

Republic of South Africa

Companies Act, No 71 of 2008, as amended

**MEMORANDUM OF INCORPORATION FOR A PRIVATE COMPANY**

Name of company: **BELL EQUIPMENT PROPRIETARY LIMITED**

Registration No.: 1968/013656/07

This Memorandum of Incorporation ("**MOI**") was adopted by Special Resolution passed on \_\_\_\_\_ 2024, in substitution for the existing MOI of the Company.

## 1. INTERPRETATION

In this MOI :

- 1.1. words that are defined in the Companies Act but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires :
  - 1.2.1. "**Board**" means the board of directors of the Company, from time to time;
  - 1.2.2. "**Companies Act**" means the Companies Act, No 71 of 2008, as amended;
  - 1.2.3. "**Company**" means Bell Equipment Proprietary Limited or by whatever other name it may be known from time to time;
  - 1.2.4. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 37 (*Notices*) and the Companies Act;
  - 1.2.5. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by a Shareholder or a Director or an Alternate Director;
  - 1.2.6. "**Existing Minorities**" means Peregrine Capital Proprietary Limited (with registration number 1998/004238/07), Zenithar Proprietary Limited (with registration number 2023/542374/07) and Peresec Prime Brokers Proprietary Limited (with registration number 1999/542374/07);
  - 1.2.7. "**Funding Arrangements**" means the funding arrangements between Investec and IAB described in clause 14 (*Funding Arrangements*);
  - 1.2.8. "**Group**" means the Company and its subsidiaries;
  - 1.2.9. "**IAB**" means IA Bell and Company Proprietary Limited (registration number: 1964/005775/07);
  - 1.2.10. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act or as contemplated in clause 22.4 which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers;
  - 1.2.11. "**Investec**" means Investec Bank Limited (registration number: 1969/004763/06) or by whatever other name it may be known from time to time;

- 1.2.12. **"MOI"** means this memorandum of incorporation;
- 1.2.13. **"Present"** means present at a meeting as contemplated in the definition of "present at a meeting" in section 1;
- 1.2.14. **"Round Robin Resolution"** means :
- 1.2.14.1. as regards resolutions of Shareholders, a resolution passed or election conducted in accordance with section 60, including a resolution signed in counterparts;
- 1.2.14.2. as regards resolutions of Directors, a resolution passed in accordance with clause 34.3;
- 1.2.15. **"Shares"** means the shares in the authorised, and where appropriate, the issued share capital of the Company; and
- 1.2.16. **"Writing"** includes Electronic Communication but as regards any Shareholder, only to the extent that such Shareholder has furnished the Company an Electronic Address, or if it has not, to the extent that the Electronic Communication can be conveniently printed within a reasonable time and at a reasonable cost, and **"Written"** shall be construed accordingly;
- 1.3. references to Shareholders represented by proxy shall include Shareholders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4. references to Shareholders entitled to vote Present or acting in person shall include Juristic Persons represented by duly authorised representative/s or acting in the manner Prescribed in the Companies Act;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act, unless the context indicates otherwise;
- 1.6. the headings are for purposes of reference and convenience only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular include the plural and *vice versa*, words importing any one gender include the other of masculine, feminine and neuter and words importing persons shall include created entities (corporate or not) and the state;
- 1.8. if :
- 1.8.1. any term is defined in any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the defined term has limited

application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;

- 1.8.2. any term is defined in any annexure to this MOI, the term so defined, unless it expressly provides in that annexure that the defined term in question shall bear the meaning ascribed to it for all purposes in the annexure and in this MOI, will have limited application to that annexure only;
- 1.8.3. any annexure to this MOI contains any rules of interpretation which conflict with the rules of interpretation contained in this MOI, the former shall prevail for purposes of the annexure;
- 1.9. 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;
- 1.10. if and for so long as the Company might be a Wholly-owned Subsidiary, nothing shall be read or interpreted as removing or restricting the rights granted to such a company in terms of section 57(2);
- 1.11. any reference to an enactment is to that enactment as at the date on which this MOI is adopted and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date on which this MOI is adopted. If as a result of an amendment or re-enactment that section number changes the relevant provision of this MOI shall be read as if it referred to the correct section, without the necessity for an actual amendment;
- 1.12. if the provisions of this MOI are in any way inconsistent with 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; and
- 1.13. to the extent that any provisions of this MOI are based on any Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations and any of those provisions are amended in such a way that the provisions of this MOI would contravene the Companies Act or the Regulations, the Board is authorised to amend this MOI to reflect such amendments, in addition to its rights to amend the MOI in terms of section 17, and in so doing eliminate the conflict between any provision of this MOI and the Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations as amended, the relevant provision of this MOI will be void to the extent that it contravenes, or is inconsistent with the amended Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations, as the case may be.

## 2. PRIVATE COMPANY

### 2.1. The Company :

2.1.1. is a Profit Company;

2.1.2. is prohibited from offering any of its Securities to the public; and

2.1.3. has restrictions on the transferability of its Securities as set out in clause 8 (*Restrictions on Transfer of Securities*),

and accordingly it is a Private Company.

2.2. The provisions of clauses 2.1.2 and 2.1.3 referring to Securities, presuppose that other Securities have been created, subject to clause 6.1 authorising same, but that may not necessarily be the case.

## 3. LIMITATIONS ON THE POWERS AND CAPACITY OF THE COMPANY

The Company has the powers and capacity of an Individual save to the extent of the limitations set out in this MOI.

## 4. LIMITATIONS ON THE POWERS OF DIRECTORS

4.1. The Board is not entitled to make any rules, as contemplated in sections 15(3) to (5).

4.2. No individual Director may conclude any agreements or commit the Company to any liabilities or otherwise purport to represent the Company or any of its subsidiaries unless it falls within the scope of the actual authority conferred upon him/her by the Board.

## 5. THRESHOLDS AND REQUIREMENTS REGARDING SHAREHOLDERS' RESOLUTIONS

5.1. An Ordinary Resolution, save to the extent otherwise expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution. A Special Resolution, save to the extent otherwise expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution, provided that for so long as the Existing Minorities and/or their Permitted Transferees between them hold them hold more than 10% (ten percent) of the issued Share capital of the Company, the resolution shall in addition require to be approved by at least one Existing Minority or Permitted Transferee.

5.2. The Shareholders undertake to procure that the Company shall not engage in, agree to, perform or undertake any of the following matters except as may be approved or agreed to by

Shareholders who at the relevant time hold at least 90% (ninety percent) of the entire issued share capital of the Company, and the directors' powers shall be limited accordingly :

- 5.2.1. the allotment and/or issue of any Shares, or Securities convertible into Shares, save in the event of a *pro rata* rights issue;
- 5.2.2. the grant of options as contemplated in section 42;
- 5.2.3. the issue of any secured or unsecured debt instruments which afford special privileges to vote at Shareholders meetings or to appoint Directors or the grant of any other rights;
- 5.2.4. the conclusion of any profit sharing arrangements with, or share option, or share incentive or other incentive scheme for the benefit of, employees, consultants or directors of the Company or any of its subsidiaries;
- 5.2.5. the grant of any loan by the Group to any person, other than loans to other members of the Group in the ordinary course of business;
- 5.2.6. the issue by any company in the Group of any guarantee (including any suretyship or indemnity) for the obligations of any Person, other than for the obligations of any company comprising of the Group in the ordinary course of business;
- 5.2.7. any increase of the authorised and/or issued share capital of any Group company (other than by way of a *pro rata* rights issue, if there is more than one shareholder, or in the case of a wholly owned subsidiary, other than to the holding company);
- 5.2.8. the modification of any preference, rights, limitations and other terms associated with any shares in any Group company;
- 5.2.9. save as provided for in this MOI, the conclusion of any transaction of whatsoever nature having a value above R100,000.00.00 (one hundred thousand rand) (but limited to R1,000,000.00 (one million rand) in any financial year of the Group), between a Group company and a Director or Shareholder of the Company, an immediate relation of any Director or Shareholder, or any related Person thereto; and
- 5.2.10. subject to clause 1.13, changes to the MOI of the Company.

## 6. AUTHORISED SHARES

- 6.1. The Company is authorised to issue 100,000,000 (one hundred million) ordinary no par value Shares (which includes ordinary Shares already issued at any time) which shall :

- 6.1.1. subject to clause 21.1, in respect of every matter that may be decided by voting have 1 (one) Voting Right per ordinary Share;
  - 6.1.2. if this clause 6 is amended so as to authorise other classes of Shares to be issued, rank after all other classes of Shares which rank ahead of the ordinary Shares as regards Distributions; and
  - 6.1.3. be entitled to receive the net assets of the Company upon its liquidation (unless this clause 6 is amended so as to authorise other classes of Shares to be issued and such other class of Shares expressly has that right instead).
- 6.2. Subject to the provisions of clause 5.2.7, the Board shall not, have the power to increase or decrease the number of Shares as contemplated in section 36(2)(b) or section 36(3)(a).
  - 6.3. Subject to the provisions of clauses 5.2.7 and 5.2.8, the Board shall not, have the power to amend the classification of Shares (including determining rights and preferences) or to classify unclassified Shares as contemplated in section 36(2)(b) or sections 36(3)(b) to (d) unless this MOI is first amended by a Shareholder resolution in accordance with clause 5.2.10, to permit a class of Shares other than Ordinary Shares, and to cater for such class of Shares.

## 7. LIMITED AUTHORITY OF THE BOARD TO ALLOT AND ISSUE SECURITIES

- 7.1. Subject to the provisions of clause 5.2.1 and clause 5.2.7, the Board shall not have the power to issue authorised Shares, to grant options relating to such Shares or to grant any other rights exercisable for such Shares. Notwithstanding anything to the contrary in this clause 7, the Board may issue capitalisation ordinary Shares (including offering a cash payment *in lieu* of awarding a capitalisation ordinary Share) in accordance with section 47.
- 7.2. Subject to clause 5.2.3, the Board shall not have the power to allot or issue secured or unsecured debt instruments as contemplated in section 43.

## 8. RESTRICTIONS ON TRANSFER OF SECURITIES

- 8.1. Shares may only be transferred in accordance with the provisions of this clause 8 (*Restrictions on Transfer of Shares*) and clauses 9 (*Pre-emption on Transfer*), 11 (*Value*), 12 (*Come-Along*) and 13 (*Tag-Along*).
- 8.2. The Board :
  - 8.2.1. may, at any time prior to entering a Person's name in the Company's Securities Register, refuse to permit the transfer by a holder of its Securities to such Person except where the MOI expressly permits that transfer; and

- 8.2.2. must refuse to permit a transfer by a holder of its Securities to any Person if this MOI would be breached.

## 9. PRE-EMPTION ON TRANSFER

- 9.1. For the purposes of this clause 9 :

- 9.1.1. "**Frustration**" means the frustration, or attempted frustration of the application of the pre-emptive right in clause 9 (*Pre-emption on Transfer*) in relation to any Shareholder as transferor (including avoiding a transfer, which would trigger the pre-emptive right, by any Shareholder of any of its Sale Equity, whilst in effect achieving an equivalent result);
- 9.1.2. "**Controlling Shareholder**" means in respect of any company which may be or become a shareholder, the registered holders of the shares in such company as at the date on which that company acquires or is allotted shares in the company;
- 9.1.3. an "**Immediate Relation**" of a Shareholder means a Person who is :
- 9.1.3.1. that Shareholder's spouse;
- 9.1.3.2. a child (including an adopted child) of that Shareholder;
- 9.1.3.3. that Shareholder's descendant/s (including the descendants of an adopted child);
- 9.1.4. "**Permitted Transferee**" means a person to whom Shares may freely be transferred in terms of clause 9.3;
- 9.1.5. "**Relevant Details**" means the name of the proposed transferee and, if applicable, the type of created entity, its registration details, the details of those with beneficial interests and voting interests therein (whether directly or indirectly), its beneficiaries and its Directors or trustees;
- 9.1.6. "**Sale Equity**" means the relevant Shares and the *pro rata* portion of the Loan Account (if any);
- 9.1.7. "**Transfer**" for the purposes of clauses 9 (*Pre-emption on Transfer*), and clauses 12 (*Come-Along*) and 13 (*Tag-Along*), to the extent that reference is made in those clauses to clause 9 (*Pre-emption on Transfer*), means a sale, disposal or transfer of Sale Equity, but excluding, for the avoidance of doubt, any transfer contemplated in the definition of a Trigger Event;



- 9.1.8. **"Trigger Event"** means a Shareholder (**"Offering Shareholder"**) ceasing to be controlled by the Controlling Shareholders as at the date upon which it became a Shareholder provided that in the case of IAB, IAB ceasing to be controlled by all or any of its Shareholders as at the date of adoption of this MOI, or any Permitted Transferee, provided further that in the case of Shares owned by the Existing Minorities, any transfers amongst these minorities, as well as subsidiaries of these entities, shall not constitute a Trigger Event;
- 9.1.9. **"Value"** means the fair value of a Share as agreed between the relevant Shareholders, or failing that, the fair value as determined in accordance with the provisions of clause 11 (*Value*).
- 9.2. A Shareholder may sell, Transfer or otherwise dispose of the Sale Equity held by it in the Company, including by way of donation, dividend or by way of the terms of a will, only if, in one and the same transaction, it likewise sells, disposes of or alienates a *pro rata* share of its claim against the Company on loan account (**"Loan Account"**), in terms of this clause 9 (*Pre-emption on Transfer*) and clause 10 (*Forced Sales*) and any other provision of this MOI permitting Transfer. Accordingly, all references in this clause, transmission and forfeiture provisions of the MOI to the offer, sale, disposal, alienation, transfer or transmission of a Share shall, unless the context otherwise requires, be deemed to apply also to the Loan Account of the holder of such Share. Likewise, no Loan Account may be Transferred without at the same time Transferring the *pro rata* number of Shares
- 9.3. Sale Equity may freely transferred without restriction :
- 9.3.1. by a shareholder of IAB who is a natural person to a trust established primarily for the benefit of the natural concerned and/or any of his/her Immediate Relations;
- 9.3.2. by a Shareholder of IAB to any other shareholder of IAB;
- 9.3.3. as between the Existing Minorities;
- 9.3.4. by an Existing Minority to any of its subsidiaries or any of the subsidiaries of any other of the Existing Minorities; or
- 9.3.5. by IAB to Investec or a person nominated by Investec if it is in pursuance of the exercise by Investec of its security rights under the Funding Arrangements.
- 9.4. If it is intended to Transfer Sale Equity (other than in terms of any provision in this MOI permitting Transfer) the disposer shall first offer the Sale Equity in Writing to the other Shareholders, stating the price (which shall sound in money in South African currency) and the terms of payment required by it (which will always be subject to clause 9.10), and such remaining terms and conditions as may be stipulated in the Written offer (provided that such

remaining terms and conditions shall be capable of performance by the other Shareholders, or to the extent that they are not, the disposer shall stipulate a reasonable monetary equivalent in lieu thereof) and no other terms or conditions shall be stipulated save for those contemplated in clauses 9.9, 9.10, 9.13 and 9.14. If the disposer intends (if the offer is not accepted by the other Shareholders) Transferring the Sale Equity to a particular Person (which for the avoidance of doubt, includes any other Shareholder), the disposer shall, when it offers the Sale Equity to the Shareholders, at the same time disclose the Relevant Details.

- 9.5. If, within 30 (thirty) Business Days after the receipt of the offer (during which period the offer shall be irrevocable), it is not accepted in Writing in respect of all the Sale Equity offered or such lesser portion of the Sale Equity offered as the disposer may agree to in Writing, by any of the other Shareholders, if more than one, proportionately to their shareholdings, or in proportions agreed in Writing amongst them, the disposer may, within a further 90 (ninety) Business Days, but not thereafter without again making an offer to the offeree Shareholders in terms of clause 9.4, Transfer the Sale Equity offered (but not a lesser portion) to the named Person only, at a price not lower and on terms and conditions not more favourable to such named Person than the price at and terms and conditions on which the Shareholders were entitled to take Transfer of them.
- 9.6. If a particular Person was not named in the offer or the acquirer is not a Shareholder, the disposer shall notify the other Shareholders in Writing of the proposed acquirer and all Relevant Details, within 5 (five) Business Days of finding an acquirer. If such acquirer has not been found by the disposer within 21 (twenty one) Business Days of the expiry of the 30 (thirty) Business Days period contemplated in clause 9.5, the disposer shall if it wishes to Transfer the Sale Equity, be obliged to recommence entirely the procedure in clause 9.4. If the disposer notifies the other shareholders of the proposed acquirer and furnishes it with all the Relevant Details within the said 5 (five) Business Days period, the offer shall be deemed to have been made again to the other Shareholders for a period of 48 (forty eight) hours from such notification (during which it shall be irrevocable). If it is not accepted in Writing within 48 (forty eight) hours in respect of all the Sale Equity offered, by any of the other Shareholders, if more than one, proportionately to their shareholding, or in proportions agreed in Writing amongst them, the disposer may Transfer the Sale Equity offered (but not a lesser portion) (provided such disposal occurs within 30 (thirty) Business Days of the expiry of the 48 (forty eight) hour period contemplated above, but not thereafter without again making an offer to the offeree Shareholders in terms of clause 9.4), to such named Person at a price not lower and on terms and conditions not more favourable to such named Person than the price at and terms and conditions and on which the other Shareholders were entitled to purchase them. The fact that the disposer gives any third Person or the proposed acquirer, as the case may be, normal warranties (excluding any profit warranty) shall constitute terms more favourable than those given to the remaining Shareholders if they are not given all such warranties.

- 9.7. If the offer referred to in clause 9.4 is accepted in Writing in respect of all the Sale Equity offered or such lesser portion offered as the disposer may agree to in Writing, by any of the other Shareholders, the resulting Transfers shall be indivisibly interrelated, the intention being to ensure that if any one of the offerees breaches its obligations pursuant to the Transfer resulting from the acceptance of the offer, and if as a result the disposer elects to cancel any such transaction, it shall be entitled (but not obliged) to cancel all the other transactions with the other offeree Shareholders, even though they may have complied with their obligations.
- 9.8. If whilst an offer in terms of clause 9.4 or clause 9.6 is pending, the provisions of clause 10 (*Forced Sales*) become operative in respect of the Sale Equity so offered, then at the election of the remaining Shareholders (which election shall be made in Writing delivered to the offeror within 48 (forty eight) hours after the provisions of clause 10 (*Forced Sales*) become operative) the offer in terms of clause 9.4 or clause 9.6 shall be deemed to be withdrawn and substituted with the deemed offer in terms of clause 10 (*Forced Sales*).
- 9.9. Any Transfer to any non-Shareholder shall be subject to the condition that the transferee shall undertake in Writing not to operate in competition to the principal business of the Company and/or its Subsidiaries, if any, whilst it is a Shareholder.
- 9.10. If the approval of any competition authority or any other Regulatory Authority is required for the Transfer of any Sale Equity, the agreement between the parties shall be subject to a suspensive condition that the approval of the relevant competition authority or other Regulatory Authority is obtained within a time period that is reasonable in the circumstances. The parties shall co-operate with each other in order to present the necessary filing to the relevant competition authority or other Regulatory Authority as soon as reasonably possible.
- 9.11. Except as provided in clauses 9.4, 9.6 and 10 (*Forced Sales*) or any other express provision of this MOI permitting Transfers and except for any existing pledge of IAB's Sale Equity or any part of it and except as may be necessary by virtue of the exercise by Investec of its security rights under the Funding Arrangements, Sale Equity may not be Transferred or pledged without the Written consent of all the Shareholders or the sanction of a resolution passed unanimously at a meeting at which all Shareholders were Present, or by way of a Round Robin Resolution approved by all the Shareholders.
- 9.12. The Shareholders agree not to do anything which amounts to Frustration and the Shareholders agree that if Frustration arises the provisions of clause 10 (*Forced Sales*) will become applicable.
- 9.13. Notwithstanding anything to the contrary herein contained, no Sale Equity shall be Transferred to a non-Shareholder unless such non-Shareholder has furnished an Electronic Address by way of a Written notice delivered to the Company.

9.14. A disposer of Sale Equity as contemplated in this clause 9 (*Pre-emption on Transfer*) shall be entitled to stipulate as a condition of such Transfer that :

9.14.1. the disposing Shareholder shall be released *pro rata* to the number of Shares disposed of, as a surety or guarantor or indemnitor on behalf of the Company, subject to the acquirer(s) of the Shares in question binding itself as surety or guarantor or indemnitor in the disposing Shareholder's stead;

9.14.2. if the release contemplated in clause 9.14.1 cannot be achieved, or pending such release being implemented, the disposing Shareholder shall be indemnified by the acquirer of the Shares *pro rata* to the number of Shares disposed of against any claims made against the disposing Shareholder by reason of such suretyship, guarantee or indemnity. Such acquirer shall be liable for any amount payable in terms hereof together with value-added tax thereon.

9.15. The transferee of any Sale Equity acquired pursuant to this clause 9 (*Pre-emption on Transfer*), shall pay the securities transfer tax payable thereon.

9.16. At any time, the remaining Shareholders shall be entitled, within 7 (seven) Business Days of a request therefor, to a copy of the suite of Written agreements pertaining to the Transfer of Sale Equity, or if the agreement was oral, a Written confirmation, signed by the disposer and the acquirer, of the terms of the agreement, provided that the remaining Shareholders shall be obliged to keep such information and documentation confidential, save to the extent necessary to enforce their rights under this clause 9 (*Pre-emption on Transfer*).

9.17. The onus shall rest on the disposer to show that any acquirer or offeree was *bona fide*.

## 10. **FORCED SALES**

10.1. As soon as a Trigger Event occurs, the Offering Shareholder (but excluding IAB if the Trigger Event occurred by virtue of Investec exercising its rights under its security) shall be obliged to notify the remaining Shareholders (the "**Interested Shareholders**") in Writing of such an occurrence.

10.2. Within 60 (sixty) Business Days after the later of :

10.2.1. receipt by the Interested Shareholders of the notice contemplated in clause 10.1;  
or

10.2.2. any of the Interested Shareholders becomes aware of the occurrence of a Trigger Event,

any one or more of the Interested Shareholders may, by notice in Writing to the Offering Shareholder (subject to the exclusion in 10.1), cause a deemed offer of the Offering

Shareholder's Sale Equity to the Interested Shareholders to come into force at a price sounding in money in South African currency being the fair value of the Shares plus the face value of any Loan Accounts.

- 10.3. If a dispute arises as regards whether or not a Trigger Event has occurred, such dispute shall be referred to an expert for determination, in terms of clause 38 (*Expert Determination*).
- 10.4. As soon as the fair value has been agreed or determined in accordance with clause 11 (*Value*) and notified in Writing to the Interested Shareholders and the Offering Shareholder, the Offering Shareholder shall be deemed to have offered the Sale Equity to the Interested Shareholders (if more than one in proportions agreed among them in Writing or if not so agreed proportionately to their shareholding) at the Value plus the face value of any Loan Account. Such offer shall be open for acceptance thereafter for a period of 10 (ten) Business Days and failing acceptance thereof in respect of the whole of such Sale Equity within such period, shall lapse. Such lapsing of the offer shall not affect the continued application of the pre-emptive provisions of this MOI. If the offer is accepted, the effective date of the sale shall be the day prior to the date upon which the Trigger Event occurs.
- 10.5. The proportionate share of the price so agreed or determined of each Interested Shareholder who accepts the offer shall be payable in cash immediately.
- 10.6. Each of the Interested Shareholders who accepts the offer shall use its best endeavours to procure the release of the Offering Shareholder *pro rata* (in the same ratio as the Shares so purchased by it in terms of this clause 10 (*Forced Sales*) bear to all the Shares held by the Offering Shareholder) from any liability which the Offering Shareholder may have under any guarantees, suretyships and indemnities which may have been given by the Offering Shareholder for the Company's obligations, provided that such Interested Shareholders shall :
- 10.6.1. not be obliged to discharge the principal debt;
- 10.6.2. tender its own guarantees, if necessary,
- to procure any such release. Until the release is procured, each Interested Shareholder indemnifies the Offering Shareholder against any such liability.
- 10.7. The Shares shall be delivered in transferable form to the Shareholder in question against payment of the price. If the Offering Shareholder does not deliver the Shares in transferable form on the due date any other Shareholder is irrevocably and *in rem suam* appointed as the attorney and agent of the Offering Shareholder to sign the necessary transfer forms and the Company will be entitled to cancel the share certificate/s of the Offering Shareholder without the delivery of same being necessary.

10.8. The provisions of clauses 9.9, 9.10, 9.13, 9.14 and 9.15 shall apply *mutatis mutandis* to this clause 10 (*Forced Sales*).

## 11. **VALUE**

11.1. If the relevant Shareholders do not agree on the Value of the Shares within 10 (ten) Business Days of the date of request by any Shareholder to endeavour to reach agreement with any other relevant Shareholder/s, the Value shall be a fair value determined on the basis set out in the International Financial Reporting Standards, which, in absence of agreement, shall be determined by an independent accountant with no less than 10 (ten) years of experience agreed to by the Shareholders or, failing agreement within 5 (five) Business Days, appointed, at the request of a Shareholder, by the president for the time being of the Southern African Institute of Chartered Accountants (or the successor body thereto) (which independent accountant shall act as an expert and not as an arbitrator, shall be instructed to make his/her determination within 10 (ten) Business Days after being requested to do so and shall determine the liability for his/her charges which will be paid accordingly). The expert's determination shall (in the absence of manifest error) be final and binding on the Shareholders to the dispute.

11.2. For the purposes of clause 11.1 when determining the Value, no deduction shall be made nor shall any premium be added (as may be applicable) for the fact that :

11.2.1. the Shares in question constitute a minority interest in the Company, or a majority or controlling interest in the Company or if the purchaser is an existing Shareholder, for the fact that by purchasing the Shares in question, such Shareholder would be in a position to control the Company's affairs, as the case may be;

11.2.2. the Company not being listed on a stock exchange, or any of the Shares being illiquid;

11.2.3. new management shall be managing the Company nor shall any premium be added for the fact that the Shares in question constitute a majority or controlling interest in the Company nor, if the purchaser is an existing Shareholder, for the fact that by purchasing the Shares in question, such Shareholder would be in a position to control the Company's affairs.

## 12. **COME-ALONG**

12.1. For the purposes of clause 12.2, a third party excludes:

12.1.1. any Shareholder; and

12.1.2. any party Related or Inter-related to any Shareholder.

12.2. If a third party offers to purchase the Sale Equity of all the Shareholders on identical *pro rata* terms, and provided that Shareholders holding not less than 50% (fifty percent) of the issued Shares accept such offer in respect of their Sale Equity (after first having complied with the relevant provisions of clause 9.4), then the remaining Shareholders shall be deemed to have accepted the offer of the third party in respect of all their Sale Equity.

12.3. Each of the Shareholders irrevocably and *in rem suam* appoints any of the other Shareholders at the time as its attorney and agent to do all such things as may be necessary to implement this clause.

### 13. TAG-ALONG

13.1. Subject to clause 13.2 if a third party (which for the purposes of this clause 13 (*Tag-Along*) includes any party who is Related or Inter-related to any Shareholder) offers to purchase Shares constituting at least 50% (fifty percent) of the issued Shares, then notwithstanding that the Shareholders to whom such offer has been made have complied with the provisions of clause 9.4, such Shareholders shall not be entitled to sell their Sale Equity to such third party, unless the same *pro rata* offer to acquire the Sale Equity of the remaining Shareholders is made by such third party also to each remaining Shareholder who indicates in Writing in response to the offer in terms of clause 9.4 that it wishes to dispose of its Sale Equity.

13.2. If IAB is required to sell or transfer to any third party (which includes but is not limited to Investec) all or any of its Shares in the Company pursuant to the exercise by Investec of its rights under the Funding Arrangements, then tag-along rights in clause 13.1 will not apply.

### 14. FUNDING ARRANGEMENTS

14.1. To facilitate the acquisition of shares in the Company by IAB pursuant to an acquisition of shares in the Company by way of a sale and purchase agreement and by way of a scheme of arrangement between the Company and certain of its minority shareholders, IAB entered into a suite of finance agreements with Investec.

14.2. Pursuant to those agreements IAB furnished security to Investec, including security over the shares and loan accounts held and acquired by IAB in the Company from time to time ("**Security**").

14.3. In terms of the Security, and as is usual, IAB is, without the prior written approval of Investec, *inter alia* restricted from pledging or ceding or in any way whatsoever encumbering any of its Shares in the Company, and it is restricted from selling, transferring or in any way whatsoever disposing of or alienating any of its Shares in the Company. In addition, Investec has certain rights in relation to all or any of IAB's Shares in the Company as security provider.

**15. CERTIFICATES EVIDENCING ISSUED SHARES AND SECURITIES REGISTER**

- 15.1. The Shares issued by the Company shall be evidenced by certificates.
- 15.2. Certificates shall be issued in such manner and form as the Directors shall from time to time prescribe and shall be signed by a Director authorised by the Board and 1 (one) other Person authorised by the Board by autographic, mechanical or electronic means.
- 15.3. Each Shareholder shall be entitled to 1 (one) certificate for all the Shares of a particular class registered in its name, or to several certificates, each for a part of such Shares.
- 15.4. A certificate for Shares registered in the names of 2 (two) or more Persons shall be Delivered (but clause 37.3 shall not apply) to the Person first named in the Securities Register and Delivery of a certificate for Shares to that Person shall be a sufficient Delivery to all joint Shareholders.
- 15.5. If a certificate for Shares is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in the case of defacement) on delivery of the old certificate to the Company.

**16. PROHIBITION REGARDING BENEFICIAL INTERESTS**

The Company shall not permit Shares to be held by 1 (one) Person for the Beneficial Interest of another, it being recorded that this clause 16 shall not apply where the shares are held by a collective investment schemes in terms of the Collective Investment Schemes Act, No 45 of 2002.

**17. THIRD PARTY RIGHTS REGARDING SHARES BY OPERATION OF LAW OR COURT ORDER**

The :

- 17.1. parent or guardian or tutor of any Shareholder who is a minor;
- 17.2. trustee of an insolvent Shareholder;
- 17.3. liquidator or business rescue practitioner of a body corporate Shareholder;
- 17.4. curator of a Shareholder; or
- 17.5. executor or administrator of the estate of a deceased Shareholder,

shall, upon production of such evidence as may be required by the Directors, have the right to exercise those rights in terms of law or the court order, as may be applicable, but only to the extent that the Shareholder would otherwise have been entitled to have exercised those rights, and subject always to any restrictions or obligations set out in this MOI and any other Agreement between all the Shareholders, if any.



## 18. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 18.1. The Company's Accounting Records shall be accessible from its Registered Office.
- 18.2. The Directors shall from time to time determine at what times and places and under what conditions, subject to the requirements of the Regulations, the Shareholders are entitled to inspect and take copies of :
- 18.2.1. the MOI;
  - 18.2.2. amendments to the MOI;
  - 18.2.3. Records in respect of Directors;
  - 18.2.4. notices and minutes of Shareholders Meetings;
  - 18.2.5. communications generally to Shareholders; and
  - 18.2.6. the Securities Register.
- 18.3. Without limiting the provisions of section 26, any Shareholder who holds at least 5% (five percent) of the issued share capital of the Company, will have the right to receive :
- 18.3.1. consolidated monthly management accounts, in the form of income statements of the Company and the Group, within 30 (thirty) Business Days from the end of the month in question;
  - 18.3.2. consolidated quarterly management accounts, in the form of income statements, balance sheets and cash flow statements of the Group, within 30 (thirty) Business Days from the end of the month in question;
  - 18.3.3. budgets and cash flow forecasts and projections of the Group, on an annual basis, for the immediately following financial year and a plan for the following three years, within 30 (thirty) Business Days from the end of the last month of the financial year end in question;
  - 18.3.4. audited consolidated annual financial statements of the Company, within 120 (one hundred and twenty) Business Days after the end of the Company's financial year, and within 90 (ninety) Business Days from the finalisation of interim reports, or so soon thereafter as they have been finalised and reported on by the auditors;
  - 18.3.5. such additional financial information or other information as that Shareholder may reasonably request, and as may be approved by the Board. The shareholder shall also be allowed to engage with the chief executive officer or chief financial

officer or chairman or Internal audit on queries with regards to the management accounts and/or annual financial statements.

- 18.4. The Shareholders have the right to receive all information referred to in clauses 18.2 and 18.3 in respect of each Subsidiary of the Company and the Company shall be obliged to procure that same is made available to the Shareholders on demand.
- 18.5. Notwithstanding anything to the contrary, if a Shareholder is at any time a competitor of the Company and/or its Subsidiaries, then for so long as it is a competitor, it shall not be entitled to any information other than as is required to be provided under sections 26(1) and 26(2), but not section 26(3).
- 18.6. Each Shareholder undertakes not to obtain any of the Company's confidential information from its/his/her appointed Director/s or Alternate Director/s or Directors/s or Alternate Directors nominated by it/him/her for election or observer/s, if any, or having, inadvertently or in breach of this undertaking, obtained any such information, undertakes not to disclose or use it.
- 18.7. Apart from the Shareholders, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register and the register of Directors) unless expressly authorised by the Directors.
- 18.8. The Company shall notify the Shareholders of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Shareholder demands a copy of the annual Financial Statements, the Company shall make same available to such Shareholder free of charge.

## 19. **PROCEEDINGS OF SHAREHOLDERS' MEETINGS**

- 19.1. The Company shall, as determined by the Board, either :
- 19.1.1. hold a Shareholders' meeting in order to consider 1 (one) or more resolutions; or
- 19.1.2. as regards such resolution/s that could be voted on at a Shareholders' meeting, including the conduct of an election of Directors, instead require them to be dealt with by Round Robin Resolution of Shareholders.

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

- 19.2. The Board may, whenever it thinks fit, convene a Shareholders Meeting or put a proposed resolution by way of a Round Robin Resolution. A Shareholders Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if 1 (one)

or more Written and signed demands for such a Shareholders Meeting or Round Robin Resolution is/are delivered to the Company, and :

- 19.2.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
- 19.2.2. in aggregate, demands for substantially the same purpose are made and signed by the Shareholders at the earliest time specified in any of those demands, of at least 5% (five percent) of the Voting Rights entitled to be Exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 19.3. Every Shareholders Meeting shall be held where and how the Board determines from time to time.
- 19.4. A Shareholders Meeting may be called on at least 5 (five) Business Days' notice Delivered by the Company (but for this purpose clause 37.3 shall not apply), provided that to all Shareholders entitled to vote or otherwise entitled to receive notice and the requirements of section 62(2A) are complied with, to the extent applicable.
- 19.5. The Company may call a Shareholders Meeting with less notice than required by clause 19.4, in accordance with the Companies Act.
- 19.6. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he/she is not Present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director Present, or if no Director be Present, or if all the Directors Present decline to take the chair, the Persons entitled to vote shall select 1 (one) of their number which is Present to be chairperson of the Shareholders Meeting.
- 19.7. A copy of the instrument appointing a proxy (provided that the Company may call for the original) and a copy of the power of attorney or other authority, if any, under which it is signed (provided that the Company may call for a notarially certified copy of such power or authority) shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, before the proxy Exercises any rights of the Shareholder entitled to vote at a Shareholders Meeting.

## 20. **QUORUM FOR SHAREHOLDERS MEETINGS**

- 20.1. Business may be transacted at any Shareholders Meeting only while a quorum is present.
- 20.2. The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient Persons Present to Exercise, in aggregate, at least 90% (ninety percent) of all of the Voting

Rights that are entitled to be Exercised in respect of at least 1 (one) matter to be decided at the Shareholders Meeting but subject to any additional requirements of the Companies Act.

- 20.3. A matter to be decided at the Shareholders Meeting may not begin to be debated unless sufficient Persons are Present to Exercise, in aggregate, at least 90% (ninety percent) 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 for the Shareholders Meeting. Section 64(9) shall not apply.
- 20.4. If within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, a quorum is not Present or if the quorum requirements in clause 20.3 cannot be achieved for any 1 (one) or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, for 1 (one) week to the same time on the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Shareholders Meeting a quorum is not Present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote that are Present shall be deemed to be the requisite quorum.

## 21. **VOTING RIGHTS AND RESOLUTIONS OF SHAREHOLDERS**

- 21.1. Subject to any rights or restrictions attaching to any class or classes of Shares, on a show of hands a Person entitled to vote and Present shall have only 1 (one) vote, irrespective of the number of Voting Rights that Person would otherwise be entitled to Exercise. A proxy shall irrespective of the number of Shareholders entitled to vote which it represents, have only 1 (one) vote on a show of hands.
- 21.2. On a poll every Person entitled to vote who is Present shall have the number of votes determined in accordance with the Voting Rights associated with the Shares in question.
- 21.3. In the case of joint Shareholders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Shareholders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.
- 21.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders 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.
- 21.5. At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands unless :
- 21.5.1. the Shareholders Meeting is conducted entirely by electronic communication, in which case any resolution/s put to the vote at such meeting shall be decided by poll;

21.5.2. a poll is demanded in accordance with clause 21.6 by :

21.5.2.1. Person/s entitled to Exercise not less than 1/10<sup>th</sup> (one tenth) of the total Voting Rights entitled to vote on that matter; or

21.5.2.2. the chairperson.

21.6. A poll may be demanded :

21.6.1. in advance of the Shareholders Meeting; or

21.6.2. at the Shareholders Meeting, either before a resolution is put to a vote on a show of hands or immediately after the result of the vote on a show of hands is declared.

21.7. If a poll is duly demanded it shall be taken immediately and in such manner as the chairperson directs. The chairperson may appoint the secretary and/or any other Person/s as scrutineers for purposes of administering the poll and the chairperson shall be entitled (but not obliged) to rely on the findings of the scrutineers, if appointed. The result of the poll shall be declared by the chairperson and shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

21.8. If a resolution is to be voted on by way of a Round Robin Resolution, each Shareholder who is entitled to vote on or consent to the Round Robin Resolution shall have the same number of Voting Rights that Shareholder would otherwise be entitled to Exercise on a poll.

21.9. If any Shareholder abstains from voting in respect of any resolution, such Shareholder will for the purposes of determining the number of Voting Rights Exercised in respect of that resolution, be deemed not to have Exercised a vote and such abstention shall be ignored in determining the outcome of the vote.

21.10. Any Person entitled to a Share in terms of clause 17 (*Third Party Rights Regarding Shares by Operation of Law or Court Order*) may vote at any Shareholders Meeting in respect thereof in the same manner as if it were the Shareholder of that Share, but to the exclusion of the Shareholder: provided that (except where the Directors have previously accepted its right to vote in respect of that Share) at least 24 (twenty four) hours before the time of holding the Shareholders Meeting at which it proposes to vote, it shall have satisfied the Directors that it is entitled to exercise the right referred to in clause 17 (*Third Party Rights Regarding Shares by Operation of Law or Court Order*).

- 21.11. Unless a poll has been duly demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and binding. A minute of a Shareholders Meeting signed by the chairperson of that Shareholders Meeting or by the chairperson of the next succeeding Shareholders Meeting, is evidence of the proceedings of that Shareholders Meeting or the adoption of any resolution at that Shareholders Meeting. Any extract from such minute or extract from any resolution, if signed by the chairperson of the Shareholders Meeting or by the secretary shall be receivable as evidence of the matters stated in such minute or resolution.
- 21.12. Within 10 (ten) Business Days after a Round Robin Resolution is adopted including conducting an election of Directors, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the Round Robin Resolution.

## 22. **NUMBER OF DIRECTORS AND QUALIFICATIONS**

- 22.1. The minimum number of Directors shall be 2 (two).
- 22.2. Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 22.3. There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act.
- 22.4. A Person shall be Ineligible or Disqualified to serve as a Director or Alternate Director if :
- 22.4.1. a person is disqualified from acting as a director of a company in terms of the Companies Act and in terms of any law from time to time applicable;
  - 22.4.2. a person's estate has been sequestrated (whether provisional or final) and has not been rehabilitated, or has committed an act of insolvency as defined in the Insolvency Act 24 of 1936 (as amended);
  - 22.4.3. a person is convicted of any crime involving dishonesty under the laws of any country; or

22.4.4. a person becomes legally incapacitated, insane, incapable of managing his or her own affairs or otherwise disentitled in law to hold the office of a director.

22.5. Notwithstanding anything to the contrary in this MOI, no Person may be nominated for election or appointed as a Director or Alternate Director if that Person is a Director or an Alternate Director or a Prescribed Officer of a competitive business to that carried on by the Company or any of its Subsidiaries (including foreign subsidiaries).

## 23. ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS

23.1. Unless agreed otherwise by the Shareholders, a Shareholder or any Shareholders between them holding a complete 10% (ten percent) of the Shares in the Company, and for each 10% (ten percent) held, shall be entitled but not obliged to nominate for election one director and an alternate to that director to the board, and to cause any such director to be removed once elected and, if it wishes, replaced.

23.2. The Shareholders undertake to vote in favour of the election, removal or replacement of directors and alternate directors in terms of clause 23.1 above. For the foregoing purpose, the Company and all the Shareholders undertake, urgently on the receipt of any written notification, to elect or remove (as applicable) a director and, to that end, to do all such things as may be necessary as expeditiously as possible, including (without limitation) the convening of any necessary meetings, attending and voting in favour of the relevant resolutions at that meeting or signing to approve the passing of any written resolutions passed otherwise than at a meeting of the shareholders. If the Company or any of the Shareholders fail to do any of the aforesaid things as may be so necessary, each of the others shall have its irrevocable power-of-attorney *in rem suam* to take all such steps and do all such things and sign all such documents as may be necessary to achieve the foregoing.

23.3. The provisions of section 68(2) relating to the procedure of electing directors (or alternative directors) need to be complied with only if the election takes place at a meeting, but need not to be complied with if the election takes place by way of a written resolution of the shareholders passed in accordance with section 60(2).

23.4. The board shall be entitled to invite individuals to attend the board meetings as invitees. Such observers shall not be entitled to vote at board meetings.

23.5. No election of a Director or Alternate Director shall take effect until he/she has delivered to the Company a Written consent to serve.

## 24. ALTERNATE DIRECTORS

24.1. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing him/her during the Director's/s' absence or inability to act as Director. If a

Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he/she shall have a separate vote, on behalf of each Director he/she is representing in addition to his/her own vote, if any.

24.2. No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.

**25. DIRECTORS AND ALTERNATE DIRECTORS NOT AUTOMATICALLY EMPLOYEES**

Each Director and Alternate Director acknowledges that the mere appointment or election as a Director or Alternate Director does not render him/her an employee of the Company.

**26. FURNISHING OF ELECTRONIC ADDRESS**

Each Director and Alternate Director shall, within 7 (seven) Business Days after his/her election furnish the Company with an Electronic Address, failing which, the Company shall be entitled to furnish that Director/Alternate Director with an Electronic Address.

**27. SUSPENSION OF A DIRECTOR OR ALTERNATE DIRECTOR AND PERIOD DURING WHICH CESSATION OF OFFICE AS A DIRECTOR TAKES EFFECT**

Until the cessation of office as a Director or Alternate Director takes effect, or while a Director or Alternate Director is not allowed to act under the Companies Act, or while a Director or Alternate Director has been suspended :

27.1. he/she will not be entitled to receive notices of meetings of the Directors, nor to attend any meetings of the Directors and shall not have authority to act as a Director or Alternate Director;

27.2. no fees for services as a Director shall be payable to such Director or Alternate Director in respect of the period in question, provided that if the court as contemplated in section 71(5) orders that such Director or Alternate Director shall not cease to hold office as such, any director's fees that were payable during his/her suspension shall notwithstanding this clause 27.2 then be payable to him/her within 60 (sixty) Business Days after such court order; and

27.3. the requirement for a quorum set out in clause 33.1 shall be reduced by 1 (one) Director for each such suspended Director or Alternate Director not allowed to act.

**28. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

28.1. A Director or Alternate Director shall cease (without any claims of any nature against the Company) to hold office as such in accordance with this MOI and/or the Companies Act.



28.2. A Director or Alternate Director shall cease (without any claims of any nature against the Company or any Shareholder) to hold office as such if :

28.2.1. he/she becomes a Director or Alternate Director or Prescribed Officer of a competitive business to that carried on by the Company or any of its Subsidiaries (including foreign subsidiaries) from time to time, with effect from that date; or

28.2.2. he/she becomes Ineligible or Disqualified.

29. **REASONABLE EXPENSES OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

The Directors and Alternate Directors shall be entitled to all reasonable expenses in travelling (including hotels) 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) to and from meetings of the members of the Board committees.

30. **MANAGING AND OTHER APPOINTED DIRECTORS**

30.1. The Board may from time to time appoint 1 (one) of the Directors, or a person other than a member of the elected Board, to the office of managing Director or chief executive officer and chief financial officer for such periods and at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms it may think fit, and it may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office. The Board may appoint the chief executive officer and chief financial officer as executive directors of the Company.

30.2. The Board may from time to time entrust to and confer upon a managing Director or chief executive officer and a chief financial officer for the time being, such of the powers vested in the Directors as it may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as it may think expedient; and it may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. If the Board does not confer specific powers on the managing Director or chief executive officer or the chief financial officer, then the Director will have the usual powers for managing Directors or chief executive officer or chief financial officer, as the case may be, unless and until the Board determines otherwise. A managing Director or chief executive officer or chief financial officer appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors.

- 30.3. The provisions hereof shall not detract from authority of the Board to appoint further directors as may be considered desirable and or necessary, provided that number of all such appointed directors shall not exceed the number of elected directors from time to time.

31. **BOARD COMMITTEES**

- 31.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. A Director may be appointed to more than 1 (one) Board committee. The members of such committees may include Persons who are not Directors.
- 31.2. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 31.3. Committees of the Board may consult with or receive advice from any Person.
- 31.4. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

32. **PROCEEDINGS OF DIRECTORS MEETINGS**

- 32.1. A Director authorised by the Board :
- 32.1.1. may, at any time, summon a meeting of the Directors; and
- 32.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
- 32.2. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa. Each such notice of a meeting of Directors shall include an appropriate agenda for the meeting, which shall *inter alia* detail the venue for such meeting. Any such agenda may be amended on notice to the Directors, subject to the unanimous consent thereto of all Directors (whether or not Present at such meeting). No matter may be raised or dealt with by any meeting of Directors unless the same forms the subject matter of an agenda for such meeting, or an agenda suitably amended in terms of the provisions of this clause.
- 32.3. The Directors may determine by resolution :
- 32.3.1. what period/s of notice in respect of the convening of meetings of Directors, including those required to be held urgently, shall be given, but for so long as there is no such resolution which applies, the notice period shall be 5 (five) Business Days in respect of a Directors' meeting at which urgent matters shall be considered, and otherwise 14 (fourteen) Business Days; and

32.3.2. the means of giving such notice, but for so long as there is no such resolution which applies, the notice may be given telephonically, by telefax, by Electronic Communication or by hand delivery.

32.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

32.5. The Shareholders by majority vote shall elect a chairperson of Directors' meetings and determine the period for which he/she is to hold office, but if no such chairperson is appointed/elected, or if at any meeting the chairperson is not Present within 15 (fifteen) minutes after the time appointed for holding it, the Directors Present may choose 1 (one) of their number to be chairperson of the meeting.

### 33. **QUORUM FOR DIRECTORS' MEETINGS**

33.1. The quorum for a meeting of Directors shall be 2 (two) directors of whom, for so long as it and/or its Permitted Transferees holds more than 50% (fifty percent) of the issued share capital of the Company, 1 (one) shall be a director who was nominated for election by IAB and duly elected, and, for so long as the Existing Minorities and/or of their Permitted Transferees between them hold more than 10% (ten percent) of the issued share capital of the Company, 1 (one) shall be a director who was nominated for election by the Existing Minorities or their Permitted Transferee. If within 30 (thirty) minutes from the time appointed for the Directors' meeting to commence, a quorum is not present, the meeting of Directors shall be postponed, without motion or vote to the same time and place on the :

33.1.1. next day if the business to be dealt with by the meeting is in the opinion of the chairperson of such an urgent nature that the period in clause 33.1.2 results in too lengthy a delay; or

33.1.2. same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday,

and if at such adjourned meeting of Directors a quorum is not Present within 30 (thirty) minutes from the time appointed for the Directors' meeting then, the Individual/s entitled to vote who are Present shall be deemed to be the requisite quorum. No further notice is required to be Delivered by the Company of a meeting of Directors that is postponed, unless the location or time for the meeting of Directors is different.

### 34. **VOTING RIGHTS OF DIRECTORS AND ALTERNATE DIRECTORS AND RESOLUTIONS OF DIRECTORS**

34.1. Each Director nominated for election by a Shareholder shall have as many votes as is equal in number to the number of Shares held by that Shareholder divided, if more than one, by the

number of directors nominated by that Shareholder (or as otherwise allocated between them), present and voting at the meeting. Any fractions of votes which may result pursuant to the application of this clause shall be counted and not ignored. All decisions of the Board shall be taken by simple majority vote.

34.2. In the case of an equality of votes the chairperson may not cast a second or deciding vote even if the chairperson did not initially have or cast a vote, and the matter being voted on fails.

34.3. A decision that could be voted on at a meeting of Directors may instead, subject to clause 5.2, be adopted by Written consent of a majority of the votes of the Directors, given by signing in person a resolution in counterparts, or by Electronic Communication, within such period as the Directors may determine by resolution. A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director has received notice of the matter to be decided upon. For the avoidance of doubt, notice given to a Director's Electronic Address will be regarded as having been received by that Director when the complete data message enters the information system designated or used for that purpose by the relevant Director and is capable of being retrieved and processed by that Director, as contemplated in section 23(b) of the Electronic Communications and Transactions Act, No 25 of 2002.

34.4. Notwithstanding any defect in a Director's appointment or election as a Director :

34.4.1. that shall not invalidate anything done by the Board or the Company; and

34.4.2. the acts of a Director shall be valid,

even if such Director was Present and voted at that meeting.

## 35. **DISTRIBUTIONS**

35.1. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved. If the Company does not pay the dividend or other Distribution to the new address or in accordance with the instructions as to payment so notified, and accordingly the Company still has the relevant funds, the dividend or other Distribution is "unclaimed", and the Company shall be obliged to pay such unclaimed dividend or other Distribution in accordance with such notice of change of address or instructions as soon as reasonably possible after it comes to the Company's attention that the dividend or other Distribution is unclaimed.

35.2. Subject to clause 35.3, all unclaimed dividends or other Distributions as contemplated in this clause may be invested or otherwise be made use of by the Directors for the benefit of the

Company until claimed, or paid, provided that any dividend or other Distribution 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 Directors for the benefit of the Company. An unclaimed dividend or other Distribution shall, when claimed or paid be paid without interest. If after a dividend or other Distribution becomes unclaimed but prior to the expiry of a period of 3 (three) years from the date on which it became payable, the Company has been provided with a notice of change of address or instructions as to payment, such dividend or other Distribution shall be paid in accordance with such notice of change of address or instructions and only if it is still unclaimed thereafter may it be forfeited at the end of that 3 (three) year period from the date on which it originally became payable.

- 35.3. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any of the Company's bankers from time to time, or to a trust created by the Company, the beneficiaries of which are those to whom the unclaimed dividends or other unclaimed Distributions are due by the Company, or to a trust created by a third party, the main purpose of which is the acceptance of delegated obligations from any companies in respect of unclaimed dividends and other unclaimed Distributions and the payment of unclaimed dividends or other unclaimed Distributions to those to whom they are due.

36. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any warrant, certificate or other document sent through the post either to the registered address of any Shareholder or to any other address requested by the Shareholder.

37. **NOTICES**

- 37.1. The Company may give notices, documents, records or statements by personal delivery to the Shareholder or a Director or an Alternate Director, or by sending them prepaid through the post or by transmitting them by fax or by Electronic Communication to such Person's last known address (including such Person's last known Electronic Address). The Company must give notice of availability of a document, record or statement to the Shareholder to its last known delivery address and the last known Electronic Address.

- 37.2. Any Shareholder who/which has furnished an Electronic Address to the Company for whatever reason, by doing so :

- 37.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to it; and

- 37.2.2. confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.
- 37.3. Any notice required to be given by the Company to the Shareholders and in respect of which the Companies Act does not expressly prohibit the provisions of this clause from applying, shall be sufficiently given by posting it on the Company's website until at least the date when the event to which the notice refers occurs, provided that the Company gives a notice similar to a notice of availability in the manner contemplated in clause 37.1.
- 37.4. A Shareholder or Person entitled to Shares (or his/her executor) shall be bound by every notice in respect of the Shares Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Shareholder of or Person entitled to the Shares, notwithstanding that the Shareholder or Person entitled to Shares may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Shares, and notwithstanding any transfer of the Shares was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Shares until that Person gives the Company an address for entry on the Securities Register.
- 37.5. If joint Shareholders are registered in respect of any Shares or if more than 1 (one) Person is entitled to Shares, all notices shall be given to the Person named first in the Securities Register in respect of the Shares and notice so Delivered shall be sufficient notice to all the Shareholders of or Persons entitled to or otherwise interested in the Shares.
- 37.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery.
- 37.7. As regards the signature of an Electronic Communication by a Shareholder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Shareholder indicating in the Electronic Communication that it is the Shareholder's intention to use the Electronic Communication as the medium to indicate the Shareholder's approval of the information in, or the Shareholder's signature of the document in or attached to, the Electronic Communication which contains the name of the Shareholder sending it in the body of the Electronic Communication.

### 38. EXPERT DETERMINATION

38.1. In this MOI, where it is required that any dispute must be determined by an expert, that expert shall be the expert specified in the relevant clause or, if no expert is specified in the relevant clause, the expert shall be, if the matter in dispute is principally :

38.1.1. a legal matter, an impartial retired judge, an impartial practising advocate or an impartial practising attorney, in each case of not less than 15 (fifteen) years' standing;

38.1.2. an accounting matter, an impartial practising chartered accountant of not less than 15 (fifteen) years' standing;

38.1.3. any other matter, an independent person with not less than 15 (fifteen) years' appropriate expertise,

in each case nominated by the Shareholders or failing agreement by them within 10 (ten) Business Days, at the request of any of the Shareholders to the dispute, shall be nominated by, if the matter in dispute is principally :

38.1.4. a legal matter, the president of the Arbitration Foundation of Southern Africa ("**AFSA**") (or if this title has changed, or if this office no longer exists, the person holding the equivalent office no matter what it may be titled) or his/her delegate; and

38.1.5. an accounting matter or other matter, the president of the South African Institute of Chartered Accountants Board (or if this title has changed, or if this office no longer exists, the person holding the equivalent office no matter what it may be titled) or his/her delegate; and

who shall take clauses 38.1.1 to 38.1.3 into account in nominating the expert, whereupon the Shareholders to the dispute shall forthwith *ipso facto* be deemed to have appointed such nominee as the expert.

38.2. If the person nominated in accordance with clause 38.1 fails or refuses to accept the nomination within 10 (ten) days after such nomination, at the request of any of the Shareholders to the dispute, another expert shall be nominated *mutatis mutandis* in accordance with clause 38.1.

38.3. The expert shall be impartial and independent and must disclose to the Shareholders to the dispute any relationship or dealings which the expert has/may have had with any of them. The expert shall not accept an appointment (or, if already appointed, immediately cease to act) if there exists any circumstance that might reasonably be considered to adversely affect his/her

ability to act impartially and independently and an alternate expert shall be appointed in accordance with clauses 38.1 and 38.2.

- 38.4. The expert shall have the sole, fullest and freest discretion regarding the determination and the process to be adopted in reaching a decision, including whether or not to have a hearing or permit evidence by the Shareholders to the dispute or other experts, provided that :
- 38.4.1. the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
  - 38.4.2. the expert shall allow submissions from the Shareholders to the dispute;
  - 38.4.3. the expert may not hear any oral submission from any party to the dispute other than in the presence of the other Shareholders to the dispute and the expert shall give equal opportunity to all Shareholders to the dispute to be heard;
  - 38.4.4. any Shareholder making a written submission shall simultaneously furnish a copy thereof to the other Shareholders to the dispute. Any other Shareholder to the dispute shall be entitled to submit a written rebuttal within the time period specified by the expert and shall simultaneously furnish a copy thereof to the other Shareholders to the dispute. Unless otherwise determined by the expert, there shall be no right of reply to any such written rebuttal;
  - 38.4.5. the expert shall not be entitled to have regard to any written submission or written rebuttal from any party to the dispute if it is not made within the time period specified therefor by the expert, and the right of such party to the dispute to make any such written submission or written rebuttal shall immediately cease upon the expiry of the aforesaid time periods.
- 38.5. The expert shall act as an expert and not as an arbitrator.
- 38.6. The expert shall give a determination and an award as to costs, (including who shall be liable for the expert's costs, the costs of any experts who give evidence, venue hire costs and the like) in writing, within a reasonable time , but giving only those reasons that are necessary to enable the Shareholders to the dispute to assess whether or not there has been a manifest error, and shall give no further reasons.
- 38.7. The expert's determination shall (in the absence of manifest error) be final and binding on the Shareholders to the dispute.
- 38.8. The expert determination shall be held in private. All information howsoever disclosed (whether orally, in electronic media or by reason of inspection of documentation or otherwise), produced or arising in relation to the expert determination shall be kept confidential by the



Shareholders to the dispute and the expert. The expert's determination shall be kept confidential by the Shareholders to the dispute and the expert unless the purpose for which it is to be used clearly requires it not to be treated as confidential. The expert shall not be compelled by any party to the dispute to disclose any fact learnt in the expert determination in any subsequent legal proceedings which may take place, and the Shareholders to the dispute waive their right to require the expert to testify regarding what transpired in the expert determination.

### 39. **ARBITRATION**

- 39.1. If any dispute is referred to arbitration in terms of clause 10.3, such dispute shall be referred to and be determined by arbitration in terms of the rules of the Arbitration Foundation of Southern Africa ("**AFSA**").
- 39.2. Any Shareholder, subject to the provisions of the MOI, may demand that a dispute be determined in terms of this clause by written notice given to the other Shareholders.
- 39.3. This clause shall not preclude any Shareholder from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 39.4. The Shareholders hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of AFSA should any Shareholder by Written notice given to the other require the arbitration to be held on an urgent basis. In such event the Shareholders agree to apply jointly to the AFSA Secretariat as required in terms of the said rules to facilitate such urgent arbitration.
- 39.5. The arbitrator shall be, if the matter in dispute is principally –
- 39.5.1. a legal matter, a practising advocate or attorney in South Africa of at least 15 (fifteen) years' standing;
  - 39.5.2. an accounting matter, independent auditors appointed by agreement between the Shareholders;
  - 39.5.3. any other matter, any independent person, agreed upon between the Shareholders to the dispute and failing agreement the independent person shall be appointed by AFSA.
- 39.6. Should the Shareholders to the dispute fail to agree in writing whether the dispute is principally a legal, accounting or other matter within 7 (seven) Business Days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 39.7. Should the Shareholders fail to agree in writing on an arbitrator within 14 (fourteen) Business Days after the giving of notice in terms of clause 39.2 (*Arbitration*), the arbitrator shall be

appointed at the request of any of the Shareholders to the dispute in terms of the rules of AFSA.

- 39.8. The decision of the arbitrator shall be final and binding on the Shareholders to the dispute and may be made an order of the court referred to in clause 39.9 (*Arbitration*) at the instance of any of the Shareholders to the dispute.
- 39.9. The Shareholders hereby agree that any arbitration in terms of this clause 38 (*Arbitration*) shall take place in Johannesburg, South Africa.
- 39.10. The Shareholders hereby consent to the jurisdiction of the High Court of South Africa (the South Gauteng High Court, Johannesburg) in respect of the proceedings referred to in clause 39.3 (*Arbitration*).
- 39.11. The Shareholders agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 39.8 (*Arbitration*).
- 39.12. Other than where clause 39.3 (*Arbitration*) applies, the provisions of this clause constitute an irrevocable consent by the Shareholders to any proceedings in terms hereof and no Shareholder shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.