

**REPUBLIC OF SOUTH AFRICA**

**COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION**

of

**FORTUNA INVESTMENT HOLDINGS PROPRIETARY LIMITED**

**Registration number 2017/518750/07**

which is referred to in the rest of this MOI  
as the "**Company**"

**Adoption of memorandum of incorporation**

This MOI was adopted by the shareholders of the Company by special resolution in accordance with section 16(1)(c) of the Act.

## Table of Contents

	<b>Page No</b>
1. Definitions and interpretation.....	4
2. Incorporation and nature of the Company .....	7
2.1 Incorporation .....	7
2.2 Powers of the Company .....	8
2.3 MOI and Company rules .....	8
3. Application of optional provisions of the Act .....	9
4. Conflicts with the Act.....	9
5. Securities of the Company .....	10
5.1 Classes and numbers of Securities .....	10
5.2 Preferences, rights, limitations and other terms associated with the Shares..	10
5.3 Anti-dilution .....	11
5.4 Variation of the Share capital .....	11
5.5 Shareholders' rights of pre-emption on the issue of additional Shares.....	12
5.6 Restrictions on transferability of Shares .....	15
5.7 Debt instruments.....	21
5.8 Debt funding policy.....	21
5.9 Securities Register .....	21
5.10 Share certificates .....	22
6. Shareholders.....	22
6.1 Shareholders' right to additional information.....	22
6.2 Shareholders' authority to act.....	23
6.3 Representation by concurrent proxies .....	23
6.4 Authority of proxy to delegate.....	23
6.5 Requirement to deliver proxy instrument to the Company .....	23
6.6 Deliberative authority of proxy .....	23
6.7 Record date for determining Shareholder rights .....	24
7. Shareholders' meetings.....	24
7.1 Right to call meeting.....	24
7.2 Requirement to hold meetings.....	24
7.3 Shareholders' right to requisition a meeting.....	24
7.4 Location of Shareholders' meetings .....	25
7.5 Notice of Shareholders' meetings.....	25
7.6 Electronic participation in Shareholders' meetings .....	25
7.7 Quorum for Shareholders' meetings.....	26

7.8	Shareholders' resolutions.....	27
7.9	Written resolutions .....	27
7.10	Delays caused by identification process.....	27
7.11	Chairperson .....	27
8.	Dividend policy .....	28
9.	Directors and officers .....	28
9.1	Composition of the Board.....	28
9.2	Authority of the Board.....	28
9.3	Round robin resolutions .....	29
9.4	Requisitioning of Board meetings.....	29
9.5	Electronic participation in Board meetings.....	29
9.6	Remuneration of Directors and members of Board committees.....	32
9.7	Indemnification of Directors.....	33
9.8	Board Committees .....	33
10.	General provisions .....	34
10.1	Winding up.....	34
10.2	Delivery and publication of notices and certain documents .....	35
Annexe A	Rights, limitations and other terms relating to the Ordinary Shares.....	36
Annexe B	Rights, limitations and other terms relating to the "A" Class Ordinary Share.....	37
Annexe C	Anti-dilution illustration .....	42
Annexe D	"A" Class Ordinary Share special dividend illustration .....	43

## 1. Definitions and interpretation

1.1 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1 "**A" Class Ordinary Share**" means the "A" class ordinary share in the Company, having the preferences, rights and limitations attaching thereto set forth in Annexe A;

1.1.2 "**A" Class Ordinary Shareholder**" means the registered and beneficial holder of the "A" Class Ordinary Share;

1.1.3 "**Act**" means the Companies Act, 71 of 2008, as amended from time to time;

1.1.4 "**Annexe**" means an annexe attached this MOI;

1.1.5 "**Board**" means the board of Directors of the Company from time to time;

1.1.6 "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.7 "**Capitalised Costs**" means for any period beginning at the closure of Raise 1 and ending at a given point in time, the sum of the Operating Cost and the Opportunity Cost over the period;

1.1.8 "**Debt Instruments**" bears the meaning as defined in section 43(1)(a) of the Act;

1.1.9 "**Director**" means a director of the Company, and where the context so provides, an alternate director appointed in respect of such director;

1.1.10 "**Earned Interest Rate**" means the annualised interest rate actually earned by the Company on cash over a given period;

1.1.11 "**Hurdle Rate**" means the CAPM-derived cost of equity calculated using a risk-free rate ("**Rf**") equal to the current yield to maturity of the 10-year South African government bond, an equity market risk premium ("**MRP**") of 6.0%, and an equity beta ("**Be**") of 1.0, and which is calculated in arrears in

respect of any given financial year, using the formula "Hurdle Rate =  $R_f + B_e \times MRP$ ";

- 1.1.12 "IM" means the information memorandum of the Company issued in relation to Raise 1 dated 5 February 2019 as amended from time to time;
- 1.1.13 "**Investment Committee**" means any investment committee of the Company that may be appointed by the Board from time to time;
- 1.1.14 "**MOI**" means this memorandum of incorporation of the Company, as amended from time to time;
- 1.1.15 "**NAV**" means the net asset value of the Company, calculated on the basis of the annual financial statements,;
- 1.1.16 "**Operating Cost**" means the operating cost of the Company as recorded for accounting purposes, inclusive of non-recurring items, post the application of the statutory South African corporate income tax rate as applicable from time to time;
- 1.1.17 "**Opportunity Cost**" means the opportunity cost as calculated using the formula " $NAV \times (\text{Prime Rate} - 2.0\% - \text{Earned Interest Rate})$ ";
- 1.1.18 "**Ordinary Shareholder**" means a shareholder reflected, from time to time, in the Securities Register as holding Ordinary Shares;
- 1.1.19 "**Ordinary Shares**" means ordinary shares in the Company having the preferences, rights and limitations attaching thereto set forth in Annexe A;
- 1.1.20 "**Prime Rate**" means the publicly quoted basic rate of interest percent, per annum, compounded monthly in arrears and calculated on a 365 day year irrespective of whether the year in question is a leap year, published by Investec Bank Limited as being its prime overdraft rate, as certified by any manager of Investec Bank Limited, whose appointment and/or authority need not be proved;
- 1.1.21 "**Raise 1**" means the "Proposed Transaction" as defined in the IM, being the proposed initial raise by the Company of at least R50 000 000 in new equity capital;
- 1.1.22 "**Rand**" or "**R**" means the lawful currency in the Republic of South Africa;

- 1.1.23           **"Securities"** shall bear the meaning as defined in the Act, from time to time, and shall include without limitation, the Ordinary Shares and the "A" Class Ordinary Share and unless the context indicates differently, Debt Instruments;
- 1.1.24           **"Securities Holder"** means the registered holder of any Securities in the Company, including without limitation an Ordinary Shareholder;
- 1.1.25           **"Securities Register"** means the register of Securities established or maintained by the Company in terms of section 50(1) of the Act;
- 1.1.26           **"Shareholders"** means the registered holders of Shares in the Company, from time to time;
- 1.1.27           **"Shares"** means the Ordinary Shares and the "A" Class Ordinary Share; and
- 1.1.28           **"Special Dividend"** means the annual dividend payable to the "A" Class Ordinary Shareholder in respect of the "A" Class Ordinary Share, as set out in Annexe B.
- 1.2              The headings of the articles in this MOI are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any article hereof.
- 1.3              Unless a contrary intention clearly appears, words importing:
- 1.3.1            any one gender include the other two genders;
- 1.3.2            the singular include the plural and *vice versa*; and
- 1.3.3            natural persons include created entities (corporate or unincorporate) and the State and *vice versa*.
- 1.4              A reference to an "article" by number refers to the corresponding article in this MOI.
- 1.5              A reference to a section by number refers to the corresponding section of the Act.
- 1.6              Terms and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Act shall, when used in this MOI in

a similar context, bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise.

- 1.7 A reference to "amended" in this MOI, refers to a provision of the type contemplated in section 15(2)(a) of the Act.
- 1.8 When any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next Business Day.
- 1.9 The expiration or termination of this MOI shall not affect such of the provisions of this MOI which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the articles themselves do not expressly provide for this.
- 1.10 Any reference in this MOI to the Company or any one or more Securities Holders, as the case may be, shall if the Company or any one or more Securities Holders, as the case may be, is put under business rescue, liquidated or sequestrated, be applicable also to and binding upon the Company's or the relevant Securities Holders', as the case may be, business rescue practitioner, liquidator or trustee, as the case may be.
- 1.11 Any reference to a statute shall be a reference to such statute as at the date of adoption of this MOI by the Company and as amended from time to time thereafter.

## **2. Incorporation and nature of the Company**

### **2.1 Incorporation**

- 2.1.1 The Company is incorporated, as from the date of incorporation reflected in its registration certificate, as a private company, and accordingly:
- 2.1.1.1 the Company shall not offer any of its Securities to the public, as contemplated in section 8(2)(b)(ii)(aa); and
- 2.1.1.2 the transferability of the Securities of the Company is restricted, as contemplated in section 8(2)(b)(ii)(bb), as set out in article 5.6.

2.1.2 The Company is constituted in terms of section 19(1)(c) in accordance with and governed by:

2.1.2.1 the unalterable provisions of the Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii)); and

2.1.2.2 the alterable provisions of the Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii)); and

2.1.2.3 the provisions of this MOI (subject to and in accordance with section 15(2)).

## 2.2 **Powers of the Company**

2.2.1 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c).

2.2.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

## 2.3 **MOI and Company rules**

2.3.1 This MOI may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b), subject to the provisions contemplated in section 16(1)(c) read with section 16(2), section 17(1)(a) and section 15(2).

2.3.2 The authority of the Board to make rules for the Company, as contemplated in section 15(3) to (5A) is not amended in any manner by this MOI.

2.3.3 The Board must publish any rules made, amended or repealed in terms of section 15(3)(a) to (5A) in accordance with the requirements set out in article 10.2.

2.3.4 The Company must publish a notice of any alteration of the MOI or the rules, made in terms of section 17(1) in accordance with the requirements set out in article 10.2.



### **3. Application of optional provisions of the Act**

- 3.1 The Company is not required, in terms of section 34(2), to comply with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Act.
- 3.2 The Company does not elect, in terms of section 118(1)(c)(ii), to submit voluntarily to the provisions of Parts B (Authority of Panel and Takeover Regulations) and C (Regulation of affected transactions and offers) of Chapter 5 of the Act, and to the Takeover Regulations provided for in that Act.

### **4. Conflicts with the Act**

- 4.1 If any person at any time contends that, for purposes of section 15(1) or section 218 or otherwise, any provision of this MOI is not consistent with or contravenes, or is or has become inconsistent with, any provision of the Act, then a meeting of the Shareholders may be convened for purposes of the Shareholders considering and, if deemed fit, approving any proposed special resolution(s) required to appropriately amend the offending provisions of this MOI so as to remove or eliminate any such inconsistency or contravention.
- 4.2 Notwithstanding anything to the contrary contained elsewhere in this MOI, no person shall be required, obliged or entitled in terms of this MOI to do or omit to do something in terms of this MOI that is inconsistent with or contravenes any provision of the Act. Any person who does something or fails to do something so as not to be inconsistent with or contravene any provision of the Act or to avoid personal liability under section 218(2), but as a result thereof contravenes any provision of this MOI which provision of the MOI could be declared void by a court in terms of section 218(1), shall not for that reason alone be liable or responsible therefore under this MOI with respect to any claim by the Company or any Shareholder or any Director or any other person entitled to do so in terms of this MOI, arising out of or in connection with any such act or omission (sections 15(6) and 218).
- 4.3 Any Shareholder, Director or prescribed officer of the Company, or any member of a Board committee, who is of the view that any provision of this MOI contravenes or is or has become inconsistent with any provision of the Act, whether or not such provision could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2),

shall within 5 Business Days of forming that view in writing inform the Board of such view and the reasons for such view (section 15(6)).

- 4.4 If any provision of the Act is amended, or the Board is aware of or informed of any inconsistency or contravention in terms of article 4.3, or otherwise, then in addition to and without limiting the rights or remedies of any other person, the Board shall be responsible for expeditiously assessing that amendment to the Act and/or that inconsistency or contravention and, if required, expeditiously proposing the appropriate special resolutions required to appropriately amend the MOI so as to remove or eliminate any applicable contraventions or inconsistencies.

## **5. Securities of the Company**

### **5.1 Classes and numbers of Securities**

The Company is authorised to issue up to the maximum number of:

- 5.1.1 1 000 000 000 Ordinary Shares, subject to the preferences, rights, limitations and other terms associated therewith, as set out in Annexe A; and
- 5.1.2 1 "A" Class Ordinary Share, subject to the preferences, rights, limitations and other terms associated therewith, as out in Annexe B.

### **5.2 Preferences, rights, limitations and other terms associated with the Shares**

- 5.2.1 The preferences, rights, limitations and other terms associated with the Ordinary Shares set out in Annexe A may be changed from time to time by an amendment of this MOI (that is, an amendment of Annexe A) by special resolution of the Shareholders.
- 5.2.2 The preferences, rights, limitations and other terms associated with the "A" Class Ordinary Share set out in Annexe B may be changed from time to time by an amendment of this MOI (that is, an amendment of Annexe B) by special resolution of the Shareholders, provided that no such special resolution may be proposed without the prior written approval of the "A" Class Ordinary Shareholder.

### 5.3 **Anti-dilution**

5.3.1 All shares issued as a result of any equity raise which occurs within 24 months following the closure of Raise 1 shall be issued at a premium to the NAV per share at the time of the applicable equity raise to ensure that newly-subscribing shareholders contribute equitably to the costs of the Company indirectly borne by the Raise 1 Shareholders.

5.3.2 In relation to every equity raise contemplated in clause 5.3.1 above the issue price per share shall be determined using the formula below:

Issue price per share = (NAV immediately prior to the equity raise plus Capitalised Costs immediately prior to the equity raise) / shares in issue immediately prior to the equity raise.

5.3.3 An illustrative example of the application of this clause 5.3 is attached as Annexe C.

### 5.4 **Variation of the Share capital**

The Board shall not, without the authority of the Shareholders by way of special resolution, have the power to:

5.4.1 create any new Securities;

5.4.2 increase or decrease the number of authorised Shares of any class of Shares;

5.4.3 reclassify any classified Shares that have been authorised but not issued;

5.4.4 classify any unclassified Shares that have been authorised as contemplated in section 36(1)(c) but are not issued;

5.4.5 determine the preferences, rights, limitations or other terms of a class of Shares contemplated in section 36(1)(d);

5.4.6 consolidate and reduce the number of issued Shares; or

5.4.7 subdivide all or any of its issued Shares by increasing the number of its issued Shares without an increase of its stated capital; and

5.4.8 convert one class of Shares into one or more other classes of Shares.

## 5.5 Shareholders' rights of pre-emption on the issue of additional Shares

5.5.1 Subject to article 5.5.2, the pre-emptive rights of the Company's Ordinary Shareholders to be offered and to subscribe for additional Ordinary Shares, as set out in section 39(2) read with sections 39(3) and 39(4) do not apply and instead the provisions of the remainder of this article 5.5 shall apply.

5.5.2 For the avoidance of doubt, the pre-emptive rights of the Shareholders contemplated in the Act, this MOI or otherwise do not apply to the "A" Class Ordinary Shareholder.

### 5.5.3 fresh issue of an existing class of issued Ordinary Shares

5.5.3.1 If the Company proposes to issue Ordinary Shares then the Company must first offer in writing to each Ordinary Shareholder in the same class as the proposed issue the right to subscribe, within 15 Business Days of the date of the offer, *pro rata* to each Ordinary Shareholder's shareholding in that class, calculated as at the date of such offer.

5.5.3.2 The written offer to each Ordinary Shareholder must stipulate at least the following:

5.5.3.2.1 date of the offer;

5.5.3.2.2 the subscription price per Ordinary Share;

5.5.3.2.3 the number and class of Shares for which the Ordinary Shareholder is entitled to subscribe;

5.5.3.2.4 the total number of Ordinary Shares proposed to be issued; and

5.5.3.2.5 the date by which acceptances must be received and on which the subscription price is payable.

### 5.5.4 delivery of offer and acceptance period

The offer made by the Company in terms of article 5.5.3.1 shall be delivered to each Ordinary Shareholder in the same class as the proposed issue, and is irrevocable and open for acceptance by notice of acceptance in writing ("**Notice of Acceptance**") which must in order to constitute valid acceptance:

5.5.4.1 specify whether the Ordinary Shareholder is accepting the number of Ordinary Shares offered or less than that number; or wishes to subscribe for more than that number; and

5.5.4.2 be received by the Company within 7 Business Days of the date of the offer ("**Acceptance Period**").

5.5.5 **allocation of excess Ordinary Shares not subscribed for**

5.5.5.1 The Board shall within 10 Business Days of the date of the offer:

5.5.5.1.1 allocate the Ordinary Shares not subscribed for ("**Excess Shares**") to the extent applicable among the Ordinary Shareholders who offered to subscribe for the Excess Shares in a Notice of Acceptance *pro rata* in the proportions of their Shareholdings of the Ordinary Shares or such other proportions as may be agreed by the Shareholders concerned, provided that no Ordinary Shareholder shall be required to subscribe for more Excess Shares than it offered to subscribe for;

5.5.5.1.2 in writing advise the relevant Ordinary Shareholders of the number of Excess Shares allocated to each of them and subscription price payable in respect thereof.

5.5.6 The period within which the Board may allocate the Excess Shares may be extended at the discretion of the Board (acting reasonably) by no more than 30 days or such longer period (not exceeding an additional 30 days) as the Board (acting reasonably) may allow if an extension is required to obtain any regulatory approvals required as a result of the allocation of the Excess Shares.

5.5.7 **payment for Excess Shares and Excess Shares subscribed for**

5.5.7.1 Payment of the subscription price for the number of Ordinary Shares recorded in a Notice of Acceptance and for Excess Shares must be made within 15 Business Days of the date of the offer by electronic transfer into the bank account nominated by the Company for such purpose.

5.5.7.2 Failing payment the Board will be entitled to offer the Ordinary Shares and Excess Shares for which an Ordinary Shareholder had submitted a Notice of Acceptance to any persons approved in accordance with article 5.5.8.

5.5.8 **offer of remaining Ordinary Shares to approved persons**

5.5.8.1 If all the Ordinary Shares offered by the Company in terms of article 5.5.3.1 are not subscribed for or if the Board exercises its rights under article 5.5.7 ("**Remaining Shares**") and if the Ordinary Shareholders have by ordinary resolution approved any person or persons ("**Approved Persons**") to whom the Remaining Shares may be offered, the Board shall then offer these Remaining Shares to the Approved Persons.

5.5.8.2 The offer to the Approved Persons must be made within **20** Business Days immediately following the due date for payment of the subscription price set out in article 5.5.7 at the same issue price per Ordinary Share and on the same terms and conditions no more favourable than those as provided for in this article 5.5 except that:

5.5.8.2.1 the Acceptance Period may be extended at the discretion of the Board by no more than 90 days or such longer period (not exceeding an additional 90 days) as the Board may allow if any of the Approved Persons requires an extension to obtain any regulatory approvals required for the implementation of the offer contemplated in clause 5.5.8.2 (if any); and

5.5.8.2.2 payment of the subscription price must be made within 7 Business Days of delivery of the notice of acceptance or obtaining the required regulatory approvals for the implementation of the offer contemplated in clause 5.5.8.2 (if any), whichever is the later, by electronic transfer into the bank account in the name of the Company nominated by the Company for the purpose.

### 5.5.9 **Pre-emption provisions to apply again**

If after the relevant Ordinary Shares have been offered in accordance with this article 5.5 there are Ordinary Shares which have not been subscribed for, then such Ordinary Shares shall not be issued except after again following the pre-emption provisions of this article 5.5.

### 5.6 **Restrictions on transferability of Shares**

The following provisions restricting the transferability of any class of Shares shall apply.

#### 5.6.1 **proper instrument of transfer**

For purposes of section 51(6)(a), a "proper instrument of transfer" means an instrument in writing, in any form, specifying: (a) the full name of the transferor (being the name of a person entered in the Securities Register as the registered holder of the Securities being transferred); (b) the full name of the transferee; and (c) the number of the class of Shares being transferred, which has been signed by or on behalf of the registered Securities Holder as transferor and signed by or on behalf of the transferee.

#### 5.6.2 **Board's power to decline to register a transfer**

5.6.2.1 The Board may not decline to register the transfer of any Shares in terms of a proper instrument of transfer unless (and for so long as) the transfer in question is not in accordance with the requirements for such transfer, as set out in this article 5.6.

5.6.2.2 The transferor shall be deemed to remain the holder of and shall remain the registered Shareholder in respect of such Shares until the name of the transferee is entered in the Securities Register in respect thereof.

#### 5.6.3 **documents required for registration of transfer**

5.6.3.1 Any person wishing the Company to register the transfer of any Shares shall deliver to the Company:

5.6.3.1.1 a copy of a proper instrument of transfer; and

5.6.3.1.2 the original certificate (or a duplicate certificate issued pursuant to Article 5.10.3) of the Shares being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Shares.

5.6.3.2 Where an instrument of transfer is signed by a person other than the relevant Shareholder, a copy of the authority granted by the Shareholder for the purpose of transferring Shares, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.

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

5.6.3.4 The copy of the instrument of transfer, original or duplicate share certificate, other documentary evidence and a copy of any authority to transfer the Shares shall remain in the custody of the Company at its registered office.

#### 5.6.4 **recognition of title**

The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is an insolvent or the *curator bonis* of any registered Shareholder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered Shareholder shall, subject to the provisions of articles 5.9.2 and 5.9.3, be the only person recognised by the Company as having any title to any



Shares registered in the name of such Shareholder, including for voting purposes.

#### 5.6.5 **transmission of Shares**

The following provisions relating to the transmission of Shares shall apply:

5.6.5.1 Subject to section 51(6)(b) and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of articles 5.9.2 and 5.9.3 or article 5.6.4 as having any title to any Shares (and also the legal guardian of any minor Shareholder and any person who obtains title to any Shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this article or as to his or her title to any Shares, and subject to the transfer provisions in this MOI but not the right of pre-emption referred to in article 5.6.6, transfer such Shares to himself or to any other person.

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

#### 5.6.6 **Shareholders' rights of pre-emption on transfer**

Subject to article 5.6.6.6 and the other provisions of this MOI, no Shares shall be sold or otherwise disposed of unless and until the procedures prescribed by this article 5.6.6 have been complied with. Any purported sale or disposal of Shares in contravention of this MOI shall be void.

##### 5.6.6.1 **transfer of Ordinary Shares and loan claims**

5.6.6.1.1 No Shareholder may transfer any Ordinary Shares without simultaneously transferring a proportionate percentage of that

Shareholder's loan claims ("**Loan Claims**") against the Company.

5.6.6.1.2 No Shareholder may encumber, including without limitation by way of pledge, mortgage, cession as security or the granting of a pre-emptive right over, any Share save with the written consent of the Board or as otherwise set out in this MOI.

5.6.6.1.3 If an Ordinary Shareholder ("**the Offeror**") proposes to transfer all or any Ordinary Shares and Loan Claims (together "**the Offered Shares and Loan Claims**") then, subject to article 5.6.6.6, the Offeror must first offer in writing to each other Ordinary Shareholder the right to purchase a percentage (as determined by the Board and advised to the Offeror) of the Offered Shares and Loan Claims being the percentage that the number of Ordinary Shares held by each accepting Shareholder is of the aggregate number of Ordinary Shares held by all the Ordinary Shareholders other than the Offeror, in each case calculated as at the date of the offer.

5.6.6.1.4 The written offer to each of the Ordinary Shareholder(s) is irrevocable, must stipulate at least the date of the offer, the purchase price of the Offered Shares and Loan Claims, the number of Ordinary Shares and the amount of the Loan Claims which the Ordinary Shareholder is entitled to purchase, the aggregate number of Ordinary Shares and amount of the Loan Claims proposed to be transferred, the date by which acceptances must be received and the date on which the purchase price of the Offered Shares and Loan Claims is payable as well as a copy of the articles of this MOI which relate to the offer.

#### 5.6.6.2 **delivery of offer and acceptance period**

The offer made by the Offeror shall be delivered to each Ordinary Shareholder and is open for acceptance by notice of acceptance in writing ("**Notice of Acceptance**") which must in order to constitute valid acceptance be for all of the Offered Shares and Loan Claims

and must be received by the Offeror within 14 Business Days of the date of the offer ("**Acceptance Period**").

#### 5.6.6.3 **payment for the Offered Shares and Loan Claims**

Payment of the purchase price of the Offered Shares and Loan Claims must be made within 15 Business Days of the date of the offer and, failing payment, the Offeror will be entitled but not obliged to offer the Offered Shares and Loan Claims for which an Ordinary Shareholder had submitted a Notice of Acceptance to any persons approved in accordance with article 5.6.6.4.

#### 5.6.6.4 **offer of remaining shares to approved persons**

5.6.6.4.1 If the Offeror does not receive Notices of Acceptance for all the Offered Shares and Loan Claims within the Acceptance Period or if, in the case of non-payment, the Offeror exercises its rights under article 5.6.6.3 ("**Remaining Shares and Loan Claims**") and if the Ordinary Shareholders (other than the Offeror) have by ordinary resolution approved any person or persons ("**Approved Persons**") to whom the Remaining Shares and Loan Claims may be offered, the Offeror may then offer these Remaining Shares and Loan Claims to the Approved Persons.

5.6.6.4.2 The offer to the Approved Persons must be made within the 5 Business Days immediately following the due date for payment of the purchase price set out in article 5.6.6.3 at the equivalent price for the Offered Shares and Loan Claims and on no more favourable terms and conditions than those provided for in this article 5.6.6 except that -

5.6.6.4.2.1 the Acceptance Period may be extended at the discretion of the Offeror by up to 90 days or a longer period (not exceeding an additional 90 days) if any of the Approved Persons requires an extension to obtain any regulatory approvals; and

5.6.6.4.2.2 payment of the purchase price must be made within 7 Business Days of delivery of the Notice of Acceptance or

obtaining the required regulatory approvals whichever is the later.

#### 5.6.6.5 **pre-emption provisions to apply again**

If after the Offered Shares and Loan Claims have been offered in accordance with article 5.6.6 there are Offered Shares and Loan Claims which have not been purchased, then such Shares and Loan Claims shall not be transferred except after again following the pre-emption provisions of article 5.6.6.

#### 5.6.6.6 **permitted transfers by Ordinary Shareholders**

The following transfers of Ordinary Shares and Loan Claims shall be permitted without triggering the rights of pre-emption under article 5.6.6.1, namely:

- 5.6.6.6.1 if the Ordinary Shareholder is a company, a transfer to its wholly owned subsidiary, provided that if that wholly owned subsidiary at any time ceases to be a wholly owned subsidiary of the original Ordinary Shareholder, it shall prior to it ceasing to be such wholly owned subsidiary, transfer all of the Ordinary Shares and Loan Claims it then holds to the original Ordinary Shareholder;
- 5.6.6.6.2 if the Ordinary Shareholder is a wholly owned subsidiary, a transfer by that wholly owned subsidiary to another wholly owned subsidiary in the same group subject to the same proviso as set out in article 5.6.6.6.1;
- 5.6.6.6.3 if the Ordinary Shareholder is a natural person, a transfer by that Ordinary Shareholder to a family trust (being a trust established solely for the benefit of that Ordinary Shareholder and his immediate family members who are related persons as defined in the Act) or to a family private company or family close corporation (being a private company or close corporation all of the issued shares or members' interests of which are beneficially held by a family trust as described in this article or that Ordinary Shareholder and, if that Shareholder so wishes,

his immediate family members who are related persons as defined in the Act), provided that if that family trust or family private company or family close corporation at any time ceases to be such a family trust, family private company or family close corporation it shall prior to it ceasing to be such transfer all of the Ordinary Shares and Loan Claims it then holds to the original Ordinary Shareholder;

5.6.6.6.4 if the Ordinary Shareholder is a nominee for the beneficial owner, a transfer by the nominee to the beneficial owner or another nominee of the beneficial owner; and

if the Ordinary Shareholder is the beneficial owner of the Ordinary Shares, a transfer to a nominee of the beneficial owner.

## 5.7 **Debt instruments**

The Board shall not authorise or issue any Debt Instruments, except upon such terms and subject to such conditions as the Shareholders have approved by special resolution.

## 5.8 **Debt funding policy**

The Board shall adopt a debt funding policy for the Company that is consistent with the debt funding terms set out in the IM.

## 5.9 **Securities Register**

5.9.1 Any person who is entitled to have his name entered into the Securities Register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the Securities Register, including the name, business address, residential address, postal address and available e-mail address of that person.

5.9.2 In the case of any Security registered in the names of two or more persons as joint holders, the person first-named in the Securities Register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such Security and to the related certificate of title.

5.9.3 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such Security.

## 5.10 **Share certificates**

5.10.1 Securities of the Company are to be issued in certificated form, as contemplated in section 49(2)(a).

5.10.2 Every person to whom Securities are issued and whose name is entered in the Securities Register shall be entitled to one certificate for all the Securities in any class registered in his name, or to several certificates, each for a part of such Securities.

5.10.3 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.

5.10.4 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the Securities Register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that Security.

## 6. **Shareholders**

### 6.1 **Shareholders' right to additional information**

In addition to the rights to access information set out in sections 26(1) and 31, every person who has a beneficial interest in any of the Company's Securities has the further rights to information, set out below:

6.1.1 the Board may, from time to time, in its discretion, grant a person who has a registered or beneficial interest in any of the Company's Securities the right to access any information pertaining to the Company in addition to that to which he is entitled in terms of section 26(1); and

6.1.2 the grant of any additional information right(s) shall be on such terms and subject to such conditions and for such period(s) as the Board may determine in writing, provided that the confidential information of the Company is adequately protected.

## 6.2 **Shareholders' authority to act**

6.2.1 If, at any time, there is only one Shareholder of the Company, the authority of that Shareholder to act without notice or compliance with any other internal formalities, is as set out in section 57(2), provided that copies of all Shareholder resolutions are maintained.

6.2.2 If, at any time, every Shareholder of the Company is also a Director of the Company as contemplated in section 57(4), the authority of the Shareholders to act without notice or compliance with any other internal formalities as set out in that section, is not amended by this MOI.

## 6.3 **Representation by concurrent proxies**

The right of a Shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a), is not amended by this MOI.

## 6.4 **Authority of proxy to delegate**

A proxy may not delegate his authority to act on behalf of a Shareholder appointing him as proxy to another person.

## 6.5 **Requirement to deliver proxy instrument to the Company**

A copy of the instrument appointing a proxy must be delivered to the Company, or to any other person specified to receive such instrument in the notice convening the meeting, before the scheduled time for commencement of the relevant meeting.

## 6.6 **Deliberative authority of proxy**

The authority of a Shareholder's proxy to decide to vote in favour of, against, or to abstain from exercising any voting rights shall be determined by the instrument appointing the proxy.

## 6.7 **Record date for determining Shareholder rights**

If, at any time, the Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be:

- 6.7.1 for receiving notice of a meeting of Shareholders, if the notice must be sent to Shareholders by post, at least 7 Business Days prior to the latest date by which notice of a meeting is required by the Act or this MOI to be delivered to Shareholders;
- 6.7.2 for receiving notice of a meeting of Shareholders, if the notice may be sent to Shareholders by any means other than post, at least 2 Business Days prior to the latest date by which notice of a meeting is required by the Act or this MOI to be delivered to Shareholders;
- 6.7.3 for participation in and voting at a meeting, 2 Business Days prior to the date of the meeting as recorded in the notice convening the meeting;
- 6.7.4 for all other events or actions, 2 Business Days before the date on which the event or action in respect of which the record date is being set is scheduled to occur.

## 7. **Shareholders' meetings**

### 7.1 **Right to call meeting**

The Company authorises any Shareholder to call a Shareholders' meeting for the purposes of section 61(11).

### 7.2 **Requirement to hold meetings**

The Company is not required to hold any Shareholders' meetings other than those specifically required by the Act.

### 7.3 **Shareholders' right to requisition a meeting**

The right of Shareholders to requisition a meeting, as set out in section 61(3), may be exercised by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting.



#### 7.4 **Location of Shareholders' meetings**

The Board may determine the location of any Shareholders' meeting, which may be held in the Republic of South Africa or in any foreign country.

#### 7.5 **Notice of Shareholders' meetings**

The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders, as required by section 62(1)(b) is 10 Business Days before the meeting is to begin.

#### 7.6 **Electronic participation in Shareholders' meetings**

7.6.1 A resolution approved by a majority of Shareholders who were connected by electronic communication at a Shareholders' meeting where:

7.6.1.1 all such Shareholders remained connected for the duration of the meeting;

7.6.1.2 the subject matter of the resolution had been discussed at such meeting; and

7.6.1.3 the chairperson, deputy chairperson or any Shareholder present at such meeting certified in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of such meeting).

7.6.2 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in article 7.6.1, the Company shall:

7.6.2.1 deliver to each Shareholder a copy of the resolution proposed with a statement describing the results of the vote, consent process or election as the case may be; and

7.6.2.2 insert a copy of the resolution and statement referred to in article 7.6.2.1 into the Company's minute book.

## 7.7 **Quorum for Shareholders' meetings**

7.7.1 Subject to article 7.7.2, the quorum requirement:

7.7.1.1 for a Shareholders' meeting to begin, will be Shareholders holding, in aggregate, at least 25% (twenty five percent) of the votes exercisable in respect of at least one matter to be decided at the relevant meeting; and

7.7.1.2 for a matter to be decided at a Shareholders' meeting, will be the Shareholders holding, in aggregate, at least 25% (twenty five percent) of the votes exercisable on such matter at the time that matter is called on the agenda.

7.7.2 If the Company has more than two Shareholders, the quorum requirement shall not be satisfied unless a minimum of three Shareholders are present at a Shareholders' meeting.

7.7.3 If within 30 minutes of the appointed time for a meeting to begin, a quorum is not present, the meeting will automatically (without any further action or formalities being required, unless the location of the meeting is different) be postponed for 1 week, and if the day that falls 1 week later is not a Business Day, to the next succeeding Business Day.

7.7.4 If a quorum is not present when a matter is called on the agenda, if there is other business on the agenda, consideration of that matter may be postponed to a later time in the meeting (without further action or formalities being required). If there is no further business on the agenda, the meeting will automatically be adjourned (without any further action or formalities being required, unless the location of the meeting is different) for 1 week, and if the day that falls 1 week later is not a Business Day, to the next succeeding Business Day.

7.7.5 The chairperson of the meeting shall be entitled to extend the 30 minute time period referred to in article 7.7.3 in the circumstances contemplated in section 64(5) of the Act.

7.7.6 If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Shareholders who are entitled to exercise voting rights in relation to the

Company present or represented at the meeting will be deemed to constitute a quorum.

## 7.8 **Shareholders' resolutions**

7.8.1 For an ordinary resolution to be adopted, it must be supported by more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).

7.8.2 For a special resolution to be adopted, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9).

7.8.3 A special resolution is required, in addition to the matters set out in section 65(11) or elsewhere in the Act, for the matters set out in article 5.3.

## 7.9 **Written resolutions**

A resolution of the Shareholders signed by Shareholders collectively holding such number of voting rights as is necessary for the passing of that resolution, within 20 Business Days of such resolution being submitted to Shareholders (including a resolution signed in counterpart), shall be as valid and effective as if it had been adopted at a duly convened meeting of Shareholders.

## 7.10 **Delays caused by identification process**

The provisions of section 64(5) are extended also to apply to delays caused by verification of any Shareholders' identity as contemplated in section 63(1).

## 7.11 **Chairperson**

The chairperson of the Board shall be entitled to chair Shareholders' meetings. If, however, there is no chairperson or if he has notified his inability to attend a meeting or if at any meeting he is not present within ten minutes of the time appointed for the meeting, the Shareholders who are entitled to exercise voting rights in relation to the Company present and represented shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Shareholders shall choose one of their own to be the chairperson of the meeting.

## 8. **Dividend policy**

The Board may adopt a dividend policy in relation to the Ordinary Shares from time to time that is consistent with the IM in so far as it relates to dividends.

## 9. **Directors and officers**

### 9.1 **Composition of the Board**

9.1.1 The Board shall comprise not less than five Directors, provided that at least one Director is the chief executive officer of the Company.

9.1.2 At least 50% of the Directors (and at least 50% of any alternates) must be elected by ordinary resolution of holders of the Company's Securities entitled to exercise voting rights, as contemplated in section 68 read with section 66(4)(b).

9.1.3 At least 75% of the Directors must be non-executive Directors.

9.1.4 Each Director elected as contemplated is entitled to nominate an alternate Director to act in his or her stead for election in terms of Article 9.1.2.

9.1.5 Each alternate Director is entitled to act as a Director in the absence of the Director for whom he or she is an alternate.

9.1.6 Each elected Director of the Company shall, subject to sections 69 and 71, serve a three year term and may subject to the preceding provisions of this Article 9.1, be re-elected after the end of such term.

9.1.7 The manner of electing Directors of the Company is as set out in section 68(2).

9.1.8 The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) is not amended by this MOI.

### 9.2 **Authority of the Board**

9.2.1 Subject to section 66(1) of the Act, the Board may delegate the day to day management of the business of the Company to executive management.

9.2.2 If, at any time, the Company has only one Director, as contemplated in section 57(3), the authority of that Director to act without notice or

compliance with any other internal formalities applies, save that any resolutions must be recorded and sections 73(6) and 73(7) shall apply.

### 9.3 **Round robin resolutions**

9.3.1 A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided each Director has received notice of the matter to be decided upon.

9.3.2 A resolution passed in terms of section 74(1) read with article 9.3.1 shall be deemed to have been passed on the date on which it was signed by the Director last required to achieve the requisite approval, unless the resolution states otherwise.

9.3.3 The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their alternates). An alternate Director shall be entitled to sign such a written resolution if the Director to whom he is an alternate Director is, at the time of the alternate Director's signature, absent from the Republic of South Africa, or is incapacitated.

9.3.4 Article 9.5.3 shall also apply *mutatis mutandis* to round robin resolutions.

### 9.4 **Requisitioning of Board meetings**

The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1)(b), may be exercised in terms of section 73(2), by one Director.

### 9.5 **Electronic participation in Board meetings**

9.5.1 A resolution signed by the number of Directors required to vote in favour of a resolution who were connected by electronic communication at a Board meeting where:

9.5.1.1 all such Directors remained connected for the duration of the electronic meeting;

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

9.5.1.3 the chairperson or any other Director present in person or electronically certified in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of the meeting).

9.5.2 Such resolution may consist of several documents, each of which may be signed by one or more Directors who participated in the electronic meeting.

9.5.3 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in article 9.5.1, the Company shall:

9.5.3.1 deliver to each Director a copy of the resolution proposed with a statement describing the results; and

9.5.3.2 insert a copy of the resolution and statement in the Company's minute book.

9.5.4 **Quorum for Board meetings**

The quorum requirement for a Board meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73(5), without variation.

9.5.5 **Adjournment and postponement of Board meetings**

9.5.5.1 **automatic postponement of a meeting**

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

9.5.5.1.2 The 30 minute limit may be extended for a reasonable period not exceeding two hours by the chairperson of the meeting.

9.5.5.2 **automatic adjournment of a meeting**

If at the time a matter is to be considered at a Board meeting, a quorum is not present and there is no other business on the agenda

which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for one week.

**9.5.5.3 voluntary postponement of a particular matter to later in the Board meeting**

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

**9.5.5.4 further notice required for postponed or adjourned meeting**

Further notice of a Board meeting that is postponed or adjourned is not required unless the location for the meeting is different from:

9.5.5.4.1 the location of the postponed or adjourned meeting; or

9.5.5.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting; or

9.5.5.4.3 it is necessary to inform Directors of the availability of participation in the postponed or adjourned meeting by electronic communication.

**9.5.5.5 deemed quorum at a postponed or adjourned meeting**

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

**9.5.5.6 continuing quorum during meeting**

After a quorum has been established for a Board meeting or for a matter to be considered at a Board meeting, the Board meeting may continue or the matter may be considered.

#### 9.5.5.7 **adjournment by Directors**

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

#### 9.5.6 **voting at Board meetings**

Subject to the exclusions in the Act, each Director has one vote on a matter before the Board.

#### 9.5.7 **approval of resolutions**

A Board resolution shall be approved by a majority of the votes cast on that resolution.

#### 9.5.8 **Written resolutions**

A resolution of the Directors signed by Directors collectively holding such number of voting rights as is necessary for the passing of that resolution, within 20 Business Days of such resolution being submitted to Directors (including a resolution signed in counterpart), shall be as valid and effective as if it had been adopted at a duly convened meeting of Directors.

#### 9.5.9 **appointment of chairperson**

The chairperson of the Board shall be elected by the Directors annually at the first Board meeting of the Company's financial year, provided that if the chairperson is absent from a meeting for any reason, the Directors shall elect one of their number to be chairperson of that meeting.

### 9.6 **Remuneration of Directors and members of Board committees**

9.6.1 The Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or members of Board committees as may have been determined from time to time by special resolution within the previous 2 years.

9.6.2 In addition, the Directors shall be entitled to all reasonable expenses in travelling (including hotels or accommodation) to and from meetings of the Directors and Shareholders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including hotels or



accommodation) to and from meetings of the members of the Board committees.

9.6.3 A Director may hold office or be employed in any other capacity in the Company (other than as a Director or Alternate Director) and is entitled to be paid such remuneration therefor as a disinterested quorum of Directors may from time to time determine.

9.6.4 The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to 30(6)(g) of the Companies Act to any executive Directors.

## 9.7 **Indemnification of Directors**

9.7.1 The authority of the Company to advance expenses to a Director, or indemnify a Director, and to purchase insurance to protect the Company, or a Director, shall be as contemplated in the Act.

9.7.2 Article 9.7.1 read with section 78 of the Act, shall apply *mutatis mutandis* to the secretary of the Company, Prescribed Officers, employees of the Company and members of a committee of the Board (in the event where such persons are not members of the Board), as if such persons were Directors for the purposes of section 78, to the extent permitted in terms of the Act.

## 9.8 **Board Committees**

### 9.8.1 **General**

9.8.1.1 The Board may appoint any number of committees of Directors and may delegate to any committee any of the authority of the Board, as more fully contemplated section 72(1)(a) and (b). Except to the extent contemplated in this MOI or to the extent that a resolution establishing a committee provides otherwise, the committee may include persons who are not Directors, as more fully contemplated in section 72(2)(a), but any such person must not be ineligible or disqualified to be a Director in terms of section 69 and no such person has a vote on a matter to be decided by the committee.

9.8.1.2 Except to the extent contemplated in this MOI or a resolution establishing a committee provides otherwise, the committee may consult with or receive advice from any person and has the full authority of the Board in respect of any matter referred to it, as more fully contemplated in section 72(2)(b) and (c).

9.8.1.3 If and for so long as it is required to do so in terms of the Act, the Company shall appoint all committees that it is required to appoint.

## 9.8.2 **Investment Committee**

The Board shall appoint an Investment Committee in accordance with the provisions of article 9.8.1 above. The composition and responsibilities of the Investment Committee shall be determined by the Board, on a basis that is consistent with the IM.

## 10. **General provisions**

### 10.1 **Winding up**

10.1.1 If the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:

10.1.1.1 to pay any Special Dividend to the "A" Class Ordinary Shareholder which has accrued but not been declared or paid;

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

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

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

10.1.2 In a winding up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution of the Company, be paid to the Ordinary Shareholders of the Company *in specie*, or may, with the same sanction, be vested in

trustees for the benefit of such Ordinary Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

## 10.2 **Delivery and publication of notices and certain documents**

- 10.2.1 All notices and documents required to be published as contemplated in sections 15(3)(a) or 17(1)(a) of the Act shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11) read with Regulation 7 and Table CR3, to each Shareholder to any of his registered addresses recorded in the Securities Register.
- 10.2.2 If a Shareholder has not notified an address in terms of article 5.9.1, he shall be deemed (for all purposes, including for the purposes set out in article 10.2.1 above) to have waived his right to be served with notices.
- 10.2.3 All notices with respect to any Shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of article 5.9.2, as the case may be, and notice so given shall be sufficient notice to all the holders of such Shares.
- 10.2.4 The notice may be given by the Company to the persons entitled to a Share in consequence of the death or insolvency of a Shareholder, or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been supplied) by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.
- 10.2.5 Where a notice is sent by post, the post office shall be the agent for the Shareholder and the Shareholder shall, from the time and date of delivery of the notice to the post office, bear all risks associated with that notice including of non-delivery or late delivery of the notice.
- 10.2.6 A notice given to any Shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.
- 10.2.7 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

**Annexe A**

**Rights, limitations and other terms relating to the Ordinary Shares**

**1. Rights attaching to Ordinary Shares**

1.1 All the Ordinary Shares of the Company shall rank *pari passu* in all respects.

1.2 All Ordinary Shareholders shall have the right to:

1.2.1 be entered in the Securities Register of the Company as the registered holder of an Ordinary Share;

1.2.2 attend, participate in, speak at and vote on any matter to be considered at, any meeting of Ordinary Shareholders;

1.2.3 receive any distribution by the Company, if and when declared on the Ordinary Shares, to be made in proportion to the number of Ordinary Shares held by each Ordinary Shareholder;

1.2.4 receive a portion of the total net assets of the Company remaining upon its liquidation; and

1.2.5 any other rights attaching to the Ordinary Shares in terms of the Act or any other law.

## Annexe B

### Rights, limitations and other terms relating to the "A" Class Ordinary Share

#### 1. Definitions and interpretation

1.1 Expressions defined in the MOI to which this Annexe B is attached, shall bear the same meaning in this Annexe B, as that assigned to them in the MOI. The following additional words and phrases shall have the meanings in this Annexe B ascribed thereto below:

- 1.1.1 **"Annual Shareholder Return"** means at any balance sheet date of the Company, the total return to Shareholders who held their shares for the 12 preceding months, resulting from movements in NAV and from Shareholder distributions that are paid to Shareholders, adjusted downwards for operational expenses including the Executive's salary but excluding the Special Dividend and taxes;
- 1.1.2 **"Chrissen"** means Chrissen Beleggings Proprietary Limited, registration number 1998/002641/07, a private company incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.3 **"Cumulative Alpha"** means, at any balance sheet date of the Company, the Total Shareholder Value minus the Total Benchmark Value, unless the Total Benchmark Value is greater than the Total Shareholder Value, in which case Cumulative Alpha means zero;
- 1.1.4 **"Employment Date"** means the date on which the Executive was employed by the Company, being 1 April 2019;
- 1.1.5 **"Executive"** means Christo Claassen, identity number 6902055020086;
- 1.1.6 **"Growth Factor"** means Annual Shareholder Return plus one;

- 1.1.7            **"Incremental Alpha"** means, at any balance sheet date of the Company, the Cumulative Alpha in respect of the most recent financial year minus the sum of Incremental Alphas in respect of the period from the Employment Date to the year preceding the balance sheet date, provided that Incremental Alpha is equal to or greater than zero;
- 1.1.8            **"Special Dividend Percentage"** means 20%;
- 1.1.9            **"Termination Date"** means the date upon which the Executive ceases to be an employee of the Company, for any reason whatsoever;
- 1.1.10           **"Total Benchmark Value"** means, subject to paragraph 1.2 below, at any balance sheet date of the Company, any amount raised in new equity as a result of Raise 1, escalated annually utilising all preceding Hurdle Rates, on a cumulative basis;
- 1.1.11           **"Total Shareholder Return"** means, at any balance sheet date of the Company, the product of the Growth Factor at that balance sheet date and at all previous balance sheet dates after the Employment Date, minus one; and
- 1.1.12           **"Total Shareholder Value"** means, subject to paragraph 1.2 below, at any balance sheet date of the Company, the amount in fact raised in new equity as a result of Raise 1, multiplied by one plus the Total Shareholder Return as at that balance sheet date.
- 1.2              The definitions of Total Shareholder Value and Total Benchmark Value in paragraph 1.1 of this Annexe A contemplate a single equity raise, being Raise 1, in the calculation of Cumulative Alpha and Incremental Alpha. The calculation of Cumulative Alpha and Incremental Alpha shall be adjusted by the Company to account for additional equity raises (to the extent applicable) by making

appropriate adjustments to Total Shareholder Value and to Total Benchmark Value to ensure that equity contributions are not treated as investment returns. An illustrative example hereof is attached as Annexe D.

## 2. **General**

The "A" Class Ordinary Share shall confer upon the "A" Class Ordinary Shareholder only the rights and privileges provided for in this Annexe B and, for the avoidance of doubt, the "A" Class Ordinary Share shall not confer upon the "A" Class Ordinary Shareholder any rights:

- 2.1 to receive dividends or distributions other than Special Dividends; or
- 2.2 to attend, speak at and vote at general meetings of the Company save as set out in paragraph 5 of this Annexe B.

## 3. **Special Dividends**

- 3.1 The "A" Class Ordinary Shareholder shall, subject to the requirements of the Act, be entitled to receive an annual Special Dividend calculated in accordance with the following formula:

*Special Dividend Percentage × Incremental Alpha*

- 3.2 The Special Dividend shall be calculated annually in arrears in respect of every financial year of the Company, effective as of the relevant balance sheet date.

## 4. **Share Repurchase**

The Company shall, subject to the requirements of the Act, be entitled to repurchase the "A" Class Ordinary Share from the "A" Class Ordinary Shareholder at the issue price of the "A" Class Ordinary Share at any time after the later of:

- 4.1 the Termination Date; or
- 4.2 the date on which the final Special Dividend that has accrued is declared and paid, if on the Termination Date a Special Dividend has accrued but has not been declared and paid.

## 5. Meetings and Voting

5.1 The "A" Class Ordinary Shareholder shall, subject to the requirements of the Act, be entitled:

5.1.1 to receive notice of, and to be present at any meeting of the Shareholders; and

5.1.2 to receive notice of, and to participate in any resolution of Shareholders contemplated in section 60 of the Act,

if a resolution is proposed which affects the rights, privileges, limitations or other terms attaching to the "A" Class Ordinary Share.

5.2 The "A" Class Ordinary Shareholder shall not (in its capacity as "A" Class Ordinary Shareholder) be entitled to vote at or participate in, either in person, by representation or by proxy, any meeting of Shareholders or resolution of Shareholders contemplated in section 60 of the Act, unless a resolution is proposed which affects the rights, privileges, limitations or other terms attaching to the "A" Class Ordinary Share.

5.3 The "A" Class Ordinary Share shall carry one vote in accordance with section 37(2) of the Act.

## 6. Ranking

Notwithstanding anything to the contrary contained in this Annexe B, the "A" Class Ordinary Shareholder's entitlement to the Special Dividend shall at all times rank in priority to any distributions in respect of the Ordinary Shares.

## 7. Corporate transactions and restructurings

Where the Company undergoes a merger, amalgamation, recapitalisation, restructuring or similar transaction, including any transaction where the Shareholders dispose of their shares in exchange for shares in a new entity, the board shall propose any amendments required to the terms of the "A" Class Ordinary Share as a result of such transaction on the basis of the commercial principles set out in these terms, or alternatively, propose the creation of a new instrument to be issued to the "A" Class Ordinary Shareholder to give effect to the same commercial principles. The "A" Class



Ordinary Shareholder shall be obliged to take all steps and pass all resolutions necessary to approve the required changes.

**8. Restriction on sale or encumbrance**

The "A" Class Ordinary Shareholder shall not be entitled to sell, encumber or otherwise dispose of the "A" Class Ordinary Share, except with the prior written consent of the Company.

**9. No Conflict**

If there is any conflict or inconsistency between this Annexe B and any other provision of the MOI, the provisions of this Annexe B shall prevail to the extent of the inconsistency.

## Annexe C

### Anti-dilution illustration

Illustrative example of anti dilution mechanism	ZAR Million	
<i>Inputs</i>		
Corporate income tax	28.0%	Assume Raise 2 occurs 12 months after Raise 1
Prime Rate	10.25%	
Premium over Prime Rate	-2.0%	As defined in Opportunity Cost
Earned Interest Rate	5.0%	
Raise 1	65.0	
Operating Cost before tax for 12 month period	1.7	Round 1 raise cost of R1.0m + Year 1 Budget of R0.73 million + Year 1 remuneration R0
Millions of shares on issue immediately prior to Raise 2	6.5	
NAV immediately prior to Raise 2	65.0	Assume it equal Raise 1
<i>Calculations</i>		
Operating Cost for 12-month period	1.2	
Opportunity Cost for 12 month period	2.1	
Capitalised Cost for 12 month period	3.4	
<b>Issue price per share in Raise 2 (Rand)</b>	<b>10.52</b>	Sum (NAV, Capitalised Cost) / shares on issue prior to Raise 2

Annexe D

“A” Class Ordinary Share special dividend illustration

Calculation inputs

**Special Dividend assumptions**

NAV at inception (R Million)	200
Special Dividend Percentage	20.00%
Hurdle Rate	15.00%

**Fortuna share performance parameters**

Mean annual return	25.00%
Standard deviation of annual return	15.00%

**Subsequent equity raises**

MOI definition	Raise 2	Raise 3	Raise 4								
Quantum of equity raised (assume end of year)	200	300	300	-	-	-	-	-	-	-	-

Calculation of Special Dividend	Average	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28
Annual Shareholder Return	25.9%	15.3%	28.8%	32.0%	7.4%	24.5%	52.4%	16.5%	14.3%	57.3%	10.4%
Growth Factor		1.15	1.29	1.32	1.07	1.25	1.52	1.17	1.14	1.57	1.10
Total Shareholder Return		15.3%	48.5%	96.1%	110.6%	162.3%	299.7%	365.8%	432.4%	737.4%	824.1%
Total Shareholder Value - Opening (R Million)		200.0	430.5	854.6	1428.4	1534.6	1911.1	2912.3	3394.0	3879.1	6101.1
Total Shareholder Value - Contribution from Annual Shareholder Return (R Million)		30.5	124.1	273.8	106.2	376.4	1001.2	481.7	485.1	2222.0	631.6
Total Shareholder Value - Contribution from equity raisings (R Million)		200.0	300.0	300.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total Shareholder Value (R Million)</b>	<b>200.0</b>	<b>430.5</b>	<b>854.6</b>	<b>1428.4</b>	<b>1534.6</b>	<b>1911.1</b>	<b>2912.3</b>	<b>3394.0</b>	<b>3879.1</b>	<b>6101.1</b>	<b>6732.7</b>
Total Benchmark Value - Opening (R Million)		200.0	430.0	794.5	1213.7	1395.7	1605.1	1845.8	2122.7	2441.1	2807.3
Total Benchmark Value - Contribution from Hurdle Rate (R Million)		30.0	64.5	119.2	182.1	209.4	240.8	276.9	318.4	366.2	421.1
Total Benchmark Value - Contribution from equity raisings (R Million)		200.0	300.0	300.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total Benchmark Value (R Million)</b>	<b>200.0</b>	<b>430.0</b>	<b>794.5</b>	<b>1213.7</b>	<b>1395.7</b>	<b>1605.1</b>	<b>1845.8</b>	<b>2122.7</b>	<b>2441.1</b>	<b>2807.3</b>	<b>3228.4</b>
Cumulative Alpha (R Million)		0.5	60.1	214.7	138.9	306.0	1066.4	1271.3	1438.0	3293.8	3504.3
Incremental Alpha (R Million)		0.5	59.6	154.6	0.0	91.2	760.5	204.9	166.7	1855.8	210.5
<b>Special Dividend (R Million)</b>	<b>0.1</b>	<b>11.9</b>	<b>30.9</b>	<b>0.0</b>	<b>18.2</b>	<b>152.1</b>	<b>41.0</b>	<b>33.3</b>	<b>371.2</b>	<b>42.1</b>	
Special Dividend as % of opening outstanding shares	2.0%	0.0%	2.1%	2.7%	0.0%	1.0%	5.2%	1.2%	0.9%	6.1%	0.6%