

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

of

Global Tailings Management Institute (RF) NPC

(Registration Number)

being a non-profit company without members

("the Company")

The Company has adopted this unique form of Memorandum of Incorporation and, accordingly, the prescribed standard form of Memorandum of Incorporation for non-profit companies without members which is contained in the Regulations shall not apply to the Company.

This Memorandum of Incorporation was adopted by the Incorporators of the Company, in accordance with section 13(1), as evidenced by the following signatures made by each of them, or on their behalf, the signatories warranting their authority thereto.



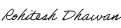

Name of Incorporator	Identity number / registration number	Signature	Date
John Stefan Howchin	DoB: 01/11/1971	 <small>John Howchin (Jan 10, 2025 09:53 GMT+1)</small>	10/01/25
Adam Christopher Tomasz Matthews	DoB: 28/01/1976		09/01/25
Rohitesh Dhawan	DoB: 25/07/1985	 <small>Rohitesh Dhawan</small>	09/01/25
Aidan John Davy	DoB: 25/08/1965	 <small>Aidan Davy (Jan 9, 2025 15:05 GMT)</small>	09/01/25

TABLE OF CONTENTS

PART A – THE MOI AND RULES.....	1
1 INTERPRETATION	1
2 CONFLICTS WITH THE MOI	6
3 AMENDMENT OF THE MOI	6
4 RULES	7
PART B – STATUS, OBJECTS AND POWERS OF THE COMPANY	7
5 STATUS AS A NON-PROFIT COMPANY	7
6 OBJECTS AND POWERS OF THE COMPANY	10
7 PARTICIPANTS IN THE COMPANY	13
8 LIMITATION OF LIABILITY	14
9 ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT	14
PART C – DIRECTORS POWERS AND PROCEEDINGS.....	15
10 AUTHORITY OF THE BOARD OF DIRECTORS.....	15
11 APPOINTMENT OF DIRECTORS AND OTHER OFFICE BEARERS	16
12 BOARD COMMITTEES	21
13 DIRECTORS MEETINGS.....	23
14 WRITTEN RESOLUTIONS BY DIRECTORS	28
15 INDEMNIFICATION AND INSURANCE FOR DIRECTORS.....	28
PART D – GENERAL PROVISIONS.....	32
16 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION....	32
17 FINANCIAL YEAR END	32
18 BANK ACCOUNT	32
19 FINANCIAL ASSISTANCE TO DIRECTORS	33
20 FUNDAMENTAL TRANSACTIONS	33
21 DONATIONS.....	33
22 APPLICATION OF DONATIONS.....	34

23	NOTICES	34
24	DISPUTE RESOLUTION	35
Annexe A	BOARD RESERVED MATTERS	37

PART A – THE MOI AND RULES

1 INTERPRETATION

In this MOI, clause headings are used for convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any clause hereof or paragraph of any schedule or annexe hereto. Unless the context clearly indicates a contrary intention:

- 1.1 an expression that denotes:
 - 1.1.1 any gender, includes the other genders;
 - 1.1.2 a natural Person, includes an artificial or Juristic Person and *vice versa*;
 - 1.1.3 the singular, includes the plural and *vice versa*;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
 - 1.2.1 "**Act**" means the Companies Act 71 of 2008, as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;
 - 1.2.2 "**Board**" means the board of Directors of the Company from time to time with the composition as set out in this MOI;
 - 1.2.3 "**Board Reserved Matters**" means the Board reserved matters set out in Annexe A;
 - 1.2.4 "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the Republic;
 - 1.2.5 "**Charter**" means any charter or terms of reference approved by the Board, as amended by the Board from time to time, relating to the powers, duties, functions and/or operations of the Board and/or any committee of the Board. For the sake of clarity, it is recorded that a Charter shall not constitute Rules;
 - 1.2.6 "**Co-convenors**" means the co-convenors of the Standard, namely ICMM, UNEP and PRI;

- 1.2.7 "**Company**" means the company defined as such on the front page of this MOI;
- 1.2.8 "**Connected Person**" means a connected person as defined in the Income Tax Act;
- 1.2.9 "**Director/s**" means a director of the Company from time to time;
- 1.2.10 "**Founding Partners**" means ICMM, UNEP and PRI;
- 1.2.11 "**Global Tailings Review**" means an initiative co-convened by the Founding Partners to establish the Standard;
- 1.2.12 "**IAP Representative**" means a representative from the International Advisory Panel who is enlisted by the Founding Partners for particular tasks in relation to the Company;
- 1.2.13 "**ICMM**" means the International Council on Mining and Metals;
- 1.2.14 "**Income Tax Act**" means the Income Tax Act 58 of 1962 as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;
- 1.2.15 "**International Advisory Panel**" means the multi-stakeholder advisory panel comprised of expert professionals from a broad range of backgrounds convened by the UNEP, the Church of England Pensions Board and the Council on Ethics of the Swedish National Pension Funds (on behalf of the PRI) to support the foundation of the Company by providing the team developing the Company with initial guidance, reviewing and commenting on the structure, definition of various elements within the structure and planning for the implementation of the Company's activities;
- 1.2.16 "**Memorandum of Incorporation**" or "**MOI**" means the memorandum of incorporation of the Company, being this document (and including any schedules or annexures hereto), as amended or replaced from time to time;
- 1.2.17 "**Mining Industry**" means companies engaged in mining and related activities i.e. the mining and processing of minerals which generate a tailings stream which needs to be appropriately stored and managed;

- 1.2.18 **"Non-Profit Organisations Act"** means the Non-Profit Organisations Act 71 of 1997 as amended or re-enacted and for the time being in force, including any regulations promulgated thereunder and for the time being in force;
- 1.2.19 **"Parties"** means each person bound by the MOI in terms of the Act, including the Company, each Founding Partner, each Director and each Prescribed Officer, or any one or more of them, as the context may require;
- 1.2.20 **"Person/s"** means a person as defined in section 1 of the Act;
- 1.2.21 **"PRI"** means Principles for Responsible Investment;
- 1.2.22 **"Public Benefit Activity"** means a public benefit activity as defined in the Income Tax Act;
- 1.2.23 **"Public Benefit Organisation"** means a public benefit organisation as defined in the Income Tax Act;
- 1.2.24 **"Regulations"** means the regulations promulgated from time to time under the Act;
- 1.2.25 **"Republic"** means the Republic of South Africa;
- 1.2.26 **"Stakeholder Groups"** means the Mining Industry and the following groups which have a direct interest or involvement in the Mining Industry:
- 1.2.26.1 potentially affected communities: human settlements living in areas that could be impacted in the event of a Tailings Facility failure;
- 1.2.26.2 Indigenous Peoples that may potentially be affected by a Tailings Facility: peoples who (i) have historical continuity or association with a given region or part of a given region prior to colonisation or annexation; (ii) self-identify as indigenous peoples and are, at the individual level, accepted as members of their community; (iii) have strong links to territories, surrounding natural resources and ecosystems; they maintain at least part, distinct, social, economic and political systems; (iv) maintain at least in part, distinct languages, cultures, beliefs and knowledge systems; (v) are resolved to maintain and further develop their identity and distinct social, economic, cultural and political institutions as distinct

- peoples and communities; and (vi) are often former non-dominant sectors of society;
- 1.2.26.3 investment communities: providers of financial capital to the Mining Industry;
- 1.2.26.4 insurance / banking industry: providers of insurance and/or banking services to the Mining Industry;
- 1.2.26.5 technical / academic community: researchers and practitioners of various technical aspects of tailings management;
- 1.2.26.6 environmental experts: technical specialists in environmental tailings management;
- 1.2.26.7 workforce: mine and related industry workers;
- 1.2.26.8 regulatory: lawmakers and other regulatory bodies;
- 1.2.27 "**Standard**" means the Global Industry Standard on Tailings Management (GISTM);
- 1.2.28 "**Tailings Facility**" has the meaning ascribed to this term in the Standard, namely:
- 1.2.28.1 a facility that is designed and managed to contain the tailings produced by the mine. Although tailings can be placed in mine-out underground mines, for the purpose of the Standard, tailings facilities refer to facilities that contain tailings in open pit mines or on the surface ('external tailings facilities');
- 1.2.28.2 for purposes of the Standard, tailings facilities are higher than 2.5m measured from the elevation of the crest to the elevation of the toe of the structure, or have a combined water and solids volume more than 30,000m³, unless the Consequence Classification (as contemplated in the Standard) is 'High', 'Very High' or 'Extreme', in which case the structure is considered a tailings facility regardless of its size;
- 1.2.28.3 for the purposes of the Standard, existing tailings facilities are facilities that are accepting new mine tailings on the date that the Standard takes

- effect or not currently accepting new mine tailings but are not in a state of safe closure;
- 1.2.28.4 all other facilities will be treated as new for the purposes of the Standard;
- 1.2.29 "**Technical Issue**" means all aspects covered by the Standard; and
- 1.2.30 "**UNEP**" means the United Nations Environment Programme;
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.4 the use of the word "**including**", "**includes**" and "**include**", followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;
- 1.5 where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this MOI;
- 1.6 any capitalised word or expression, or any other term, that is not otherwise defined in this MOI shall be construed in accordance with the Act or the Standard, as the context may require;
- 1.7 when any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next Business Day;
- 1.8 the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.9 any reference in this MOI to the Company, shall if the Company becomes subject to business rescue proceedings as contemplated in Chapter 6 of the Act, liquidated or sequestrated, be applicable also to and binding upon the business rescue practitioner, liquidator or trustee with respect to the Company;
- 1.10 any reference to a statute shall be a reference to such statute as at the date of the adoption of this MOI by the Company and as amended from time to time thereafter;
- 1.11 a reference to a "**section**" refers to the corresponding section of the Act; and
- 1.12 references in the left-hand margins to sections of the Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only.

2 CONFLICTS WITH THE MOI

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and:

- 2.1 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Act expressly allows for the Company to adopt the conflicting provision;
- 2.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict.

3 AMENDMENT OF THE MOI

S15(2)(b)

S15(2)(c)

S16

S17

- 3.1 Every provision of this MOI shall be capable of amendment in accordance with sections 16 and 17 of the Act, unless expressly indicated otherwise herein and/or being incapable of amendment in terms of the Act. Accordingly, this MOI may only be altered or amended:

S16(1)(a)

- 3.1.1 in compliance with a court order on the basis set out in section 16(1)(a) of the Act and any other applicable provisions of the Act;

S16(1)(c)

- 3.1.2 by way of a Board resolution supported by unanimous approval of Directors entitled to vote thereon in accordance with section 16(1)(c)(i)(aa) and section 16(3) of the Act, read in conjunction with the remaining provisions of the Act and this MOI; and subject to (i) for the first five financial years of the Company, the unanimous agreement of the Founding Partners; (ii) from the

sixth financial year of the Company, consultation with the Founding Partners, and further subject to clause 6.2.2.11; or

S17 3.1.3 as contemplated in section 17 of the Act.

S152(6)(b)

3.2 Save as specifically provided for in clause 3.1, this MOI is not capable of amendment by any other method. Accordingly, the provision of section 16(1)(b) of the Act shall not apply, nor shall any other alterable provisions of the Act that allows for a method for the alteration or amendment of the MOI other than those methods contemplated in clause 3.1 apply.

S17 (1) 3.3 The Company must publish and file a notice of any alteration made to this MOI in order to correct this MOI in accordance with section 17(1) of the Act.

3.4 Once the Company is registered as a Public Benefit Organisation and/or a Non-Profit Organisation, the Company must submit a copy of any amendment to this MOI to the Commissioner for the South African Revenue Service (or its successors in title) and the Director of Non-Profit Organisations of the Department of Social Development (or its successors in title), as the case may be.

4 RULES

S15(3) 4.1 The Board may, subject to section 15(4) of the Act, 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 this MOI, and the authority of the Board in this regard is not limited or restricted other than in relation to the Board Reserved Matters as read with clause 13.4.5.

S17(1) 4.2 The Company shall publish a copy of those Rules and a notice of any alteration to those Rules in accordance with section 17(1) or in such other manner as may be required by those Rules.

PART B – STATUS, OBJECTS AND POWERS OF THE COMPANY

5 STATUS AS A NON-PROFIT COMPANY

5.1 The Company shall:

S1(2)
Schedule
1 5.1.1 apply all of its assets and income, however derived, to advance its stated objects, as set out in this MOI;

5.1.2 comply with any reporting requirements determined by the Commissioner for the South African Revenue Service (or its successors in title) and any reporting requirements under the Non-Profit Organisations Act; and

5.1.3 subject to clause 5.1.1, may:

5.1.3.1 acquire and hold securities issued by a profit company; or

5.1.3.2 directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

S1(3)
Schedule
1

5.2 The Company shall not, directly or indirectly, pay any portion of its funds, income or transfer any of its assets, regardless how the funds, income or asset was derived, to any Person (including a Person who is or was an Incorporator of the Company, or who is a Director, or Person appointing a Director, of the Company) except:

5.2.1 as reasonable:

5.2.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company, provided that, to ensure that such remuneration will not benefit any such Person in a manner which is not consistent with or is detrimental to the Company's objects, in determining the remuneration for goods delivered or services rendered the Company shall have regard to what is generally considered reasonable in the applicable sector; or

5.2.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

5.2.2 as a 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;

5.2.3 as a 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

5.2.4 in respect of any legal obligation binding on the Company,

provided that such payment furthers the principal objects of the Company.

S1(4)
Schedule 1

- 5.3 Upon the winding-up or dissolution of the Company:
- 5.3.1 no past or present Director of the Company, or a Person appointing a Director of the Company, shall be entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied;
- 5.3.2 the entire net value of the Company shall be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts ("**Entities**") having objects similar to the Company's principal objects and as determined by the Directors, provided that the Entities qualify as Public Benefit Organisations which are approved in terms of section 30 of the Income Tax Act or any institution board or body which is exempt from tax under the provisions 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 at or immediately before the Company's dissolution. For the avoidance of doubt, the recipient of the net value of the Company shall be required to use those assets solely for the purposes of carrying out a Public Benefit Activity.
- 5.4 The Company may not:
- 5.4.1 accept a donation which is recoverable at the instance of the donor for reasons other than to conform to the designated purpose and conditions of the donation, including misrepresentation with regard to the tax deductibility of the aforesaid donation;
- 5.4.2 accept a donation from a donor who has imposed conditions on such donation that would enable the donor or any Connected Person of the donor to derive a direct or indirect benefit from the application of such donation unless the donor is an approved Public Benefit Organisation or is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act;
- 5.4.3 knowingly 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 would have been payable to the South African Revenue Service but for the transaction, operation or scheme; or

5.4.4 use any of its income, funds, or assets, directly or indirectly, to support, advance or oppose any political party.

S8(1)

5.5 The Company is, accordingly, incorporated as a non-profit company without members, as classified in terms of section 8(1) of the Act.

5.6 The Company shall be registered as a Public Benefit Organisation and as a non-profit organisation in terms of the Non-Profit Organisations Act.

6 OBJECTS AND POWERS OF THE COMPANY

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

6.1.1 the unalterable provisions of the Act, that are applicable to non-profit companies (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii) of the Act);

6.1.2 the alterable provisions of the Act, that are applicable to non-profit companies (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii) of the Act); and

6.1.3 the other provisions of this MOI.

6.2 The Company is subject to the following restrictive conditions in accordance with section 15(2)(b):

6.2.1 the purpose and business of the Company is solely to oversee the implementation of, and conformance with, the Standard, which strives to achieve the ultimate goal of zero harm to people and the environment with zero tolerance for human fatality. To achieve this the Company's primary objects will be:

6.2.1.1 **Assurance:** Managing an assurance framework whereby Tailings Facilities will be audited and certified against the Standard by qualified, independent third party assessors is the one core priority of the Company, which will also have the following three supporting functions;

- 6.2.1.2 **Awareness:** Promoting awareness, understanding and adoption of the Standard by (all) mining companies (public, private and government owned), building on the efforts of the Global Tailings Review;
- 6.2.1.3 **Knowledge Sharing:** Facilitating the sharing of knowledge and implementing the Standard to improve overall knowledge in tailings management;
- 6.2.1.4 **Disclosures:** Supporting confidence in the Standard and its implementation through transparency of Tailings Facility details and auditing outcomes;

S1(1)
Schedule 1

- 6.2.2 in order to achieve its principal objects, the Company may undertake and/or exercise any of the following ancillary objects and powers:

Assurance programme

- 6.2.2.1 oversee an accreditation process for auditors who will be carrying out the Tailings Facility audits;
- 6.2.2.2 provide a reference point for mining companies and auditors seeking clarification on aspects of the Standard;
- 6.2.2.3 provide a mechanism to receive and act on feedback from stakeholders;

Awareness building

- 6.2.2.4 liaise with other Mining Industry representative bodies who have developed parallel standards and best practice guidelines to recognise equivalence and/or align with the Standard where appropriate;
- 6.2.2.5 liaise with regulators with a view to align regulatory oversight of Tailings Facilities with the Standard;

Knowledge sharing

- 6.2.2.6 work with stakeholders to continually improve knowledge of tailings management practices;

- 6.2.2.7 facilitate stakeholder engagement on issues of concern with feedback received contributing to the inputs to future reviews of the Standard which would be undertaken by the Co-convenors;
- 6.2.2.8 work with academic institutions to promote appropriate Standard awareness training for a range of professionals and regulators working with Tailings Facilities;
- 6.2.2.9 promote and encourage independent investigations of any future Tailings Facility failures, facilitating public access to enable learnings derived from investigations to be built into the knowledge base, with outcomes contributing to the inputs of future reviews of the Standard;

Disclosures

- 6.2.2.10 facilitate ongoing updates to company disclosures on Tailings Facility details, including summary outcomes from certification audits and links to company disclosures required under the Standard;

Updates to the Standard by the Co-convenors

- 6.2.2.11 undertake a technical review of the Standard if requested to do so by the Co-convenors (noting that the ownership and responsibility for updating the Standard remains the responsibility of the Co-convenors, which responsibility cannot be modified through any provisions within, or future alterations or amendments to, this MOI, unless such alteration or amendment to the MOI is approved by the Co-convenors);
- 6.2.2.12 accommodate and implement any updates to the Standard received from the Co-convenors; and

General

- 6.2.2.13 all other activities necessary to the Company's core function and primary objects;
- 6.2.3 it is specifically recorded that the objects of the Company, as listed in clauses 6.2.1 and 6.2.2, are to be carried out such that none of the

aforementioned objects are intended, whether directly or indirectly, to promote the self-interest of any fiduciary or member of the Company;

6.2.4 the Company will not conduct any business other than as set out in clause 6.2.1 (as read with clause 6.2.2) or enter into any transactions other than those required to give effect to the purpose and business of the Company as set out in clause 6.2.1.

6.3 The restrictive conditions set out in clause 6.2 constitute a restriction of the Company's power and capacity in accordance with section 15(2)(b), and accordingly the Company is a ring-fenced company.

S15(2)(b) 6.4 There are no other restrictive conditions as contemplated in section 15(2)(b) of the Act.

S19(1)(b)(ii) 6.5 Except to the extent implied by the stated objects in clause 6.2.1 (as read with clause 6.2.2), the Company has, subject to section 19(1)(b)(i) of the Act, all of the legal powers and capacity of an individual, and the purposes, legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications contemplated in section 19(1)(b)(ii) of the Act.

7 PARTICIPANTS IN THE COMPANY

It is contemplated that the Company shall operate as follows:

7.1 Signatories

7.1.1 Mining companies and government owned enterprises may become signatories to the Standard, thereby committing to the implementation of the Standard, along with independent auditing and certification.

7.1.2 The signatories will register each Tailings Facility that is to be audited by the independent third party auditors to assess conformance with the Standard.

7.2 Supporters

7.2.1 Other stakeholders may become supporters of the Company. The opportunities to become supporters of the Company are intended to be broad and inclusive and the Board will determine which stakeholders are eligible and the role and expectations of stakeholders.

7.2.2 The Company will provide these stakeholders with a window into tailings management practices through:

7.2.2.1 access to publicly available, Mining Industry wide, information on Tailings Facilities, including summary outcomes from certification audits and links to company disclosures required under the Standard;

7.2.2.2 facilitating stakeholder engagement on issues of concern (e.g. recurring issues raised for Board consideration) through the hosting of roundtables with experts and key stakeholders;

7.2.2.3 knowledge sharing with stakeholders, such as community representative groups, insurance professionals, investor groups, regulators and others to continually improve their undertaking of tailings management practices.

7.3 **Fees**

7.3.1 Each participant shall pay an annual fee as determined by the Board.

7.3.2 Signatories and supporters will be disclosed on the Company's website. A listing of the Tailings Facilities that signatories are responsible for managing and a summary report on the outcomes of independent audits of these Tailings Facilities will also be disclosed on the Company's website.

8 **LIMITATION OF LIABILITY**

s19(2) No Person shall, solely by reason of being an Incorporator or Director of the Company, be liable for any liabilities or obligations of the Company.

9 **ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT**

s34(2) The Company does not elect, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act, unless otherwise provided herein.

PART C – DIRECTORS POWERS AND PROCEEDINGS

10 AUTHORITY OF THE BOARD OF DIRECTORS

- S66(1) 10.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Act or this MOI provides otherwise.
- 10.2 The responsibilities of the Board include, but are not limited to:
- 10.2.1 promoting the objectives of the Company and advancing progress to achieve its priority and supporting functions;
 - 10.2.2 selecting, supporting, compensating and evaluating the performance of the Chief Executive Officer and succession planning;
 - 10.2.3 defining and periodically reviewing the Company's strategy and tracking and assessing performance;
 - 10.2.4 ensuring the Company has the resources in place to deliver against its objectives and supporting the executive in securing resources;
 - 10.2.5 ensuring strong fiduciary oversight and financial management;
 - 10.2.6 understanding the Company's risk profile and reviewing and overseeing the Company's management of risks;
 - 10.2.7 ensuring compliance with all applicable laws, regulations, policies and ethical standards of the Company (including laws and regulations, as well as the Company's conflict of interest and other policies); and
 - 10.2.8 affirming the composition of the Board and its committees and determining governance practices.
- 10.3 The Board may delegate to any one or more Persons all such powers and delegate to any one or more Persons the doing of all such acts (including the right to sub-delegate).

11 APPOINTMENT OF DIRECTORS AND OTHER OFFICE BEARERS

11.1 Directors

- S3
Schedule 1
- 11.1.1 The first Directors of the Company shall be the Incorporators of the Company, who shall serve as Directors of the Company until the minimum number directors prescribed in clause 11.1.2 have been appointed to the Board pursuant to the initial appointments contemplated in clause 11.1.4.
- 11.1.2 The Board of the Company shall comprise of not less than the number of Directors prescribed in terms of the Act and in terms of any other legislation or any regulation applicable to the Company from time to time, provided that after all the initial appointments to the Board are made as contemplated in clause 11.1.4, at all times there shall be at least seven Directors, which must at all times include two Mining Industry representatives.
- S5(2)
Schedule 1
- 11.1.3 The Board shall consist of up to nine members, comprising of seven members, one chairperson and one deputy chairperson. The members of the Board shall be drawn from the Stakeholder Groups, with Mining Industry having two representatives, one of which shall be the chairperson or the deputy chairperson. Based on seven to nine Board members, to balance interests within the Board, there should always be three seats collectively for representatives from potentially affected communities (as contemplated in clause 1.2.26.1), Indigenous Peoples (as contemplated in clause 1.2.26.2), and workforce (as contemplated in clause 1.2.26.7) and two seats for Mining Industry. These three Board seats are treated as separate Stakeholder Groups for voting purposes.
- 11.1.4 Other than the first Directors, the initial appointments to the Board should be made as follows:
- 11.1.4.1 **chairperson and deputy chairperson**
- 11.1.4.1.1 There will be an open call for nominations for the chairperson of the Board and deputy chairperson of the Board.
- 11.1.4.1.2 The successful candidates for the chairperson and deputy chairperson will be appointed to the Board by the Founding Partners based on the unanimous agreement of the Founding

Partners and the IAP Representative. Either the Board chairperson or deputy chairperson will always be from Mining Industry. ICMM will nominate a Mining Industry representative in the role of either the chairperson or the deputy chairperson, subject to no objections from UNEP, PRI and the IAP Representative.

- 11.1.4.1.3 In the case of objections which cannot be resolved, ICMM will nominate other candidates until unanimous agreement with UNEP, PRI and the IAP Representative is reached.
- 11.1.4.1.4 The duration of a chairperson's and deputy chairperson's term is three years.
- 11.1.4.1.5 Subject to clause 11.1.4.1.6:
- 11.1.4.1.5.1 at the end of a chairperson's term, the incumbent deputy chairperson shall become the chairperson and the chairperson shall become the deputy chairperson;
- 11.1.4.1.5.2 if they cannot, or do not wish to, become the chairperson or deputy chairperson, as the case may be, for any reason, the nominations and governance committee will determine a process to identify the next chairperson or deputy chairperson, as the case may be, or to extend the current chairperson's or deputy chairperson's term.
- 11.1.4.1.6 An individual can serve a maximum of 2 (two) consecutive terms as chairperson or deputy chairperson and a maximum of 3 (three) terms as a Director.
- 11.1.4.2 **Mining Industry Representative**
- 11.1.4.2.1 ICMM will nominate a Mining Industry representative for appointment to the Board, subject to no objections from UNEP, PRI and the IAP Representative.
- 11.1.4.2.2 In the case of objections which cannot be resolved, ICMM will nominate other candidates until agreement with UNEP, PRI and the IAP Representative is reached.

11.1.4.2.3 The successful candidate will be appointed to the Board by the Founding Partners.

11.1.4.3 **All other Board members**

11.1.4.3.1 All other Board members will be appointed from the Stakeholder Groups (other than Mining Industry) by unanimous agreement of the Founding Partners, the chairperson and the deputy chairperson.

11.1.5 All Directors shall serve a term of 3 (three) years.

11.1.6 Retiring Directors (i.e. from the Board) are eligible for re-election for 2 (two) further term of three years each provided that he/she satisfies the requirements to become or remain a director as set out in clauses 11.1.10 and 11.1.11 and shall be deemed to offer themselves for re-election unless they, or any of them, shall at least 90 (ninety) Business Days before the expiry of their term notify the Board of their intention not to seek re-election. A retiring Director may be re-elected by the Board.

11.1.7 New Directors from time to time shall be appointed as follows:

11.1.7.1 if either of the Mining Industry representative Directors retires and is not re-elected or ceases to be a Director for any other reason, ICMM will nominate a candidate, subject to no objections from the other Board members. In the case of objections which cannot be resolved, ICMM will nominate other candidates until unanimous agreement with the other Board members is reached. The successful candidate will be appointed as a Director by unanimous approval of the Board as contemplated in clause 13.4.5;

11.1.7.2 if any other Board member retires and is not re-elected or ceases to be a Director for any other reason, the nominations and governance committee will choose a new Director, based on unanimous acceptance by the nominations and governance committee and (i) for the first five financial years of the Company, with the unanimous agreement of the Founding Partners; (ii) from the sixth financial year of the Company, the nominations and governance committee will consult with the Founding

Partners in relation to the appointment of new Directors. The successful candidate will be appointed as a Director by unanimous approval of the Board as contemplated in clause 13.4.5.

11.1.8 All persons accepting any invitation to serve on the Board (as well as any person offering themselves for re-election to the Board) must deliver to the Company a written consent to serve as a Director as contemplated in the Act.

11.1.9 For so long as their number is reduced below the minimum prescribed in clause 11.1.2:

11.1.9.1 the continuing Directors may act for the purpose of increasing the number of Directors to the minimum number of Directors required in terms of clause 11.1.2, or of convening a Board meeting, and for no other purpose; and

11.1.9.2 the ICMM or the nominations and governance committee, as the case may be, shall expediate the process contemplated in clause 11.1.7 to fill any vacancy on the Board.

S69(3) 11.1.10 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Act or the Non-Profit Organisations Act.

S69(6)
S70 11.1.11 In addition to the grounds of ineligibility and disqualification of Directors as contained in sections 69 and 70 of the Act and section 25A of the Non-Profit Organisations Act, a Director shall cease to be eligible to continue to hold office as a Director if:

11.1.11.1 he or she is concerned or interested in or participates in the profits of any agreement with or work done for the Company, without disclosing same in compliance with the Act;

11.1.11.2 he or she is removed by the Board;

11.1.11.3 his or her estate is finally sequestrated;

11.1.11.4 he or she files a petition for the surrender of his or her estate as insolvent;

11.1.11.5 he or she is placed under curatorship by any court of competent jurisdiction;

- 11.1.11.6 he or she enters into a compromise with his or her creditors generally;
- 11.1.11.7 he or she is the subject of, or is subject to an event which, under the applicable laws of any jurisdiction, has an analogous effect of any of the events specified in clauses 11.1.11.3 and 11.1.11.6 (all inclusive);
- 11.1.11.8 he or she delivers a notice of his or her resignation at the Company;
- 11.1.11.9 he or she becomes of unsound mind; and/or
- 11.1.11.10 the Director misses 2 (two) consecutive Board meetings unless such Director provides the Board with a valid reason for his or her absence. The validity of any such reason shall be determined by way of an ordinary resolution of the Board. For the avoidance of doubt, the aforesaid Director shall be deemed to be, and allowed to be, present for any Board meeting, for purposes of quorum requirements.

S70

- 11.1.12 Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time in terms thereof or otherwise.
- 11.1.13 Notwithstanding any of the aforementioned, a Person may not serve as a Director of the Company if a Connected Person of the aforementioned Person is already a Director of the Company.

11.2 **Office bearers**

- 11.2.1 The Board may appoint any officers (who may, but need not, be chosen from among the Directors) it considers necessary to better achieve the objects of the Company, including, without limitation a Chief Executive Officer, Secretary and Treasurer. The Chief Technical Officer will be appointed by the Chief Executive Officer in consultation with the Board chairperson and deputy chairperson.
- 11.2.2 The officers shall be appointed at the first Board meeting of the Company's financial year or any other meeting by unanimous approval of the Board.
- 11.2.3 Any two offices may be held by the same person, provided that the office of the Secretary may not be held by the deputy chairperson.

- 11.2.4 Subject to, and to the extent permitted in terms of, the Act and the Board Reserved Matters, the Directors may from time to time confer upon any officer of the Company such of the powers and authority vested in them as they may deem fit, for such time, for such purposes, upon such terms and conditions and with such restrictions as they may think fit and the Directors may from time to time revoke or vary all or any of such powers and authorities, provided that such powers and authority shall not exceed or conflict with any of the powers or authority of the Board and the Company as set out in this MOI.
- 11.2.5 The officers shall hold office until the first Board meeting of the next financial year of the Company and until their respective successors are appointed, except in the case of prior resignation, death or removal.
- 11.2.6 The Board may remove any officer at any time, with or without cause, but such removal shall be without prejudice to the contractual rights of the officer, if any.
- 11.2.7 A vacancy in any office may be filled by unanimous approval of the Board.
- 11.2.8 The Board shall, subject to clause 5.2, determine the reasonable compensation for officers for their services rendered. Any remuneration payable in terms of this clause 11.2.8 shall be commensurate with the services actually rendered and shall not be excessive, having regard to what is generally considered reasonable for similar services.

12 BOARD COMMITTEES

- S72(1) 12.1 The Board may:
- 12.1.1 appoint any number of committees of Directors;
- 12.1.2 delegate to any committee any of the authority of the Board (including the authority to sub-delegate); and
- 12.1.3 include any Person who is not a Director of the Company in such committees, provided that such Person is not ineligible or disqualified to be a Director as contemplated in clauses 11.1.10 and 11.1.11.
- 12.2 Without limiting the foregoing, the Board will appoint the following committees:

- 12.2.1 a technical committee to oversee Technical Issues related to, *inter alia*, the audit and certification process and to advise the Board on any other Technical Issues that the Board may delegate to it;
- 12.2.2 an audit committee to hire and assure the independence of the independent financial auditor and provide oversight of (a) the financial audit, review or compilation of financial statements; (b) internal controls and related processes designated to assure the reliability of data and (c) risk management processes;
- 12.2.3 a compensation committee to review the compensation of the Board members, Chief Executive Officer, committee members (including, for the avoidance of doubt, the technical committee) and other senior managers of the Company; and
- 12.2.4 a nominations and governance committee to nominate Board candidates, ensure the size, leadership and composition of the Board are appropriate and oversee the governance structures and policies of the Company.
- 12.3 Provided that decisions taken by any committee must be reported for approval to the next meeting of the Board, this MOI does not limit or restrict the authority and power of any committees established by the Board, but such power or authority may be restricted by the Board in the applicable Charter.
- 12.4 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 Act and the Non-Profit Organisations Act, provided that a Person shall comply with such qualifications or requirements as may be stipulated in the relevant Charter in order to serve as a member of that Board committee.
- 12.5 A member of a Board committee shall cease to hold office as such immediately he/she becomes ineligible or disqualified as contemplated in clauses 11.1.10 and 11.1.11.
- 12.6 Subject to the provisions of its Charter, any committee of the Board may consult with or receive advice from any suitably qualified Person.
- 12.7 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of the relevant Charter.

13 DIRECTORS MEETINGS

13.1 Board Meetings

13.1.1 The Board shall:

S73(1)(b)
S73(2) 13.1.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that any the chairperson, the deputy chairperson or any five Directors shall be entitled to convene or direct a Director authorised by the Board to convene a meeting of the Board;

S73(4) 13.1.1.2 determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Act; provided that:

13.1.1.2.1 subject to clause 13.1.2, no meeting may be convened without notice to all of the Directors; and

S73(5)(a) 13.1.1.2.2 any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question.

13.1.2 If all of the Directors of the Company:

13.1.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

13.1.2.2 are present at a meeting; or

13.1.2.3 waive notice of the 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.

13.1.3 The chairperson of the Board or, failing her/him, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board.

13.1.4 The Company may, subject to the Board's discretion and prior approval, pay any reasonable and necessary travel and associated costs required to be

incurred by the Directors in fulfilling their obligations to attend any meeting, but shall not be obliged to do so.

13.2 **Board meetings by Electronic Communications**

S73(3)

13.2.1 The Board:

13.2.1.1 may, as contemplated in section 73 of the Act, provide for a Board meeting to be conducted in whole or in part by Electronic Communication; and

13.2.1.2 may make provision for any Director to participate by Electronic Communication in every Board meeting that is being held in Person,

and any Electronic Communication facility so employed must ordinarily enable all Persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary.

13.2.2 Subject to clause 13.4.2, a resolution signed by the number of Directors required to vote in favour of a resolution who were connected by Electronic Communication at a Board meeting where a quorum was present where:

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

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

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

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

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

13.2.4 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in clause 13.2.2 (subject to clause 13.4.2), the Company shall:

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

13.2.4.2 insert a copy of the resolution and statement referred to in clause 13.2.4.1 in the Company's minute book.

13.3 **Quorum for Board meetings**

S73(5)(b) The quorum for meetings of the Board shall be a minimum of the majority of the Directors then in office, provided that such Directors shall include both Mining Industry representative Directors (and for avoidance of doubt, at least one of the chairperson or the deputy chairperson), who must be personally present at the meeting or participate by Electronic Communication before the transaction of business (including the call of a vote) at such meeting; provided that unless the Board decides otherwise:

13.3.1 if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (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 the matters that were on the agenda of the meeting that was postponed;

13.3.2 if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Act, the Directors present shall be deemed to constitute a quorum and shall be sufficient to transact business (including to vote on any resolution which is tabled at that meeting), provided that any Directors not personally present at the meeting or participating by Electronic Communication when the vote on a resolution was initiated, are entitled to vote on such resolution in accordance with clause 13.4.2.

13.4 Voting and approval of resolutions

13.4.1 At any meeting of the Board:

S73(5)

13.4.1.1 each Director has one vote on every matter to be decided by the Board, provided that where there is more than one Director from any Stakeholder Group, (i) such Stakeholder Group shall have one vote on every matter to be decided by the Board and each individual of the Stakeholder Group shall not have their own vote (subject to clause 13.4.3); and (ii) the Mining Industry representative acting as the chairperson or the deputy chairperson, as the case may be, shall have the casting vote for the Mining Industry Stakeholder Group (for the avoidance of doubt, the casting vote shall constitute the one vote for the Stakeholder Group); and

13.4.1.2 save as otherwise contemplated in this MOI and in the Board Reserved Matters, a resolution of the Board shall be passed by 75% of the votes cast in the manner set out in clause 13.4.1.1 at a quorate meeting of the Board and as contemplated in clause 13.4.2, provided that if Board members from two different Stakeholder Groups vote against a resolution, that resolution will not be passed.

13.4.2 Where any Directors were not personally present at the meeting or participating by Electronic Communication when the vote on a resolution was initiated, the Secretary of the Company, or if no Secretary is appointed or present at the meeting, the Director or officer appointed to take minutes as contemplated in clause 13.5.1, shall circulate the proposed resolution, together with the minutes of the meeting, within 2 (two) Business Days after the Board meeting, to all such Directors ("**Board Resolution Circulation Date**"). Such Directors shall be entitled to vote on the proposed resolution within 10 (ten) Business Days after the Board Resolution Circulation Date.

13.4.3 Subject to clause 13.4.4, when any two Board members disagree on a Board decision relating to a Technical Issue, such members can refer the Technical Issue to the technical committee and for purposes of this referral each Director has one vote even where there is more than one Director from any Stakeholder Group (i.e. the votes of any two members rather than Stakeholder

Groups can refer a Technical Issue to the technical committee). Once the technical committee has reached a decision, the Technical Issue shall be referred back to the Board and the Board may approve the technical committee's decision on the Technical Issue in accordance with clause 13.4.1.2, provided that the Board may only approve a counterproposal to the technical committee's decision on the Technical Issue by unanimous agreement.

13.4.4 A specific Technical Issue may only be referred to the technical committee once by the same two Board members, provided that the same Technical Issue may be referred back to the technical committee by:

13.4.4.1 the same two Board members as the original parties if new or additional information has come to light that warrants further consideration by the technical committee;

13.4.4.2 two Board members where at least one of the two referring Directors is different than the original parties; or

13.4.4.3 the Board by simple majority as many times as the Board deems necessary.

13.4.5 Notwithstanding any provision to the contrary in this MOI, the Company shall not engage in, agree to, perform or undertake any Board Reserved Matters listed in Annexe A, except as may be approved by a Board resolution, whether passed by a duly convened meeting or by way of a written resolution as contemplated in clause 14, which resolution must be passed by unanimous approval of the Directors entitled to vote thereon.

13.4.6 Clause 13.4.1.2 and 13.4.2 shall not detract from the Board's ability to adopt resolutions as set out in clause 14.

13.5 **Minutes**

S73(6)

13.5.1 The Secretary of the Company, or if no Secretary is appointed or present at the meeting, the members of the Board who are present shall elect one of the Directors or another officer to take minutes at the Board meeting.

13.5.2 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes:

13.5.2.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and

13.5.2.2 every resolution adopted by the Board.

S73(7) 13.5.3 Resolutions adopted by the Board must be dated and sequentially numbered; and are effective as of the date of the resolution, unless the resolution states otherwise.

S73(8)

13.5.4 Any minutes of a meeting, or a resolution, approved by the Directors as a true record of the meeting and signed by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

14 WRITTEN RESOLUTIONS BY DIRECTORS

S74 14.1 A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been submitted to all of the Directors and signed by at least that number of the Directors having a majority of the voting rights that could be exercised upon that resolution if it were considered by a meeting of the Board.

14.2 Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors.

14.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by or on behalf of the Director who signed it last.

14.4 The resolution may consist of one or more counterpart documents, each signed by one or more Directors.

15 INDEMNIFICATION AND INSURANCE FOR DIRECTORS

S78(1) 15.1 For the purposes of this clause 15, a Director includes a former 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.

- S78(4)
S78(5)
S78(7)
- 15.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act:
- 15.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 15.2.2 directly or indirectly indemnify a Director for expenses contemplated in clause 15.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings:
- 15.2.2.1 are abandoned or exculpate that Director; or
- 15.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of clause 15.2.3;
- 15.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Act;
- 15.2.4 purchase insurance to protect:
- 15.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with clause 15.2.3;
- 15.2.4.2 the Company against any contingency, including:
- 15.2.4.2.1 any expenses:
- 15.2.4.2.1.1 that the Company is permitted to advance in accordance with clause 15.2.1; or
- 15.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 15.2.2; or
- 15.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 15.2.3,
- and the authority of the Board in this regard is not limited or restricted by this MOI.
- 15.3 The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any loss, liability,

damage, cost (including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense ("**Loss**") which that Director may suffer as a result of any act or omission of that Director in his capacity as a Director; provided that:

- 15.3.1 this indemnity shall not extend to any Loss:
 - 15.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Act; or
 - 15.3.1.2 any Loss arising from any gross negligence or recklessness on the part of that Director, or
 - 15.3.1.3 any loss of or damage to reputation;
 - 15.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),

and Directors shall not be entitled to recover the Losses referred to in this clause 15.3.1 from the Company. All losses other than those referred to in this clause 15.3.1 are referred to herein as "**Indemnified Losses**";

- 15.3.2 each Director's right to be indemnified by the Company in terms of this indemnity shall exist automatically upon his/her becoming a Director and shall endure even after he/she ceases to be a Director until he/she can no longer suffer or incur any Indemnified Loss as contemplated in section 77(7) of the Act;
- 15.3.3 then:
 - 15.3.3.1 if any claim is made against a Director in respect of any Indemnified Loss, the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this clause 15.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this clause 15.3.3, save in the event and to the extent that the

Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this clause 15.3.3;

15.3.3.2 the Company shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that:

15.3.3.2.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;

15.3.3.2.2 the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director;

15.3.3.2.3 the Company shall consult with the Director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;

15.3.4 to the extent that any Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;

15.3.5 all provisions of this clause 15.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this clause 15.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated

as *pro non scripto* and the remaining provisions of this clause 15.3 shall remain of full force and effect;

- 15.3.6 this indemnity shall not detract from any separate indemnity that the Company may sign in favour of the Director.

PART D – GENERAL PROVISIONS

16 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION

- 16.1 The annual financial statements of the Company are required to be audited in terms of sections 30(2) and (7), read with Regulation 28.

S30
Regulation 28

- 16.2 The annual financial statements must:

- 16.2.1 include an auditor's report;

- 16.2.2 include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company, including:

- 16.2.2.1 any material matter relating to the Company's state of affairs; and

- 16.2.2.2 any other prescribed information in terms of any legislation or regulations pertaining to the Company from time to time;

- 16.2.3 be approved by the Board and signed by an authorised Director; and

- 16.2.4 be submitted to any relevant authority as may be prescribed in terms of any legislation or regulations pertaining to the Company from time to time.

- 16.3 Except as set out in this clause 16, no information rights are established by this MOI in favour of any Person in addition to those rights created by section 26 of the Act.

S26(3)

17 FINANCIAL YEAR END

The financial year for the Company will end on the last day of February each year.

18 BANK ACCOUNT

The Company's financial transactions shall be conducted by means of a bank account and/or bank accounts as set up by the Company with a reputable bank from time to time.

19 FINANCIAL ASSISTANCE TO DIRECTORS

S5(3) and
S5(4)
Schedule 1

19.1 The Company shall 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 of a related or inter-related (as such terms are contemplated in section 1, read with section 2, of the Act) Company, or to a Person related to any such Director unless the transaction:

- 19.1.1 is in the ordinary course of the Company's business and for fair value;
- 19.1.2 constitutes an accountable advance to meet (i) legal expenses in relation to a matter concerning the Company or (ii) anticipated expenses to be incurred by the Person on behalf of the Company;
- 19.1.3 is to defray the Person's expenses for removal at the Company's request; or
- 19.1.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

20 FUNDAMENTAL TRANSACTIONS

S2
Schedule 1

The Company shall not:

- 20.1 amalgamate or merge with, or convert to, a profit company; or
- 20.2 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.

21 DONATIONS

21.1 The Directors shall, in respect of every donation received, furnish to the donor in each case a receipt, in which the following particulars are given:

- 21.1.1 the reference number of the Company issued by the Commissioner for the South African Revenue Service (or its successors in title) for the purposes of section 18A of the Income Tax Act;
- 21.1.2 the date of receipt of the donation;

- 21.1.3 the name of the Company, together with an address to which enquiries may be directed in connection therewith;
 - 21.1.4 the name and address of the donor;
 - 21.1.5 the amount or nature of the donation if not in cash; and
 - 21.1.6 a certificate to the effect that the receipt is issued for purposes of section 18A of the Income Tax Act, and that the donation has been or will be used exclusively for the main object of the Company.
- 21.2 The Company may only make donations to other entities or associations of persons, whether corporate or unincorporated, having a main object similar to the Company's objects and where the Company has satisfied the Commissioner of the South African Revenue Service (or its successors in title) that it has put in place reasonable measures to ensure that such funds are utilised for the purpose for which they were provided.

22 APPLICATION OF DONATIONS

The Company shall from time to time and as often as they may think desirable, award, lend or otherwise disburse so much of the donations received by the Company as the Directors may in their discretion decide, solely to achieve all or any of the objects of the Company.

23 NOTICES

- 23.1 Each Director shall:
 - 23.1.1 notify the Company in writing of a physical address, which address shall be her/his registered address for the purposes of receiving written notices from the Company by hand or courier and, if he has not named such an address, s/he shall be deemed to have nominated the Company's registered address from time to time; and
 - 23.1.2 unless otherwise agreed with the Company, notify in writing to the Company an e-mail address or mobile cellular phone number, which shall be her/his address for the purposes of receiving notices by way of e-mail or mobile cellular phone, respectively.

- 23.2 Subject to the provisions of the Act and the Regulations, the Parties have chosen as their *domicilia citandi et executandi* for all purposes under this MOI, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the physical address, e-mail address or mobile cellular phone number notified to the Company.
- 23.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by any person, as the case may be, shall be an adequate written notice or communication to him/her/it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*, subject to the provisions of the Act.

24 DISPUTE RESOLUTION

24.1 **separate, divisible agreement**

This clause is a separate, divisible agreement from the rest of this MOI and shall:

- 24.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the MOI and not to this clause. The Parties intend that all disputes, including the issues set forth above, be and remain subject to arbitration in terms of clause 24.3; and
- 24.1.2 remain in effect even if the MOI expires or terminates for any reason whatsoever.

24.2 **Internal referral**

- 24.2.1 If any dispute arises between any of the Parties in relation to any matter pertaining to, or arising out of this MOI, the operation or objects of the Company, the governance or management of the Company, the relationships of the Parties *inter se*, or in relation to any similar matter, then any Party or Parties claiming the existence of such dispute shall immediately advise the Board in writing thereof and the Board shall thereafter advise all the relevant Parties to the dispute, if they are not members of the Board. Within 14 (fourteen) Business Days of the receipt of such notice, the relevant Parties

shall meet and negotiate in good faith and using their reasonable endeavours in order to resolve such dispute.

24.2.2 Should the relevant Parties fail to resolve such dispute within 14 (fourteen) Business Days of their meeting, or such longer period as the Parties may agree in writing, the dispute, the dispute shall be submitted to and decided by arbitration as set out in clause 24.3.

24.3 **Arbitration**

24.3.1 Subject to clauses 24.2, any dispute arising out of or in connection with this MOI or the subject matter of this MOI shall be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**"), which will be incorporated by reference herein, and under the direction of the International Court of Arbitration of the International Chamber of Commerce (the "**ICC Court**").

24.3.2 The Parties to the dispute shall agree on the arbitrator who shall be appointed according to the ICC Rules. If agreement is not reached within 10 Business Days after any party in writing calls for agreement, the arbitrator shall be nominated by the ICC Court in accordance with the ICC Rules.

24.3.3 The arbitration shall be held at the arbitration facilities of the International Chamber of Commerce, and the judicial seat of the arbitration shall be in London.

24.3.4 The language of the arbitration proceedings, and of all orders, decisions, and the award, shall be English.

24.3.5 The decision of the arbitrator shall, in the absence of fraud or manifest error, be final and binding on the Parties to the dispute.

24.3.6 Nothing contained in this clause 24.3 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief.

Annexe A**BOARD RESERVED MATTERS****1 MOI, objects, Rules and Charters**

- 1.1 the alteration or amendment of this MOI, including the filing of a consolidated version of the MOI and any amendment which would affect the tax-exempt status of the Company, subject to (i) for the first five financial years of the Company, the unanimous agreement of the Founding Partners; (ii) from the sixth financial year of the Company, consultation with the Founding Partners, and further subject to clause 6.2.2.11;
- 1.2 the change of name of the Company;
- 1.3 conversion of the Company to a non-profit company with members;
- 1.4 the making or filing of any Rules by the Board as contemplated in section 15 of the Act;
- 1.5 the appointment or dissolution of any committees of Directors;
- 1.6 the making of, and any amendment to, any Charter;
- 1.7 the undertaking of any new object/s outside the scope of:
 - 1.7.1 the primary objects of the Company as set out in clause 6.2.1;
 - 1.7.2 any other objects undertaken by the Company by the requisite approval of the Board as contemplated in this clause 13.4.5,

provided that, for as long as the Company is registered as a Public Benefit Organisation, it will not undertake any new objects outside of the scope of the public benefit activities contemplated in the Ninth Schedule to the Income Tax Act, as amended or replaced from time to time;
- 1.8 the discontinuation or suspension of any of the primary objects of the Company;
- 1.9 the approval of counterproposals to decisions arising from a recommendation of any Board committee.

2 Directors, Prescribed Officers and employees

- 2.1 any change to the minimum and/or maximum number of Directors contemplated in clauses 11.1.2 and 11.1.3;
- 2.2 the election or re-election (as the case may be), replacement, removal or the filling of any vacancy of any Director or proposed Director, from time to time;
- 2.3 appointment, replacement, removal or the filling of any vacancy of any officers of the Company;
- 2.4 any indemnity provided by or insurance taken out by the Company in respect of any Director, member of any committee and/or a Prescribed Officer of the Company;
- 2.5 the appointment, dismissal and/or determination and/or increase of the remuneration of the managerial level of employees of the Company;
- 2.6 the adoption or amendment of employment benefits for any employees including medical aid, pension and provident fund benefits;
- 2.7 the change in quorum requirements of Board meetings.

3 Financial and related matters

- 3.1 the fees and any increase in fees charged to Participants to the Company;
- 3.2 the incurring of long-term debts or any material borrowing;
- 3.3 the conclusion of any agreement outside the Company's objects;
- 3.4 the institution or defence of any legal proceedings whatsoever;
- 3.5 the issue of any guarantees or suretyships or indemnities;
- 3.6 the approval of any budget of the Company and material i.e. 10% departure therefrom;
- 3.7 the conclusion of any agreements binding the Company to any on-going financial commitments over and above any provision made for same in the then prevailing budget of the Company;

- 3.8 the disposal or lease of all or a greater part of the Company's assets or undertakings;
- 3.9 amalgamation, merger or consolidation of the Company with any company or juristic person;
- 3.10 the creation and modification of mortgages, liens or other charges on the Company's assets;
- 3.11 the conclusion or amendment of any agreement providing for the disposal or licensing of the Company's intellectual property;
- 3.12 the establishment or implementation of or any changes in the Company's financial policy or accounting policy of whatsoever nature;
- 3.13 the conclusion and/or implementation of any transaction with any Prescribed Officer or Director of the Company or any person related or inter-related (as such terms are contemplated in section 1, read with section 2, of the Act) to or of any of the foregoing or any juristic person in which any of the foregoing has an interest or which has an interest in the Company;
- 3.14 a compromise generally with the Company's creditors;
- 3.15 approval of the winding-up, deregistration, dissolution or business rescue of the Company;
- 3.16 the appointment or dismissal of the auditors of the Company; and
- 3.17 a change in the financial year end of the Company.