, duty upon or in respect of the estates of deceased persons and the administration of the estates of insolvent and deceased persons and persons under disability -

7.2.1. the parent or guardian of any holder who is a minor;

7.2.2. any person becoming entitled to any securities or rights therein in consequence of his/her marriage in community of property to a holder;

- 7.2.3. the trustee or liquidator of an insolvent holder;
- 7.2.4. the curator of a holder under disability;
- 7.2.5. the executor or administrator of any deceased holder's estate; or
- 7.2.6. any other person becoming entitled to any securities or rights in securities held by a holder by any lawful means other than transfer in terms of this MOI,
shall, upon production of such evidence as may be required by the board, have the right either -
- 7.2.7. to exercise the same rights and to receive the same dividends and other advantages to which he would be entitled if he were the holder of the relevant securities or rights; or
- 7.2.8. himself to be registered as a holder in respect of those securities or rights and to make such transfer of those securities or rights as the holder concerned could have made.

8. TRANSFER OF SECURITIES

- 8.1. The transferor of any securities or rights in such securities shall be deemed to remain the holder of such securities or rights therein until the name of the transferee is entered in the register in respect thereof.
- 8.2. The transfer of any securities shall be implemented in a manner consistent with the provisions of the Statutes -
 - 8.2.1. in respect of certificated securities using the usual or common form of instrument of transfer or such other form as may be approved from time to time by resolution of the board, provided that all authorities to sign transfer deeds granted by holders for the purpose of transferring securities which may be lodged, produced or exhibited with or to the company at any of its transfer offices shall as between and amongst the company and the grantor of such authorities and the holders in respect of the relevant securities, be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon, until such time as express notice in writing of the revocation of the same shall have been delivered to the company. Even after the delivery of such notice, the company shall be entitled to give effect to any instrument signed under the authority to sign, and certified by any officer of the company as being in order, before the giving of such notice;

- 8.2.2. in respect of uncertificated securities, only by a participant or the central securities depository in accordance with the Companies Act and the rules of the central securities depository.
- 8.3. Without prejudice to paragraphs 13.8 to 13.12, the company shall not be bound to allow the exercise of any act or matter by an agent for a holder unless a duly certified copy of such agent's authority is produced and filed with the company. The company is entitled, but not obliged, to require evidence to its satisfaction of the nature and scope of the authority granted by a holder to any person purporting to act as agent on behalf of that holder, and the company shall not be liable for any act done by the company acting in good faith on the basis of such purported authority.
- 8.4. All instruments of transfer shall be retained by the company, but any instrument of transfer which the directors may decline to register shall (except in the case of fraud), on demand, be returned to the person depositing the same.

9. RECORD DATE

Subject to the Statutes, the board may determine a record date as contemplated in section 59(1) and 59(2) of the Companies Act. If the board does not determine a record date for any action or event, requiring such record date, the record date is -

- 9.1. in the case of a meeting of voting rights-holders, the latest date by which the company is required to give notice of that meeting; or
- 9.2. the date of the action or event, in any other case.

10. ALTERATION OF CAPITAL

Without prejudice to its powers generally (and in particular to its powers under paragraph 4), the board may, subject to the provisions of paragraph 4.7 and the Statutes, and subject where required to approval of such matter by way of a special resolution authorising where required any consequential amendment of this MOI, (which special resolution must be filed with the Companies and Intellectual Property Commission of South Africa, established in terms of section 185 of the Companies Act, and the proof of filing submitted to the JSE) -

- 10.1. increase or decrease the number of authorised shares of any class of shares;
- 10.2. increase its stated capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;

- 10.3. consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued no par value shares;
- 10.4. increase the number of its issued no par value shares without an increase of its stated capital;
- 10.5. subdivide its shares, or any of them, into shares of smaller amount than is fixed by this MOI;
- 10.6. convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value; and
- 10.7. cancel shares which at the time of the passing of the resolution in that regard, have not been taken or agreed to be taken by any person and diminish the amount of its authorised share capital by the amount of the shares so cancelled or may cancel shares of no par value which have not so been taken or agreed to be taken.

11. GENERAL MEETINGS

- 11.1. The company -
 - 11.1.1. shall, at such times as are in the Statutes prescribed, convene and hold a general meeting of voting members to be known and described in the notice calling such meeting as an annual general meeting;
 - 11.1.2. may from time to time convene and hold general meetings of voting members to be known and described in the notices calling such meetings as general meetings.
- 11.2. The board may, whenever it thinks fit, convene a general meeting, and a general meeting shall also be convened by the board on a demand validly made in terms of the Statutes by voting members holding at least 10% (ten per cent) of the general voting rights.
- 11.3. Subject to the provisions of the Statutes relating to the waiving of minimum notice as contemplated in section 62(2A) of the Companies Act, a general meeting shall be called by 15 (fifteen) business days' notice in writing at the least.
- 11.4. If there was a material defect in the giving of the notice of a meeting of voting rights-holders, the voting rights-holders may either ratify such defective notice (as contemplated in section 62(4) of the Companies Act) or proceed with the meeting to the extent permitted by section 62(5) of the Companies Act.
- 11.5. Notice of any general meeting shall be given to all shareholders (save to the extent directed otherwise by a shareholder) and all voting rights-holders entitled to vote at that meeting and also, at the same time, to the JSE.

12. PROCEEDINGS AT GENERAL MEETINGS

12.1. Subject to the provisions of section 61(8) of the Companies Act, all business that is transacted at a general meeting shall be deemed to be "special business" and will require notice.

12.2. Save as contemplated in 12.3, Resolutions proposed at meetings convened in terms of the JSE Listings Requirements must be adopted at a meeting and not by way of the procedure provided in section 60 of the Companies Act.

12.3. Subject to the Statutes and the remaining provisions of this MOI, resolutions proposed in respect of the following matters may be adopted by the shareholders entitled to exercise voting rights on such matters, in writing, in accordance with the procedures provided in section 60 of the Companies Act –

12.3.1. the change of the name of the company;

12.3.2. any odd lot offers to shareholders;

12.3.3. the increase in the authorised share capital of the company; and/or

12.1.1.12.3.4. the approval of any amendments to this MOI.

12.2.12.4. No resolution may be proposed in terms of section 20(2) read with section 20(6), in the event that such resolution would lead to the ratification of an act that is contrary to the JSE Listings Requirements, unless such proposal is approved by the JSE.

12.3.12.5. A meeting of voting rights-holders may begin, and a matter may begin to be debated at that meeting, only if the quorum requirements of the Statutes are met, which as at the date of filing of this MOI are the following -

12.3.1.12.5.1. subject to 12.4.2 and 12.4.3 -

12.3.1.1.12.5.1.1. a meeting of voting rights-holders may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

12.3.1.2.12.5.1.2. a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the

voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda; and

12.3.2.12.5.2. once a quorum has been established at a meeting of voting rights-holders,

all the voting rights-holders necessary to maintain such quorum must be present at that meeting to consider and vote on any matter;

12.3.3.12.5.3. despite the percentage figures set out in paragraph 12.5.112.5.112.4.1, if the company has more than 2 (two) voting rights-holders, a meeting may not begin, or a matter begin to be debated unless -

12.3.3.1.12.5.3.1. at least 3 (three) voting rights-holders are present at the meeting; and

12.3.3.2.12.5.3.2. the requirements of paragraph 12.5.112.5.112.4.1 are satisfied.

12.4.12.6. Subject to the provisions of this paragraph 12 and to the Statutes, if, within 1 (one) hour after the appointed time for a meeting to begin, a quorum is not present, the meeting shall be postponed without motion, vote or further notice for 1 (one) week, at the same time and place or, if that day not be a business day, to the next succeeding day which is a business day.

12.5.12.7. The person intended to preside at a meeting as contemplated in paragraph 12.812.812.7, that cannot begin, as contemplated in paragraph 12.612.612.5, may extend the one hour period contemplated in paragraph 12.612.612.5 for a reasonable period on the grounds that -

12.5.1.12.7.1. exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of voting rights-holders to be present at the meeting; or

12.5.2.12.7.2. one or more particular voting rights-holders, having been delayed have communicated an intention to attend the meeting, and those voting rights-holders, together with others in attendance, would satisfy the quorum requirements for the meeting to begin.

12.6.12.8. Unless otherwise stipulated in respect of any such meeting, the chairperson, if any, of the board shall preside as chairperson at every meeting of voting rights-holders. If there is no such chairperson, or if at any meeting he is not present within 30 (thirty) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the voting rights-holders present may choose one of the directors present, or if no director be present, or if all

the directors present decline to take the chair, they may choose one of the voting rights-holders present to be the chairperson of the meeting.

12.7.12.9. Subject to the provisions of section 64(11) of the Companies Act, a meeting of voting rights-holders, or the consideration of any matter being debated at the meeting, may be adjourned from time to time in accordance with the Statutes, provided that no such adjournment shall be to a date beyond the earlier of –

12.7.1.12.9.1. the date that is 120 (one hundred and twenty) business days after the record date; and

12.7.2.12.9.2. a date that is 60 (sixty) business days after the date on which the adjournment occurred.

12.8.12.10. Every meeting of voting rights-holders of the company shall be reasonably accessible within the Republic for electronic participation by shareholders and voting rights-holders in the manner contemplated in the Companies Act.

12.9.12.11. Every notice of a meeting of voting rights-holders shall inform those persons entitled to such notice of the availability of the electronic participation and shall provide any necessary information to enable such persons or their proxies to access the available medium or means of electronic communication.

12.10.12.12. Access to the medium or means of electronic communication shall be at the expense of the holder or proxy concerned, unless the company should determine otherwise.

12.11.12.13. Even if not a holder -

12.11.1.12.13.1. any director;

12.11.2.12.13.2. the company's attorney (or, where the company's attorneys are a firm, any partner or director thereof), the auditors of the company or the company's sponsors in relation to the JSE Listings Requirements;

12.11.3.12.13.3. any other invitee of the board, may attend any general meeting, but may not vote, unless he is a voting rights-holder or a proxy of a voting rights-holder. A director present at a meeting may be heard on any matter arising at that meeting, while the company's attorneys, auditors and sponsors may be heard in respect of any part of the business of that meeting that concerns that person's duties or functions.

13. VOTING

- 13.1. Subject to any rights or restrictions attaching to any class or classes of securities and to the provisions of paragraph 7.2 -
 - 13.1.1. on a show of hands any person who is present at a meeting, whether as a voting rights-holder or as proxy for a voting rights-holder, and entitled to exercise voting rights has 1 (one) vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
 - 13.1.2. on a poll a voting rights-holder who is present in person or represented by proxy shall be entitled to exercise all the votes attaching to the securities he is entitled to vote.
- 13.2. At any meeting of voting rights-holders a resolution put to the vote of the meeting shall be decided by way of a poll unless a proposal for a vote by show of hands is supported by holders entitled to exercise at least 75% (seventy five per cent) of the voting rights exercisable at that meeting. If voting is by way of a poll it shall be taken in such manner and at such place and time as the chairperson of the meeting directs and either immediately or after an interval. Scrutineers shall be appointed by the chairman to count the votes and to declare the result of the poll and their declaration, which shall be announced by the chairperson of the meeting and recorded in the minute book of the company, shall, subject to paragraph 13.3, be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.3. If a vote is conducted by way of a show of hands a declaration by the chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the company, shall, subject to 13.13, be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.
- 13.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 13.5. A request for voting by way of a show of hands shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which same has been requested. Such a request may be withdrawn.
- 13.6. When there are joint registered holders of any securities or voting rights therein, any one of such persons may vote at any meeting in respect of such securities as if he were solely entitled thereto, but if more than one of such joint holders be present or represented at any meeting,

that one of the said persons whose name stands first in the register in respect of such securities or voting rights, or his proxy, as the case may be, shall alone be entitled to vote in respect thereof.

- 13.7. Any person entitled to the voting rights in respect of securities in terms of paragraph 7.2 may vote at any meeting in respect thereof in the same manner as if he were the voting rights-holder, provided that (except where the board has previously accepted his right to vote in respect of those securities) 24 (twenty four) hours at least before the time of holding the meeting at which he proposes to vote, he shall have satisfied the board that he is entitled to exercise the right referred to in paragraph 7.2. Several executors of a deceased shareholder in whose name shares or voting rights are registered shall, for the purposes of this paragraph, be deemed joint holders of those shares or voting rights.
- 13.8. Any voting rights-holder shall be entitled to appoint an individual as a proxy. A proxy need not be a securities-holder or a voting rights-holder of the company.
- 13.9. The form appointing a proxy shall be in writing, dated and signed by the voting rights-holder and shall otherwise comply with the requirements of the Statutes.
- 13.10. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the company, or such other address in the Republic as the board may from time to time in its discretion appoint, not less than 48 (forty eight) hours (or such lesser period as the board may determine in relation to any particular meeting), excluding Saturdays, Sundays and public holidays, before the time for holding the meeting (including an adjourned meeting) at which the person named in the form proposes to vote, or in the case of a poll not less than 24 (twenty four) hours (or such lesser period determined as aforesaid in relation to the particular poll) before the time appointed for the taking of the poll, and in default the form of proxy shall not be treated as valid. No form appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date when it was signed, except at an adjourned meeting or on a poll demanded at a meeting or adjourned meeting in cases where the meeting was originally held within 12 (twelve) months from the said date, unless a different period is specifically stated in the proxy itself. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by or on behalf of the company secretary of the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

- 13.11. For the purpose of any resolutions for which the JSE Listing Requirements require the exclusion or disqualification of votes by any holder or category of holders, any proxy given by a voting rights-holder to such an excluded person shall be excluded from voting for the purposes of that resolution.
- 13.12. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form.
- 13.13. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, and a determination of the chairperson made in good faith shall be final and conclusive.

14. BORROWING POWERS

- 14.1. Subject to paragraph 14.2 below -
 - 14.1.1. the board may exercise all the powers of the company to borrow money and to mortgage or encumber its undertaking and property or any part thereof and to issue debentures (whether secured or unsecured) and other securities (with such special privileges, if any, as may be authorised by the board) whether outright or as security for any debt, liability or obligation of the company or of any third party; and
 - 14.1.2. the borrowing powers of the company contemplated above are unlimited.
- 14.2. The company's powers under section 43(3) of the Companies Act are limited to the extent that holders of debt instruments may not be granted the following special privileges -
 - 14.2.1. the rights to attend and vote at general meetings; or
 - 14.2.2. the rights to elect or appoint directors of the company.

15. DIRECTORS

- 15.1. Until otherwise determined by a meeting of voting members, the number of directors shall not be less than 5 (five), and not more than 15 (fifteen).
- 15.2. At least 50% (fifty per cent) of the directors and alternate directors shall be elected by voting rights-holders.
- 15.3. In any election of directors -

- 15.3.1. the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board have been filled; and
 - 15.3.2. in each vote to fill a vacancy -
 - 15.3.2.1. each voting right entitled to be exercised may be exercised once; and
 - 15.3.2.2. the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 15.4. Should the number of directors fall below the minimum provided for in paragraph 15.1, the remaining directors must, subject to compliance with the Statutes, as soon as possible and in any event not later than 3 (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 3 (three) month period does not limit or negate the authority of the board or invalidate anything done by the company. After the expiry of the 3 (three) month period the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings.
 - 15.5. Subject to compliance with the Statutes, the board shall have the power at any time and from time to time to appoint any person as a director, either to fill a casual vacancy or as an addition to the board, but so that the total number of the directors shall not at any time exceed the maximum number fixed. Subject to the provisions of paragraph 18.2, any person so appointed to fill a casual vacancy or as an addition to the board shall retain office only until the next annual general meeting of the company and shall then retire and be eligible for re-election.
 - 15.6. A director becomes entitled to serve as such upon compliance with the requirements of the Statutes.
 - 15.7. Life directorships and directorships for indefinite periods are not permissible.
 - 15.8. The remuneration of non-executive directors (being all directors other than executive directors appointed in terms of paragraph 18) for their service as directors shall from time to time be determined by the board, based on the recommendation of the remuneration committee of the board, provided that such determination shall be subject to the approval of such remuneration by special resolution.
 - 15.9. The directors may be paid all their 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.

15.10. Without prejudice to the provisions of paragraph 15.15, if any director is required to perform extra services (as director but subject to compliance with the Statutes), or in his capacity as director to go or to reside abroad or otherwise shall be specifically occupied about the company's business, he may be entitled to receive such remuneration as is determined by a disinterested quorum of directors, on the recommendation of the remuneration committee, which may be either in addition to or in substitution for any other remuneration payable.

15.11. A director shall not act as a director and shall cease to hold office as such -

15.11.1. if he becomes insolvent, or assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compromises generally with his creditors; or

15.11.2. if he becomes of unsound mind; or

15.11.3. if he is absent in any one financial year without prior leave of the board from –

15.11.3.1. at least 75% (seventy five per cent) of the meetings of committees of the board of which he is a member; or

15.11.3.2. at least 75% (seventy five per cent) of the scheduled meetings of the board, and the directors resolve that the office be vacated, provided that the board shall have power to grant any director leave of absence for any or an indefinite period; or

15.11.4. if he is removed under paragraph 15.16; or

15.11.5. if he is removed pursuant to the provisions of section 71 of the Companies Act; or

15.11.6. if he has given notice in writing of his intention to resign, which resignation shall take effect 1 (one) month or, with the permission of the board, earlier, after receipt by the company of such notice; or otherwise ineligible or disqualified or cease to hold office or be prohibited from acting as director.

15.12. The company, the directors and all prescribed officers (and all references in this paragraph 15.12 to "director" shall also refer to and include each prescribed officer) shall comply with the provisions of the Statutes with regard to the disclosure of the interests of directors or related persons in contracts or proposed contracts, subject thereto, no director shall be disqualified by his office from contracting with the company, either with regard to such office or as vendor, purchaser or otherwise. Without prejudice to the foregoing -

- 15.12.1. a director may, at any time, disclose the nature and extent of a personal financial interest in advance by written notice to the board;
- 15.12.2. if a director acquires, or knows that a related person has acquired, a personal financial interest in an agreement or matter in which the company has a material interest, after the matter has been approved by the company, the director must promptly disclose to the board, the nature and extent of that interest and the material circumstances relating to the director or related person's acquisition of that interest; and
- 15.12.3. if a director has, or knows that a related person has, a personal financial interest in respect of a matter to be considered at a meeting of the board, the director -
 - 15.12.3.1. must disclose the interest and its general nature before the matter is considered at the meeting together with any material information relating to the matter which is known to that director;
 - 15.12.3.2. may disclose observations or pertinent insights relating to the matter upon request by the other directors;
 - 15.12.3.3. must leave the meeting of the board, if present, immediately after making the disclosure and must not take part in the consideration of the matter;
 - 15.12.3.4. will, notwithstanding paragraph 15.12.3.3 above, be regarded as being present at the meeting of the board for the purposes of satisfying any quorum requirement but will not be regarded as present for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 15.12.3.5. must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the board.
- 15.13. For the purpose of this paragraph 15 an alternate director shall not be deemed to be interested in any contract or arrangement merely because the director for whom he is an alternate is so interested.
- 15.14. Nothing in this paragraph 15 shall be construed so as to prevent any director, in his capacity as a holder, from taking part in and voting upon all questions submitted to a general meeting whether or not such director shall be personally interested or concerned in such questions.

- 15.15. A director may be employed or engaged for reward in any capacity (for example as a consultant, advisor or agent), in addition to his office of director (other than in the position of auditor of the company or of any subsidiary company), whether such employment or engagement is by the company or by any major subsidiary company (as the term "major subsidiary" is defined in the JSE Listings Requirements), and upon such terms as to appointment, remuneration and otherwise as may be determined by a disinterested quorum of directors, and any remuneration so paid will be in addition to the remuneration payable in terms of paragraphs 15.8 and 15.9.
- 15.16. Subject to the provisions of the Statutes and subject to paragraph 15.15, a majority of directors may remove a director at a board meeting before the expiration of his period of office.

16. SECURITIES REGISTER

- 16.1. The directors shall cause a securities register to be maintained in accordance with the Statutes.
- 16.2. The company shall cause to be entered into its securities register in respect of each class of securities all the details required by the Statutes, and shall otherwise comply with the requirements of the Statutes in respect thereof.
- 16.3. If any person who is registered as the holder of securities in the securities register (as the case may be) of the company is not the holder of all beneficial interests in all of the securities in the company registered in the name of that person, that person must disclose to the company in terms of the Companies Act and the Companies Regulations -
 - 16.3.1. the identity of any other person on whose behalf any security is so held by that first person; and
 - 16.3.2. the identity of each other person with a beneficial interest in any security so held, the number and class of securities in relation to which such other person has a beneficial interest, and the extent of such beneficial interest.
- 16.4. The company may in accordance with the Statutes request the participant concerned to furnish it with such details of uncertificated securities in the company as are reflected in the sub-register maintained by that participant.
- 16.5. A holder who wishes to inspect a securities register may do so in terms of the Companies Act and the Companies Regulations.
- 16.6. The securities register maintained in accordance with the Companies Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.

16.7. For so long as the company is listed on the JSE, the company shall comply with the JSE Listings Requirements in regard to the closing of the transfer books and securities register and any branch register.

17. ROTATION OF DIRECTORS

17.1. Subject to paragraph 18, at the annual general meeting held in each year at least 1/3 (one-third) of the directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that in determining the number of directors to retire no account shall be taken of any director who by reason of the provisions of paragraph 18.2 is not subject to retirement. The directors so to retire at each annual general meeting shall be firstly those retiring in terms of paragraph 15.5 and secondly any director(s) who at the date of the annual general meeting will have held office for a period of 3 (three) years or more since his last election, and amongst directors having equal tenure since their last election, those directors shall retire in alphabetical order or such other order as the board may determine. A retiring director shall act as a director throughout the meeting at which he retires. The length of time a director has been in office shall, save in respect of directors appointed in terms of the provisions of paragraph 15.5, be computed from the date of his last election.

17.2. Retiring directors may be re-elected provided they are eligible. The board shall make a recommendation (which shall take into account the recommendation of a nominations committee, to the extent such exists) regarding the eligibility of each retiring director taking into account past performance and contribution.

17.3. The voting members in general meeting may fill the vacated offices by electing a like number of persons to be directors. In electing directors the provisions of paragraph 15.3 and the Statutes shall be complied with.

17.4. For the purposes of this paragraph 17, "director" shall mean a non-executive director.

18. EXECUTIVE DIRECTORS

18.1. Subject to the provisions of paragraph 18.2, the board may from time to time appoint a) chief executive officer/managing director and other executive directors (with or without specific designation or portfolio) or b) any director to any other executive office in the company (subject to the JSE Listings Requirements), as the board deem fit, 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 provided that the directors appointed to any such executive position must, in number, be less than half of the directors.

18.2. Any executive director appointed in terms of paragraph 18.1 -

- 18.2.1. shall not (subject to the terms of the contract under which he is appointed) whilst he continues to hold that position or office, be subject to retirement in terms of paragraph 15.5 or 17, provided that the appointment of such executive director to the office of director shall terminate if not ratified by ordinary resolution at the next annual general meeting following the appointment referred to above; and
 - 18.2.2. shall not, during the currency of such appointment, be taken into account in determining the rotation or retirement of directors; and damages which may accrue to him as a result of such termination.
- 18.3. A director appointed in terms of the provisions of paragraph 18.1 whether to the office of managing director of the company or to any other executive office in the company may be paid such remuneration in respect of such office as may be determined by the board on the basis of a proposal from a committee comprising non-executive directors. Such remuneration may include but not be limited to the types of remuneration contemplated in sections 30(6)(b) to (g) inclusive of the Companies Act.
 - 18.4. The board may from time to time entrust and confer upon a managing director or other executive officer for the time being 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 confer 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 board in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities.

19. **PROCEEDINGS OF DIRECTORS**

- 19.1. The board may, subject to the Statutes, meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined, but subject to paragraph 15.4, 5 (five) directors shall form a quorum.
- 19.2. Any director may at any time and the company secretary upon the request of any director shall convene a meeting of the directors.
- 19.3. The board may determine what period of notice shall be given of meetings of the board and may determine the medium of giving such notice which may include telephone, telegram,

telex, e-mail (electronic mail) or telefax. Notice shall be given to all duly appointed alternate directors.

- 19.4. Each director shall have one vote at a meeting of the board. Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes, the chairperson shall not have a second or casting vote.
- 19.5. The board may elect a chairperson of their meetings and one or more deputy chairpersons to preside in the absence of the chairperson, and may determine a period, not exceeding 1 (one) year, for which they are to hold office, but if no such chairperson or deputy chairperson is elected or if at any meeting neither the chairperson nor a deputy chairperson is present at the time appointed for holding the same, the board shall choose one of their number to be chairperson of such meeting.
- 19.6. A meeting of the board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this MOI or the regulations of the company for the time being vested in or exercisable by the board generally.
- 19.7. Subject to the Statutes -
 - 19.7.1. a resolution in writing, signed and approved by all the directors (other than those who are conflicted, whether in terms of the Companies Act or otherwise), including through telefax or any form of electronic communication where the directors' consent thereto can be verified, shall be as valid and effectual as if it had been passed at a meeting of the board duly called and constituted;
 - 19.7.2. proceedings of directors may be conducted by video conference or telephone conference facilities or other electronic communication, subject to compliance with the Statutes and provided that the required quorum is present. A resolution agreed to by a majority of the directors participating during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.
- 19.8. The company secretary shall as soon as is reasonably possible after such meeting by video or telephone conference has been held, prepare a written minute/extract thereof as soon as possible after the conclusion of such meeting, or, if the company secretary was not present at such meeting, as soon as possible after having been notified of the occurrence and outcomes of such meeting.
- 19.9. Any resolution referred to in paragraph 19.7.1 may consist of several documents, each signed by one or more directors or their alternates in terms of this MOI,

- 19.10. Any resolution referred to in paragraph 19.7.1 shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last director or alternate required to sign it and where it states a date as being the date of its signature by any director or alternate that document shall be prima facie evidence that it was signed by that director or alternate on that date.
- 19.11. All acts performed by the board or by a committee of the board or by any person acting as a director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons so acting, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or member of such committee.

20. **COMMITTEES**

- 20.1. The board shall ensure the election by the general meeting of an audit committee in terms of the Companies Act and the Statutes, and shall ensure the appointment of persons to fill any vacancy on the audit committee within 40 (forty) business days after such vacancy arising. The company shall pay all expenses reasonably incurred by the audit committee, in accordance with the Companies Act, and shall otherwise facilitate the carrying out by the audit committee of its functions under the Statutes.
- 20.2. If required in terms of the Statutes, the board shall appoint a social and ethics committee, and delegate or allocate the requisite power and authority to such committee, over and above the rights and powers enjoyed by such a committee in terms of the Statutes, including those set out in section 72(8) of the Companies Act. The company shall pay all expenses reasonably incurred by such committee, in accordance with the Companies Act, and shall otherwise facilitate the carrying out by the committee of its functions under the Statutes.
- 20.3. The board shall appoint, and delegate or allocate the requisite powers to a remuneration committee and unless not required under the Statutes, a risk committee and a nomination committee.
- 20.4. The board may delegate or allocate any of its powers to any other executive or other committee, consisting of such member or members of their body or any other person or persons as they think fit. Any committee so formed -
 - 20.4.1. shall in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the board;
 - 20.4.2. may include persons who are not directors of the company, but -

- 20.4.2.1. any such person must not be ineligible or disqualified to be a director in terms of section 69 of the Companies Act or this MOI, and any such person shall cease to hold office immediately upon becoming so ineligible or disqualified; and
 - 20.4.2.2. no such person has a vote on a matter to be decided by the committee;
 - 20.4.3. may consult with or receive advice from any qualified person; and
 - 20.4.4. has the full authority of the board in respect of a matter referred to it.
- 20.5. The meetings and proceedings of any such committee consisting of 2 (two) or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the board so far as the same are applicable thereto and are not superseded by any regulations made by the board under this paragraph 20.
- 20.6. All acts done at any meeting of the board or of any executive or other committee of the board, or by any person acting as a director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that they or any of them were disqualified or had vacated office or were not qualified to vote, be as valid as if every such person had been duly appointed and was qualified to be and to act and vote as a director.

21. ALTERNATE DIRECTORS

- 21.1. Subject to paragraph 15.2, should circumstances so require, any director shall be entitled to nominate another person to be approved, and if approved, appointed by the board to act as alternate director in his place during his absence or inability to act as such director, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms and conditions existing with reference to the other directors of the company. A person may be appointed as alternate to more than one director. Where a person is alternate to more than one director or where an alternate director is a director, he shall have a separate vote, on behalf of each director he is representing in addition to his own vote, if any, provided that the alternate director so acting will only be counted as one for purposes of establishing a quorum.
- 21.2. The alternate directors, whilst acting in the place of the directors who appointed them, shall exercise and discharge all the duties and functions of the directors they represent. The appointment of an alternate director shall cease on the happening of any event which, if he were a director, would cause him to cease to hold office in terms of this MOI or if the director

who appointed him ceases to be a director, or gives notice to the company secretary of the company that the alternate director representing him shall have ceased to do so. An alternate director shall look to the director who appointed him for his remuneration.

22. POWERS OF THE BOARD AND DELEGATION OF AUTHORITY

- 22.1. Subject only to paragraph , the powers of management granted to the board in terms of section 66(1) of the Companies Act are not limited. The general powers contemplated in this paragraph shall not be limited or restricted by any special authority or power given to the board by any other paragraph.
- 22.2. The board shall have the power to delegate to any person or persons any of its powers and discretions and to give to any such person or persons power of sub-delegation for such period and subject to such conditions as the board may from time to time think fit. The board may from time to time revoke, withdraw, restrict, alter or vary any of such delegated powers or discretions, and may itself exercise same in place of such delegate(s).
- 22.3. Without in any way limiting or restricting the general powers of the board to establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of, or to grant pensions, allowances, gratuities and bonuses to, officers or ex-officers, employees or ex-employees of the company or the dependants of such persons, it is hereby expressly declared that the board may from time to time, but subject to the Statutes, establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of, or grant pensions, gratuities or other allowances to, any person or to the widow or dependants of any deceased person in respect of services rendered by him to the company as managing director, executive director, prescribed officer or manager, or in any other office or employment under the company, notwithstanding that he may continue to be or be elected a director or may have been a director of the company, of such amounts, for such period, whether for life or for a definite period or for a period terminable on the happening of any contingency or event, and generally upon such terms and conditions as the board in its discretion may from time to time think fit. For the purpose of this paragraph, the expression "executive director" shall mean a director appointed to an executive office in the company in addition to his directorship and receiving salary or remuneration for such additional services whether under a service agreement or otherwise. The board may authorise the payment of such donations by the company to such religious, charitable, public or other bodies, clubs, funds or associations or persons as may seem to them advisable or desirable in the discretion of the board.

23. COMMITTEE/S IN FOREIGN COUNTRY/IES

- 23.1. Without prejudice to the general powers conferred by this MOI, it is hereby expressly declared that the board may appoint persons resident in a foreign country to be a local committee for the company in that country, and at their discretion to remove or suspend such local committee and any member thereof, to fix and vary their remuneration, and also to open offices of the company where necessary and to close the same at their discretion, and to appoint and remove agents to represent the company for the issue, subdivision, conversion and consolidation and transmission of shares and for such other purposes as the board may, subject to the provisions of this MOI, determine, and to give the members of such committee or any such agents the power to appoint alternate committee members or substituted agents and to remove such alternates and substitutes, to appoint others or to act again themselves, as also to grant to such committee members or agents power to appoint other persons as co-committee-members or joint agents. Any director may act on the local committee whenever in the country for which the committee is appointed to act and may take part in the proceedings of such committee and may have the same rights and privileges as any member of the committee.
- 23.2. All appointments of alternate committee members or substituted agents by members of any local committee or agents made in accordance with the provisions of paragraph 21.1 shall be subject to the approval of the remaining members of the local committee or agents and shall be reported forthwith to the board. No local committee member or his alternate or agent or substituted agent shall be obliged to hold any shares in the company.

24. STATUTORY RECORDS

- 24.1. The board shall -
 - 24.1.1. comply with all the requirements of the Statutes as to the keeping of records;
 - 24.1.2. keep proper minutes which shall record inter alia the names of all directors present at each meeting of the board or of any committee, all appointments of officers and all resolutions and proceedings of general meetings and of meetings of the board and committees.
- 24.2. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the board, is evidence of the proceedings of that meeting or adoption of that resolution, as the case may be.
- 24.3. The company secretary of the company is authorised to prepare and certify extracts from -
 - 24.3.1. the minutes of any meeting; or

24.3.2. any resolution, that has been signed in terms of paragraph 24.2.

25. LOSS OF DOCUMENTS

The company shall not be responsible for the loss in transmission of any cheque, warrant, and certificate or (without any limitation *eiusdem generis*) other document sent in a manner consistent with the Statutes.

26. CAPITALISATION

- 26.1. The board may approve the issue of capitalisation shares subject to the requirements of the Statutes, including section 47 of the Companies Act.
- 26.2. When resolving to approve a cash distribution or to issue capitalisation shares, the board shall be entitled to grant to the participating rights-holders the right to elect to receive scrip dividends in lieu of cash dividends or a cash dividend in lieu of capitalisation shares.

27. ACCOUNTS

- 27.1. A rights-holder has a right to inspect and copy, without charge for such inspection or upon the payment of no more than the maximum charge prescribed by the Statutes, *inter alia* such accounts and records of the company, and at such times, as contemplated in sections 26 and 31 of the Companies Act.
- 27.2. A copy of the company's annual financial statements, including every document required by the Statutes to be attached thereto which is to be laid before an annual general meeting, shall be delivered, at least 15 (fifteen) business days before the date of the said annual general meeting, to each holder and each other person entitled to receive notices of general meetings of the company and otherwise in the same manner as notices of the meeting are given to voting members. The company shall comply generally with all the requirements of the Statutes relating to the making available of the company's annual financial statements.
- 27.3. Not later than 3 (three) months after the expiration of the first period of 6 (six) months of its financial year the company shall publish, and shall deliver to every rights-holder, the interim report prescribed by the JSE Listings Requirements containing the information referred to in the JSE Listings Requirements.
- 27.4. At the same time that the annual financial statements and interim reports referred to in paragraphs 27.2 and 27.3 are sent in terms thereof, the number of copies of the said documents required by the JSE from time to time, shall be forwarded to the JSE.

28. AUDIT

- 28.1. Auditors shall be appointed and their duties regulated in a manner consistent with the provisions of the Statutes. If the company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 28.2. This MOI shall not limit the power of the board from time to time to appoint one or more consultants to carry out internal audit functions.

29. NOTICES

- 29.1. Notices shall be delivered by the company in accordance with the Statutes to all persons entitled to receive same. Notices of meetings sent to holders shall addition be sent to the JSE and shall be announced through SENS.
- 29.2. Each holder shall notify in writing to the company a physical address in the Republic or in some other country, or an address for electronic mail, which address shall be deemed his address for all purposes under this MOI. In the absence of such notice that holder nominates the company's registered office, care of the company secretary, as his address for all purposes under this MOI.
- 29.3. A holder in respect of securities shall be bound by every notice given in terms of paragraph 29.1.
- 29.4. The company shall not be bound to enter any person in any register until that person notifies the company of an address for entry on the register.
- 29.5. Any notice to be given by advertisement shall, subject to the Statutes -
 - 29.4.1. be published on SENS and in such South African national daily newspaper or newspapers and in such daily newspaper or newspapers circulating in the district in which any branch or duplicate register or transfer office has been established as the board may determine;
 - 29.4.2. be deemed to have been served on the first day when the newspaper containing such advertisement is published.
- 29.5. All notices may with respect to any shares or rights therein to which persons are jointly entitled be delivered to the first address appearing in the register in respect of those holders, and notice so given shall be sufficient notice to all the holders in respect of such shares.

- 29.6. Any notices sent by the company shall be deemed to have been delivered on the date and at the time prescribed in the Statutes from time to time.
- 29.7. Every person who by operation of law, transfer or other means whatsoever shall become entitled to any securities or rights therein shall be deemed to have received every notice in respect of such securities which, prior to his name being entered on the register shall have been delivered to the person from whom he derives his title to such securities or rights.
- 29.8. Any notice or document sent by post to any holder in pursuance of this MOI shall, notwithstanding that such holder be then deceased, and whether or not the company has notice of his death, be deemed to have been duly served, whether the relevant shares or rights are held solely or jointly with other persons by such holders, until some other person be registered in his stead as the holder or joint holder thereof, and such service shall, for all purposes of this MOI, be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such shares or rights.
- 29.9. Where a given number of days' notice or notice extending over any other period is required to be given, the relevant period shall be calculated by excluding the first but including the last day of the period.
- 29.10. Every notice calling any general meeting of the company shall be consistent with the requirements of the Statutes.
- 29.11. The holder of a share warrant shall not, unless it be otherwise expressed in the share warrant, be entitled in respect thereof to notice of any general meeting of the company or otherwise.

30. ELECTRONIC COMMUNICATION

- 30.1. To the extent permitted by the Statutes from time to time, any documents or notices referred to in this MOI may be sent by electronic mail, but as regards any holder or director only to the extent that such holder or director has furnished an appropriate address for electronic communication.
- 30.2. Any holder or director notifying the company of an address for the purposes of receiving electronic mail from the company by doing so -
 - 30.2.1. authorises the company to use electronic mail to give notices, documents, records or statements or notices of the availability of the foregoing to him; and
 - 30.2.2. confirms that same can conveniently be printed by the holder or director within a reasonable time or at a reasonable cost; and

30.2.3. accepts that any amendment or withdrawal of any such notice from a holder or director, shall only take effect if signed by the holder or director and received by the company.

30.3. Any document or notice sent by electronic mail, shall be deemed to be received by the holder or director on the date and at the time determined in accordance with the Statutes.

30.4. Signature of an electronic communication may be effected in a manner consistent with the requirements of the Statutes.

31. **REPRESENTATION**

The company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed shall be signed by any person or persons authorised so to do by resolution of the board.

32. **WINDING UP**

If the company shall be wound up, whether voluntarily or otherwise, the liquidator may with the sanction of the requisite resolution of a general meeting divide among the relevant participating rights-holders in specie any part of the assets of the company, and may with the like sanction vest any part of the assets of the company in trustees upon such trusts for the benefit of the participating rights-holders as the liquidator with the like sanction shall think fit, whereafter the liquidation shall be finalised and the company dissolved.

33. **INDEMNITY**

33.1. To the extent permissible under the Statutes -

33.1.1. every director, manager, company secretary and other prescribed officer of the company shall be indemnified by the company against, and it shall be the duty of the board out of the funds of the company to bear and pay -

33.1.1.1. all costs, losses and expenses, including travelling expenses; and

33.1.1.2. any liability, which any such officer may incur or become liable to by reason of any contract entered into or act or deed done by him in good faith in his capacity as such officer or in any way in the discharge of his duties;

33.1.2. the company may purchase insurance to protect the company or a director as set out in section 78(7) of the Companies Act.

33.2. The provisions of paragraph 33.1 shall apply *mutatis mutandis* to any former director, prescribed officer or member of any committee of the board, including any audit committee.

34. **BRANCH REGISTER**

The company, or the directors on behalf of the company, may cause to be kept in any foreign country a branch register or other register in respect of holders resident in such foreign country and the board may, subject to the provisions of the Companies Act, make and vary such regulations as they may think fit in respect of the keeping of any such register.

35. **ACQUISITION OF SHARES AND STOCK**

The board may, subject to compliance with the Statutes, resolve that the company acquire securities issued by it and/or its holding company. The company agrees that any of its subsidiaries may acquire securities in the company, subject to compliance with the requirements of the Statutes.

36. **FRACTIONS OF SHARES**

36.1. If, ~~on pursuant to any capitalisation issue or consolidation of securities or other corporate action (including without limitation any rights issue, capitalisation issue or consolidation of securities or otherwise)~~, holders would, but for the provisions of this paragraph 36, become entitled to fractions of securities, ~~such fractions shall be dealt with in accordance with the JSE Listing Requirements and any other requirements of the JSE from time to time the board shall procure that all fractions of securities will be rounded up or down based on standard rounding convention (i.e. allocations of securities will be rounded down to the nearest whole number if they are less than 0.5 and will be rounded up to the nearest whole number if they are equal to or greater than 0.5) resulting in allocations of whole securities and no fractional entitlements.~~

36.2. If, in any particular instance, the JSE Listing Requirements or other requirements of the JSE do not specify the manner in which fractional entitlements are to be dealt with, the board shall be entitled to:-

36.2.1. round down the number of securities to be received by a holder to the nearest whole number; or

36.2.2. sell the securities resulting from the aggregation of those fractional entitlements, on such terms and conditions as the board deems fit, for the benefit of the relevant holders,

and any director shall be empowered to sign any instrument of transfer or other instrument necessary to give effect to the provisions of this paragraph 36.

36.1.36.3. Subject to the JSE Listings Requirements and other requirements of the JSE from time to time, the provisions of paragraphs 37.7, 37.8 and 37.10 below (all inclusive) shall apply, mutatis mutandis, to any amounts that become payable to holders in terms of this paragraph 36.

37. DIVIDENDS AND OTHER PAYMENTS

- 37.1. Subject to the provisions of the Statutes, the company may make distributions to participating rights-holders from time to time, provided that no payment out of capital may be made to participating rights-holders on the basis that it may be called up again.
- 37.2. The board may, (subject to compliance with section 46 of the Companies Act) from time to time authorise and declare a dividend or other distribution to be made to the participating rights-holders in such manner as the board may determine and direct at the time of declaration, including, without limiting the foregoing, that a distribution shall be made by distribution of specific assets or in a specific currency (and if the latter the date of conversion of the currency in which the dividend or other distribution is approved, into such other currencies). If any difficulty arises in regard to any payment, the board may settle same as they consider appropriate.
- 37.3. The declaration of the board as to whether the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution shall be conclusive as regards the company declaring a dividend or making any other distribution to participating rights-holders.
- 37.4. Distributions are to be made to participating rights-holders registered as at a date subsequent to the date of declaration or date of confirmation of the distribution, whichever is the later. Distributions may be made-
 - 37.4.1. to such holders in respect of uncertificated securities in a manner consistent with the Statutes and the rules of the central securities depository; and
 - 37.4.2. to such holders in respect of certificated securities by crossed, not negotiable cheque, or electronic transfer, or otherwise in a manner consistent with the Statutes as the board may from time to time determine, and if by cheque same shall be delivered in accordance with the Statutes, and reasonable proof of payment or delivery in terms hereof will be sufficient proof of compliance by the company. The company shall not be responsible for the loss in transmission of any cheque or other document sent in a manner consistent with the Statutes, whether or not it was so sent at his request.

- 37.5. Where a holder has provided his banking details to the company he shall be deemed to have authorised payments of all distributions and payments under schemes of arrangement by way of electronic transfer.
- 37.6. No notice of change of address or instructions as to payment given after the record date for a distribution or other payment to participating rights-holders, shall become effective until after the distribution or other payment has been made, unless the general meeting or the board so determines at the time the distribution or other payment is approved.
- 37.7. All unclaimed dividends or other distributions to participating rights-holders as contemplated in this MOI may be invested or otherwise be made use of by the board for the benefit of the company until claimed, provided that any dividends remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the board for the benefit of the company and may be dealt with by the directors or their assigns as they deem fit. Notwithstanding the provisions above, the company shall hold all distributions including distributions payable in money (other than dividends) due to participating rights-holders in trust indefinitely, but subject to the laws of prescription of the Republic.
- 37.8. The company shall be entitled at any time to delegate to any one of the company's bankers from time to time its obligations to any participating rights-holder in respect of unclaimed dividends or other unclaimed distributions.
- 37.9. Unless the Statutes or this MOI requires a resolution to be passed by the general meeting to authorise the reduction by the company of its share capital, stated capital and any capital redemption reserve fund or any share premium account, the board shall have the power, to the extent necessary, to resolve that the company reduce its share capital, stated capital and any capital redemption reserve fund or any share premium account, whether accompanied by a payment to participating rights-holders as contemplated in this paragraph 37, or without any such payment.
- 37.10. Unless otherwise determined by the board in respect of any particular distribution, a distribution that has been declared but not paid shall not carry interest as against the company.

38. LISTING ON STOCK EXCHANGES

- 38.1. The company may seek listings on such stock exchanges as the board may consider appropriate from time to time.
- 38.2. For so long as the shares of the company are listed on any stock exchange in addition to the JSE, if the listing on the JSE is the primary listing and if the company is obliged to obtain the

approval of the JSE in regard to any matter, it may, if and to the extent required by the rules of that other exchange, be obliged also to obtain the consent at the same time of any other stock exchanges on which it is listed.

39. APPOINTMENT OF COMPANY SECRETARY AND PRESCRIBED OFFICERS

- 39.1. The board of the company shall appoint a company secretary in accordance with the Statutes.
- 39.2. No person shall hold office as a prescribed officer, and shall cease to hold office as such, if he would be ineligible or disqualified from holding office as a director in terms of this MOI read with the Statutes.

40. JSE LISTINGS REQUIREMENTS PROHIBITIONS

- 40.1. The company is prohibited from acquiring a lien on its securities.
- 40.2. The board's power to make, amend or repeal rules as contemplated in Section 15(3) of the Companies Act is prohibited.

SCHEDULE AB: A ORDINARY SHARES AND B ORDINARY SHARES

1. INTERPRETATION AND APPLICATION

1.1. For the purposes of this Schedule AB, unless inconsistent with the context—

- 1.1.1. "**A acquired ordinary shares**" means the ordinary shares acquired as contemplated in paragraph 5 of this Schedule AB;
- 1.1.2. "**A call option exercise date**" means the first business day after expiry of the A lock-in period;
- 1.1.3. "**A call option**" means the company's rights to acquire the A repurchase shares on and with effect from the A call option exercise date contemplated in the terms of the A ordinary shares set out herein;
- 1.1.4. "**A call option price**" means the product of a) R0.10 per A repurchase share, times b) the number of A repurchase shares;
- 1.1.5. "**A effective date**" means the date on which the A ordinary shares were issued to BEE Co being 9 April 2010;
- 1.1.6. "**A lock-in period**" means the period commencing on the A effective date and terminating on the 10th (tenth) anniversary of the A effective date (both dates included);
- 1.1.7. "**A notional outstanding**" in respect of the A ordinary shares at any relevant date means—
 - 1.1.7.1. the agreed notional value of 17 556 090 A ordinary shares, being R847 335 911; less
 - 1.1.7.2. the amount of any special dividends that would have been paid by the company to the A ordinary shareholders in respect of A ordinary shares and in respect of the A acquired ordinary shares as special dividends, but for the provisions of paragraphs 2.1.1 and 6 of this Schedule AB, with effect from the respective date/s on which such special dividends are paid to the company's ordinary shareholders; plus effective date, on the difference from time to time between the amounts in paragraphs 1.1.7.1 and 1.1.7.2 of this Schedule AB at the notional rate to the date in question;
- 1.1.8. "**A ordinary shareholder/s**" means the lawful shareholder/s in respect of the A ordinary shares;

- 1.1.9. **"A ordinary shares subscription agreement"** means the written agreement entitled "Subscription and Call Option Agreement" concluded on or about 17 February 2010 between the company and BEE Co, as amended from time to time;
- 1.1.10. **"A ordinary shares"** means the 19 458 196 automatically convertible A ordinary shares with a par value of R0.10 each in the company which have the preferences, rights, limitations and other terms set out in part A of this Schedule AB read with this paragraph 1;
- 1.1.11. **"A release date"** means the first business day after the date on which the A repurchase shares are transferred to the company (or its nominee, as the case may be) pursuant to the exercise of the A call option, unless the company has advised BEE Co in writing, prior to the expiry of the A lock-in period, that it does not intend to exercise the A call option, in which event the A release date shall be the first business day after the expiry of the A lock-in period;
- 1.1.12. **"A repurchase shares"** means the A ordinary shares (and A acquired ordinary shares, if applicable), which the company is entitled to repurchase from the A ordinary shareholder/s on exercise of the A call option;
- 1.1.13. **"B acquired ordinary shares"** means the ordinary shares acquired as contemplated in paragraph 19 of this Schedule AB;
- 1.1.14. **"B call option exercise date"** means the first business day after the expiry of the B lock-in period;
- 1.1.15. **"B call option"** means the company's rights to acquire the B repurchase shares on and with effect from the B call option exercise date contemplated in the terms of the B ordinary shares set out herein;
- 1.1.16. **"B call option price"** means the product of a) R0.10 per B repurchase share times b) the number of B repurchase shares;
- 1.1.17. **"B effective date"** means the date on which the B ordinary shares were issued to ESOP in terms of the B ordinary shares subscription agreement, being 9 April 2010;
- 1.1.18. **"B lock-in period"** means the period commencing on the B effective date and terminating on the 7th (seventh) anniversary of the B effective date (both dates included);

- 1.1.19. **"B notional outstanding"** in respect of the B ordinary shares at any relevant date means—
- 1.1.19.1. the agreed notional value of all the B ordinary shares (being R313 695 304); less
- 1.1.19.2. the amount of any special dividends that would have been paid by the company to the B ordinary shareholder/s, but for the provisions of paragraphs 16.1.1 and 20 of this Schedule AB, with effect from the respective date/s on which such special dividends are paid to the company's ordinary shareholders; plus
- 1.1.19.3. notional accrued interest, calculated from the day following the A effective date, on the difference from time to time between the amounts in paragraphs 1.1.7.1 and 1.1.7.2 of this Schedule AB above at the notional rate to the date in question;
- 1.1.20. **"B ordinary shareholder"** means the lawful shareholder in respect of any of the B ordinary shares;
- 1.1.21. **"B ordinary shares subscription agreement"** means the written agreement entitled "subscription and call option agreement" concluded on or about 17 February 2010 between the company and ESOP, as amended from time to time;
- 1.1.22. **"B ordinary shares"** means the 6 486 065 automatically convertible B ordinary shares with a par value of R0.10 each in the company which have the preferences, rights, limitations and other terms set out in part B of this Schedule AB read with this paragraph 1
- 1.1.23. **"B release date"** means the first business day after the date on which the B repurchase shares are transferred to the company pursuant to the exercise of the B call option, unless the company has advised ESOP in writing, prior to the expiry of the B lock-in period, that it does not intend to exercise the B call option, in which event the B release date shall be the first business day after the expiry of the B lock-in period;
- 1.1.24. **"B repurchase shares"** means the B ordinary shares (and B acquired ordinary shares, if applicable), which the company is entitled to repurchase from the B ordinary shareholder/s on exercise of the B call option;

- 1.1.25. "BEE" means black economic empowerment as contemplated in the BEE Act and the Codes;
- 1.1.26. "BEE Act" means the Broad-Based Black Economic Empowerment Act, No 53 of 2003;
- 1.1.27. "BEE agreements" means the A ordinary shares subscription agreement, the relationship agreement and the B ordinary shares subscription agreement;
- 1.1.28. "BEE Co" means Blue Falcon 69 Trading (Proprietary) Limited, a private company incorporated in accordance with the laws of the Republic, with registration number 2009/016091/07, being the initial holder of A ordinary shares, and its lawful successors in title as holder(s) of A ordinary shares from time to time;
- 1.1.29. "BEE principles" means the restrictions, covenants and other terms applicable to the BEE shareholders and BEE Co as referred to in the relationship agreement;
- 1.1.30. "BEE shareholders" means Kagiso, Mookodi and Kurisani and the lawful successors in title of each of them as holder(s) of shares in BEE Co from time to time;
- 1.1.31. "Codes" means the Codes of Good Practice on Black Economic Empowerment issued in terms of section 9 of the BEE Act, in the form existing as at the effective date;
- 1.1.32. "Companies Act effective date" means the first date on which the Companies Act (or any part thereof) came into operation, being 1 May 2011;
- 1.1.33. "ESSOP" means the Mpho Ea Bophelo Trust, Master's reference number IT330/2010 and its lawful successors in title as holder(s) of B ordinary shares from time to time;
- 1.1.34. "Kagiso" means Kagiso Strategic Investments III (Proprietary) Limited, a company incorporated in accordance with the laws of the RSA with registration number 2007/023000/07;
- 1.1.35. "Kurisani" means the Kurisani Youth Development Trust, Master's reference number IT8979/04;
- 1.1.36. "Mookodi" means the Mookodi Pharma Trust, reference number IT 314/2010;

- 1.1.37. **"notional rate"** means a notional interest rate of 0.0766%, nominal annual compounded daily in arrears, based on a notional 365 day year and calculated from the day following the A effective date to the relevant date, both such dates inclusive;
- 1.1.38. **"ordinary dividend"** means any dividend of the company other than a special dividend, but excluding any dividend *in specie*;
- 1.1.39. **"ordinary shares"** means the ordinary shares in the company with, as at date of filing of this MOI, a par value of R0.10 each;
- 1.1.40. **"relationship agreement"** means the written agreement entitled "relationship agreement" concluded on or about 17 February 2010 between the company, BEE Co, Kagiso Strategic Investments III (Proprietary) Limited, the trustees for the time being of the Kurisani Youth Development Trust, the trustees for the time being of the Mookodi Pharma Trust, and Mookodi Technologies (Proprietary) Limited, as amended from time to time;
- 1.1.41. **"sell"** means sell, alienate, transfer and/or otherwise dispose of; and
- 1.1.42. **"special dividend"** means any dividend of the company which is described by the company as a special or extraordinary dividend or in any analogous manner and/or which is otherwise not a dividend declared in accordance with the company's ordinary dividend policy, but excluding any dividend *in specie*;
- 1.1.43. **"VWAP"** means the volume weighted average price of an ordinary share on the JSE, i.e. the ratio of the value traded to total volume traded of an ordinary share on the JSE over the relevant time period.
- 1.2. The company shall not be obliged to recognise, nor enter into any register, any purported transfer of securities, or rights therein, that is not consistent with the requirements of—
- 1.2.1. this Schedule AB; and/or
- 1.2.2. the BEE agreements.

Schedule AB Part A

Terms and conditions of class A ordinary shares and provisions relating to BEE Co

2. A ORDINARY SHARES

2.1. Notwithstanding anything to the contrary contained in this MOI, the A ordinary shares shall rank *pari passu* with the ordinary shares, save that—

2.1.1. A ordinary shareholders shall not participate in any special dividends declared or paid by the company, unless the A notional outstanding becomes zero at any time prior to the A release date, in which event the A ordinary shares shall be entitled to participate in all special dividends declared or paid by the company *pari passu* with the ordinary shares from the date that the A notional outstanding becomes zero; provided that in respect of a special dividend paid on the date on which the A notional outstanding becomes zero, the A ordinary shares shall only be entitled to participate in that portion of that special dividend which is in excess of an amount equal to the amount of that special dividend which reduced the A notional outstanding to zero;

2.1.2. A ordinary shares shall remain certificated and shall not be listed on any stock exchange;

2.1.3. save as permitted as contemplated in paragraph 8 of this Schedule AB, the registered shareholder in respect of an A ordinary share from time to time shall not, without the prior written consent of the company, be entitled to transfer to any other person any beneficial interest in that A ordinary share;

2.1.4. for so long as the ordinary shares are listed on the JSE, the rights attaching to the A ordinary shares may not be amended in any material respect without the prior written approval of the JSE and will not be counted for categorisation purposes in terms of section 9 of the Listings Requirements of the JSE;

2.1.5. on the A release date, the A ordinary shares shall automatically convert on a one for one basis into ordinary shares;

2.1.6. the provisions of this MOI that set out the preference rights, limitations and other terms associated with the A ordinary shares and not with the ordinary shares generally may be amended or deleted only by way of—

2.1.6.1. a special resolution duly adopted at a general meeting of voting rights holders convened in terms of this MOI; and

2.1.6.2. a resolution of the A ordinary shareholders duly adopted at a meeting of A ordinary shareholders convened in terms of this MOI (which may be held immediately prior to or after the meeting referred to in paragraph 2.1.6.1 or at any other time within 30 (thirty) days of such meeting), which is approved by A ordinary shareholders holding no less than 75% (seventy five per cent) of those A ordinary shares held by A ordinary shareholders who are present and who vote at that meeting, either in person or by proxy; and

2.1.7. no meeting may be convened for the purposes of proposing a resolution contemplated in paragraph 2.1.6 of this Schedule AB to be taken by the relevant holders unless the convening of such meeting is approved by A ordinary shareholders holding no less than 90% (ninety per cent) of the A ordinary shares.

2.2. In the event of any conflict between the provisions of this paragraph 2 and any other paragraph of this MOI, the provisions of this paragraph 2 shall prevail.

3. SHARE CERTIFICATES TO BE LODGED IN TRUST

3.1. Subject to the provisions of paragraph 12 of this Schedule AB, the share certificates in respect of the A ordinary shares (together with duly signed share transfer forms in respect thereof in negotiable form) are held by the group company secretary of the company and the group company secretary shall release such documents only in order to give effect to a sale of A ordinary shares pursuant to—

3.1.1. this MOI;

3.1.2. the A ordinary shares subscription agreement; or

3.1.3. the relationship agreement, and to give effect to the provisions of paragraphs 12.1, 12.2 or 12.4 of this Schedule AB and/or clause 18.2, 18.3 or 18.5 of the relationship agreement, as the case may be.

3.2. The company is obliged to procure that the A acquired ordinary shares shall be materialised immediately following the acquisition, as contemplated in paragraph 5 of this Schedule AB, of such ordinary shares and that the share certificates in respect of thereof (together with duly signed share transfer forms in respect thereof in negotiable form) shall likewise be lodged with the group company secretary of the company on the basis that the group company secretary shall release such documents only in order to give effect to a sale of A acquired ordinary shares as contemplated in—

3.2.1. this MOI;

- 3.2.2. the A ordinary shares subscription agreement; or
- 3.2.3. the relationship agreement, and to give effect to the provisions of paragraphs 12.1, 12.2 or 12.4 of this Schedule AB and/or clause 18.2, 18.3 or 18.5 of the relationship agreement, as the case may be.
- 3.3. BEE Co is obliged promptly to sign any share transfer forms referred to in paragraph 3.1 or 3.2 of this Schedule AB when requested to do so by the company.

4. ENDORSEMENT OF SHARE CERTIFICATES

- 4.1. All share certificates issued by the company in respect of A ordinary shares shall, to the extent not already so endorsed, be endorsed as follows—

"This certificate and the shares evidenced by this certificate are transferable only upon compliance with the provisions of the company's Memorandum of Incorporation and of a "subscription and call option agreement" entered into between the company and Blue Falcon 69 Trading (Proprietary) Limited and a "relationship agreement" entered into between the company, Blue Falcon 69 Trading (Proprietary) Limited, its shareholders and Mookodi Technologies (Proprietary) Limited, as such agreements may be amended from time to time, copies of which are on file with the company, which agreements, amongst other things, (i) grant a call option in favour of the company in respect of the shares evidenced by this certificate, (ii) impose conditions upon the sale, transfer or encumbrance of the shares evidenced by this certificate, (iii) grant to the company certain pre-emptive rights to purchase the shares evidenced by this certificate, and (iv) deem the shares evidenced by this certificate to have been offered for sale to the company, either at fair market value or 50% of fair market value, in certain circumstances."

- 4.2. Each of the company and BEE Co is obliged to procure that all share certificates issued by the company in respect of A acquired ordinary shares shall bear the endorsement set out in paragraph 4.1 when such shares are materialised.

5. ACQUISITION OF ORDINARY SHARES

- 5.1. For so long as the ordinary shares remain listed on the JSE, BEE Co is obliged to utilise—

- 5.1.1. 85% (eighty five per cent) of all ordinary dividends paid to it in respect of its A ordinary shares to acquire ordinary shares; and
- 5.1.2. 100% (one hundred per cent) of the ordinary dividends paid to it in respect of its A acquired ordinary shares to acquire further ordinary shares, in each case on-

~~market within a period of 30 (thirty) business days after the date on which any such ordinary dividends are paid, and otherwise subject to the provisions of the A ordinary shares subscription agreement.~~

6. SPECIAL DIVIDENDS

- 6.1. Nothing in this MOI derogates from the waiver and abandonment by BEE Co, in terms of the A ordinary shares subscription agreement, of its rights, in respect of the A acquired ordinary shares, to participate in special dividends declared or paid by the company between the A effective date and the earlier of—
- 6.1.1. the A release date; and
- 6.1.2. the date on which the A notional outstanding becomes zero, provided that in respect of a special dividend paid on the date on which the A notional outstanding becomes zero, BEE Co shall, in respect of the A acquired ordinary shares, only be entitled to participate in that portion of that special dividend in which, in terms of paragraph 2.1.1 of this Schedule AB, the A ordinary shares are entitled to participate.
- 6.2. In light of the provisions of paragraph 2.1.1 and this paragraph 6 of this Schedule AB, the A ordinary shareholder/s shall not receive any special dividends declared by the company between the A effective date and the A release date, whether in respect of A ordinary shares or A acquired ordinary shares, save as expressly contemplated in paragraph 2.1.1 and this paragraph 6 of this Schedule AB if the A notional outstanding becomes zero before the A release date.

7. A CALL OPTION

- 7.1. The company is entitled to acquire the A repurchase shares on the terms and conditions set out in this paragraph 7.
- 7.2. The company shall, unless it gives express written notice to the A ordinary share holder/s prior to the expiry of the A lock in period that it does not intend to exercise the A call option, and subject only to compliance by the company with any statutory requirements and the provisions of the JSE Listings Requirements that may be applicable at the relevant time regarding the acquisition by the company of its own shares, be deemed on the A call option exercise date to have exercised the A call option, without being required to give written notice of such exercise.

7.3. Upon the deemed exercise of the A call option as contemplated in paragraph 7.2 of this Schedule AB, a sale of the A repurchase shares shall be deemed to have been concluded on the A call option exercise date on the following terms and conditions—

7.3.1. the number of A repurchase shares which the company shall be deemed to have purchased shall be determined by the company in accordance with the following formula—

N = NO / FM where:

N = the number of A repurchase shares, which shall not be more than the total number of A ordinary shares and A acquired ordinary shares on the A call option exercise date;

NO = the A notional outstanding on the A call option exercise date;

and

FM = the VWAP per ordinary share (expressed in Rands and cents) for the 60 (sixty) business days terminating on the business day before the A call option exercise date;

7.3.2. the A repurchase shares shall comprise, in the first instance, A ordinary shares and, only to the extent that their number is less than N, A acquired ordinary shares;

7.3.3. the purchase consideration of the A repurchase shares shall be the A call option price;

7.3.4. the A call option price shall, upon compliance by the company with any applicable statutory requirements, be paid within 60 (sixty) days after the date on which the number of A repurchase shares has been advised by the company or agreed or determined, as contemplated in the A ordinary shares subscription agreement, as the case may be, failing which the A call option shall be deemed never to have been exercised and shall be of no further force or effect;

7.3.5. subject to paragraph 7.3.4 of this Schedule AB, the A repurchase shares shall be acquired by the company with effect from the A call option exercise date, from which date all benefit of the A repurchase shares shall, against payment by the company of the A call option price in terms of that paragraph 7.3.4, pass to the company;

- 7.3.6. the A repurchase shares shall be acquired ~~voetstoots~~ without any warranties or representations of whatsoever nature, save that each of the A ordinary shareholder/s shall have warranted to the company that on the A call option exercise date –
- 7.3.6.1. it shall be the beneficial and the registered owner of the A repurchase shares sold by it to the company;
- 7.3.6.2. the A repurchase shares sold by it shall not in any way be encumbered; and
- 7.3.6.3. no person (other than the company) shall have any right of any nature whatsoever to acquire any of its A repurchase shares;
- 7.3.7. delivery of the A repurchase shares shall be given by the holder thereof to the company on the date on which the company pays to the holder the A call option price;
- 7.3.8. all risk relating to the A repurchase shares shall pass to the company on the date on which the A repurchase shares are delivered to the company; and
- 7.3.9. the company shall be entitled to instruct the group company secretary to release and deliver the share certificates relating to the A repurchase shares to the company against payment of the A call option price.
- 7.4. Should the A ordinary shareholder fail to deliver the A repurchase shares on the date referred to in paragraph 7.3.7 of this Schedule AB, the group company secretary for the time being of the company or any director for the time being of the company is hereby irrevocably authorised to sign all documents and do all things necessary to effect delivery of the A repurchase shares against payment of the A call option price.
- 7.5. Each A ordinary shareholder is obliged to vote, in its capacity as a shareholder of the company, in favour of all resolutions, and to give all consents necessary, to give effect to the repurchase of the A repurchase shares by the company.
- 7.6. BEE Co acknowledges that if it should sell any of the A ordinary shares and/or A acquired ordinary shares or any rights or interests therein, prior to the A release date, to one or more third parties, or unbundle same to the BEE shareholders, as permitted by the relationship agreement, it shall be a term of such sale or unbundling that the acquiror/s of those A ordinary shares and/or A acquired ordinary shares, or rights or interests therein, shall bind themselves, to the extent not so bound by operation of law, to this MOI, to the A ordinary shares subscription agreement and to the relationship agreement, mutatis mutandis, on terms

acceptable to the company and the other parties to the relationship agreement, and that the said acquirors shall, without limitation, be bound by the provisions of the A call option.

7.7. The company shall be entitled, on written notice to the A ordinary share holder/s, to assign all or any of rights and/or obligations contemplated in this paragraph 7 to a nominee of the company.

8. DISPOSAL AND ENCUMBRANCE OF A ORDINARY SHARES AND A ACQUIRED ORDINARY SHARES

8.1. BEE Co is bound not to sell any of its A ordinary shares or any of its A acquired ordinary shares or any rights or interests therein before the seventh anniversary of the A effective date, without the prior written approval of the company, which the company shall be entitled to grant or withhold at its sole discretion and subject to such conditions as the company may determine at its sole discretion, but in each case acting in good faith. Such conditions shall include the requirement that the person/s to whom such shares are sold shall bind themselves, to the extent not so bound by operation of law, in the place of (or in addition to, as the case may be) BEE Co on terms acceptable to the company to the relevant provisions of this MOI, the relationship agreement and the A ordinary shares subscription agreement, *mutatis mutandis*, including the provisions of clauses 5, 6, 7, and 8 of the A ordinary shares subscription agreement.

8.2. Subject, for the avoidance of doubt, to paragraph 8.3 of this Schedule AB, BEE Co is obliged not to cede in security, pledge, grant any option or right of first refusal or pre-emptive right in respect of, nor otherwise permit any encumbrance (collectively, an "encumbrance") of any of its A ordinary shares or any of its A acquired ordinary shares or any rights or interests therein until the A release date, without the prior written approval of the company, which the company shall be entitled to grant or withhold at its sole discretion and subject to such conditions as the company may determine at its sole discretion, but in each case acting in good faith. Without derogating in any way from the foregoing discretion of the company, any such encumbrance which the company may approve shall, *inter alia*, be subject to the terms that—

8.2.1. it shall automatically lapse and be of no further force or effect in respect of any such A ordinary shares or A acquired ordinary shares which become A repurchase shares, by no later than the date on which such A repurchase shares are repurchased pursuant to the A call option; and

8.2.2. the person in favour of whom the encumbrance is given shall, *inter alia*, undertake in writing in favour of the company and each A ordinary shareholder/s that it shall be bound by the provisions of paragraph 8.5 of this Schedule AB and the relevant provisions of the relationship agreement, *mutatis mutandis*.

- 8.3. With effect from the 7th (seventh) anniversary of the A effective date and until the A release date, BEE Co may sell any or all of its A ordinary shares and its A acquired ordinary shares or any rights or interests therein, but only in accordance with the provisions contemplated in paragraph 8.5 of this Schedule AB below. For the avoidance of doubt it is recorded that each A ordinary shareholder shall be obliged to sell the A repurchase shares to the company pursuant to the A call option.
- 8.4. After the A release date an A ordinary shareholder shall be free to deal with its ordinary shares as it deems fit.
- 8.5. BEE Co is obliged, should it wish to sell any of its A ordinary shares and/or its A acquired ordinary shares or any rights or interests therein during the period referred to in paragraph 8.3 of this Schedule AB, then it shall first offer same in writing to the company in accordance with the provisions of the relationship agreement.
- 8.6. The company has agreed that BEE Co is at any time after the A effective date entitled to sell, unbundle or distribute all of its A ordinary shares and all of its A acquired ordinary shares to the BEE shareholders and/or to renounce any letters of allocation which it may receive relating to the A ordinary shares and the A acquired ordinary shares to the BEE shareholders in accordance with clause 18 of the BEE Co subscription and shareholders agreement contemplated in the relationship agreement, provided same occurs with the company's prior written consent, which shall not be unreasonably withheld or delayed, and which the company may grant subject to reasonable conditions, in which event the provisions of clause 8 of the relationship agreement shall apply *mutatis mutandis* if any of the BEE shareholders thereafter wish to sell any of the A ordinary shares or A acquired ordinary shares so acquired by them. Such conditions shall include, without limitation, the requirement that the BEE shareholders to whom such shares are unbundled shall bind themselves, to the extent not so bound by operation of law, in the place of BEE Co on terms acceptable to the company to the relevant provisions of this MOI, the relationship agreement and the A ordinary shares subscription agreement, *mutatis mutandis*, including the provisions of clauses 5, 6, 7, and 8 of the A ordinary shares subscription agreement.
- 8.7. The company is entitled to assign its rights and obligations in relation to any offer contemplated in paragraph 8.5 of this Schedule AB to a nominee of the company.

9. BEE PRINCIPLES

- 9.1. BEE Co has accepted that if it sells any of its A ordinary shares or A acquired ordinary shares in accordance with this MOI and the relationship agreement after the 7th (seventh) anniversary of the A effective date but before the A release date to a person qualifying in terms of the relationship agreement as an eligible purchaser, then the company shall be entitled as a

~~condition of any approval that the company may grant in respect of such eligible purchaser as contemplated in the relationship agreement and paragraph 8 of this Schedule AB, to require such eligible purchaser to bind itself to specific BEE principles determined by the company in its sole discretion, but acting in good faith, to –~~

- ~~9.1.1. be analogous in purpose to the relevant BEE principles set out in the relationship agreement; and~~
- ~~9.1.2. consistent with the relevant objectives of the BEE transaction referred to in clause 2.4 of the relationship agreement.~~

~~10. DEEMED OFFERS BY BEE CO~~

- ~~10.1. Amongst other remedies available to the company in terms of the relationship agreement, BEE Co shall, in terms of the relationship agreement, in certain circumstances be deemed to have offered ("BEE Co deemed offer") all of its A ordinary shares and all of its A acquired ordinary shares (the "BEE Co sale interest") for sale to the company, on the terms and conditions set out in the relationship agreement.~~
- ~~10.2. The provisions of the relationship agreement relating to the BEE Co deemed offer shall be binding on and apply, *mutatis mutandis*, to the successors, executors, trustees, curators, liquidators and administrators of BEE Co.~~
- ~~10.3. The company shall be entitled to assign its rights and obligations in terms of the BEE Co deemed offer to a nominee of the company.~~

~~11. AUTHORISATION REGARDING DELIVERY OF SHARES~~

~~Should BEE Co fail to deliver any A ordinary shares or A acquired ordinary shares which it is obliged to deliver to the company and/or its nominee and/or any other person in terms of the A ordinary shares subscription agreement or the relationship agreement, the group company secretary for the time being of the company or any director for the time being of the company is irrevocably authorised to sign all documents and do all things necessary to effect delivery of such shares against payment of the relevant purchase price therefor.~~

~~12. RELEASE~~

- ~~12.1. If the ordinary shares are listed on the JSE on the A release date, the company is obliged, immediately following the A release date, to procure that –~~

12.1.1. ~~those of the A ordinary shares which are not A repurchase shares shall, upon their conversion into ordinary shares, be dematerialised and listed on the JSE; and~~

12.1.2. ~~those of the A acquired ordinary shares which are not A repurchase shares shall be dematerialised and, to the extent not already so listed, listed on the JSE, notwithstanding the provisions of paragraph 3 of this Schedule AB.~~

12.2. ~~If~~

12.2.1. ~~the A call option price is not paid within the 60 day period contemplated in paragraph 7.3.4 of this Schedule AB and the A call option consequently lapses, the company is obliged to procure that the A repurchase shares shall be dematerialised and listed on the JSE as soon as reasonably possible;~~

12.2.2. ~~the A call option is not exercised, the company is obliged to procure that all the A ordinary shares and all the A acquired ordinary shares shall be dematerialised and listed on the JSE as soon as reasonably possible, provided that if the ordinary shares are not listed on the JSE at that time the provisions of paragraph 12.5 of this Schedule AB shall apply, and the relevant share certificates delivered, mutatis mutandis in terms of that paragraph.~~

12.3. ~~To facilitate the effective implementation of paragraph 12.1 of this Schedule AB, if the ordinary shares are listed on the JSE on the day which falls 30 (thirty) days prior to the earliest anticipated A release date, the company is obliged to use its reasonable endeavours to procure that the JSE pre-approves the listing of those of the A ordinary shares which are not A repurchase shares and those of the A acquired ordinary shares which are not A repurchase shares with effect from the A release date.~~

12.4. ~~If the ordinary shares are not listed on the JSE on the A release date, the company is obliged, immediately following the A release date, to procure that the share certificates relating to~~

12.4.1. ~~those of the A ordinary shares which are not A repurchase shares shall, upon the conversion of those A ordinary shares into ordinary shares, be delivered to the A ordinary shareholder; and~~

12.4.2. ~~the A acquired ordinary shares which are not A repurchase shares shall be delivered to the A ordinary shareholder, notwithstanding the provisions of paragraph 3 of this Schedule AB.~~

12.5. ~~If~~

- 12.5.1. the A call option price is not paid as contemplated in paragraph 7.3.4 of this Schedule AB and the A call option consequently lapses, the company is obliged to procure that the A repurchase shares shall be delivered to the A ordinary shareholder as soon as reasonably possible;
- 12.5.2. the A call option is not exercised, all the A ordinary shares (upon their conversion into ordinary shares) and all the A acquired ordinary shares shall be delivered to the A ordinary shareholder.

13. DISPUTES IN RELATION TO A ORDINARY SHARES

~~Save as otherwise provided in this MOI, any dispute arising from or in connection with the provisions of this Part A read with paragraph 1 of this Schedule AB shall be dealt with in accordance with the provisions of clause 23 of the relationship agreement.~~

14. BREACH

- 14.1. Should a person bound by this part A of this Schedule AB ("bound party") commit a breach of any provision of this part A of this Schedule AB and should such breach be:
 - 14.1.1. incapable of remedy; or
 - 14.1.2. capable of being remedied and should such bound party fail to remedy such breach within 14 (fourteen) days after receiving written notice from another bound party (the "aggrieved party") requiring that defaulting party to do so; then—
 - 14.1.3. if the breach is a breach contemplated in paragraph 14.1.2, the aggrieved party shall be entitled to claim specific performance of all of the defaulting party's obligations whether or not due for performance, without prejudice to the aggrieved party's right to claim damages; or
 - 14.1.4. if the breach is a breach contemplated in paragraph 14.1.1, the aggrieved party shall be entitled to claim damages.

15. NON-DEROGATION

~~Nothing in this part A read with paragraph 1 of this Schedule AB derogates from the rights and/or obligations of persons pursuant to or arising from—~~

- 15.1. the A ordinary shares subscription agreement; or

15.2. the relationship agreement.

Schedule AB Part B

~~Terms and conditions of class B ordinary shares 16. B ORDINARY SHARES~~

~~16. B ORDINARY SHARES~~

~~16.1. Notwithstanding anything to the contrary contained in this MOI, the B ordinary shares shall rank pari passu with the ordinary shares, save that –~~

~~16.1.1. B ordinary shareholders shall not be entitled to any special dividends declared or paid by the company, unless the B notional outstanding becomes zero at any time prior to the B release date, in which event the B ordinary shares shall be entitled to participate in all special dividends declared or paid by the company pari passu with the ordinary shares from the date that the B notional outstanding becomes zero; provided that in respect of a special dividend paid on the date on which the B notional outstanding becomes zero, the B ordinary shares shall only be entitled to participate in that portion of that special dividend which is in excess of an amount equal to the amount of that special dividend which notionally reduced the B notional outstanding to zero;~~

~~16.1.2. B ordinary shares shall remain certificated and shall not be listed on any stock exchange;~~

~~16.1.3. the registered shareholder in respect of a B ordinary share from time to time shall not, without the prior written consent of the company, be entitled to transfer to any other person any beneficial interest in that B ordinary share;~~

~~16.1.4. for so long as the ordinary shares are listed on the JSE, the rights attaching to the B ordinary shares may not be amended in any material respect without the prior written approval of the JSE and will not be counted for categorisation purposes in terms of section 9 of the Listings Requirements of the JSE~~

~~16.1.5. on the B release date, the B ordinary shares shall automatically convert on a one for one basis into ordinary shares;~~

~~16.1.6. the provisions of this MOI that set out the preferences, rights, limitations and other terms associated with the B ordinary shares and not with the ordinary shares generally may be amended or deleted only by way of –~~

~~16.1.6.1. a special resolution duly adopted at a general meeting of voting rights holders convened in terms of this MOI; and~~

16.1.6.2. a resolution of the B ordinary shareholders duly adopted at a meeting of B ordinary shareholders convened in terms of this MOI (which may be held immediately prior to or after the meeting referred to in paragraph 16.1.6.1 or at any other time within 30 (thirty) days of such meeting), which is approved by B ordinary shareholders holding no less than 75% (seventy five per cent) of those B ordinary shares held by B ordinary shareholders who are present and who vote at that meeting, either in person or by proxy; and

16.1.7. no meeting may be convened for the purposes of proposing a resolution contemplated in paragraph 16.1.6 of this Schedule AB to be taken by the relevant holders unless the convening of such meeting is approved by B ordinary shareholders holding no less than 90% (ninety per cent) of the B ordinary shares.

16.2. In the event of any conflict between the provisions of this paragraph 16 and any other paragraph of this MOI, the provisions of this paragraph 16 shall prevail.

17. SHARE CERTIFICATES TO BE LODGED IN TRUST

17.1. The share certificates in respect of the B ordinary shares (together with duly signed share transfer forms in respect thereof in negotiable form) are held by the group company secretary of the company and the group company secretary shall release such documents only in order to give effect to a distribution of ordinary shares to beneficiaries in terms of the ESOP trust deed following the B release date.

17.2. The company is obliged to procure that the B acquired ordinary shares shall be materialised immediately following the acquisition, as contemplated in paragraph 19 of this Schedule AB, of such ordinary shares and that the share certificates in respect thereof (together with duly signed share transfer forms in respect thereof in negotiable form) shall likewise be lodged with the group company secretary of the company on the basis that the group company secretary shall release such documents only in order to give effect to a distribution of ordinary shares to beneficiaries in terms of the ESOP trust deed following the B release date.

17.3. ESOP is obliged promptly to sign any share transfer forms referred to in paragraph 17.1 or 17.2 of this Schedule AB when requested to do so by the company.

18. ENDORSEMENT OF SHARE CERTIFICATES

18.1. All share certificates issued by the company in respect of B ordinary shares shall, to the extent not already so endorsed, be endorsed as follows-

"This certificate and the shares evidenced by this certificate are transferable only upon compliance with the provisions of the company's Memorandum of Incorporation and of a "subscription and call option agreement" entered into between the company and The Mpho Ea Bophelo Trust and a "trust deed" in relation to that Trust, together with the scheme rules attached thereto, as such agreements may be amended from time to time, copies of which are on file with the company, which agreements, amongst other things, (i) grant a call option in favour of the company in respect of the shares evidenced by this certificate; and (ii) contain restrictions upon the sale, transfer or encumbrance of the shares evidenced by this certificate."

18.2. Each of the company and ESOP is obliged to procure that all share certificates issued by the company in respect of B acquired ordinary shares shall bear the endorsement set out in paragraph 18.1 when such shares are materialised.

19. ACQUISITION OF ORDINARY SHARES

19.1. For so long as the ordinary shares remain listed on the JSE, ESOP is obliged to utilise—

19.1.1. 100% (one hundred per cent) of all ordinary dividends paid to it in respect of its B ordinary shares to acquire ordinary shares; and

19.1.2. 100% (one hundred per cent) of the ordinary dividends paid to it in respect of its B acquired ordinary shares to acquire further ordinary shares, in each case on-market within a period of 30 (thirty) business days after the date on which any such ordinary dividends are paid and otherwise subject to the provisions of the B ordinary shares subscription agreement.

20. SPECIAL DIVIDENDS

20.1. Nothing in this MOI derogates from the waiver and abandonment by ESOP, in terms of the B ordinary shares subscription agreement, of its rights in respect of the B acquired ordinary shares, to participate in special dividends declared or paid by the company between the B effective date and the earlier of—

20.1.1. the B release date; and

20.1.2. the date on which the B notional outstanding becomes zero, provided that in respect of a special dividend paid on the date on which the B notional outstanding becomes zero, ESOP shall, in respect of the B acquired ordinary shares, participate only in that portion of that special dividend in which, in terms of paragraph 16.1.1 of this Schedule AB, the B ordinary shares are entitled to participate.

20.2. In light of the provisions of paragraph 16.1.1 and this paragraph 20 of this Schedule AB, the ordinary shareholder/s shall not receive any special dividends declared by the company between the effective date and the release date, whether in respect of ordinary shares or acquired ordinary shares, save as expressly contemplated in paragraph 16.1.1 and this paragraph 20 of this Schedule AB if the notional outstanding becomes zero before the release date.

21. **B CALL OPTION**

21.1. The company is entitled to acquire the repurchase shares on the terms and conditions set out in this paragraph 21.

21.2. The company shall, unless it gives express written notice to ESOP prior to the expiry of the lock-in period that it does not intend to exercise the call option, and subject only to compliance by the company with any statutory requirements and the provisions of the JSE Listings Requirements that may be applicable at the relevant time regarding the acquisition by the company of its own shares, be deemed on the call option exercise date to have exercised the call option, without being required to give written notice of such exercise.

21.3. Upon the deemed exercise of the call option contemplated in paragraph 21.2 of this Schedule AB, a sale of the repurchase shares shall be deemed to have been concluded on the call option exercise date on the following terms and conditions—

21.3.1. the number of repurchase shares which the company shall be deemed to have purchased shall be determined by the company in accordance with the following formula—

N = NO / FM

where:

N = the number of repurchase shares, which shall not be more than the total number of ordinary shares and acquired ordinary shares on the call option exercise date;

NO = the notional outstanding on the call option exercise date; and

FM = the VWAP per ordinary share (expressed in Rands and cents for the 60 (sixty) business days terminating on the business day before the call option exercise date);

- 21.3.2. the B repurchase shares shall comprise, in the first instance, B ordinary shares and, only to the extent that their number is less than N, B acquired ordinary shares;
- 21.3.3. the purchase consideration of the B repurchase shares shall be the B call option price;
- 21.3.4. the B call option price shall, upon compliance by the company with any applicable statutory requirements, be paid within 60 (sixty) days after the date on which the number of B repurchase shares has been determined and advised by the company failing which the B call option shall be deemed never to have been exercised and shall be of no further force or effect;
- 21.3.5. subject to paragraph 21.3.4 of this Schedule AB, the B repurchase shares shall be acquired by the company with effect from the B call option exercise date, from which date all benefit of the B repurchase shares shall, against payment by the company of the B call option price in terms of that paragraph 21.3.4, pass to the company;
- 21.3.6. the B repurchase shares shall be acquired *voetstoots* without any warranties or representations of whatsoever nature, save that each of the B ordinary shareholder/s shall have warranted to the company that on the B call option exercise date—
- 21.3.6.1. it shall be the beneficial and registered owner of the B repurchase shares sold by it to the company;
- 21.3.6.2. the B repurchase shares sold by it shall not in any way be encumbered; and
- 21.3.6.3. no person (other than the company) shall have any right of any nature whatsoever to acquire any of its B repurchase shares;
- 21.3.7. delivery of the repurchase shares shall be given by the holder/s thereof to the company on the date on which the company pays the holder the B call option price;
- 21.3.8. all risk relating to the B repurchase shares shall pass to the company on the date on which the B repurchase shares are delivered to the company; and

21.3.9. the company shall be entitled to instruct the group company secretary to release and deliver the share certificates relating to the B repurchase shares to the company against payment of the B call option price.

21.4. Should the B ordinary shareholder/s fail to deliver the B repurchase shares on the date referred to in paragraph 21.3.7 of this Schedule AB, the group company secretary for the time being of the company or any director for the time being of the company is hereby irrevocably authorised to sign all documents and do all things necessary to effect delivery of the B repurchase shares against payment of the B call option price.

21.5. Each B ordinary shareholder is obliged to vote, in its capacity as a shareholder of the company, in favour of all resolutions, and to give all consents necessary, to give effect to the repurchase of the B repurchase shares by the company.

21.6. The company shall be entitled, on written notice to the B ordinary shareholder/s, to assign all or any of rights and/or obligations contemplated in this paragraph 21 to a nominee of the company.

22. DISPUTES IN RELATION TO B ORDINARY SHARES

Save as otherwise provided in this MOI, any dispute arising from or in connection with the provisions of this Part B read with paragraph 1 of this Schedule AB shall be dealt with in accordance with the provisions of clause 12 of the B ordinary shares subscription agreement.

23. BREACH

23.1. Should a person bound by this part B of this Schedule AB ("B bound party") commit a breach of any provision of this part B of this Schedule AB and should such breach be

23.1.1. incapable of remedy; or

23.1.2. be capable of being remedied and should such bound party fail to remedy such breach within 14 (fourteen) days after receiving written notice from another B bound party (the "aggrieved party") requiring that defaulting party to do so,

then—

23.1.3. if the breach is a breach contemplated in paragraph 23.1.2, the aggrieved party shall be entitled to claim specific performance of all of the defaulting party's obligations whether or not due for performance, without prejudice to the aggrieved party's right to claim damages; or

~~23.1.4. if the breach is a breach contemplated in paragraph 23.1.1, the aggrieved party shall be entitled to claim damages.~~

24. NON-DEROGATION

~~Nothing in this part B read with paragraph 1 of this Schedule AB derogates from the rights and/or obligations of persons pursuant to or arising from the B ordinary shares subscription agreement.~~

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