

Companies and Intellectual Property Commission
Republic of South Africa
MEMORANDUM OF INCORPORATION ("MOI") OF
GLOBAL COMPACT NETWORK SOUTH AFRICA NPC
REGISTRATION NUMBER: 2018/073580/08
A NON-PROFIT COMPANY WITH MEMBERS

Neither the short nor the long standard form of the Memorandum of Incorporation (“**MOI**”) for a Profit Company Forms CoR.15.1.A and respectively CoR15.1.B, as amended from time to time, shall apply to the Company.

This MOI is in a form unique to the Company, as contemplated in section 13(1) (a) (ii) of the Companies Act 71 of 2008, as amended.

Adoption of MOI

This MOI was adopted by a special resolution of members dated 10 May 2018 as recommended by the directors of the Company, and in accordance with section 16(1) (c) of the Companies Act No. 71 of 2008.

Amendment of MOI

This MOI was amended by a special resolution of members dated [xxxx 2022] as recommended by the directors of the Company, and in accordance with section 16(1) of the Companies Act No. 71 of 2008.

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1. INTERPRETATION

1.1 In this MOI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings-:

- 1.1.1 **“Accounting Officer”** means an “accounting officer” as defined in the Income Tax Act;
- 1.1.2 **“AGM”** means Annual General Meeting of the Board;
- 1.1.3 **“GCN”** means the group of companies and organisations in South Africa that are signatories to the United Nations Global Compact. The Network advances corporate sustainability in South Africa and facilitates and actions and partnerships for the achievement of sustainable goals;
- 1.1.4 **“Board”** means the board of directors of the Company from time to time;
- 1.1.5 **“CIPC”** means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- 1.1.6 **“Commissioner”** means the Commissioner for the South African Revenue Service;
- 1.1.7 **“Company”** means Global Compact Network South Africa NPC a non-profit company duly incorporated with registration number 2018/073580/08;
- 1.1.8 **“Companies Act”** means the Companies Act No 71 of 2008, as amended from time to time;
- 1.1.9 **“Constitution”** means the Constitution of the Republic of South Africa No. 108 of 1996;
- 1.1.10 **“Director”** means a member of the Board as contemplated in section 66 of the Companies Act;
- 1.1.11 **“Electronic Communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act No. 25 of 2002;
- 1.1.12 **“Income Tax Act”** means Income Tax Act No. 58 of 1962;
- 1.1.13 **“Member/s”** means any natural or juristic person, admitted as a member of the Company in terms of the provisions of this Memorandum of Incorporation;
- 1.1.14 **“MOI”** means this memorandum of incorporation of the Company and any Schedules hereto, as amended or replaced from time to time;
- 1.1.15 **“NPC”** means a non-profit company as defined in the Companies Act;

- 1.1.16 **“Ordinary Resolution”** in relation to a resolution of the Board, means a resolution passed by the affirmative vote of those of the Directors present at a properly constituted and quorate meeting of Directors, or the affirmative vote of those of the Directors present at a meeting that has been properly adjourned in terms of this MOI, in each case who are entitled to exercise more than 50% of the votes of such Directors present;
- 1.1.17 **“Republic”** means the Republic of South Africa;
- 1.1.18 **“Resolution”** means an Ordinary or Special Resolution in terms of this MOI;
- 1.1.19 **“Rules”** means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Companies Act and clause 43 hereof.
- 1.1.20 **“SARS”** means the South African Revenue Services.
- 1.2 In this MOI, unless the context clearly indicates otherwise-
- 1.2.1 words and expressions defined in the Companies Act and which are not defined herein shall have the same meanings given to them in the Companies Act; and
- 1.2.2 a reference to a section by number refers to the corresponding section of the Companies Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.3 in any instance where there is a conflict between a provision of this MOI and-
- 1.2.3.1 a non-elective provision of the Companies Act, the non-elective provision of the Companies Act shall prevail to the extent of the conflict;
- 1.2.3.2 unless the MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict;
- 1.2.4 an expression which denotes-
- 1.2.4.1 any gender includes the other gender;
- 1.2.4.2 a natural person includes a juristic person and vice versa; and
- 1.2.4.3 the singular includes the plural and vice versa;
- 1.2.5 if the due date for performance of any obligation in terms of this MOI is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be immediately the succeeding business day;

- 1.2.6 any words or expressions defined in any clause shall, unless the application of any word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MOI;
- 1.2.7 any reference to a notice shall be construed as a reference to a written notice and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations;
- 1.2.8 any reference in this MOI to “days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time; and
- 1.2.9 where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.

2 JURISTIC PERSONALITY

- 2.1 GCN is a company as defined in the Companies Act and as such, continues to exist as a non-profit company as it has been incorporated and registered in terms of the Companies Act.
- 2.2 The Company is incorporated in accordance with and governed by-
 - 2.2.1 the unalterable provisions of the Companies Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this MOI in relation to such unalterable provisions;
 - 2.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this MOI;
 - 2.2.3 the other provisions of this MOI; and
 - 2.2.4 its Rules, if any.

3 OBJECTIVE

GCN creates platforms for companies that are members of United Nations Global Compact to work with other stakeholders to collectively respond to national and global challenges of poverty, inequality, environmental degradation and corruption.

4 NON-PROFIT COMPANY PROVISIONS

- 4.1 The Company is a non-profit company, and accordingly the Company-
 - 4.1.1 must apply all its assets and income, however derived, to advance its stated objective set out in clause 3;
 - 4.1.2 subject to clause 4.1.1, may-
 - 4.1.2.1 acquire and hold securities issued by a profit company; or
 - 4.1.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.2 The Company, as a non-profit company, must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless as to how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or a person appointing a Director of the Company, except-
 - 4.2.1 as reasonable-
 - 4.2.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or
 - 4.2.1.2 payment of or reimbursement for expenses incurred to advance a stated object of the Company;
 - 4.2.2 as payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
 - 4.2.3 as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - 4.2.4 in respect of any legal obligation binding on the Company.
- 4.3 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company-
 - 4.3.1 no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
 - 4.3.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntarily associations or non-profit trusts-

- 4.3.2.1 having objects similar to the Company's object;
- 4.3.2.2 as determined-
 - 4.3.2.2.1 in terms of this MOI; or
 - 4.3.2.2.2 by the Members, failing whom the Directors, at or immediately before the time of its dissolution; or
 - 4.3.2.2.3 by the court, if no such determination is made in this MOI or by the Members or Directors; and
- 4.3.2.3 which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.

5 LIMITATION OF LIABILITY

No person shall, solely by reason of being an incorporator or Director or Member of the Company, be liable for any liabilities or obligations of the Company, as provided for in section 19 (2).

6 POWERS OF THE COMPANY

- 6.1 The Board shall be entitled to borrow money and to mortgage or bind the undertaking and property of the Company or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party, subject to the resolutions issued by the Members in a general meeting.
- 6.2 The Directors may set aside and deposit surplus funds in a reserve fund of the Company and these funds must be utilised in fulfilling the main objective of the Company as stated in clause 3.
- 6.3 The Company has all of the legal powers and capacity of an individual for purposes of carrying out its object, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, and no provision contained in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 6.4 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).

7 SPECIAL PROVISIONS RELATING TO TAX EXEMPTION

- 7.1 The Company has been approved by the Commissioner as a public benefit organisation as contemplated in section 30(3) of the Income Tax Act and accordingly the receipts and accruals of the Company will be exempt from normal tax to the extent set out in section 10(1) (c) of the Income Tax Act at all times to comply with the provisions of clauses 7.6 to 7.16

- 7.2 As recorded in clause 4 of this MOI, the income and property of the Company howsoever derived shall be applied solely towards the promotion of the Company's objects or be invested and no portion thereof shall be paid or transferred, directly or indirectly, to any person other than in the course of the promotion of the Company's objects; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company in return for any services actually rendered to the Company.
- 7.3 The Company shall comply with such conditions, if any, as the relevant minister may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its objects.
- 7.4 As recorded in clause 4.3, upon its dissolution the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution having objects similar to the Company's objects, which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.
- 7.5 There shall at all times be a minimum of 3 (three) Directors who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person shall directly or indirectly control the decision-making powers relating to the Company.
- 7.6 The Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(Ca)(i) of the Income Tax Act which has as its sole or principal object the carrying on of any public benefit activity may not impose conditions which could enable such donor to derive some direct or indirect benefit from the application of such donation.
- 7.7 The Directors shall submit copies of any amendments to the MOI to the CIPC.
- 7.8 The Company shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act administered by the Commissioner.
- 7.9 The Company will not pay any remuneration, as defined in the fourth schedule of the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to

what is generally considered reasonable in the sector and in relation to the service rendered and will not economically benefit any person in a manner which is not consistent with the objects of the Company.

- 7.10 The Company shall submit the required income tax returns together with the relevant supporting documents to the SARS annually and comply with all such other reporting requirements as may be determined by the Commissioner.
- 7.11 The Company will not use the Company's resources directly or indirectly to support, advance or oppose any political party.
- 7.12 All financial transactions of the Company shall be conducted by means of a banking account.
- 7.13 Any books of account, records or other documents relating to the Company must, regardless of whether such documents are kept in book form or not, be retained and carefully preserved by the Company for a period of not less than 4 (four) years after the date of the last entry in any book or document.
- 7.14 The Company shall be entitled but not obliged to procure that donations to the Company shall be allowed to be deducted from the taxable income of a taxpayer, as contemplated in section 18A of the Income Tax Act, and such other tax exemptions as are available in law, and/or as the Commissioner may allow. In that event the Company shall-
 - 7.14.1 comply with any additional requirements imposed in terms of section 18A (1) of the Income Tax Act that are prescribed for donations to be allowed as a deduction for the purposes of section 18A of the Income Tax Act; and
 - 7.14.2 ensure that an audit certificate is provided upon submission by the Company to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Company in that year, in respect of which section 18A receipts were issued by the Company, were utilised in the manner contemplated by that section.
- 7.15 Within 2 (two) calendar months after drawing up the Company's financial statements, the Company must arrange for a written report to be compiled by an Accounting Officer (which may be the auditor of the Company) and submitted to the Company stating whether or not-
 - 7.15.1 the financial statements of the Company are assessed with its accounting records;
 - 7.15.2 the accounting policies of the Company are appropriate and have been appropriately applied in the preparation of the financial statements; and

7.15.3 the Company has complied with the provisions of the Companies Act and of this MOI which relate to financial matters.

7.16 The Company shall preserve each of the Company's books of account, supporting vouchers, income and expenditure statements, balance sheets and Accounting Officer's reports, in an original or reproduced form, for such periods as may be prescribed from time to time in terms of the Companies Act, the Retention and in any event for a period not less than that referred to in clause 7.13.

8 RESTRICTIVE CONDITIONS

This MOI does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2) (b) or (c).

9 APPLICATION OF OPTIONAL PROVISIONS OF THE COMPANIES ACT

The Company elects, to comply to a limited extent as contemplated in clause 30, in terms of section 34(2) as set out in chapter 3 of the Companies Act.

10 MEMBERS AND ADMISSION TO MEMBERSHIP

10.1 Members may be person defined in section 1 of the Companies Act and includes companies or other bodies corporate, or statutory bodies or partnerships or associations of persons, who are all part of the Global Compact Network South Africa.

10.2 The number of Members shall not be limited and shall not be restricted or regulated in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution.

10.3 Members of the Company shall be the subscribers to the Company's MOI, Statutes and the signatories to these and such other person as from time to time are admitted to membership as hereinafter provided.

10.4 The Board of Directors may by resolution in its sole discretion;

10.4.1 elect a person as a member;

10.4.2 refuse to admit any person as a member;

10.4.3 suspend an existing Member; or

10.4.4 terminate a Member.

10.5 The Board shall not be obliged to give reasons for a resolution in terms of this MOI.

- 10.6 No person elected in terms of clause 10.4 above shall become a member unless and until the persons' name has been entered in the register of members.
- 10.7 The Company shall maintain at its registered office a register of members of the Company as provided for in the Companies Act and may be amended from time to time.

11 TERMINATION OF MEMBERSHIP

- 11.1 Membership of the Company shall not be transferable and shall terminate:
- 11.1.1 when the Local Network ceases to exist;
 - 11.1.2 the Member ceases to be a GC Signatory or Participant;
 - 11.1.3 on the death of a Member representative, if such Member only has one representative, or upon such single Member being declared mentally incapacitated or incapable of managing his/her own affairs;
 - 11.1.4 upon the issue of a final order of sequestration or liquidation of or commencement of business rescue proceedings against the Member concerned;
 - 11.1.5 in the event of non-compliance by a Member with any such obligations as may attach to its Membership, upon the expiration of a period of 3 (three) months written notice served on the Member by the Company requiring the Member to remedy the breach and the Member's failure to remedy the breach within the period; save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate;
 - 11.1.6 upon the passing of a resolution to this effect by a duly convened general meeting (also referred to as a General Assembly) of the Company; and
 - 11.1.7 the Board has passed a resolution expelling the Member for actions the Board determine are:
 - 11.1.7.1 prejudicial to the welfare, interest or character of the Company;
 - 11.1.7.2 wilful breach of this MOI;
 - 11.1.7.3 conduct undermining or contrary to the Companies policies, procedures and statutes;
 - 11.1.7.4 misusing Company resources, funds and programmes.

11.1.8 notwithstanding anything to the contrary herein contained or implied, the termination of Membership shall in no way release a Member of any obligation undertaken by that Member prior to the termination of its Membership.

12 REINSTATEMENT OF MEMBERSHIP

A member may be reinstated:

- 12.1 by Board resolution at its sole discretion;
- 12.2 following compliance with the Companies policies and procedures on membership.

13 MEETINGS OF MEMBERS

- 13.1 Only Members in good standing may attend and make proposals, put motions and initiate discussions at general or special meetings on matters related to the business of the Company.
- 13.2 An annual general meeting and a meeting called for the passing of a special resolution shall be called on not less than 21 (twenty-one) calendar days' notice in writing and any other general meeting shall be called on not less than 14 (fourteen) days' notice in writing.
- 13.3 The Board or any prescribed officer of the Company authorised by the Board, is entitled to call a meeting of Members at any time
- 13.4 Subject to the provisions of section 60 of the Companies Act dealing with the passing of resolutions of Members otherwise than at a meeting of Members, the Company shall hold a meeting of Members-
 - 13.4.1 at any time that the Board is required by the Companies Act or MOI to refer a matter to the Members for decision; or
 - 13.4.2 whenever required in terms of the Companies Act to fill a vacancy on the Board; or
 - 13.4.3 when required in terms of clause 12.5 or by any other provision of this MOI.
- 13.5 The Board shall call a meeting of Members if 1 (one) or more written and signed demands calling for such a meeting are delivered to the Company and-
 - 13.5.1 each such demand describes the specific purpose for which the meeting is proposed; and

- 13.5.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 13.6 At any general meeting, a resolution put to the vote of the meeting shall be decided on a poll, unless a show of hands is demanded by the Chairperson, or not less than 2 (two) Members entitled to vote and personally present or represented by proxy at the meeting. The demand for a vote by a show of hands may be withdrawn. Where there is no unanimous outcome regarding a resolution put to the vote on a poll, such resolution shall not be regarded as having been decided and shall be put to the vote and be decided by a show of hands.
- 13.7 Unless a vote by a show of hands is so demanded, a declaration by the Chairperson that a resolution has, on a poll, been carried unanimously or by a particular majority or negative, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 13.8 If a vote by a show of hands is duly demanded, it shall be taken in such a manner as the Chairperson directs.
- 13.9 A vote by a show of hands demanded on the election of a Chairperson or on a question of adjournment, shall be taken forthwith. A vote by a show of hands demanded on any other question shall be taken at such time as the Chairperson of the meeting at such point in the meeting directs. The demand for a vote by a show of hands shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the vote by a show of hands has been demanded.
- 13.10 Unless a meeting is required to comply with the Companies Act, a resolution signed by or on behalf of all Members of the Company shall be as valid and effectual as if passed at a duly convened meeting of the Company.
- 13.11 At any general meeting, except in the case of a special resolution, a resolution put to the vote shall be decided by a majority of votes.

14 ANNUAL GENERAL MEETING

- 14.1 Notwithstanding any provision of the Companies Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Members-
- 14.1.1 initially, no more than 18 (eighteen) months after the date of its incorporation;
 - 14.1.2 thereafter, once in each calendar year, but not more than six months after the expiration of the financial year of the Company; provided that any such annual general meeting shall be capable of being held by Electronic Communication in accordance with further provisions of this MOI.
- 14.2 each annual general meeting of the Company contemplated in clause 14 shall provide for at least the following business to be transacted-
- 14.2.1 the presentation of the financial statements for the immediately preceding financial year of the Company;
 - 14.2.2 the election of Directors, to the extent required by the Companies Act or by this MOI;
 - 14.2.3 the appointment of an auditor for the following financial year, to the extent that the annual financial statements of the Company are required to be audited in terms of the Companies Act or by this MOI; and
 - 14.2.4 any matters raised by the Members, with or without advance notice to the Company save that a matter shall not be considered where it is undesirable in the interests of the Company or the good order of the meeting.
- 14.3 Save as otherwise provided herein, the Company is not required to hold any other meetings of Members other than those specifically required by the Companies Act.
- 14.4 The Board may determine the location of any meeting of Members, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this MOI.
- 14.5 The minimum number of days for the Company to deliver a notice of a meeting of Members to the Members as required by section 62 (1) of the Companies Act and accordingly any such notice shall be delivered to all Members as of the record date for the meeting at least 15 (fifteen) business days before the meeting is to begin.

- 14.6 The quorum requirement for a meeting of Members, Board or Committees, whether in the form of a physical meeting or by using an electronic medium, consists of at least fifty plus one per cent (50 + 1 %) of the total number of Members, Board or Committees.
- 14.7 If, within 30 (thirty) minutes of the time fixed for the meeting, a quorum is not formed that meeting must stand adjourned to another day; and without motion or vote, (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with matters that were on the agenda of the postponed meeting.
- 14.8 For consideration of a particular matter -
- 14.8.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
- 14.8.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote for 14 (fourteen) days; provided that the meeting shall not be adjourned until after an hour.
- 14.9 The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.
- 14.10 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 14.7 unless the location for the meeting is different from-
- 14.10.1 the location of the postponed or adjourned meeting; or
- 14.10.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 14.11 If at the time appointed in terms of clause 14.7 for a postponement meeting to begin, or for an adjourned meeting to resume, the requirements of clause 14.6 have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 14.12 After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered.
- 14.13 The Chairperson of the Board shall preside as Chairperson at every Members' meeting.
- 14.14 If there is no such Chairperson or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be the Chairperson. If no Director is willing to act as Chairperson or if no director is present within 15 (fifteen) minutes after the

time appointed for holding the meeting, the Members present shall choose one of their number to be Chairperson of the meeting.

14.15 The Chairperson of a meeting of Members may-

14.15.1 appoint any firm or persons to check any powers of attorney received and to assist with counting the votes at the meeting; or

14.15.2 act on a certificate given by such firm or persons without requiring production at the meeting of the forms of proxy or himself counting the votes.

14.16 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless-

14.16.1 it is brought to the attention of the Chairperson at the meeting; and

14.16.2 in the opinion of the Chairperson at the meeting, it is of sufficient magnitude to vitiate the resolution.

14.17 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised-

14.17.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

14.17.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

14.18 Even if he or she is not a Member-

14.18.1 any Director; or

14.18.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof), may attend and speak at any general meeting, but may not vote, unless he/she is a Member or the proxy or representative of a Member.

15 MEMBERS' MEETINGS BY ELECTRONIC COMMUNICATION

15.1 The Company may conduct a meeting of Members entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63 of the Companies Act, and the power of the Company to do so is not limited or restricted by this MOI. Accordingly-

- 15.1.1 any meeting of Members may be conducted entirely by Electronic Communication; or
- 15.1.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any meeting of Members that is being held in person.
- 15.2 The Electronic Communication referred to in 15.1 shall be used on condition that the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 15.3 Any notice of any meeting of Members shall inform Members of the alternative to participate by means of Electronic Communication.

16 VOTES OF MEMBERS

- 16.1 Only Members in good standing will be allowed to vote.
- 16.2 At a meeting of the Company every person present, provided that he or she is a Member or Director in the case of a Board meeting, shall be entitled to exercise voting rights shall be entitled to such number of votes as allocated from time to time.
- 16.3 At any meeting of the Company a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 16.4 In the case of a deadlock, the Chairperson of the meeting shall be entitled to a second or casting vote.
- 16.5 The Director of the Company or a Member may authorise any person to act as their representative at any meeting of Members or Board of the Company, in which event the following provisions shall apply-
 - 16.5.1 the person so authorised may exercise the same powers of the authorising Member or Director as he or she could have exercised it if he or she were present at the meeting; and
 - 16.5.2 the authorising person shall lodge a written proxy confirming the granting of such an authority with the company secretary at least 48 (forty-eight) hours before commencement of the meeting.

17 PROXIES AND REPRESENTATIVES

- 17.1 Any Member or Director may at any time appoint any natural person as a proxy to-
- 17.1.1 participate in and speak and vote at a meeting of Members of Board on behalf of the Member or Director; or
 - 17.1.2 give or withhold written consent on behalf of that Member or Director to a decision contemplated in section 60 of the Companies Act.
- 17.2 A proxy appointment-
- 17.2.1 must be in writing, dated and signed by the Member or Director providing it;
 - 17.2.2 remains valid for 1 (one) year after the date on which it was signed.
- 17.3 The holder of a power of attorney or other written authority from a Member or Director may, if so authorised, thereby represent such Member or Director at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any) to the company secretary before such holder may exercise any rights at a meeting and within the time limits provided for herein. Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Companies Act.
- 17.4 All of the remaining provisions of the Companies Act relating to the appointment and revocation of proxies and rights of proxies generally shall apply.

18 MEMBERS' RESOLUTIONS

- 18.1 For an ordinary resolution to be approved it must be supported by more than fifty percent (50%) of the voting rights of Members exercised on the resolution, as provided in section 65(7) of the Companies Act.
- 18.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy-five percent) of the voting rights exercised on the resolution, as provided in section 65(9) of the Companies Act.
- 18.3 No matters except those matters set out in section 65(11) of the Companies Act and any other matter required by the Companies Act or by this MOI to be resolved by means of a special resolution, require a special resolution adopted at a meeting of Members of the Company.
- 18.4 In the event that any Member abstains from voting in respect of any resolution, such Member will for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

19 MEMBERS ACTING OTHER THAN AT A MEETING

- 19.1 In accordance with the provisions of section 60 of the Companies Act, a resolution that could be voted at a meeting of Members (including in respect of the election of Directors) may instead be-
- 19.1.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
 - 19.1.2 voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.
- 19.2 A resolution contemplated in clause 19.1-
- 19.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution as the case may be, at a properly constituted meeting of Members; and
 - 19.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 19.3 Within 10 (ten) business days after adopting a resolution or conducting an election of Directors in terms of the provisions of this clause 18, the Company shall deliver a statement describing the results of the vote, consent process or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of Director, as the case may be.

20 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

- 19.1 The Board must comprise of at least 7 (seven) Directors of the Company but not more than 9 (nine) Directors.
- 19.2 A Director shall be required to be a Member representative in order to be appointed a Director of the Company.
- 19.3 The Company should publish an open call for nominations of members to the GCN Board and the selection committee should maintain a matrix of skills for Board Directors.
- 19.4 The Company should aim to achieve diversity in the composition of the Board, with respect to gender (in line with the Women's Empowerment Principles), skills, expertise, experience, ethnicity, and other factors. The Company should also aim for diversity in terms of representation from large vs. small companies and from different types of non-business organizations, including civil society, labour organizations, and academic institutions.

- 19.5 At least 50% of Directors must at any time represent businesses or business associations or in other ways represent the business community (e.g. Independent Board Directors with significant experience from the private sector).
- 19.6 One seat on the Board shall be reserved for the United Nations Resident Coordinator for South Africa.
- 19.7 A member of the Global Compact Office (“GCO”) may join the Board as an observer or in an advisory role, with no voting rights. The GCO representative will assist the Company in securing alignment with UN priorities and goals.
- 19.8 An employee of a company that is (a) not a Global Compact Signatory or Participant or (b) of a company that is a Global Compact Signatory or Participant not in good standing (i.e. not holding an Active status due to failure to submit an annual Communication on Progress or making the required financial contribution on time) shall not be on the Board.
- 19.9 The Board shall at any time have representation from at least one non-business organization.

18 BOARD NOMINATIONS

- 18.1 The Board shall at least 45 (forty-five) days prior to the AGM at which the Directors shall be elected, call for nominations for the election of directors from the Members. Nominees shall be included in a list of persons from whom nominations have been received (“Directors’ Candidate List”).
- 18.2 During the Board nomination process, the Company shall consider potential conflicts of interest of nominees or the organizations that they represent, including but not limited to conflicts of interest of a personal, financial, or political nature, as well as to their reputation among peers and civil society organizations in terms of upholding the commitment to the Ten Principles of UN Global Compact.
- 18.3 The due diligence on Board nominations by the Company should ensure that the individuals are of good standing and have the necessary time and resources to carry out their responsibilities.
- 18.4 At least 14 (fourteen) days before a list of nominations is finalized and presented to the Members, the Company’s Secretariat must inform GCO, allowing GCO to check whether it has engaged with any of the candidates under its Integrity Measures, and thus allowing GCO to make this known to the Company in due time.

- 18.5 Each person on the Directors' Candidate List shall be sent to the Members together with the notice of the AGM. At the AGM appointment of the Directors shall be decided by a majority of votes and voting shall take place according to the procedures set out in clause 14, 15, 16 and 17.
- 18.6 Elected Directors will be elected for a period of 3 (three) years renewable once by secret ballot, by Members present in person or by proxy at a duly constituted AGM or a special general meeting called for this purpose by the Board.
- 18.7 Nominations for the Board must be submitted to the company secretary at least 45 (forty-five) days prior to the meeting to elect Directors.
- 18.8 If insufficient nominations to the Board have been received, nominations may be made from the floor on the day of the meeting.
- 18.9 Nominations for election to the Board must comply with the following, failing which the nomination will be invalid and the nominee will not be permitted to stand for election. The nomination must specify:
- 18.9.1 the name of the nominating Member;
 - 18.9.2 the full name of the nominee; and
 - 18.9.3 the nomination must be supported by a written consent from the nominee to stand for election to the position nominated and the written agreement of the nominee to perform the duties attendant upon the position should the nominee be elected.
- 18.10 The Board shall have the power by majority vote to appoint such additional Directors as it may consider appropriate.

19 DIRECTOR DURATION AND TERMINATION

- 19.1 The Board shall have the power to remove any Director from office, as they may in their discretion deem fit, provided that they shall so exercise the powers hereby granted to them to ensure that the number of Directors shall not fall below 7 (seven).
- 19.2 In addition to satisfying the qualification and eligibility requirements set out in section 69, of the Companies Act, namely that a person is disqualified to be a director of a company if a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162 of the Companies Act or in terms of section 47 of the Close Corporation Act No. 69 of 1984; or subject to subsection 69(9) to 69(12) of the Companies Act, the person-

- 19.2.1 is an unrehabilitated insolvent;
- 19.2.2 is prohibited in terms of any public regulation to be a director of a company;
- 19.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 19.2.4 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence-
 - 19.2.4.1.1 involving fraud, misrepresentation or dishonesty;
 - 19.2.4.1.2 in connection with the promotion, formation or management of a company, or in connection any act contemplated in sections 69(2) or 69(5); or
 - 19.2.4.1.3 under the Act, the Insolvency Act No.24 of 1936, the Close Corporations Act No. 69 of 1984, the Competition Act, the financial Intelligence Centre Act No. 38 of 2001, the Securities Services Act No. 36 of 2004, Chapter 2 of the Prevention and Combating of Corruption Activities Act No. 12 of 2004.

- 19.3 Unless the terms upon which any Director is appointed provided otherwise, each Director of the Company shall serve for a period of 3 (three) years, provided that a maximum of 50% of the Directors can be changed per election term, to guarantee continuity of the work and support to GCN. A vacancy in the number of Directors shall only arise in the event of -
- 19.3.1 any Director ceasing to hold office or become disqualified from holding office as such for any reason; and/or
 - 19.3.2 a Member who employs a Director ceases to be a Member of GCN. That Director shall resign a Board Member; and/or
 - 19.3.3 the Directors resolving to increase the number of Directors; and/or
 - 19.3.4 a Director is absent without the consent of the Board from 3 (three) or more consecutive meetings of the Board; and/or
 - 19.3.5 any of the other circumstances contemplated in section 70(1) of the Companies Act arising, namely-
 - 19.3.5.1 when the person's term of office as Director expires; or

- 19.3.5.2 in any case, if the person-
- 19.3.5.3 resigns or dies;
- 19.3.5.4 in the case of an ex officio director; ceases to hold the office, title designation or similar status that entitled the person to be an ex officio director;
- 19.3.5.5 becomes incapacitated to the extent that the person is unable to perform functions of a director, and is unlikely to regain that capacity within a reasonable time, subject to section 71(3) of the Companies Act;
- 19.3.5.6 is declared a delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company, in terms of section 162 of the Companies Act;
- 19.3.5.7 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
- 19.3.5.8 becomes ineligible or disqualified in terms of section 69 of the Act, subject to section 71(3); or
- 19.3.5.9 is removed-
 - 19.3.5.9.1 by resolution of the Members;
 - 19.3.5.9.2 by resolution of the Board; or
 - 19.3.5.9.3 by order of the court in terms of section 71(5) or (6) Companies Act.

19.4 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) Companies Act, and the powers of the Board in this regard are not limited or restricted by this MOI.

19.5 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MOI) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, directors, nominees or managers of any company or firm,

or otherwise in favour of any company, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

19.6 Save for otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

19.7 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

19.8 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration and otherwise as a disinterested quorum of the Directors may determine.

19.9 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company or other juristic person promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except in so far as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company or juristic person.

19.10 The Board shall, on an annual basis, evaluate and assess the performance of individual Directors, the Board and Board Committees on the same principles.

20 DIRECTORS' MEETINGS

20.1 Save as may be provided otherwise herein, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they may think fit.

- 20.2 **The Directors may elect a Chairperson and a Deputy Chairperson.** A Chairperson's term should not exceed 3 (three) years, but a Chairperson can be re-elected for an additional term provided that no more than 2 (two) consecutive terms should be served.
- 20.3 The Chairperson, or in his or her absence the Deputy Chairperson, shall be entitled to preside over all meetings of Directors and shall serve for a term of 3 (three) years renewable for one (1) additional term. If no Chairperson or Deputy Chairperson is elected, or if at any meeting neither is present or willing to act as Chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1(one) of their number to be Chairperson of such meeting.
- 20.4 In addition to the provisions of section 73(1) of the Companies Act, any 2 (two) Directors shall at any time be entitled to call a meeting of the Directors.
- 20.5 The Board has the powers to-
- 20.5.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 of the Companies Act and, accordingly, any decision that could be voted on at a meeting of the meeting of the Board may instead be adopted by a written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 20.5.2 conduct a meeting entirely by Electronic Communication (conference call, videoconference, internet meeting or any other format agreed upon by the Directors) or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.
- 20.5.3 determine the manner and form of providing notice of its meetings as set out in section 73(4) of the Companies Act; and
- 20.5.4 proceed with a meeting despite a failure or defect in giving notice of the meeting as set out in section 73(5) of the Companies Act.
- 20.6 The powers of the Board in respect of the above matters are not limited or restricted by this MOI.
- 20.7 The quorum requirement for a Directors' meeting (including an adjourned meeting) shall be 50% +1 (fifty percent plus one) of the Directors appointed at the relevant time.

- 20.8 If all of the Directors of the Company-
- 20.8.1 acknowledge actual receipt of the notice convening a meeting; or
 - 20.8.2 are present at a meeting; or
 - 20.8.3 waive notice of a meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 20.9 each Director has 1(one) vote on a matter before the Board.
- 20.10 a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 20.11 in the case of a tied vote-
- 20.11.1 meeting the Chairperson shall have a casting vote in addition to any deliberative vote; and
 - 20.11.2 the matter being voted shall be finalised.
- 20.12 Resolutions adopted by the Board-
- 20.12.1 must be dated and sequentially numbered;
 - 20.12.2 are effective as sequentially numbered; and
 - 20.12.3 are effective as of the date of the resolution unless any resolution states otherwise.
- 20.13 Any minutes of a meeting, or a resolution, signed by the Chairperson of the meeting, or by the Chairperson of the next of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 20.14 The minutes of every general meeting and annual general meeting of the Company may be inspected and copied.
- 20.15 If receipt of a notice is disputed by a Member, such notice shall be deemed not to have been duly given, unless the Company is able to produce a registered slip or electronic confirmation verifying that the notice was duly despatched. Any notice sent by registered post shall be deemed to have been received 5 (five) days after the letter containing the same was duly posted.

21 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 21.1 The Company may not pay remuneration to the non-executive Directors for their services as non-executive Directors. Accordingly, non-executive Directors shall not be entitled to receive remuneration for their services as non-executive Directors; but may be entitled to reasonable remuneration as determined by the Company in general meeting from time to time, for any extra services rendered to the Company.
- 21.1 As contemplated in item 5(3) in Schedule 1 of the Companies Act, the Company may not provide a loan to secure a debt or obligation of or otherwise provide direct or indirect financial assistance to a Director of the Company or to a person related to any such Director.
- 21.2 Notwithstanding the provisions of clause 19.1, a transaction shall not be prohibited if it-
- 21.3.1 is in the ordinary course of the Company's business and for fair value;
 - 21.3.2 constitutes an accountable advance to meet-
 - 21.3.2.1 legal expenses in relation to a matter concerning the Company; or
 - 21.3.2.2 anticipated expense to be incurred by the person on behalf of the Company; or
 - 21.3.2.3 is to defray the person's expenses for removal at the Company's request; or
 - 21.3.2.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

22 PERSONAL FINANCIAL INTERESTS OF DIRECTORS

- 22.1 For the purposes of this clause 20 (Personal Financial Interests of Directors), "Director" includes an Alternate Director, a Prescribed Officer, and a person who is a member of a Committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 22.2 At any time, a Director may disclose any Personal Financial Interest in advance by delivering a notice in writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further written notice from that Director.

- 22.3 If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or knows that a Related Person has a Personal Financial Interest in the matter, the Director-
- 22.3.1 must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
 - 22.3.2 must disclose to the meeting any material information relating to the matter, and known to the Director;
 - 22.3.3 must disclose any observations or pertinent insights relating to the matter if requested to do so by the Directors;
 - 22.3.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 22.3.2 and 22.3.3;
 - 22.3.5 must not take part in the consideration of the matter, except to the extent contemplated in clauses 22.3.2 and 23.3.3;
 - 22.3.6 while absent from the meeting in terms of this clause 22.3:
 - 22.3.6.1 is to be regarded as being Present at the Meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum;
 - 22.3.6.2 must not be regarded as being Present at the Meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 22.3.6.3 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
 - 22.3.8 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material Interest, or knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that Personal Financial Interest and the Material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

- 22.4 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, or only if-
- 22.4.1 it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 22; or
 - 22.4.2 despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

23 EXECUTIVE DIRECTOR

- 23.1 The Directors may from time to time appoint a person to the office of Executive Director.
- 23.2 The Directors may from time to time entrust to and confer upon the Executive Director such of the powers exercisable in terms of this MOI by the Directors as they may deem fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions, as they may deem expedient; and they may confer such powers either collaterally with or to the conclusion of and in substitution for all or any of the powers of the Directors in their behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

24 INDEMNIFICATION OF DIRECTORS

- 24.1 The Company may-
- 24.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);
 - 24.1.2 indemnify a Director in respect of liability as set out except to the extent that this MOI provides otherwise, the Company may indemnify a Director in respect of any liability arising other than in respect of-
 - 24.1.2.1 any liability arising-
 - 24.1.2.1.1 in terms of section 77(3)(a), (b) or (c) of the Companies Act; or
 - 24.1.2.1.2 from wilful misconduct or wilful breach of trust on the part of the Director; or

- 24.1.2.2 any penalty that may be imposed on a Director, or of a related company, who has been convicted of an offence in terms of any national legislation; and/or
- 24.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7), and the power of the Company in this regard is not limited, restricted or extended by this MOI.
- 24.1.4 The provisions of clause 24.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee, if any.

25 COMMITTEES OF THE BOARD

25.1 The Board may-

- 25.1.1 appoint committees of Directors and delegate to any committee any of the authority of the Board as set out in section 72(1); and/or
- 25.1.2 include in any such committee persons who are not Directors, as set out in section 72(2) (a), and the power of the Board in this regard is not limited or restricted by this MOI.

25.2 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this MOI.

26 FUNDAMENTAL TRANSACTIONS

As contemplated in item 2(1) of Schedule 1 to the Companies Act, the Company may not-

- 26.1 amalgamate or merge with, or convert to, a profit company; or
- 26.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

27 FINANCIAL YEAR END AND ANNUAL FINANCIAL STATEMENTS OF THE COMPANY

- 27.1 The Company's financial year end will be on the last day of December each year.
- 27.2 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of-

- 27.2.1 the Act;
 - 27.2.2 any other law with respect to the preparation of financial statements to which the Company may be subject;
 - 27.2.3 the Regulations; and
 - 27.2.4 this MOI;
- 27.3 The Company shall each year prepare annual financial statements within 6(six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 27.4 The Company shall in particular, in order to satisfy its obligations in Regulation 27(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any party, to the extent applicable.
- 27.5 The Company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 27.6 For the purposes of the affairs of the Company, with regard to and/or relating to the auditor of the Company, the provisions of sections 90(1), 90(901A), 90(2)(a) and (b), 90(3), 90(5), 90(6)(a)(i) to (iii), 90(6)(b) and (c), 91(1), 91(2), and 93(1) are incorporated, *mutatis mutandis*, into MOI.
- 27.7 The annual financial statements of the Company-
- 27.7.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act and the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and
 - 27.7.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 27.8 Subject to clause 27.6, and notwithstanding any contrary provision in the Act, the annual financial statements shall be audited as set out in clause 27.8.

- 27.9 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall-
- 27.9.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
 - 27.9.2 subject to and in accordance with IFRS-
 - 27.8.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - 27.8.2.2 show the Company's assets and liabilities, as well as its income and expenses;
 - 27.8.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
 - 27.8.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

26 ACCESS TO COMPANY RECORDS

- 28.1 Each Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being-
- 28.1.1 this MOI and any amendments or alterations thereof, and any Rules of the Company;
 - 28.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
 - 28.1.3 all-
 - 28.1.3.1 reports presented at an annual general meeting of the Company for a period of 7(seven) years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact hold an annual general meeting; and

- 28.1.3.2 annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;
- 28.1.4 notice and minutes of all meetings of Members, including-
 - 28.1.4.1 all resolutions adopted by them, for 7(seven) years after the date each such resolution was adopted; and
 - 28.1.4.2 any document that was made available by the Company to Members in relation to each such resolution;
- 28.1.5 any written communications sent generally by the Company to all Members (or all members of any class of Members, if any), for a period of 7 (seven) years after the date on which each of such communications was issued; and
- 28.1.6 the Members' register of the Company.
- 28.2 A person not contemplated in clause 28.1 has a right to inspect the Members' register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

29 NOTICES

- 29.1 All notices intended or required to be given by the Company to any Member of the Company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.
- 29.2 Each Member of the Company-
 - 29.2.1 shall notify in writing to the Company an address, which addresses shall be his registered address for the purposes of receiving written notices from the Company by post; and
 - 29.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 29.3 Any Member whose address is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him or her at such address.

29.4 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

30 AMENDMENT OF MEMORANDUM OF INCORPORATION

30.1 This MOI may only be altered or amended in the manner set out in sections 16, 17 or 152(6)(b).

30.2 As contemplated in section 17, the Board, or any individual authorised by the Board, may alter this MOI in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by-

30.1.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and

30.1.2 filing a notice of alteration.

30.3 An amendment of this MOI will take effect from the later of-

30.3.1 the date on, and time at which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7); or

30.3.2 the date, if any, set out in the said notice of amended.

32 COMPANY RULES

31.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this MOI by-

31.1.1 publishing a copy of any Rules or amendments to such Rules made in terms 15(3) to 15(5) by delivered a copy of such Rules or amendments to each Member by ordinary mail; and

31.1.2 filing a copy of those Rules.

31.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).

31.3 The Board, or any individual authorised by Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the document by-

31.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and

31.3.2 filing a notice of the alteration.

32 DISPUTE RESOLUTION

- 32.1. If any dispute arises out of or in connection with this MOI, or related thereto, whether directly or indirectly, including the enforcement of the provisions hereof, the Board may, in its sole discretion, refer such dispute for resolution by way of arbitration.
- 32.2. A dispute within the meaning of this clause exists once the Board notifies the relevant parties in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- 32.3. Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in in this clause 32.
- 32.4. The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (“AFSA”) by 1 (one) arbitrator appointed by agreement between the Board and the relevant disputing party/ies. If the parties cannot agree on the arbitrator within 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.
- 32.5. The decision of the arbitrator shall be final and binding on all parties and there shall be no further right of appeal.
- 32.6. The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process

