

Republic of South Africa

Companies Act, 2008

**AMENDED MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY**

Name of company: **SOUTHERN AFRICAN MUSIC RIGHTS ORGANISATION NPC**

[the shortened name of the company: **SAMRO**]

Registration No. 1961/002506/08

*For approval by member at the AGM scheduled to take place on 25 November 2016 at SAMRO Place.*

## 1. INTERPRETATION

In this MOI unless the context otherwise requires -

- 1.1. except where a different definition is provided for a term in this MOI, words that are defined in the Companies Act (which as at the Harmonisation Adoption Date, are contained in **Annexure A** for ease of reference but which do not form part of this MOI other than for purposes of information) but not defined in this MOI shall bear the same meaning in this MOI as in the Companies Act (for the sake of clarity, in respect of the interpretation of this MOI, the definitions in this MOI shall, insofar as is lawful, prevail over the definitions of the same terms in the Companies Act). For ease of reading, such terms have been capitalised in this MOI;
- 1.2. the terms defined below shall have the corresponding meaning when used in this MOI –
  - 1.2.1. “**Administer**” includes the rights of the Company to control, administer, make use of, exploit, commercialise, license, or enforce the relevant IP Rights (being the Administered IP Rights) and the exercise of such rights as contemplated in clause 29 (*Administration of IP Rights*), in accordance with this MOI and the Administration of IP Rights Agreement or an agreement contemplated in clause 33 (*Third Party Agreements*); and “**Administered**”, “**Administration**” and “**Administering**” shall have corresponding meanings;
  - 1.2.2. “**Administered IP Rights**” means all IP Rights which are Administered by the Company in accordance with this MOI and the related Administration of IP Rights Agreement, which IP Rights shall continue to be associated with the particular Member or Affiliate (e.g. for the purpose of identifying the consideration due for such IP Rights), as the case may be, who agreed to them being Administered by the Company and where the Member’s interest in such rights has been transferred to a Permitted Successor, the IP Rights associated with the relevant Permitted Successor;
  - 1.2.3. “**Administration of IP Rights Agreement**” means an agreement concluded from time to time between the Company and an Applicant or a Member (including a Permitted Successor), or an Affiliate pursuant to which such a Person appoints the Company to Administer the IP Rights Assigned to the Company (subject to the possible alternative arrangements in clauses 29.7 or 29.9) in consideration for agreeing to pay the applicable Royalty Payments, Grant of Rights Payments and Special Consideration Payments, as contemplated in clause 29 (*Administration of IP Rights*) and -

1.2.3.1. in the case of Members, includes any further agreement or addendum entered into in accordance with clauses 29.4 or 29.5; or

1.2.3.2. in the case of Affiliates, in accordance with clause 33 (*Third Party Agreements*),

as amended, supplemented or replaced from time to time;

1.2.4. "**Administration Rights**" means the rights granted to or vested in the Company for the purposes of Administering the Administered IP Rights as required by or contemplated in this MOI read together with the Administration of IP Rights Agreement;

1.2.5. "**Affiliate**" means an Affiliated Society and, where relevant, includes any Affiliated Society's members, and "**Affiliates**" shall have a corresponding meaning;

1.2.6. "**Affiliated Society**" means any persons that are Collecting Societies (or which perform a role similar to Collecting Societies) in jurisdictions outside South Africa with which the Company is for the time being affiliated;

1.2.7. "**Applicant**" has the meaning ascribed thereto in clause 7.4;

1.2.8. "**Assign**" has its ordinary meaning, read together with the IP Related Legislation and, in regard to Members and Applicants assigning rights to the Company for Administration shall, unless agreed otherwise in writing, without limitation, be an assignment that results in the rights comprising the Administered IP Rights being transferred to, and vested in, the Company by the Applicant or Member who was vested with such rights immediately prior to such assignment ("**Assignor**") for the purpose of empowering the Company to exclusively (unless otherwise agreed as contemplated in clause 29.9) Administer the Administered IP Rights in its own name on the terms and conditions set out in this MOI read together with the Administration of IP Rights Agreement, and "**Assignment**" shall have a corresponding meaning;

1.2.9. "**Associate Member**" means a Member of the Company elected to the status of Associate Membership pursuant to clause 7.8 or clause 7.12 or clause 9.4.5 and having the rights, privileges and obligations provided for Associate Members by this MOI;

- 1.2.10. “**Audit Committee**” means any audit committee of the Company that may be appointed by the Board in accordance with clause 13.1, and which may be combined with a risk committee, or any other committee of the Company;
- 1.2.11. “**Author**” means an ‘author’ as defined in section 1 of the Copyright Act and the equivalent in jurisdictions outside South Africa, including, without limitation, a lyricist, Composer, adapter or translator of any words which are (or may be) associated with any music, but excludes any Permitted Successors (e.g. Author’s Heirs) entitled to an Author’s interests in the relevant copyright, unless expressly stated otherwise;
- 1.2.12. “**Author’s Heirs**” means the Heirs of an Author in respect of the Author’s interest in the relevant IP Rights authored by the Author and any successive Heirs of such Heirs;
- 1.2.13. “**Ballet**” means a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences;
- 1.2.14. “**Ordinary Member**” means a Member of the Company elected to the status of ordinary Membership pursuant to clause 7.8, and having the rights, privileges and obligations provided for such Members by this MOI;
- 1.2.15. “**CISAC**” means the *Confédération Internationale des Sociétés d’Auteurs et Compositeurs* (English translation - ‘International Confederation of Societies of Authors’), an international, non-governmental, not-for-profit organisation composed of societies administering rights in all categories of copyright, founded in France in 1926 and currently having its headquarters in Paris;
- 1.2.16. “**Cinematograph Film**” means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sound embodied in a sound track associated with the film, but shall not include a computer program unless the computer program forms part thereof;
- 1.2.17. “**Collecting Society**” means a society for the protection of Intellectual Property or collection of royalties and similar consideration for the use of any IP Rights in any jurisdiction(s) in the World (including any ‘collecting society’ established under the Copyright Act);

- 1.2.18. "**Collecting Society Regulations**" means the Collecting Society Regulations, 2006 published in terms of section 39 of the Copyright Act, as amended from time to time or any legislation which replaces it;
- 1.2.19. "**Companies Act**" means the Companies Act (71 of 2008) and the Regulations, as amended or any legislation which replaces it;
- 1.2.20. "**Company**" means Southern African Music Rights Company NPC, or by whatever other name it may be known from time to time;
- 1.2.21. "**Completed Full Royalty Payment Cycle**" means a Full Royalty Payment Cycle in respect of which the entire period has lapsed, notwithstanding that there may be Undocumented Royalty Payments and unclaimed Royalty Payments which may be subsequently claimed or paid in respect of such Full Royalty Payment Cycle (for example, if the Full Royalty Payment Cycle in respect of the Net Licence Revenue recorded for payment in the financial statements for the financial year ending 30 June 2013 is the period from 1 July 2013 to 30 June 2014, then it will be a Completed Royalty Payment Cycle from the advent of 1 July 2014), notwithstanding any subsequent claims, payments or adjustments in respect thereof;
- 1.2.22. "**Composer**" means a composer or arranger of any music;
- 1.2.23. "**Copyright Act**" means the Copyright Act (98 of 1978) including the regulations promulgated in terms thereof, as amended from time to time or any legislation which replaces it;
- 1.2.24. "**Deceased Member's Interest**" has the meaning ascribed thereto in clause 8.8;
- 1.2.25. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 34 (*Notices*) and the Companies Act;
- 1.2.26. "**Diffusion Service**" means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute (i.e. excludes) a Work of Music Performance, Performer's Indirect Performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by any receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a Work of Music Performance, Performer's Indirect

Performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;

- 1.2.27. **"Documentation"** means in relation to any Administered IP Rights, the process of notification to the Company accompanied with the required supporting documentation and evidence of the relevant Person's interest as an Author, Publisher, Proprietor, or Performer or Permitted Successor in respect of the particular Work of Music (or other relevant subject matter of Administered IP Rights) and the Company's acceptance and recording thereof (e.g. the notification and recording of a Member as Composer of a particular Work of Music) having regard to any related Governance Rules and **"Documented"** shall have a corresponding meaning;
- 1.2.28. **"Dramatico-musical Work"** means an opera, operetta, musical play, revue, pantomime or sketch, in so far as it consists of words and music written expressly therefore (but does not include a Cinematograph Film);
- 1.2.29. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Holder;
- 1.2.30. **"Exchange Control Regulations"** means the South African exchange controls of the South African Reserve Bank regulated and promulgated in terms of the Currency and Exchanges Act (9 of 1933) and the related regulations, including the Exchange Control Regulations (1961), as amended or replaced from time to time;
- 1.2.31. **"Forfeited Undocumented Royalty Payments"** means Undocumented Royalty Payments that have been forfeited because they have not been Documented and claimed within 5 (five) years of the date they were initially allocated as Undocumented Royalty Payment in accordance with the Governance Rules;
- 1.2.32. **"Forfeited Undocumented Performing Rights Royalty Payments"** means Forfeited Undocumented Royalty Payments in respect of Administered Performing Rights together with any interest that may accrue thereon and any other adjustments as may be provided for in the Payment Rules;
- 1.2.33. **"Full Member"** means a Member of the Company being a subscriber to the MOI or elected to the status of full Membership pursuant to clause 7.8 or clause 7.12 or clause 7.14, and having the Rights, privileges and obligations provided for Full Members by this MOI;

- 1.2.34. **“the Full Royalty Payment Cycle”** means the year in which the Net Licence Revenue recorded in respect of a financial year is paid (this is normally the year following the financial year in which the Licence Revenue is recorded in the annual Financial Statements, unless the Board determines otherwise having regard to any relevant Governance Rules;
- 1.2.35. **“General Meeting”** means a meeting of the Members who are entitled to exercise Voting Rights in relation to a matter to be considered at such meeting and includes an Annual General Meeting;
- 1.2.36. **“Governance Rules”** means rules as contemplated in clause 6 (*Governance Rules*) of this MOI;
- 1.2.37. **“Grand Rights”** means Performing Rights in respect of the following classes of works, unless such acts are done by means of Cinematograph Films -
- 1.2.37.1. Dramatico-musical Works in their entirety;
  - 1.2.37.2. excerpts from Dramatico-musical Works consisting of a complete act;
  - 1.2.37.3. excerpts from Dramatico-musical Works which, not consisting of a complete act, have a total duration in excess of 20 (twenty) minutes when broadcast by television, or in excess of 25 (twenty-five) minutes when broadcast by sound radio or performed otherwise than by broadcasting, and excerpts which, not consisting of a complete act and not exceeding the durations mentioned in this clause, form a consecutive sequence which preserves all the essential elements of the original work and does not interrupt the dramatic action; and
  - 1.2.37.4. the music and any words associated therewith composed or used for a Ballet, if accompanied by a visual representation of such Ballet in excess of 15 (fifteen) minutes in total duration of 50% (fifty percent) of the total length of the Ballet;
- 1.2.38. **“Grant of Rights Payment”** has the meaning ascribed thereto in clause 30.3;
- 1.2.39. **“Harmonisation Adoption Date”** means the date on which the Special Resolution replacing the prior Memorandum and Articles of Association of the Company (which were the constitutional documents of the Company in terms of the Companies Act, (61 of 1973)) in their entirety with this MOI (intended to be harmonised with the Companies Act) is adopted;

- 1.2.40. "**Harmonisation Effective Date**" means the date on which this MOI adapted under the Companies Act becomes effective, replacing the prior Memorandum and Articles of Association of the Company as a company limited by guarantee under the Companies Act, ( 46 of 1926) (as amended);
- 1.2.41. "**Heir**" means the widow(er), child or other relative, next of kin, beneficiary under the will or in terms of intestate succession of a deceased Member;
- 1.2.42. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (which are contained in **Annexure B** for ease of reference but which do not form part of this MOI other than for purposes of information) or as contemplated in clause 17.1;
- 1.2.43. "**Intellectual Property**" means the subject matter of any IP Rights;
- 1.2.44. "**IP Related Legislation**" means -
- 1.2.44.1. the Copyright Act;
  - 1.2.44.2. the Performers' Protection Act; and/or
  - 1.2.44.3. any other legislation in any relevant jurisdiction applicable in respect of the Administered IP Rights and/or the Administration of the Administered IP Rights;
- 1.2.45. "**IP Rights**" means all applicable Performing Rights, Reproduction Rights, Needletime Rights, and similar rights under any IP Related Legislation in the Principal Territory or anywhere else in the world, subsisting now or in the future;
- 1.2.46. "**Licence Revenue**" means the royalties, licence fees, and other proceeds (all excluding VAT) received by the Company directly from the Company's Administration of the Administered IP Rights (to be determined and attributed by the Board in applying the Payment Rules);
- 1.2.47. "**Member**" means a registered member of the Company, and includes a Non-Voting Member and a Performing Rights Member (whether a Full Member, Associate Member or Ordinary Member), and "**Membership**" shall have a corresponding meaning;
- 1.2.48. "**Membership Rules**" shall have the meaning attributed thereto in clause 6.5, essentially being the Governance Rules principally relating to Membership of the Company at the relevant time;



- 1.2.49. **“Member’s Granted IP Rights”** means the Administered IP Rights Assigned by the Member (or in some instances by a Predecessor in the case of a Permitted Successor) to the Company (or in exceptional cases such other rights granted in term of clause 29.7 or 29.9) which remain associated with a Member (or the relevant Permitted Successor) to the extent of the Member’s interest therein for the purpose of determining the Members rights in terms of the Administration of IP Rights Agreement and this MOI (e.g. for the purpose of determining the consideration Royalty Payments, Grant of Rights Payments and Special Consideration Payments, the Member’s voting rights (if any) and the Member’s reversionary rights);
- 1.2.50. **“Member’s Certificate”** means the certificate issued to a Member by the Company reflecting such Member’s Membership, which certificate shall be signed by a Director and countersigned by a duly authorised officer or manager of the Company, and be in such form as the Board may determine from time to time;
- 1.2.51. **“Members’ Register”** means the register required to be established by the Company in terms of item 1(9) of Schedule 1 of the Companies Act;
- 1.2.52. **“MOI”** means the MOI contained in this document, including all schedules and annexures hereto;
- 1.2.53. **“Momentum”** means MMI Group Limited (registration no. 1904/002186/06), or by whatever other name it may be known from time to time;
- 1.2.54. **“Musical Work”** means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;
- 1.2.55. **“Needletime Right”** means the rights conferred on a Performer in terms of section 5(1)(b) of the Performers Protection Act in respect of his Performer’s Indirect Performance and granting him/her the right to enforce and protect such rights and authorise and receive remuneration in respect thereof;
- 1.2.56. **“Needletime Rights Members”** means those Members whose Needletime Rights are Administered by the Company at the relevant time under consideration in regard to their Needletime Rights only;
- 1.2.57. **“Needletime Trust”** means the Performers Organisation of South Africa Trust (Master’s reference number IT1991/10) which has been established by the Company for the purpose of, amongst other things, Administering Needletime Rights;

1.2.58. **“Net Collection Holding Revenue”** means the net revenue (including without limitation interest and dividends) and the net gains on realised investments recognised by the Company, after discharging or providing for all related expenses and liabilities (including without limitation Taxes), in respect of any Licence Revenue attributed to Documented Performing Rights that is held (or invested) by the Company (e.g. bank deposits and other investments) during the period from receipt of such Licence Revenue until allocation and payment of the related Royalty Payment or transfer to a Reserve as reasonably determined by the Board in accordance with the Royalty Payment Rules, provided that -

1.2.58.1. this only applies to the actual Licence Revenue held (or invested) during the relevant period and such Licence Revenue may be used at any time to settle expenses and liabilities;

1.2.58.2. this excludes, without limitation:

1.2.58.2.1. the amount of the Net Licence Revenue required for the payment of the Royalty Payment;

1.2.58.2.2. revenue or proceeds received or accruing to the Company on amounts held that have been allocated to Undocumented Royalty Payments or Reserves;

1.2.58.2.3. any income, revenue or proceeds received or accruing to the Company from other sources, for example in respect of any other operations or activities of the Company,

provided that such money may be invested and commixed with other money and investments and in such circumstances the revenue and gains and related expenses and liabilities shall be allocated and attributed on a pro rata basis as reasonably determined by the Board or its delegee;

1.2.59. **“Net Licence Revenue”** means the amount equal to the Licence Revenue minus the Permitted Royalty Deductions;

1.2.60. **“Non-Voting Members”** means that class of Members comprising of all Members who have not been elected as Performing Rights Members as contemplated in clause 7.5, who have no voting rights (for example Members whose Member’s Granted IP Rights only include Needletime Rights) as contemplated in clause 7.6;

- 1.2.61. **“Ordinary Resolution”** means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised thereon at a General Meeting (abstentions to be ignored for the purpose of calculating the majority);
- 1.2.62. **“Payment Rules”** shall have the meaning attributed to it in clause 6.6, essentially being the Governance Rules principally relating to the attribution of Licence Revenue and payments to Members including the Royalty Payments, Grant of Rights Payments and Special Contractual Payments, applicable at the relevant time;
- 1.2.63. **“Performer”** means a natural person falling within the definition of a “performer” in section 1 of the Performers’ Protection Act;
- 1.2.64. **“Performer’s Heir”** means the Heir of a Performer in respect of any interest in the Needletime Rights performed by the Performer Administered by the Company, and any successive Heirs of such Heirs;
- 1.2.65. **“Performer’s Indirect Performance”** means the act of broadcasting, transmitting in a Diffusion Service and/or communicating to the public a Performer’s Recorded Performance;
- 1.2.66. **“Performers’ Protection Act”** means the Performers’ Protection Act (11 of 1967), as amended from time to time or any legislation which replaces it;
- 1.2.67. **“Performing Right”** includes the right under the copyright in a Work of Music, including the comparable right in any jurisdiction outside of South Africa, to do or authorise the doing of, any of the following -
- 1.2.67.1. performing the Work of Music in public;
  - 1.2.67.2. broadcasting the Work of Music; and
  - 1.2.67.3. causing the Work of Music to be transmitted in a Diffusion Service, unless that service transmits a lawful broadcast (including the Work of Music) and is operated by the original broadcaster.
- 1.2.68. **“Performing Rights Members”** means those Members that have applied to the Company and been elected as Members on the basis that their Member’s Granted IP Rights include Performing Rights and such Administered IP Rights have earned Licence Revenue as contemplated in clause 7.5 having voting rights and the other rights set out in this MOI depending on their status as an Ordinary Member, Associate Member or Full Member as the case may be;

- 1.2.69. **“Permitted Royalty Deductions”** has the meaning ascribed thereto in clause 30.5;
- 1.2.70. **“Permitted Successor”** means a Person who is permitted to acquire an interest in a Member’s Granted IP Rights in terms of clause 8 (*Termination of Membership*), 9 (*Prohibition on Transfer of Membership*), in relation to the acquired interest in the Member’s Granted IP Rights and the Administration of IP Rights Agreement;
- 1.2.71. **“Predecessor”** in relation to a Permitted Successor, means the Member of the Company that originally appointed the Company to Administer its associated Administered IP Rights;
- 1.2.72. **“Present”** means, in the context of any General Meeting, a Member -
- 1.2.72.1. present in person; or
  - 1.2.72.2. represented by proxy who is present in person;
- 1.2.73. **“Principal Territory”** means South Africa, the Kingdom of Lesotho, the Kingdom of Swaziland and any other jurisdiction or territory in Africa in terms of which the Company operates and from time to time Administers Administered IP Rights directly (i.e. not through an Affiliate);
- 1.2.74. **“Proprietor”** means, subject to any express categorisation Governance Rules -
- 1.2.74.1. prior to application for Membership, a Person who owns or controls the whole, or a portion of, any IP Rights, other than as (i) a Publisher (ii) an Author of a Work of Music; (iii) an Author’s Heir; (iv) a Performer in relation to any Needletime Rights; or (v) a Performer’s Heir, (the qualifying person generally being the successor in title of an Author or Performer other than as their Heirs);
  - 1.2.74.2. after application for Membership, a Person (including Permitted Successors) who has granted the Company Administration Rights relating to his/her interest in a Work of Music (e.g. share) in respect of which they are not (i) the Publisher (ii) the Author; (iii) an Author’s Heir; (iv) the Performer in relation to any Needletime Rights; or (v) a Performer’s Heir; and
  - 1.2.74.3. for the sake of clarity excludes a Person in respect of his/her interest in a Work of Music (e.g. share) in respect of which

he/she is (i) a Publisher (ii) an Author; (iii) an Author's Heir; (iv) a Performer; or (v) a Performer's Heir;

- 1.2.75. "**Publisher**" means, subject to any express categorisation in the Governance Rules, a publisher of any Work of Music as the term is generally understood in the music licensing industry;
- 1.2.76. "**Record**" shall have the meaning ascribed to the term in section 1(1) of the Copyright Act but in relation to a Performer's rendition of a Work of Music shall include a fixation of such a rendition and the equivalent in any other jurisdiction outside of South Africa;
- 1.2.77. "**Recorded Performance**" means a Record embodying a Performer's rendition of a Work of Music;
- 1.2.78. "**Reproduction**" in relation to a Work of Music includes -
- 1.2.78.1. a reproduction in the form of a Record or a Cinematograph Film;
  - 1.2.78.2. an adaptation of it; and
  - 1.2.78.3. a reproduction made from a reproduction of that Work of Music,
- including the equivalent thereof in any jurisdiction outside of South Africa, and references to "**Reproduce**" and "**Reproducing**" shall be construed accordingly;
- 1.2.79. "**Reproduction Rights**" includes the right under the copyright in a Work of Music to do, or to authorise, the making of a Reproduction of the work;
- 1.2.80. "**Reserves**" means any amounts held in a reserve fund as contemplated in clause 21 (*Reserves*) at the relevant time;
- 1.2.81. "**Round Robin Resolution**" means a resolution passed other than at a meeting of the Members or the Directors, as the case may be, being –
- 1.2.81.1. in the case of Members, a resolution as contemplated in section 60 of the Companies Act; and
  - 1.2.81.2. in the case of Directors, a resolution as contemplated in section 74 of the Companies Act, read with clause 24.14;
- 1.2.82. "**Royalty Payment**" has the meaning ascribed thereto in clause 30.2;

- 1.2.83. “**Royalty Reserves**” shall have the meaning attributed thereto in clause 21.1 adjusted for any transfers from such reserve;
- 1.2.84. “**Royalty Share**” means the proportion of the Net Licence Revenue to be allocated to a Person interested (e.g. as the Composer or Publisher) in a particular Work of Music (or the subject matter of any other relevant Administered IP) Administered by the Company taking into account the interests and rights of other Persons, as determined by the Board in accordance with the Governance Rules;
- 1.2.85. “**SFBS**” means the funeral benefit insurance policy the Company undertakes to procure and call the ‘SAMRO Funeral Benefit Scheme’, as same may be amended or replaced from time to time;
- 1.2.86. “**South Africa**” means the Republic of South Africa;
- 1.2.87. “**Special Consideration Payment**” shall have the meaning ascribed thereto in clause 30.4;
- 1.2.88. “**Special Resolution**” means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights exercised thereon at a General Meeting (abstentions to be ignored for the purpose of calculating the majority);
- 1.2.89. “**SRAF**” means the SAMRO Retirement Annuity Fund that was established by the Company and in operation as at the Harmonisation Effective Date, as same may be amended or replaced from time to time;
- 1.2.90. “**Taxes**” means all forms of taxation including income, withholding, corporation, capital gains, inheritance, VAT, employment, property, sales, goods, wealth, provisional tax, customs and other import or export duties, excise duties, stamp duties, transfer taxes, royalties, annual fees owing to the Companies and Intellectual Property Commission in South Africa, social security or other similar contributions and all charges, duties, imposts and levies of a similar nature, and any interest, penalty, surcharge or fine relating to such taxation;
- 1.2.91. “**Territory Performing Rights Royalty Payments**” means the amount of the Royalty Payments paid or credited to Members, attributed by the Board to the Performing Rights in the Principal Territory (having regard to the Payment Rules) forming part of the Administered IP Rights, which (for the sake of clarity) excludes, without limitation, amounts paid or credited to Members -

- 1.2.91.1. in respect of Reproduction Rights, Needletime Rights and any Administered IP Rights outside of the Principal Territory, regardless of the nature of the rights; and
- 1.2.91.2. in respect of all Grant of Rights Payments and Special Consideration Payments;
- 1.2.92. **“Undocumented Performing Right Royalty Payment”** means any Undocumented Royalty Payment in respect of Performing Rights Royalty Payments only;
- 1.2.93. **“Undocumented Royalty Payment”** means the Royalty Payment amount that is allocated to an Undocumented Royalty Share, which are forfeited to the Company after 5 (five) years in accordance with clause 31.5;
- 1.2.94. **“Undocumented Royalty Share”** means a Royalty Share in the Royalty Payment due in respect of a Work of Music (or other relevant Administered IP Rights) which has not been Documented as determined by the Board in accordance with the Governance Rules;
- 1.2.95. **“VAT”** means value-added tax in terms of the Value-Added Tax Act (89 of 1991) as amended from time to time and any comparable replacement tax;
- 1.2.96. **“Work of Music”** means the whole or a part of a Musical Work or of a Musical Work in combination with lyrics, words or any other literary work written for the purpose of accompanying the music, such as a song;
- 1.2.97. **“Work of Music Performance”** means in respect of a Work of Music, doing any act falling within the Performing Right as contemplated in clauses 1.2.67.1 to 1.2.67.3;
- 1.2.98. **“Worldwide Basis”** in regard to IP Rights and the Administration of IP Rights means the relevant IP Right (including comparable rights where there is no direct correlation in the relevant jurisdiction) in every jurisdiction and nation in the world and if such rights are included in the Administered IP Rights then the Administration of such IP Rights shall extend to all such jurisdictions and nations and **“Worldwide”** shall have a corresponding meaning; and
- 1.2.99. **“Writing”** and **“Written”** includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;

- 1.3. if and for so long as the Company is involved in the Administration of Needletime Rights, all provisions in the this MOI in respect of Needletime Rights shall be subject to the requirements of the Collecting Society Regulations;
- 1.4. references to "Shareholder" in the Companies Act shall for purposes of this MOI be read as a reference to "Member";
- 1.5. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.6. references to Members entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by a duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.7. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.8. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.9. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing any particular gender shall include the other genders;
- 1.10. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.11. in so far as reasonably possible the provisions of this MOI shall be read in a manner that is not inconsistent with the unalterable provisions of the Companies Act, and if the provisions of this MOI are in any way inconsistent with the unalterable provisions of the Companies Act, the unalterable provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to such unalterable provisions of the Companies Act;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI; and
- 1.13. when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by -
  - 1.13.1. excluding the day on which the first such event occurs;



- 1.13.2. including the day on or by which the second event is to occur unless it falls on a Saturday, Sunday or public holiday in South Africa, in which case the time shall be reckoned excluding such last day as well; and
- 1.13.3. in the case of Business Days, excluding any public holiday in South Africa, Saturday or Sunday that falls on or between the days contemplated in clauses 1.13.1 and 1.13.2 respectively.

## 2. **NON-PROFIT COMPANY**

The Company is a Non-Profit Company and the provisions of section 10 and Schedule 1 of the Companies Act shall apply to the Company. The Company has separate juristic personality and a Person is not, solely by reason of being a Member or a Director of the Company, liable for any liabilities or obligations of the Company.

## 3. **OBJECTS OF THE COMPANY**

3.1. The objects of the Company are -

- 3.1.1. to, for the public benefit and/or in the furtherance of the related cultural and social activities and communal or group interest:
- 3.1.1.1. strive to protect and enforce copyright and other IP Rights relating to music and prevent unlawful Works of Music Performances and other unlawful uses of Intellectual Property relating to Works of Music and reduce related abuses and unfair practices and methods;
  - 3.1.1.2. further and encourage the creation and promotion of music, literature and art and the development of Intellectual Property and encourage the national arts and training of Authors, Composers and Proprietors;
  - 3.1.1.3. advance musical and related cultural interests;
  - 3.1.1.4. facilitate the development of the community of Authors, Publishers or Performers, including without limitation, by encouraging and facilitating education and training;
  - 3.1.1.5. for the above purposes promote and support the social welfare (and reduce the incidence of indigence) of Authors and their families, dependents and Heirs and their dependants;

- 3.1.1.6. provide support for other social and cultural objectives in the Principal Territory as determined by the Board;
- 3.1.1.7. represent generally the views of those Authors, Performers, Publishers and Proprietors of Works of Music and related Intellectual Property and facilitate the interrelationship between, and advancement and protection of the interests of, Authors, Performers, Publishers and Proprietors of Works of Music and related Intellectual Property, as a social and cultural group;
- 3.1.1.8. encourage and promote efficiency in the administration of Intellectual Property relating to music and the use thereof;
- 3.1.1.9. promote reforms in the laws regulating Intellectual Property associated with music; and
- 3.1.1.10. co-operate, and enter into reciprocal arrangements, with Affiliates and related societies and bodies as the Company deems fit,

through, amongst other things, acting as a Collecting Society and Administering the Administered IP Rights as contemplated in the MOI, all in order to support a viable and sustainable music culture, society and industry;

- 3.1.2. to, directly or through a Subsidiary support a viable and sustainable literary, artistic and dramatic industry, society and culture by administering the intellectual property rights attaching literary works, artistic works, published editions (as defined in the Copyright Act) and Grand Rights ("**Literary and Artistic IP Rights**") and to co-operate and enter into reciprocal arrangements with related societies and bodies in order to, *inter alia*:

- 3.1.2.1. encourage the development of Intellectual Property, protect and enforce copyright and other IP Rights relating to Literary and Artistic IP Rights;
- 3.1.2.2. prevent the unlawful use of Literary and Artistic IP Rights, and reduce abuses and advance related cultural interests;
- 3.1.2.3. facilitate the interrelationship between, and advancement and protection of the interests of authors (including adapters and translators), publishers and proprietors in respect of Literary and Artistic IP Rights, as a social and cultural group; and

3.1.2.4. encourage and promote efficiency in the administration of Literary and Artistic IP Rights; and

3.1.3. to pursue any objects ancillary to the above objects and subject to the Companies Act, acquire and hold securities in any company or other interests in any Person and to conduct any business trade or undertaking consistent with or ancillary to the above objects.

3.2. Each of the above objects shall be self-standing and shall not be limited by any of the other objects.

#### 4. **POWERS AND CAPACITY OF THE COMPANY**

4.1. Subject to the limitations on non-profit companies in Companies Act, the Company has the default powers and capacity of an Individual and, without limitation, for the sake of clarity, the Company has the following capacity and powers to be used in a manner that is consistent with or ancillary to its stated objects -

4.1.1. to hold, control, administer, make use of, exploit, commercialise, exercise and/or enforce Administered IP Rights as contemplated in this MOI;

4.1.2. to acquire by way of Assignment, licence, agreement or other means the rights to Administer the Administered IP Rights including, without limitation, to authorise -

4.1.2.1. the Reproduction of copyright works in any manner or form;

4.1.2.2. the performance of copyright works in public (including in respect of Works of Music);

4.1.2.3. the broadcasting of the copyright works;

4.1.2.4. the causing of the copyright works to be transmitted in a Diffusion Service; and

4.1.2.5. the licensing of Recorded Performances;

4.1.3. to make available information regarding copyright works and Needletime Rights as well as information regarding Authors, Publishers, Proprietors and Performers (and their Permitted Successors) of their Works of Music, Work of Music Performances and Performer's Indirect Performances, respectively, and Administered IP Rights to relevant authorities and bodies for protection and Administration;

- 4.1.4. to make available, authorise, license or grant permission for the use or commercial exploitation of any Administered IP Rights and to collect and receive and give effectual discharges of all royalties, fees and other monies payable in connection the Administered IP Rights;
- 4.1.5. without limitation to the generality of the right to Administer Administered IP Rights, to in its own name (or where applicable on behalf of any or all Members) -
  - 4.1.5.1. enforce the Administered IP Rights and any agreements or arrangements in respect of the Administration of the Intellectual Property by any legal means necessary or desirable;
  - 4.1.5.2. to take remedial action in respect of any infringement of any of the Administered IP Rights or breach of agreement including, without limitation, to recover damages or apply for a restraint or any other remedy; and
  - 4.1.5.3. to institute or defend any proceedings or actions or dispute resolution processes (including referral to court or arbitration) in relation to the Administration of the Administered IP Rights or anything referred to in this MOI and to settle, release or compromise any such proceedings, actions or dispute resolution processes;
- 4.1.6. to process, compute or apportion the Licence Revenue received or collected after deduction of expenses, deductions necessary for the continued operation of the Company and other deductions that are permitted and/or approved as contemplated in this MOI;
- 4.1.7. to receive by way of transfer, cession or Assignment, and to use, hire, obtain, take over or otherwise acquire and to improve, protect, manage, develop, make use of, exploit, commercialise, enfranchise, let, deliver, turn to account, deal in, transfer away or otherwise dispose of, and to exercise and enforce any and all Intellectual Property and including any and all rights, obligations, powers, duties and remedies arising under the IP Related Legislation and/or under any law ;
- 4.1.8. to incorporate or acquire Subsidiaries in connection with the advancement of its objects;
- 4.1.9. to contract with Affiliates to Administer their (or their members') Intellectual Property and/or take Assignment of their Intellectual Property or any related rights;

- 4.1.10. to enter into agreements with other similar organisations in foreign countries for the reciprocal protection of the Administered IP Rights of the Members of the Company and those of each similar organisation in their respective jurisdictions;
- 4.1.11. to hold, control, administer, make use of, expropriate, commercialise and/or enforce any Intellectual Property licensed to, owned or held by or vested in the Company;
- 4.1.12. to establish any trust as a Collecting Society or with any objects similar to the Company, including without limitation, to Administer all or part of the Administered IP Rights of Members and other Persons and to donate or transfer property (in the widest sense) of the Company to such trust in so far as is consistent with or ancillary to the other objects of the Company;
- 4.1.13. to purchase or acquire movable and immovable property and any rights in so far as is consistent with or ancillary to the other objects of the Company;
- 4.1.14. to provide, through trusts or associations or otherwise for social and cultural objectives, including without limitation by way of the provision, through trusts or associations or otherwise, of gratuities, donations, pensions or other benefits for Authors, and Proprietors and their Heirs, or employees of the Company, and or their wives, husbands, widows, widowers, families or dependants;
- 4.1.15. to invest the assets and monies held or owned by the Company, including without limitation to -
  - 4.1.15.1. invest and deal with the monies of the Company in such manner as may from time to time be determined by the Directors and to apply the proceeds of such investments in any manner consistent with this MOI and the Companies Act; and
  - 4.1.15.2. hold shares in any other company that, in the view of the Board, is anticipated or capable of being conducted so as to directly or indirectly further any of its objects;
- 4.1.16. to open and operate banking accounts and to overdraw such accounts, to borrow or raise or secure the payment of money in such a manner as the Directors shall think fit and in particular by pledge, mortgage, hypothecation charged upon all or any of the Company's property, both present and future, movable and/or immovable, and to purchase, redeem or pay off any such securities and in the advancement of its objects provide financial assistance to any Subsidiary or trust established by the Company or associated with its objects; and

- 4.2. subject to the provisions of the Companies Act, to sell or dispose of the undertaking of the Company or any part thereof. For the sake of clarity it is recorded that, in so far as is lawful, the capacity and powers of the Company extend to every territory and jurisdiction in the world, and without limitation the Company -
- 4.2.1. may exercise the powers and capacities it has in any part of the Principal Territory or elsewhere outside the Principal Territory and as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others;
- 4.2.2. may appoint any agent or agents for the collection and recovery of any monies receivable by the Company in the exercise of its powers or otherwise for the purpose of the exercise of any of such powers;
- 4.2.3. may enter into contracts outside South Africa and execute any contracts, deeds and documents in any foreign country; and
- 4.2.4. procure that the Company be registered or recognised in any foreign country or place.
- 4.3. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.

## 5. **AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's website.

## 6. **GOVERNANCE RULES**

- 6.1. The Board may make, amend or repeal rules ("**Governance Rules**") regulating, *inter alia*, the governance of the Company, the Administration of the Administered IP Rights for Members and Affiliates, the attribution of Licence Revenue to Administered IP Rights and social and cultural activities and benefits including, without limitation, rules in respect of –
- 6.1.1. the regulation of governance decisions in relation to the protection of Intellectual Property and pursuit of the Companies objects;
- 6.1.2. the qualifications for classes of Membership and the categorisation of Members;

- 6.1.3. the mode in which the Works of Music and/or Works of Music Performances of Members are to be communicated or declared by them to the Company;
  - 6.1.4. the Administration of the Administered IP Rights and the attribution of Licence Revenue to Administered IP Rights, shares therein and valuation thereof;
  - 6.1.5. the mode and proportions in which, and the times at which, the Net Licence Revenue is apportioned amongst and paid to the Members interested therein respectively as Royalty Payments;
  - 6.1.6. Permitted Royalty Deductions;
  - 6.1.7. the determination of the proportion of the Net Collection Holding Revenue to be distributed, the calculation, apportionment, and mode and times of payment of the Grant of Rights Payments;
  - 6.1.8. the mode and proportions in which, and the times at which, the Net Licence Revenue is to be paid as Special Consideration Payments;
  - 6.1.9. the provision for social and cultural objectives;
  - 6.1.10. the administration and management of the property or business of the Company and any matters incidental thereto; and
  - 6.1.11. any other ancillary matters.
- 6.2. Subject to clauses 6.3 and 29.12, Governance Rules or any alterations of such Governance Rules, shall take effect immediately upon their adoption by the Board, provided that such Governance Rules (or alternations thereto) shall cease to have effect at the end of the next Annual General Meeting following their adoption, unless they are approved by Ordinary Resolution at such Annual General Meeting. If such Ordinary Resolution is not adopted, this shall not have any effect upon the validity of any actions or decisions made in accordance with such Governance Rules (or alternations thereto) prior to the end of that Annual General Meeting.
- 6.3. Notwithstanding clause 6.2, the Board is empowered to correct errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the Governance Rules without approval by Ordinary Resolution of Members.
- 6.4. The Board shall publish a copy of any Governance Rules, or of any correction effected by the Board, on its website, unless, in making the Governance Rules in question, the Board determines that another method of publication shall be used.

- 6.5. The Governance Rules principally relating to the Membership of the Company essentially being those contemplated in clauses 6.1.2 to 6.1.3 are referred to as the “**Membership Rules**”.
- 6.6. The Governance Rules principally relating to the determination and attribution of Licence Revenue, Permitted Royalty Deductions and the determination and payment of Royalty Payments, Grant of Rights Payments and Special Consideration Payments essentially being those contemplated in clauses 6.1.4 to 6.1.8 are referred to as the “**Payment Rules**”.
- 6.7. Membership Rules and Payment Rules shall be deemed to be incorporated into, and form part of, the contract between the Company and the Member in respect of the Administration of the Member’s Granted IP Rights.

## 7. **MEMBERS AND QUALIFICATION FOR AND DETERMINATION OF MEMBERSHIP**

- 7.1. The number of Members shall, subject to this MOI, be unlimited.
- 7.2. The Company has two classes of Members, voting Members, being the Performing Rights Members and non-voting Members being all other Members that are not Performing Rights Members. All pre-existing members of the Company at the Harmonisation Effective Date whose Member’s Granted IP Rights did not include Performing Rights and who had not been entitled to exercise votes at any past General Meetings of the Company shall be deemed to be Non-Voting Members and all other pre-existing Members on the Harmonisation Effective Date shall be deemed to be Performing Rights Members. The Membership status and category of pre-existing Members shall not change.
- 7.3. Performing Rights Members are categorised into Ordinary Member, Associate Member and Full Member. In addition to this, Membership is also categorised in respect of those Members that are Authors, Author’s Heirs, Performers (Needletime Rights Members), Performer’s Heirs, Publishers and Proprietors, and some of the rights and obligations of Membership are also determined with reference to these categories and the corresponding Member’s Granted IP Rights or the nature of the Administered IP Rights. It is noted that these categories are not exclusive and a Member can fall into more than one of these categories (for example, a Member can be both an Author and a Publisher).

### *Application for Membership*

- 7.4. Subject to clauses 7.15, 8 (*Termination of Membership*) and the exception regarding members of Affiliated Societies in clause 33.3, in order for a Person to be considered for qualification for Membership, the Person vested with qualifying IP Rights (prior to any Assignment thereof to the Company) (“**Applicant**”) must apply to the Board for Membership. Such application must be in Writing in the form prescribed by the Board from time to time, and the Applicant shall only be eligible for consideration for election to Membership -



- 7.4.1. if such Applicant is an Author, Publisher, Performer, Proprietor or a Permitted Successor;
  - 7.4.2. if such Applicant has signed an Administration of IP Rights Agreement with the Company conforming with the requirements set out in clause 29 (*Administration of IP Rights*) on terms acceptable to the Board and delivered same to the Board (together with the application form referred to above) which as a default requires the Assignment of the subject matter IP Rights to the Company; and
  - 7.4.3. once the Administered IP Rights forming the subject of the Administration of IP Rights Agreement signed by the Applicant (as contemplated in clause 7.4.2) have started earning and been attributed with Licence Revenue (provided that in the case of a Permitted Successor, it shall suffice if Licence Revenue had previously been attributed to the relevant Administered IP Rights in respect of their Predecessor).
- 7.5. In order to be elected as a Performing Rights Member (with voting rights) the Applicant must have -
- 7.5.1. applied to the Board for Membership and included Performing Rights in the Administered IP Rights as the subject of the executed Administration of IP Rights Agreement; and
  - 7.5.2. Licence Revenue must have been earned and attributed to such Administered Performing Rights (provided that in the case of a Permitted Successor, it shall suffice if Licence Revenue had previously been attributed to the relevant Administered Performing Rights in respect of the Predecessor).
- 7.6. An Applicant that does not qualify for election as a Performing Rights Member may only be elected to Membership as a Non-Voting Member. Notwithstanding the foregoing, a Non-Voting Member may apply for conversion to Performing Rights Member if they qualify.
- 7.7. An Applicant shall not be entitled to any payments or benefits from the Company in respect of the Applicant's interests in the IP Rights that are the subject of the executed Administration of IP Rights Agreement unless and until the Applicant has been elected to Membership.
- 7.8. The Board may, in its sole and absolute discretion, elect an Applicant meeting the requirements set out in clause 7.4 to Membership, in which event the Board shall cause a Written communication to be made to the Applicant (in such form as the Board may determine from time to time) informing the Applicant of such election and advising as to the class and status of Membership to which the Applicant will be admitted. Upon the relevant entry being made in the Members' Register, the Applicant shall become a Member. The

Board, in making such an election, can elect an Applicant to Ordinary Membership, Associate Membership or Full Membership, if the Applicant meets the requirements applicable for the applicable class of Membership. The Board shall not be required to give reasons for any decision not to elect an Applicant to Membership.

7.9. The Board may issue a Member's Certificate to such new Member.

*Rights, privileges and obligations of Membership*

7.10. Members shall have the rights and privileges, and be subject to the obligations, as -

7.10.1. set out in this MOI and the Governance Rules; and

7.10.2. the Board may determine from time to time.

7.11. Only a Full Member meeting the required qualifications shall be eligible for appointment as a Director in accordance with clause 16 (*Election of Directors and Casual Vacancies*), if he is not Ineligible or Disqualified.

*Election to Associate and Full Membership*

7.12. Subject to clause 7.15, an Ordinary Member shall be eligible (without further application) to be elected by way of Board resolution for conversion of his Membership into Associate Membership (or directly to Full Membership, if the Ordinary Member qualifies) if, in the Board's view (in its absolute discretion), the Ordinary Member qualifies for such a change in Membership, in accordance with the qualifications set out in the Membership Rules, and -

7.12.1. upon the effective date of such electing Board resolution, the Ordinary Member shall become an Associate Member (or Full Member, if applicable); and

7.12.2. the Company may issue the Member with a Member's Certificate evidencing the Associate Membership (or Full Membership, if applicable) against surrender of the Member's Certificate reflecting Ordinary Membership (if same was issued to the Member).

7.13. If the Board has not elected an Ordinary Member to the status of Associate Member or Full Member (as contemplated in clause 7.12) within 2 (two) years after the Ordinary Member (or in the case of a Permitted Successor, its Predecessor) became an Ordinary Member, the Board may elect at any time thereafter to terminate the Membership of an Ordinary Member by way of notice to such effect for so long as they have not been elected to the status of Associate Member, in which case the provisions of clauses 8.20 to 8.22 shall apply and the former Ordinary Member shall have no further rights against the Company and in such instance the Ordinary Member shall not have the right to demand that the Board's decision

be approved by an Ordinary Resolution of the Members in an extraordinary General Meeting as contemplated in clause 8.5.

7.14. Subject to clause 7.15, an Associate Member shall be eligible (without further application) to be elected by way of Board resolution for conversion of his Membership into Full Membership if, in the Board's view (in its absolute discretion), the Associate Member qualifies for such a change in Membership, in accordance with the qualifications set out in the Membership Rules, and -

7.14.1. upon the effective date of such electing Board resolution, the Associate Member shall become a Full Member; and

7.14.2. the Company may issue the Member with a Member's Certificate evidencing the Full Membership against surrender of the Member's Certificate reflecting Associate Membership (if same was issued to it).

7.15. The processes for election to Membership (as set out in clause 7.4) and election to a different class of Membership (as set out in clauses 7.12 and 7.14) are in addition to the application mechanism provided for in clause 9.4.5, read with the Membership Rules.

## 8. **TERMINATION OF MEMBERSHIP**

8.1. Membership shall terminate on the following events -

8.1.1. termination due to an Ordinary Member not being elected to Associate Membership or Full Membership within the time period referred to in clause 7.13;

8.1.2. termination by notice by either the Member or the Company as contemplated in clauses 8.2 to 8.5;

8.1.3. termination pursuant to termination of the Company's related Administration Rights or lapse of the Member's Granted IP Rights as contemplated in clauses 8.6 and 8.7;

8.1.4. termination subsequent to the death of a Member that is a natural person, subject to the possible transfer of the Deceased Member's Interest to an Heir as contemplated in clauses 8.8 to 8.15; or

8.1.5. termination subsequent to the insolvency or winding-up of a Member as contemplated in clauses 8.16 to 8.19.

*Member's termination by notice*

- 8.2. Subject to clauses 8.8 and 8.16, any Member may terminate his Membership by giving Written notice to the Company not less than 3 (three) calendar months' prior to 30 April of any year and, if such notice is duly received by the Company, the Member's Membership and participation in the Company shall, subject to clause 8.3, cease with effect from 30 April of the following year (e.g. if notice is given on 31 January 2020, Membership shall cease on 30 April 2021) and the provisions of clause 8.20 to 8.22 shall apply.
- 8.3. The Board may, in its absolute discretion, resolve, following receipt of the notice referred to in clause 8.2, that the termination of the Membership shall -
- 8.3.1. only take effect from 30 June (instead of 30 April) of the following year; or
- 8.3.2. take effect earlier than 30 April of the following year,
- provided that the Board shall as soon as is practical supply the Member with Written notice and reasons for such resolution.

*Company's termination by notice*

- 8.4. The Board may at any time terminate the Membership of any Member by giving such Member no less than 14 (fourteen) days' prior Written notice, signed by an officer of the Company authorised by the Board, and the Member's Membership shall cease on the date stipulated in such notice, subject to clause 8.5.
- 8.5. Subject to the exception in clause 7.13, in any other case, a Member receiving notice of termination of Membership may, before the expiration of the 14 (fourteen) day notice period referred to in clause 8.4, deliver a Written demand to the Board demanding that the Board's decision to terminate his Membership be approved by an Ordinary Resolution of the Members in an extraordinary General Meeting, in which case the Member's Membership shall not terminate unless and until an extraordinary General Meeting approves such termination of his Membership by Ordinary Resolution. If, at such extraordinary General Meeting, termination of his Membership is approved, the Member shall cease to be a Member with effect from the date of such approval.

*Termination pursuant to termination of Administration Rights or lapse of Member's Granted IP Rights*

- 8.6. If at any time the Company ceases to have the right to Administer any of a Member's Granted IP Rights, for any reason whatsoever (including as a result of the cancellation or termination of the Administration of IP Rights Agreement with the relevant Member), then, unless the Board determines otherwise within 10 (ten) Business Days of such cessation of the Company's Administration Rights, the Member's Membership and participation in the

Company shall terminate on the lapse of the abovementioned 10 (ten) Business Day period (and the termination of such Membership shall be deemed to be effective from the date of the cessation of the Company's Administration Rights in respect of such Member).

- 8.7. The Membership of any Member shall *ipso facto* cease upon the expiration of the subsistence of the last of the Member's Granted IP Rights (e.g. the expiry of the copyright therein) in respect of which the Member is entitled to receive Royalty Payments. On such cessation, the Member shall cease to have any rights in the Company (including without limitation any claim to the assets of the Company) and the Membership of the Member shall immediately (*ipso facto*) be terminated.

*Termination pursuant to death*

- 8.8. On the death of a Member, the deceased Member's Membership shall terminate (subject to the provisions below) and may not be transferred or ceded, but the Heir(s) of a deceased Member may be elected to Membership and the interests of such deceased Member in the deceased Member's Granted IP Rights and the Administration of IP Rights Agreement (the "**Deceased Member's Interest**") may be transmitted or transferred to the Heir(s) in terms of clause 8.13 read with clauses 8.9 to 8.15, however the Company shall, in so far as is lawful, at all times retain all related IP Rights vested in the Company and continue to Administer the deceased Member's Granted IP Rights until the earlier of -
- 8.8.1. any permitted transfer of the Deceased Member's Interest to an Heir(s) in terms of clause 8.13 prior to the lapse of the Transitional Period in clause 8.8.2, after which the Company shall continue to Administer the deceased Member's Granted IP Rights for the benefit of such Heir(s) for the duration of the relevant Heir's(s') Membership and the provisions of this clause 8 shall apply on termination of the relevant Heir's(s') Membership; and
- 8.8.2. the 31<sup>st</sup> (thirty first) day of December in the 7<sup>th</sup> (seventh) year immediately following the year in which the Member died ("**Transitional Period**") and during this Transitional Period clause 8.2 shall not apply and the estate of the Member can only terminate these arrangements or the Administration of IP Rights Agreement with the written agreement of the Company.
- 8.9. From the date of death of any Member, until the earlier of the date on which a Deceased Member's Interest is transferred to the Heir(s) (as contemplated in clause 8.8.1, read with clause 8.13), and the end of the Transitional Period, any Royalty Payments or Grant of Rights Payments to which the Member would, if living, have been entitled in relation to the Member's Granted IP Rights, shall be made to the executor or other personal representative of the Member's deceased estate as contemplated in clause 10 (*Representation*), or to any

lawful Heir(s) of such Member entitled thereto in the event of the estate having been wound-up.

- 8.10. Upon the transfer of the Deceased Member's Interest to any Heir(s) (as contemplated in clause 8.8.1, read with clause 8.13), any future Royalty Payments to which the deceased Member would, if living, have been entitled in accordance with the Payment Rules, in respect of any period subsequent to such transfer, shall be made to such Heir(s), in accordance with, and subject to the provisions of clause 8.13.
- 8.11. If all of the Deceased Member's Interest has not been transferred to an Heir at the expiry of the Transitional Period -
- 8.11.1. the Administration of IP Rights Agreement shall terminate and the Company's right to Administer the deceased Member's Granted IP Rights shall cease in respect of the whole or any portion of the Deceased Member's Interest that has not been transferred;
- 8.11.2. if any Administered IP Rights of the deceased Member are vested in the Company at the relevant time, such Administered IP Rights in respect of any Deceased Member's Interest that has not been transferred to an Heir shall revert to the deceased Member's estate, or to any lawful Heir entitled thereto of such Member in the event that the estate has been wound-up and, to the extent necessary, the Company hereby agrees to Assign such IP Rights to the estate of the deceased Member or relevant Heir (provided that the Board may require verification of the instructions from the executor or another personal representative of the estate or other comparable person, to its satisfaction, before doing so), with effect from the date following the expiry of the Transitional Period; and
- 8.11.3. the Company shall not be liable for any claims whatsoever, arising from the use, commercialisation nor any failure to use or commercialise the Administered IP Rights and no further payments shall be made.
- 8.12. A Deceased Member's Interest may only be transferred to one or more Heirs if such Heirs -
- 8.12.1. have applied for and been elected to Membership by the Board (in its discretion, but it shall not unreasonably decline to do so); and
- 8.12.2. have entered into an Administration of IP Rights Agreement (on such terms as the Board may determine) with the Company in respect of the Administration of the Deceased Member's Interest, and the Board may require that the executor or another personal representative of the estate of the deceased Member is a party to such agreement or consents to such agreement.

- 8.13. In regard to the transfer of the Deceased Member's Interest, the following provisions shall apply -
- 8.13.1. unless the Board determines otherwise, the deceased Member's Granted IP Rights vested in the Company shall be retained by the Company and shall not be assigned to its deceased estate or to the Heir, however, the Heir shall be acknowledged as the Member interested in such Administered IP Rights in respect of the inherited whole or portion (as the case may be) of the deceased Member's Interest to which the Heir is entitled (subject to clause 8.13.3);
- 8.13.2. for the purpose of determining (in accordance with the Payment Rules) the Royalty Payments, and Grant of Rights Payments relating to the transferred Deceased Member's Interest only, the Heir(s) shall be regarded as a Member of the same class and category of Membership as the deceased Member with the duration of the Membership of the Heir calculated from the date on which the deceased Member became a Member (with subsequent Heirs of Heirs looking back to the first deceased's Predecessor in this regard), but shall be categorised as an Heir and not qualify as a Publisher or Author for any other purpose (e.g. the sole Heir of a deceased Author shall have the deceased Author's Royalty Share of the Net Licence Revenue allocated to the Heir for the purposes of determining the Royalty Payment due to the Heir, but shall not qualify as an Author in respect of the Deceased Member's Interest for the purpose of complying with the minimum number of Directors that must be Authors);
- 8.13.3. where the deceased Member has more than one Heir, each Heir shall be acknowledged as the Person interested in the deceased Member's Granted IP Rights, in accordance with each Heir's share in the Deceased Member's Interest and unless the Governance Rules provide otherwise -
- 8.13.3.1. the provisions of clause 8.13.2 shall apply in respect of each such Heir;
- 8.13.3.2. where reference is made to the attribution of Licence Revenue to a Member's Granted IP Rights and determination of the related Royalty Payment, such attribution and determination shall first be made with reference to the deceased Member's Granted IP Rights as if he were still alive, and then allocated to each Heir *pro rata* to the Heir's particular share in the Deceased Member's Interest; and

- 8.13.3.3. the Grant of Rights Payment to each Heir shall be determined in accordance with the applicable Payment Rules; and
- 8.13.4. the Board may impose any other conditions or terms as it may reasonably require.
- 8.14. Where an Heir, to which the Deceased Members' Interest is transferred, is an existing Member of the Company or subsequently acquires an interest in other Administered IP other than the Deceased Members Administered IP Rights then -
- 8.14.1. the attribution of Licence Revenue and the determination of the Royalty Payments or Grant of Rights Payments due to the Member shall be allocated and determined distinctly in respect of the Heir's share of the Deceased Member's Interest in accordance with clause 8.13 and the rest of the Member's Granted IP Rights, as if the payments were being determined with reference to 2 (two) separate Members;
- 8.14.2. the Membership status of such Heir shall not be effected by the acquisition of the Heir's share in the Deceased Member's Interest and the Member shall not adopt the Membership status of the deceased Member; and
- 8.14.3. where the Heir is an existing Member, the Heir shall not be subject to the election contemplated in clause 8.12.1.
- 8.15. The provisions of clauses 8.8 to 8.14 shall apply *mutatis mutandis* to the Heirs of any Heir.

*Termination on business rescue, administration, insolvency or sequestration*

- 8.16. Subject to clause 8.19, in the case of a Member being a Juristic Person being liquidated or placed under administration or resolving or being ordered to begin Business Rescue proceedings, the Member's Membership shall terminate; however, the Company shall, in so far as is lawful, retain all IP Rights vested in the Company and continue to Administer the Member's Granted IP Rights, subject to clause 8.17 -
- 8.16.1. for a period ending on the 31<sup>st</sup> (thirty first) day of December in the 7<sup>th</sup> (seventh) year following the year in which the liquidation, administration or Business Rescue proceedings commenced ("**Run-out Period**"); and during this Run-out Period clause 8.2 shall not apply and the Member (or its liquidator, Business Rescue Practitioner or administrator of the estate of the Member) can only terminate these arrangements or the Administration of IP Rights Agreement with the written agreement of the Company; and



- 8.16.2. any Royalty Payments and Grant of Rights Payments to which such Juristic Person Member would (were it not for the commencement of the liquidation, administration or Business Rescue proceedings) have been entitled in accordance with the Payment Rules in respect of the Run-out Period, shall be made to the liquidator, administrator or Business Rescue Practitioner (as the case may be) or in accordance with the directions of the liquidator, administrator or Business Rescue Practitioner (as the case may be).
- 8.17. If, during the Run-out Period, the former Member comes out of Business Rescue or its administration is terminated without the Member being liquidated and the Member retains its interest in the Member's Granted IP Rights, then the Board may resolve that the former Member's Membership shall revive and revert to normal.
- 8.18. Unless clause 8.17 is applicable, upon the lapse of the Run-out Period -
- 8.18.1. the Administration of IP Rights Agreement shall terminate and the Company's right to Administer the Member's Granted IP Rights shall cease;
- 8.18.2. the Company shall Assign any Member's Granted IP Rights in respect of a Juristic Person vested in the Company at the relevant time, in accordance with the directions of the liquidator, administrator or Business Rescue Practitioner (as the case may be); and
- 8.18.3. the Company shall not be liable for any claims whatsoever, arising from the use or commercialisation or any failure to use or commercialise the Administered IP Rights and no further Royalty Payments or Grant of Rights Payments shall be made to the Member (or the liquidator, administrator or Business Rescue Practitioner).
- 8.19. In the event of a Member being a company or corporation that is or will be voluntarily liquidated or deregistered for the purpose of reconstitution or an amalgamation ("**Liquidating Member**"), such Liquidating Member may, prior to such liquidation or deregistration, apply to the Board for approval for the shareholder(s) or members of such Liquidating Member or one or more companies ("**Acquirers**") to apply for Membership and permission to take transfer of the Liquidating Member's interests in and right to reacquire Administered IP Rights vested in the Company on termination of Membership and to assume all of the Liquidating Member's obligations and rights under the Administration of IP Rights Agreement (in terms of a new Administration of IP Rights Agreement to be entered into between the Company and the Acquirers and the Liquidating Member (as may be required by the Board), or on such other terms as may be agreed to by the Board in Writing). If the Board agrees to the Acquirers' admission to Membership, they shall step into the position of the Liquidating Member with reference to the acquired interests in the

Administered IP Rights and it shall be a condition of such transfer that each Acquirer becomes a Member. If the Board does not approve the application for voluntary liquidation/deregistration or transfer of the Member's interests in the Administered IP Rights and the Member proceeds with such liquidation/deregistration, then the provisions of clause 8.16 shall apply, adapted appropriately (*mutatis mutandis*).

*Effect of Termination of Membership*

- 8.20. Except where expressly provided otherwise, on the effective date of the termination of a Member's participation as a Member in the Company pursuant to clauses 8.11, 8.16 or 8.18 -
- 8.20.1. the Member shall from that date immediately (*ipso facto*) cease to have any rights, privileges and obligations in respect of the Company and, in particular, but without prejudice to the generality of the foregoing, the Member concerned shall cease to have any claim upon the assets of the Company, shall not be entitled to vote at General Meetings and shall not be entitled to participate in any further payments by the Company, provided that the former Member shall not be relieved of the former Member's obligations to the Company arising in respect of the period prior to such termination;
- 8.20.2. any amounts owed by the Member to the Company shall become immediately due and payable, and the Company may elect to set-off any amounts so owed by the Member against any amounts owed by the Company to the Member;
- 8.20.3. the Administration of IP Rights Agreement with the Member shall terminate; and
- 8.20.4. the Member's Granted IP Rights in respect of which the Member is interested at the relevant time (e.g. in relation to which the Member's Royalty Payments are determined) that are vested in the Company (by virtue of the Member's or his Predecessor's Assignment) shall be Assigned to the Member, with effect from the date of termination of the Member's Membership.
- 8.21. If any proceedings have been instituted by or against the Company in respect of a Member's Granted IP Rights, either in the name of the Company or of the Member, and such Member ceases to be a Member prior to the conclusion of the proceedings, the Company shall retain any Administered IP Rights forming the subject of such proceedings which were vested in the Company by such Member until such proceedings are finally disposed of.
- 8.22. The Member shall at the request of the Company do all such things and execute all such documents necessary or desirable to give effect to the provisions of this clause 8, and the Member hereby grants the Company a power of attorney to, on behalf of the Member (*in*

*rem suam*), do such things and execute such documents necessary, or in the reasonable view of the Board desirable, to give effect to this clause 8.

## 9. PROHIBITION ON TRANSFER OF MEMBERSHIP

- 9.1. Except as provided for in this MOI, and subject to the provisions of the Governance Rules relating to this matter, Membership in the Company, and any rights in relation to any Administration Rights, and subject to the provisions of the Governance Rules relating to this matter, shall not be transferred, ceded, transmitted (including transmission by law), disposed of, pledged, sold or encumbered in any manner (which for the purposes of this clause 9 shall be collectively referred to as “**Transferred**” and “**Transfer**”, with “**Transferee**” and “**Transferor**” having a corresponding meaning).
- 9.2. Without limitation to the above, no Member shall be entitled or have the power or right to Transfer, delegate or otherwise dispose of the said Member’s Membership or any rights or obligations comprising such Membership or under this MOI to any other Person, or to alienate or exercise the Member’s Granted IP Rights, interests in the Member’s Granted IP Rights or any rights or obligation or interests of the Member in relation to the Company in connection with the Administered IP Rights, except in accordance with, and to the Persons specified in, clauses 8 (*Termination of Membership*) and 9.4.
- 9.3. The restrictions in clauses 9.1 and 9.2 shall be deemed to be an original incidence of Membership and limiting the rights relating to Membership in the Company and the Members’ interest in the Member’s Granted IP Rights. Any purported Transfer counter to these restrictions shall be void.
- 9.4. Notwithstanding the foregoing, the Board may authorise (which authorisation shall not be unreasonably withheld) the assignment (in so far as is possible in law) of the whole or a part of an existing Publisher Member’s interest in any of the Publisher Member’s Granted IP Rights (which includes (without limitation) the reversionary right to the Administered IP Rights, and the right to receive Royalty Payments and Grant of Rights Payments) to another existing Publisher Member only (subject to clause 9.5). In this regard -
- 9.4.1. any such permitted assignment of the said Publisher Member’s interest in any of the Member’s Granted IP Rights may only be made with the Board’s prior Written authorisation of the assignment from the Transferor to the particular accepted Transferee;
- 9.4.2. every notification of assignment shall be made to the Board in Writing in such form as the Board may prescribe and, on such notification being accepted by the Board, it shall cause a Written communication to be made to the applicant Member, advising such applicant of the Board’s approval, in such form as the

Board may prescribe, signed by a Director and countersigned by a duly authorised officer of the Company;

- 9.4.3. a duly-authenticated copy of the instrument executing the assignment of a Member's interest in any of the Member's Granted IP Rights shall be annexed to the notification form submitted to the Board in terms of Clause 9.4.2, and upon acceptance of the notification, duly filed by the Company for record purposes;
- 9.4.4. the effect of the transference of a part or the whole of a Member's interest is that the Transferee Member shall be acknowledged as the Person interested in such Administered IP Rights in respect of the acquired interest. However, it is acknowledged that the Company shall at all times retain control of the Administered IP Rights vested in it by any Person as long as such Person remains a Member of the Company;
- 9.4.5. to the extent permitted in the Governance Rules, if a qualifying (in terms of the Membership Rules) Transferee Member is an Ordinary Member, such Transferee Member may apply to the Board (in accordance with the process contemplated in the Membership Rules) for election to Associate Membership pursuant to the assignment of the interests in the assigned Administered IP Rights from a Transferor Member of a higher class of Membership; provided that, for purposes of such election, the requirement relating to the duration of Ordinary Membership (as contemplated in the Membership Rules) shall not apply. The provisions of this clause do not affect the requirements and process for election to Full Membership as set out in this MOI and the Membership Rules;
- 9.4.6. For the avoidance of doubt, it is recorded that the regime contemplated in this Clause 9.4 only applies in respect of a Publisher Member transferring the whole or a part of its Member's interest to another Publisher. More specifically, it is recorded that as long as an Author Member remains a Member of the Company, it shall not be possible for such Author Member to transfer his or her Member's interest to either another Author Member or to a Publisher Member, except to the extent contemplated and made possible in the Governance Rules. Nothing written herein shall be construed as prohibiting any Member from giving notice to the Company requiring the Company to pay the whole or any stated proportion of the total sum allocated to such Member at any given distribution, to any person named in such notice, as contemplated in the Membership Rules, provided that such notice does not amount to a transference of any portion of the Member's interest in the Administered IP Rights.

- 9.5. A Member shall only be entitled to be either an Ordinary Member, or an Associate Member or a Full Member at any time (i.e. one Member cannot hold Membership in more than one class of Membership), subject to clause 8.13 in regard to Heirs.
- 9.6. Subject to the Companies Act, the Board may charge a reasonable fee on the registration or receipt of any Transfer and/or of any letters of administration, probate, certificate of death or marriage, power of attorney or other notice or instrument affecting the title to, or the right to assign, the interest in any Administered IP Rights.
- 9.7. The Company shall not be bound to allow the exercise of any act or matter by an agent for a Member unless the original or a duly certified copy of such agent's authority is produced and filed with the Company.
- 9.8. If the Company keeps a register of Member's Granted IP Rights, it shall update such register to reflect any change in a Member's Granted IP Rights.

## 10. REPRESENTATION

Subject to the restrictions on termination and transfer of Membership under clauses 8 (*Termination of Membership*) and 9 (*Prohibition on Transfer of Membership*) (which shall in so far as is lawful also restrict a transmission by law) -

- 10.1. the parent or guardian or curator of any Member who is a minor;
- 10.2. the trustee of an insolvent former Member;
- 10.3. the liquidator of a former Member which is a Juristic Person or body corporate;
- 10.4. the tutor or curator of a Member under disability; or
- 10.5. the executor or administrator or other personal representative of the estate of a deceased Member,

shall, be entitled to apply to represent the Member (or in the case of a personal representative of a deceased Member's estate apply for Membership in such capacity) upon production of such evidence as may be required by the Directors and the conclusion of an Administration of IP Rights Agreement on terms satisfactory to the Board, have the rights and obligations to perform the represented Member's (including a deceased Member's) obligations and in such capacity exercise the rights and to receive the payments due to the represented Member, save where expressly provided to the contrary. Where a representative is so recognised the Company shall not be required to look to any relationship of trust and can assume the representative's authority to act in such capacity, provided that, if any such representative ceases to be the representative of that Member, the Board shall, pending transfer or appointment of another representative of that Member or admission of any other person as a Member in respect of the Member's interest in the Administered

IP Rights, be entitled to suspend the rights of that representative to vote and shall be entitled to withhold (and retain until such transfer has occurred) all Distributions payable to in respect of the relevant Member's Granted IP Rights.

**11. FINANCIAL YEAR**

The financial year of the Company ends on 30 June of each year.

**12. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

12.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.

12.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises (as adopted by the International Accounting Standards Board or its successor body) or, if it qualifies, in accordance with the South African Statements of Generally Accepted Accounting Practice (as adopted by the International Accounting Practices Board or its successor body), and shall have its annual Financial Statements audited.

12.3. Subject to the Companies Act, where persons are entitled to information or documents under the Companies Act, the Board shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions the relevant documents may be inspected or copied, subject to the requirements of the Regulations. In this regard it is noted that the Members are entitled to inspect and take copies (only in so far as they are entitled thereto in terms of the Companies Act) of –

12.3.1. the MOI;

12.3.2. amendments to the MOI;

12.3.3. records in respect of Directors mentioned in section 24(3)(b) of the Companies Act;

12.3.4. reports to the Annual General Meeting and annual Financial Statements;

12.3.5. notices and minutes of General Meetings;

12.3.6. general communications to Members only to the extent specified in section 26(1)(d) of the Companies Act; and

12.3.7. the Members' Register.

- 12.4. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Company unless expressly authorised by the Board or by Ordinary Resolution.
- 12.5. The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

13. **AUDIT COMMITTEE AND AUDITOR**

- 13.1. The Company has not elected to require the election of a statutory member elected Audit Committee. The Board may however decide to appoint a board Audit Committee (as opposed to the statutory member elected Audit Committee) and determine its members, powers and functions. The Board may combine such Audit Committee with a risk committee, or any other committee of the Company provided it still meets the required composition.
- 13.2. If an Audit Committee has been appointed, such Audit Committee (failing which, the Board) shall nominate an Auditor for the Company at the Annual General Meeting, however, the Members of the Company are not required to appoint the Auditor nominated by the Audit Committee.
- 13.3. The Company shall appoint an Auditor at its Annual General Meeting, provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless -
- 13.3.1. the retiring Auditor is -
- 13.3.1.1. no longer qualified for appointment;
  - 13.3.1.2. no longer willing to accept the appointment, and has so notified the Company; or
  - 13.3.1.3. required to cease serving as auditor, in terms of section 92 of the Companies Act;
- 13.3.2. the Audit Committee objects to the re-appointment; or
- 13.3.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.

- 13.4. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that -
- 13.4.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
  - 13.4.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 13.5. If, by comparison with the membership of a firm at the time of its latest appointment, less than  $\frac{1}{2}$  (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.
- 13.6. The Auditor -
- 13.6.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
  - 13.6.2. if the Company is a Holding Company, has the right of access to all current and former financial statements of any Subsidiary and is entitled to require from the Directors or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties;
  - 13.6.3. is entitled to -
    - 13.6.3.1. attend any General Meeting;
    - 13.6.3.2. receive all notices of and other communications relating to any General Meeting; and
    - 13.6.3.3. be heard at any General Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions; and
  - 13.6.4. may not perform any services for the Company -



13.6.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or

13.6.4.2. as may be proscribed by any Audit committee.

13.7. If a vacancy arises in the office of Auditor, the Board -

13.7.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

13.7.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as auditor of the Company.

13.8. Before making an appointment in terms of clause 13.7 the Board -

13.8.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new Auditor; and

13.8.2. may proceed to make an appointment of a Person proposed in terms of clause 13.8.1 if, within 5 (five) Business Days after delivering the proposal, the Audit Committee does not give notice in writing to the Board rejecting the proposed auditor.

13.9. The provisions of clauses 27.4 and 27.5 regarding resignation and removal apply *mutatis mutandis* to the Auditor.

## 14. GENERAL MEETINGS AND ROUND ROBIN RESOLUTIONS

### General

14.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

14.1.1. presentation of -

14.1.1.1. the Directors' report;

14.1.1.2. Audited Financial Statements for the immediately preceding financial year; and

- 14.1.1.3. if there is an Audit Committee, an Audit Committee report;
  - 14.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 14.1.3. appointment of an Auditor for the ensuing year;
  - 14.1.4. any matters raised by Members, with or without advance notice to the Company.
- 14.2. The Company shall, as determined by the Board, either -
- 14.2.1. hold a General Meeting in order to consider one or more resolutions; or
  - 14.2.2. as regards such resolution/s that could be voted on at a General Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution.
- 14.3. Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round Robin Resolution.
- 14.4. A Company must hold a General Meeting or put the proposed resolution by way of a Round Robin Resolution -
- 14.4.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for decision;
  - 14.4.2. whenever required to fill a vacancy on the Board.
- 14.5. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information and/or explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the General Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 14.6. The Board or any Member or any Person (if any) specified in the Governance Rules, may, whenever she/he/it thinks fit, convene a General Meeting or put the proposed resolution by way of a Round Robin Resolution. A General Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if one or more Written and signed demands for such a General Meeting or Round Robin Resolution is/are delivered to the Company, and -

- 14.6.1. each such demand describes the specific purpose for which the General Meeting is proposed; and
- 14.6.2. in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least the percentage provided for in the Companies Act in respect of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the General Meeting.
- 14.7. Round Robin Resolutions must be submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution and, to be passed, must be voted on by the requisite percentage of Persons entitled to vote by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them (and in regard to the election of Directors includes Written polling of Persons entitled to vote in respect of the election). A Members' Round Robin Resolution shall be passed if signed by Persons entitled to exercise sufficient Voting Rights for the proposed resolutions to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted General Meeting.
- 14.8. Every General Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a General Meeting entirely by Electronic Communication, or to provide for participation in a General Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that General Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the General Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted. The Board shall determine reasonable access for electronic participation and the procedures and processes relating thereto.

Notice

- 14.9. A General Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company (and for this purpose clause 34.3 shall not apply) to all Members entitled to vote or otherwise entitled to receive notice.
- 14.10. The Company may call a General Meeting with less notice than required by clause 14.9, but such a General Meeting may proceed only if every Person who is entitled to Exercise voting rights in respect of any item on the meeting agenda -
- 14.10.1. is Present at the General Meeting; and
- 14.10.2. votes to waive the required minimum notice of the General Meeting.

- 14.11. A Member entitled to vote, who is Present at a General Meeting -
- 14.11.1. is regarded as having received or waived notice of the General Meeting;
  - 14.11.2. has a right to -
    - 14.11.2.1. allege a material defect in the form of notice for a particular item on the agenda for the General Meeting; and
    - 14.11.2.2. participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
  - 14.11.3. except to the extent set out in clause 14.11.2, is regarded to have waived any right based on an actual or alleged material defect in the notice of the General Meeting.
- 14.12. A notice of a General Meeting must be in writing, in plain language and must include -
- 14.12.1. the date, time and place for the meeting, and the Record Date for the meeting;
  - 14.12.2. the general purpose of the meeting, and any specific purpose contemplated in clause 14.1, if applicable;
  - 14.12.3. in the case of the Annual General Meeting -
    - 14.12.3.1. a copy of the complete annual Financial Statements to be presented, or a summarised form thereof; and
    - 14.12.3.2. directions for obtaining a copy of the complete annual Financial Statements for the preceding financial year;
  - 14.12.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
  - 14.12.5. a reasonably prominent statement that -
    - 14.12.5.1. a Member entitled to attend and vote at the General Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the General Meeting in the place of the Member entitled to vote, or give or withhold Written consent on behalf of the Member entitled to vote on a decision by Round Robin Resolution;

- 14.12.5.2. a proxy need not be a Member;
  - 14.12.5.3. the proxy may delegate the authority granted to him as proxy, subject to any restriction in the proxy itself;
  - 14.12.5.4. participants in a General Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the General Meeting; and
  - 14.12.5.5. participation in the General Meeting by Electronic Communication (if any) is available, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 14.13. A General Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 14.14, only if every Person who is entitled to Exercise voting rights in respect of each item on the agenda of the General Meeting is present at the General Meeting and votes to approve the ratification of the defective notice.
- 14.14. If a Material defect in the form or manner of giving notice of a General Meeting relates only to one or more particular matters on the agenda for the General Meeting -
- 14.14.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 14.14.2. the General Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 14.15. An immaterial defect in the form or manner of Delivering notice of a General Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed, does not invalidate any action taken at the General Meeting.

Conduct and Quorum

- 14.16. Business may be transacted at any General Meeting only after the quorum requirements have been met.
- 14.17. The quorum for commencement of a General Meeting shall be 100 (one hundred) Members Present, which must include at least 3 (three) Full Members.

- 14.18. A matter to be decided at the General Meeting may not begin to be considered unless 100 (one hundred) Members are Present, which must include at least 3 (three) Full Members.
- 14.19. If within 30 (thirty) minutes (or any extension thereof in terms of clause 14.20) from the time appointed for the General Meeting to commence, a quorum has not been achieved for the commencement of the General Meeting, the General Meeting shall be postponed, without motion, vote or further notice, subject to clause 14.26, for 1 (one) week to the same time on the same day in the next week or, if that day is not a Business Day, to the next succeeding Business Day, and if at such adjourned General Meeting a quorum is not achieved within 30 (thirty) minutes from the time appointed for the General Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 14.20. The person intended to preside at a General Meeting that cannot begin due to non-compliance with the quorum requirements set out in clause 14.17, or if the meeting cannot continue because no further matters can be considered due to non-compliance the operation of clause 14.18, may extend the 30 (thirty) minute limit referred to in clause 14.19, or the 15 (fifteen) minute period in clause 14.22 for a reasonable period, on the grounds that exceptional circumstances affecting weather, transportation, or Electronic Communication have generally impeded or are generally impeding the ability of Members to be Present at the General Meeting, or one or more particular Members, having been delayed, have communicated an intention to attend the General Meeting, and those Members, together with others in attendance, would satisfy the requirements of clause 14.17 and clause 14.18.
- 14.21. If a meeting has commenced and if at any time during the meeting a particular matter is to be considered and at that time the matter specific quorum is not present for consideration of the matter then;
- 14.21.1. if there is other business on the agenda of the meeting, the presiding officer may decide that consideration of that matter will be postponed to a later time in the meeting without motion or vote, provided that if the presiding officer does not elect to postpone the matter the presiding officer shall wait 15 (fifteen) minutes and, if after such 15 (fifteen) minutes there is still no quorum, move onto other matters on the agenda; or
- 14.21.2. if there is no other business on the agenda of the meeting (or the presiding) then the provisions of clause 14.22 shall apply.
- 14.22. If a quorum is established for a General Meeting to commence and subsequently the General Meeting becomes inquorate, such that there is no quorum to consider any further matters and this lack of a quorum persists for 15 (fifteen) minutes (or an extension thereof in terms of clause 14.20), then the General Meeting in respect of the consideration of the outstanding matters shall be postponed, without motion, vote or further notice in respect of

such matters, subject to clause 14.26, for 1 (one) week to the same time on the same day in the next week or, if that day is not a Business Day, to the next succeeding Business Day, and, if at such adjourned General Meeting, a quorum is not achieved within 30 (thirty) minutes from the time appointed for the adjourned General Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum for the General Meeting and all matters to be considered.

14.23. A General Meeting, or the consideration of any matter being debated at the General Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the voting rights -

14.23.1. held by all of the Persons who are present at the General Meeting at the time; and

14.23.2. that are entitled to be Exercised on at least one matter remaining on the agenda of the General Meeting, or on the matter under debate, as the case may be.

14.24. Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members) as agreed at the General Meeting. No business shall be transacted at the resumption of any adjourned Members Meeting, other than the business unfinished at the Members Meeting from which the adjournment took place.

14.25. A General Meeting may not be adjourned beyond the earlier of -

14.25.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or

14.25.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

14.26. Save where the adjournment or postponement is until further notice in terms of clause 14.19, clause 14.22 or clause 14.23, as the case may be no further notice is required to be Delivered by the Company of a General Meeting that is postponed or adjourned as contemplated in clause 14.19, clause 14.22 or clause 14.23, if the location or time for the General Meeting –

14.26.1. is the same as the location or time of the postponed or adjourned General Meeting; or

14.26.2. in the case of an adjourned General Meeting, was announced at the time of adjournment.

14.27. Subject to clause 14.20, after a quorum has been established for -

- 14.27.1. a General Meeting to commence, the General Meeting may continue, for so long as at least 1 (one) Member entitled to Exercise Voting Rights on any matter to be considered at the General Meeting is Present subject to clauses 14.22 and 14.23; or
- 14.27.2. a matter to be considered at a General Meeting, the matter may be considered, as long as at least 1 (one) Member entitled to Exercise Voting Rights on such matter is Present.

Chairperson

- 14.28. The chairperson, if any, of the Board shall preside as chairperson at every General Meeting. If there is no such chairperson, or if at any General Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the General Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director present at the General Meeting, or if no Director be present at the General Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the General Meeting.

Voting

- 14.29. At any General Meeting a resolution put to the vote shall be decided on a show of hands. Only Performing Rights Members are entitled to vote and Non-Voting Members do not have any right to vote and are precluded from voting at any General Meeting. A Performing Rights Member entitled to vote and Present at the meeting shall have only 1 (one) vote, unless before or on the declaration of the result of the show of hands a poll shall be demanded by -
- 14.29.1. not less than 5 (five) Persons having the right to vote on that matter; or
- 14.29.2. a Person/s entitled to Exercise not less than 1/10th (one tenth) of the total voting rights entitled to vote on that matter,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or not passed by the required majority, and an entry to that effect in the minute book 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. No objection shall be raised as to the admissibility of any vote except at the General Meeting or adjourned General Meeting at which the vote objected to is, or may be given or tendered, and every vote not disallowed at such General Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the General Meeting, whose decision shall be final and conclusive.



- 14.30. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll and, if appointed, their decision, which shall be given by the chairperson of the General Meeting, shall be deemed to be the resolution of the General Meeting at which the poll is demanded. The demand for a poll may be withdrawn.
- 14.31. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the General Meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 14.32. Any Person entitled to Membership or to represent a Member in terms of clause 10 (*Representation*) may vote at any General Meeting in respect thereof in the same manner as if he were the Member, provided that (except where the Directors have previously accepted his right to vote) 48 (forty eight) hours at least before the time of holding the General Meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to exercise the right referred to in clause 10 (*Representation*).
- 14.33. Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall be adopted with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall be adopted with the support of more than 75% (seventy five percent) of the Voting Rights exercised on the resolution.
- 14.34. On a show of hands -
- 14.34.1. a Performing Rights Member entitled to vote that is Present at the General Meeting shall have only 1 (one) vote; and
- 14.34.2. a proxy shall, irrespective of the number of the Performing Rights Members entitled to vote which he represents, have 1 (one) vote.
- 14.35. On a poll -
- 14.35.1. Performing Rights Members shall each have votes equal to the greater of -
- 14.35.1.1. 1 (one) vote; and
- 14.35.1.2. the figure in South African Rand (rounded down to the nearest whole Rand) of the aggregate Territory Performing Rights Royalty Payments to the Member, during the Completed Full

Royalty Payment Cycle immediately preceding the General Meeting at which the voting takes place, provided that the maximum number of votes exercisable by any one Member shall not exceed 2% (two percent) of the total Voting Rights of all Members having the right to attend and vote at a General Meeting;

- 14.35.2. a proxy shall exercise the vote(s) of each Member for which it has been appointed as proxy (as determined in clause 14.35.1 in respect of each Member) separately from the vote(s) of each other Member for which it acts as proxy; and
- 14.35.3. any calculation of number of votes of a Member by a show of hands or the poll votes of the Members by an Auditor or a professional scrutineer shall be conclusive proof of the votes of the relevant Members, unless the contrary is proved.
- 14.36. If more than one Person is registered in respect of a single Membership to the extent permitted by the Board (e.g. in respect of trustees of a trust), the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered persons; and for this purpose seniority shall be determined by the order in which the names stand in the Members' Register.

#### Proxies

- 14.37. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 14.38. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company immediately prior to the General Meeting, before the proxy exercises any rights of the Member entitled to vote at a General Meeting.
- 14.39. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect

of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the General Meeting or adjourned General Meeting at which the proxy is used.

- 14.40. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form or any other form approved by the Board. The Company shall supply a general standard form of proxy upon request by a Member entitled to vote.
- 14.41. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.
- 14.42. In the absence of any express indication to the contrary on a proxy form, the appointed proxy shall be entitled to vote in his/her discretion in respect of any procedural matters or in respect of any modifications to any proposed resolutions.

## 15. **RECORD DATE**

- 15.1. If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 15.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is -
- 15.2.1. in the case of a General Meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that General Meeting;  
or
- 15.2.2. the date of the action or event, in any other case.
- 15.3. The Company must publish a notice of a Record Date for any matter by -
- 15.3.1. Delivering a copy to each Member; and
- 15.3.2. posting a conspicuous copy of the notice -
- 15.3.2.1. at its principal office; and
- 15.3.2.2. on its website, if it has one.

## 16. ELECTION OF DIRECTORS AND CASUAL VACANCIES

- 16.1. The minimum number of Directors shall be 4 (four) and the maximum shall be 14 (fourteen). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 16.2. Each of the Directors shall be elected, in accordance with clause 16.7 to serve for a maximum period of 4 (four) years subject to rotation in accordance with clause 16.3 and cessation of office in accordance with clause 17 (*Disqualification from and Cessation of Office as Director*), and may be reappointed for a second or further term of office, provided that -
- 16.2.1. except as provided for in clauses 16.2.2 and 16.2.3, no person who is not a Full Member shall be appointed to act as a Director, provided that in the case of a Juristic Person being a Full Member, there may be appointed as a Director any person being either a director, partner, officer or manager in the permanent and exclusive employment of such Juristic Person, notwithstanding that such person is not himself a Member and is not eligible for election;
- 16.2.2. notwithstanding clause 16.2.1, there may be appointed as Director any person who, not being a Member, has special knowledge, skills and/or experience relevant to performing the role and functions of a Director;
- 16.2.3. notwithstanding clause 16.2.1, there may be appointed as an independent Director any person who is not a Member of the Company;
- 16.2.4. any Directors appointed in terms of clauses 16.2.2 and 16.2.3 above shall be taken into account in determining the maximum number of Directors set out in clause 16.1 but shall not be taken into account for the purpose of the proportional representation specified in clause 16.2.5;
- 16.2.5. not less than one-half of the number of Directors in office (other than those appointed in terms of clauses 16.2.2 and 16.2.3) shall be Authors (including the nominee 'representative' of a Juristic Person that is an Author but excluding an Author's Heir(s)) and not less than one-third shall be Publishers (including the nominee 'representative' of a Juristic Person that is a Publisher) as determined at the time of appointment of the Director concerned and where a Director or nominee for Directorship (or the Juristic Person which the nominee/Director represents) is both an Author or a Publisher, then reference shall be had to the Territory Performing Rights Royalty Payments paid to the nominee/Director (or the Juristic Person the nominee/Director represents) in the immediately

preceding Completed Full Royalty Payment Cycle and the nominee/Director shall (for the purposes of this clause) be deemed to be -

16.2.5.1. an Author, if at least 50% (fifty percent) of such Territory Performing Rights Royalty Payments were derived from interests in Works of Music in respect of which the nominee/Director (or the Juristic Person the nominee/Director represents) is an Author; and

16.2.5.2. a Publisher, in any other case; and

16.2.6. the Board may appoint Directors to fill vacancies that arise between Annual General Meetings, as contemplated in (and subject to) clause 16.10.

16.3. For the sake of clarity, a nominated 'representative' of a Juristic Person shall serve as a Director in their personal capacity (and not as an actual representative of the Juristic Person), the term 'representative' merely being used for classification for the purposes of the composition requirements of clause 16.2.5.

16.4. Subject to clause 16.2, at the Annual General Meeting held each year, as from the Conversion Date, one-third of the Directors (rounded to the nearest whole number), shall retire from office. The Directors so to retire at each Annual General Meeting shall be -

16.4.1. firstly, those vacancy appointments by the Board in terms of clause 16.10, secondly, those Directors who will exceed the maximum 4 (four) year term of office if they remain in office for a period of 6 (six) months after the date of the next Annual General Meeting; and

16.4.2. thereafter, those who have been longest in office since their last election and, as between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot.

16.5. A Director retiring by rotation at an Annual General Meeting shall act as a Director throughout the Annual General Meeting at which he retires and shall be eligible for re-election. The length of time a Director has been in office shall be computed from the date of his last election. Retiring Directors, or any Director whose term of office has or will expire, shall be eligible for re-election and, if re-elected at an Annual General Meeting at which the Director's period of office terminates, shall be deemed not to have vacated his/her office, but his/her new term of office shall start from the date of such election. Only persons which meet the requirements of this MOI, the Companies Act and any other applicable statute, regulation or guideline and which are -

16.5.1. Directors retiring at the Annual General Meeting;

16.5.2. recommended by the Directors (or any nomination committee); or

16.5.3. nominated in accordance with clause 16.6,

shall be eligible for election to the office of Director at any Annual General Meeting.

- 16.6. A Member which is duly qualified to be Present and vote at the Annual General Meeting, may nominate a person for election to replace a retiring Director at an Annual General Meeting, by submitting Written notice of such nomination to the Board or any nomination committee established by the Board (in such form, and including such information, as may prescribe by the Board from time to time) within 2 (two) months after the financial year end of the Company, together with the nominee's written acceptance of the nomination. Any such nomination shall be submitted to the nomination committee established by the Board, which shall consider whether the nominee meets the requirements of this MOI, the Companies Act and any other applicable statute, regulation or guideline.
- 16.7. In any election of Directors, the Chairperson shall determine the sequence of the elections in order to ensure that the spread as set out in clause 16.2 is achieved and the election is to be conducted as follows -
- 16.7.1. a series of votes of those entitled to Exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and
- 16.7.2. in each vote to fill a vacancy -
- 16.7.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 16.7.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 16.8. No person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 16.9. No election of a Director shall take effect until he has delivered to the Company a Written consent to serve. A person who is not competent to act as Director (as contemplated in clause 16.8) must not consent to be elected as a Director, nor act as a Director.

- 16.10. Any casual vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, but the individual so appointed shall cease to hold office at the termination of the first General Meeting to be held after the appointment of such individual as a Director, unless he is elected at such General Meeting.
- 16.11. The continuing Director(s) may act notwithstanding any vacancy in their body or temporary non-compliance with clause 16.2.5, but, if and so long as their number is reduced below the number fixed by clause 16.1, the continuing Director(s) may act only for the purpose of summoning a General Meeting for the election of Directors as contemplated in clause 16.2 (read with clause 16.7) and to manage the Company pending such General Meeting. If there is no Director able and willing to act, then any Member entitled to Exercise Voting Rights in the election of a Director may convene a General Meeting for the purpose of electing Directors.

## 17. **DISQUALIFICATION FROM AND CESSATION OF OFFICE AS DIRECTOR**

- 17.1. A person shall be ineligible or disqualified from acting as a Director if –
- 17.1.1. she/he is ineligible or disqualified as contemplated in the Companies Act (a list of which is contained in **Annexure B** for ease of reference but which do not form part of this MOI other than for purposes of information);
  - 17.1.2. she/he has been declared delinquent by a court, or placed on probation under conditions that are inconsistent with being a Director of the Company and such circumstances continue to exist;
  - 17.1.3. she/he is mentally ill in a manner that is likely to materially detract from his/her ability to act as a Director of the Company and such circumstances continue to exist.
- 17.2. A Director shall cease to hold office as such –
- 17.2.1. when her/his term of office contemplated in clauses 16.2 and 17.3 expires;
  - 17.2.2. when she/he dies;
  - 17.2.3. if she/he is removed by Ordinary Resolution;
  - 17.2.4. if there are 3 (three) or more Directors in office and -
    - 17.2.4.1. the Board (other than the Director concerned) determines by resolution that she/he –

- 17.2.4.1.1. has become Ineligible or Disqualified;
- 17.2.4.1.2. has become incapacitated (including mentally ill) to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
- 17.2.4.1.3. has neglected, or been derelict in the performance of, the functions of a Director;
- 17.2.4.2. the Director has received notice and has been given an opportunity to make a presentation (in compliance with the requirements of section 71(4) of the Companies Act); and
- 17.2.4.3. the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 17.2.5. if she/he is employed by the Company, immediately upon her/his employment with the Company being terminated for any reason whatsoever, unless prior to such termination the Board resolves that she/he may remain in her/his office of director despite such termination of employment;
- 17.2.6. if she/he is absent from meetings of the Board for 6 (six) consecutive months without leave of the Board and the Board resolves that the office be vacated, provided that the Board shall have power to grant any Director leave of absence for any or an indefinite period;
- 17.2.7. 1 (one) month, or earlier if permission has been granted by the Board, after she/he has given notice in Writing of her/his intention to resign (subject to the Companies Act);
- 17.2.8. if she/he is removed from office by a resolution passed by the affirmative vote of two-thirds in number of her/his co-Directors, subject to the Companies Act;
- 17.2.9. immediately upon her/him filing a petition for the surrender of her/his estate or an application for an administration order, or her/him making any arrangement or composition with her/his creditors generally; or
- 17.2.10. immediately upon him/her assigning her/his estate for the benefit of her/his creditors or filing a petition for the liquidation or sequestration of her/his affairs, or compounding generally with her/his creditors; or



17.2.11. if she/he is otherwise removed in accordance with any provisions of this MOI.

17.3. A Director shall retire at the end of the first Annual General Meeting after the Director reaches the retirement age as determined by the Board from time to time.

## 18. REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES

18.1. Subject to the restrictions on payments to Directors in Schedule 1 and section 75 of the Companies Act, the Directors and members of Board committees shall be entitled to be paid such reasonable remuneration for their services as Directors and members of Board committees as may be approved by the Members by way of an Ordinary Resolution, provided that the Board shall be entitled to determine such reasonable remuneration of a Director in the case of the Board appointing a Director to fill a vacancy for the period from the appointment to the General Meeting at which such Director shall be proposed for election as a Director.

18.2. In addition, the Directors and members of Board committees may be paid all their reasonable expenses properly and necessarily incurred by them in and about the business of the Company, and in particular for travelling (including hotels) to and from meetings of the Board, Members and committees as is determined in compliance with clause 23 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*), by a disinterested quorum of the Board, which may be either in addition to or in substitution for any other reasonable remuneration.

18.3. A Director or Alternate Director may hold office or be employed in any other capacity in the Company (other than as a Director) as contemplated in clause 20.3 and in that event, his/her appointment and remuneration in respect of such other office or employment must, in addition to any other approvals required in terms of the Companies Act, be reasonable and determined, in compliance with clause 23 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*), by the Board or subcommittee of the Board. Further, a Director may hold office or be employed by any Subsidiary or other company or entity controlled by the Company. Unless otherwise determined by the Board (which determination may only be prospective) and subject to the restrictions in Schedule 1 of the Companies Act, any Director or Alternate Director shall not have to account to the Company for any approved remuneration or benefits accruing by virtue of holding such office or employment in respect of the Company or any Subsidiary or other company or entity controlled by the Company.

## 19. FINANCIAL ASSISTANCE TO DIRECTORS

The Company is subject to the restrictions on the provision of financial assistance to Directors of the Company or directors of any Related or Inter-Related company, or to a person Related to any such

director in Schedule 1 of the Companies Act, but shall be permitted to provide financial assistance to such persons to the extent permissible.

20. **GENERAL POWERS AND DUTIES OF DIRECTORS**

20.1. The powers of management granted to the Directors in terms of section 66(1) of the Companies Act shall not be limited, unless otherwise provided for in this MOI or any unalterable provision of the Companies Act.

20.2. Subject to the restrictions on payment of income and transfer of the assets of non-profit companies, and the restrictions on the provision of financial assistance to Directors of the Company and directors of any Related and Inter-related company or to any Person Related to any such director in Schedule 1 of the Companies Act, the Board may -

20.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

20.2.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or office bearers or ex-employees or ex-office bearers (including Directors or ex-Directors) of the Company, or of any company which is or was a Subsidiary of the Company, or is or was in any way allied to or associated with it or any such Subsidiary, and the wives, widows, families and dependants of such persons .

20.3. Subject to the requirements of the Companies Act, the Board may from time to time -

20.3.1. appoint any person as employee to the office of managing Director (provided that such person meets the requirements for appointment as Director, as contemplated in clauses 16.2 and 16.8) or chief executive officer (who need not be a Director) or executive chairperson of the Company for such period, at such reasonable remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) and on such terms as it may deem fit (provided that any appointment of a Director to such position may not be for a period exceeding the maximum period of the appointment of the Director concerned set out in clause 16.2) and generally on such terms as they may think fit, and (subject to any contract entered into between the Board and such managing Director or chief executive officer) may from time to time remove him and appoint some other person as managing Director or chief executive officer in his place; and it may be made a term of his appointment that he be paid for services a reasonable pension, gratuity or other benefit on his retirement from office. Such managing Director shall immediately cease to hold office of managing Director if he is removed from the office of

Director or his employment by the Company is terminated for any reason whatsoever (including cancellation);

- 20.3.2. entrust to and confer upon a managing Director or chief executive officer or executive chairperson for the time being such of the powers vested in the Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or in so far as is lawfully possible to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. In the absence of the Board restricting or defining the powers of any managing Director appointed as the sole managing director or 'chief executive officer', such managing director shall have the power and authority to manage the day-to-day business of the Company. A managing Director or chief executive officer or executive chairperson appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause;
- 20.3.3. appoint any 1 (one) or more persons (who may, but need not be a Director or a Member) as employee to the office of management of the Company or as senior manager (if such person has experience in business management, either gained from working for the Company or another company, or has special knowledge and/or experience in the application of the IP Related Legislation and/or the administration of copyright) for such period, at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) and on such terms as it may deem fit, and (subject to any contract entered into between the Board and such person) may from time to time remove him and appoint some other person to the management of the Company in his place; and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office; and
- 20.3.4. by power of attorney appoint any company, corporation, person, or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this MOI), and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the

Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

- 20.4. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
- 20.5. In so far as is permissible under the Companies Act, the Directors shall have the power to delegate to any Person(s) (as long as they are not incompetent as contemplated in clause 16.8) any of their authority, powers and discretions and to give to any such Person(s) the power of sub-delegation. The aforementioned delegation does not prevent the Board from performing the delegated functions.

## 21. RESERVES

- 21.1. The Board may set aside out of any Net Licence Revenue (before making the relevant Royalty Payment) receipts that it decides to not include in the determination of the Royalty Payments in respect of a particular Royalty Payment cycle and instead transfer such receipts to a reserve for future inclusion in subsequent Royalty Payments ("**Royalty Reserve**") to cater for amongst other things, the ability to reduce the impact of lean years. The Board may include the capital funds placed in the Royalty Reserve in the Licence Revenue 'pool' for future Royalty Payments (in which case the transfer from the Reserve shall be included in the Licence Revenue for the relevant Royalty Payment) or decide to use such reserves for such other purposes as the Board shall in its reasonable discretion think necessary or conducive to the interests of the Company having due regard to its objects. However, until a decision is made to transfer the funds from the Royalty Reserve it shall remain part of the Royalty Reserves reserved for inclusion in future Royalty Payments. If the Board regards it reasonable to use such Reserves for another purpose it shall forthwith transfer the relevant amounts out of the Royalty Reserve. Any income and profits in respect of the Royalty Reserve shall not be included in future Royalty Payments but shall instead be used to firstly settle related expenses and liabilities and the balance transferred to another reserve fund for use by the Company.
- 21.2. The Board may also set aside out of the Net Licence Revenue (before making the relevant Royalty Payment) receipts that the Board decides to not include in the determination of the Royalty Payments in respect of a particular Royalty Payment, or any other receipts from other sources, such sums as its thinks proper or reasonably desirable in one or more reserve funds ("**Non-Royalty Reserves**") for any purpose the Board in its absolute discretion thinks reasonably desirable or conducive to the interests of the Company having due regard to its objects. The Board may transfer the funds from one Non-Royalty Reserve to another. The Board may divide any Non-Royalty Reserve fund into such special funds as

it thinks fit, and employ the Non-Royalty Reserve funds or any part thereof for any reasonable purpose that advances the objects of the Company.

- 21.3. Without limitation the Board may in its discretion invest the Royalty Reserve and the Non-Royalty Reserves as it may think fit, and from time to time deal with or vary such investments and dispose of all or any part thereof. However, while the investment returns in respect of the Non-Royalty Reserves shall form part of such reserves and may be used accordingly, any net investment returns and gains realised on the realisation of such Royalty Reserves shall not be transferred to the Licence Revenue 'pool' but shall instead be transferred out of the Royalty Reserves and deployed in the advancement of the Company's objects.
- 21.4. The Company shall maintain accounting records of the Royalty Reserves and the Non-Royalty Reserves and shall ensure that reserves as at the Harmonisation Effective Date are appropriately allocated to the relevant reserve.

## 22. **BOARD COMMITTEES**

- 22.1. The Directors may appoint any number of Board committees and, in so far as is permissible under the Companies Act, delegate to such committees any authority, powers and discretions of the Board and give to such committees the power of sub-delegation, provided that the aforesaid delegation does not prohibit the Board from performing the delegated functions or revoking such delegation at any time.
- 22.2. The members of such committees may include persons who are not Directors, provided that such persons shall not be able to vote.
- 22.3. No person shall be appointed as a member of a Board committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 22.4. 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 Companies Act.
- 22.5. A member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified or is removed by way of a resolution of the Board.
- 22.6. Committees of the Board may consult with or receive advice from any Person.
- 22.7. Subject to the Companies Act and the mandate given by the Board, meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be

governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

22.8. Without limitation and subject to the above provisions in respect of Board committees, the Board may establish a separate Board committee to attend to such matters relating to or affecting Needletime Rights and the Administration of such Needletime Rights as they regard appropriate and to appoint trustees of the Needletime Trust as members of such committee.

23. **PERSONAL FINANCIAL INTERESTS OF DIRECTORS, PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES**

23.1. For the purposes of this clause 23, "Director" includes 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.

23.2. Subject to the Companies Act, the rest of this clause shall not apply to any Director in respect of the following matters and a Director may in so far as is lawful (after disclosure of his/her interest) attend, participate in, and vote at a Board meeting notwithstanding the Director having a conflict of interests in respect of a decision that may generally affect -

23.2.1. all of the Directors of the Company in their capacity as Directors; or

23.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-Related to the Director; or

23.2.3. in respect of a proposal to remove that Director from office as contemplated in section 71 of the Companies Act.

23.3. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, 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.

23.4. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

- 23.5. If a Director (whilst the circumstances contemplated in clause 23.2 are not applicable), 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 –
- 23.5.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
  - 23.5.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
  - 23.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
  - 23.5.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 23.5.2 or 23.5.3;
  - 23.5.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 23.5.2 or 23.5.3;
  - 23.5.6. while absent from the meeting in terms of this clause 23.5 –
    - 23.5.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
    - 23.5.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
  - 23.5.7. 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.
- 23.6. 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, or to the Members entitled to vote (if the matter is being referred to them as a result of the Board not being competent to deal with the matter), 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.
- 23.7. A decision by the Board, or a transaction or agreement approved by the Board, or by the Members (if the matter was referred to them as a result of the Board not being competent to

deal with the matter), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –

23.7.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 23 ; or

23.7.2. 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.

23.8. Notwithstanding anything in this clause 23, the Company and the Directors shall comply with the provisions of the Companies Act with regard to the disclosure of the interests in contracts or proposed contracts. Subject to any required disclosure and approval -

23.8.1. no Director or intending Director shall be disqualified by her/his office from contracting with the Company, either with regard to such office or as vendor, purchaser or otherwise;

23.8.2. shall any such duly approved contract, in which any Director shall be in any way interested, be or be liable to be avoided solely on the basis that it is concluded with a Director; nor

23.8.3. shall any Director so contracting or being so interested in a duly approved contract be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established.

## 24. **PROCEEDINGS OF DIRECTORS**

24.1. The managing Director and any other Director authorised by the Board -

24.1.1. may, at any time, summon a meeting of the Directors; and

24.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors.

24.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors, even to those who are absent from South Africa for the time being.

24.3. If all of the Directors -

24.3.1. acknowledge actual receipt of the notice;



24.3.2. are present at a meeting of the Directors; or

24.3.3. 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.

- 24.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 24.5. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 24.6. The quorum for a Directors' meeting is 3 (three) Directors.
- 24.7. The chairperson and vice-chairperson of the Company, of whom at least 1 (one) shall be an Author, shall be elected by the Board from among themselves, and shall be respectively the chairperson and vice-chairperson of the Board. Unless removed by Board resolution earlier, they shall hold their respective offices concurrently until they are required to retire in terms of clause 16.4 (provided that such retiring chairperson and vice-chairperson shall act as chairperson and vice-chairperson throughout the Annual General Meeting at which they retire), unless reappointed at such Annual General Meeting. They shall be eligible for reappointment so long as they respectively remain qualified to act as Directors. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, then the vice-chairperson shall chair the meeting and if the vice-chairperson is also not present, then the Directors present may elect one of their number to be chairperson of the meeting. The Directors may at any time revoke such an appointment.
- 24.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution. In the case of a tied vote, the chairperson of the meeting shall have a second or casting vote.
- 24.9. A resolution passed by the Board, or an act performed under the authority of the Board, is not invalid by reason only of the fact that when the resolution was passed, or the act was authorised -

24.9.1. there were less Directors than the required minimum (as contemplated in clause 16.1); or

24.9.2. a person was sitting on the Board who was Ineligible or Disqualified to sit on the Board,

if the resolution was passed, or the act was authorised, by the requisite majority of the Directors competent to sit as Directors who were present at the time.

24.10. A resolution passed by the Board, or an act performed under the authority of the Board, is not invalid by reason only of the fact that when the resolution was passed, or the act was authorised, the requirements of clause 16.2 (including without limitation the composition requirements) were not met.

24.11. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes -

24.11.1. any declaration given by notice or made by a director as required by clause 23 (*Personal Financial Interests of Directors, Prescribed Officers and Members of Board Committees*);

24.11.2. every resolution adopted by the Board.

24.12. Resolutions adopted by the Board -

24.12.1. must be dated and sequentially numbered; and

24.12.2. are effective as of the date of the resolution, unless the resolution states otherwise.

24.13. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be and such evidence shall be conclusive unless the contrary is proved.

24.14. A resolution of Directors (a "**Round Robin Resolution**") shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted, provided that -

24.14.1. each Director has received notice of the matter to be decided upon; and

24.14.2. such resolution is adopted by way of Written consent, given in person or by Electronic Communication, of a majority of the Directors.

24.15. Such a Round Robin Resolution -

24.15.1. shall be deemed to have been passed on the date upon which it was signed or executed by the last Director required to sign or execute it to achieve the required majority. Where the date of its signature by any Director is recorded on a Round Robin Resolution, that record shall be *prima facie* evidence that it was signed or executed by that Director on that date and shall be conclusive proof unless the contrary is proved; and

24.15.2. constitutes a decision of the Board and must be entered into the minute book of the Company.

24.16. Subject to the limitation of the Directors' powers and authority in this MOI, a meeting of the Board at which the quorum requirements are met shall be competent to exercise all or any of the authorities, powers and discretion, provided by or under this MOI or the Companies Act, of the Company for the time being vested in or exercisable by the Directors generally.

## 25. **SOCIAL AND ETHICS COMMITTEE**

If the Company is required to appoint a social and ethics committee in terms of the Companies Act, the Board shall appoint a social and ethics committee to fulfill the duties under the Companies Act and Regulations, unless the Company -

25.1. is a Subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required on behalf of the Company; or

25.2. has been exempted in terms of the Companies Act from having to have a social and ethics committee.

## 26. **PRESCRIBED OFFICERS**

26.1. No person shall hold office as a Prescribed Officer, if she/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

26.2. A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

## 27. **APPOINTMENT OF SECRETARY**

27.1. The Board must appoint a company secretary from time to time, who –

- 27.1.1. shall be a permanent resident of South Africa and remain so while serving as secretary; and
- 27.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and
- 27.1.3. may be a Juristic Person, subject to the following –
  - 27.1.3.1. every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified; and
  - 27.1.3.2. at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 27.1.1 and 27.1.2;
- 27.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 27.1.3.
- 27.3. If at any time a Juristic Person or partnership holds office as company secretary of the Company –
  - 27.3.1. the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 27.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
  - 27.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 27.1.3, until the Company has received a notice contemplated in clause 27.3.1; and
  - 27.3.3. any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 27.1.3 at the time of that action.
- 27.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice, or less than that with the prior Written approval of the Board.

27.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

## 28. **SOCIAL AND CULTURAL**

28.1. Subject to clause 28.3 and the obligation to make the Special Consideration Payments in clause 30.4 out of the social allocation, applicable regulations and the restrictions on the payment and transfer of the income and assets of non-profit companies under Schedule 1 of the Companies Act, the Board shall (taking into account any applicable regulations) determine the social and cultural projects, activities and funds of the Company to advance its stated objects which may include, without limitation -

28.1.1. the granting of gratuities, bursaries, donations and emoluments to, as well as making contributions to any benevolent, pension, funeral, medical aid scheme or similar fund established for the benefit of Authors and the wives, widows, families and dependants of any such persons;

28.1.2. payments by way of loan or gift or on such terms as may be thought fit for any purpose conducive to the improvement or advancement of the composition, teaching, or the performance of music (including Works of Music Performances and/or Performer's Indirect Performances), or for the encouragement or advancement of the national arts, or for any purposes calculated to benefit the industry in which the Company operates, or to make such payments to or for the benefit of any society, associated company, fund, trust or institution whose objects include or are ancillary to any such purpose in so far as is consistent with the objects of the Company;

28.1.3. subscribing money or assets to, or otherwise assisting, charitable or benevolent objects or entities;

28.1.4. providing sponsorships or bursaries, particularly but without limitation, in connection with any industry relating to the Company's objects or business activities; and/or

28.1.5. the establishment of any funds for any of the above purposes.

28.2. The Permitted Royalty Deductions shall be allocated to either social or cultural purposes as determined by the Board in accordance with any applicable Governance Rules.

28.3. The Company shall not dispose of any part of its assets, undertakings 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 its activities as a non-profit company.

## 29. ADMINISTRATION OF IP RIGHTS

### *Administered IP Rights*

29.1. In order to be eligible for election to Membership after the Harmonisation Effective Date, an Applicant must conclude an Administration of IP Rights Agreement with the Company (as contemplated in clause 7.4 of this MOI), providing for a deed of assignment of the Administered IP Rights to the Company, except as otherwise determined in terms of the Rules or through a resolution of the Board, as contemplated in clause 29.9.

29.2. All existing Members on the Harmonisation Effective Date shall, unless expressly agreed otherwise in Writing, be deemed to have agreed that their Administered IP Rights, which are vested in the Company on the Harmonisation Effective Date, shall remain vested in the Company to be Administered in accordance with the provisions of this MOI and any existing Assignment or contract, which existing contract shall be deemed to be an Administration of IP Rights Agreement, subject only to those existing contractual terms with the Member that cannot be altered by way of an amendment to the Company's MOI, if any.

29.3. Subject to the exceptions in clauses 29.4, 29.6, 29.7, 29.8, **Error! Reference source not found.** 29.10 and 33.2, every Applicant for Membership shall sign an Administration of IP Rights Agreement on terms acceptable to the Board (as contemplated in clause 7.4.2), which agreement shall -

29.3.1. unless the Applicant is applying for Membership solely in respect of the Administration of Needletime Rights, provide for the Assignment to and Administration by the Company of at least all the Worldwide Performing Rights (including any and all shares or parts in a Performing Right) in all and any Works of Music or parts of Works of Music, present and future, in respect of which the Applicant is the Author, Publisher, Proprietor or a Permitted Successor; and

29.3.2. if the Applicant is a Performer (or a Performer's successor in title) applying for Membership solely in respect of the Administration of Needletime Rights, provide for the Assignment to and Administration by the Company of all and any Needletime Rights in respect of Performer's Indirect Performances, present and future, of which the Applicant is the holder, and

shall include -

- 29.3.3. the Performing Rights and/or Needletime Rights, as the case may be, which the Applicant has at the date of application for Membership; and
- 29.3.4. the Performing Rights and/or Needletime Rights, as the case may be, which subsequently are acquired by, or vest in, the Applicant after submission of the application for Membership until either the application is declined or the Member's Membership is terminated and the Company has ceased to Administer the Member's Granted IP Rights in accordance with clause 8 (*Termination of Membership*) (for the sake of clarity, pursuant to such Assignment, the Company shall be vested with such Performing Rights or Needletime Rights and the Member shall cease to be vested with such Reproduction Rights).
- 29.4. Unless and until the Board determines otherwise, a person with only Needletime Rights and no Performing Rights can be accepted as a Member (i.e. Needletime Rights Member). Any Member can after becoming a Member request that the Company also Administer the Member's Needletime Rights and, if the request is accepted, the Member shall enter into an agreement with the Company (which can be part of or an addendum to the agreement referred to in clause 29.3.1 but shall be deemed to be part of the Administration of IP Rights Agreement) providing for such Administration.
- 29.5. In addition to the conclusion of the Administration of IP Rights Agreement in respect of the Administration of Performing Rights referred to in clause 29.3.1 (and subject to clause 29.9), every Applicant (or Member) may, when applying to become a Member (and/or at any time thereafter) or on request by the Company, enter into an agreement with the Company (which can be part of or an addendum to the agreement referred to in clause 29.3.1 but shall be deemed to be part of the Administration of IP Rights Agreement) providing for the Assignment to and Administration by the Company of the Worldwide Reproduction Right (including parts or shares in such rights) in all or any Works of Music, present and future, owned or controlled by the Applicant or Member, (including such Reproduction Rights that may arise or vest in the Member during the Member's Membership. For the sake of clarity, pursuant to such Assignment, the Company shall be vested with such Reproduction Rights and the Member shall cease to be vested with such Reproduction Rights.
- 29.6. Notwithstanding the default requirements in regard to the territory applicable to the Administered IP Rights, the Board may exempt an Applicant or an existing Member from the default territories or regions applicable to the IP Rights to be Administered by, and Assigned to, the Company (e.g. on a Worldwide Basis) and instead accept a more limited territory or region in respect of all or part of the Administered IP Rights, provided that the Company shall at all times be empowered to administer the rights at least in the Principal Territory.

- 29.7. Subject to clause 29.9, in order to facilitate the Administration of the Administered IP Rights, all Applicants applying for membership of the Company after the coming into effect of this MOI (and Members agreeing to the Administration of additional categories of Administered IP Rights as contemplated in clauses 29.4 and 29.5) shall be required to, together with the execution of the Administration of IP Rights Agreement, in so far as is lawfully possible, Assign to the Company the IP Rights (including, without limitation, all remedies, rights to enforce, rights to payment of royalties and licence revenue/fees) and shall contemporaneously with the execution of the Administration of IP Rights Agreement execute a deed of assignment on terms satisfactory to the Board (which can be part of or annexed to the Administration of IP Rights Agreement). In so far as it is not lawfully possible for an Applicant to Assign all or part of the relevant IP Rights to the Company or at the request of the Company, the Board may agree to administer the Applicant's IP Rights on terms reasonably satisfactory to the Board, subject to the Company's Governance Rules.
- 29.8. The Board shall have the power to, in its discretion, decide from time to time whether any Grand Rights or any other IP Rights included in the Performing Rights, required to be included in the Administered IP Rights in terms of clause 29.3.1, must or may be excluded from the Administered IP and may do so generally (whether for a group of Members or type of IP Rights or otherwise) or for a specific case. The Board may also agree to acquire and/or Administer any other Intellectual Property and related rights held by a Member in so far as same will be regarded to advance the stated objects of the Company.
- 29.9. The Board may agree in writing to an amendment to any Administration of IP Rights Agreement or deed of assignment from time to time.
- 29.10. A Person who becomes a Member of the Company solely in respect of Needletime Rights is not required to be a Member of the Company also in respect of any of the other category of Administered IP Rights (for example, Performing Rights or Reproduction Rights).
- 29.11. Any of the IP Rights referred to in clauses 29.3.1 and 29.4 agreed to be Administered by the Company, shall be included in the Member's Granted IP Rights and unless otherwise agreed to in Writing by the Company, the Administration Rights granted in terms of the Administration of IP Rights Agreement shall be Assigned in their entirety to the Company and shall be vested with such rights and free to control, administer, make use of, commercialise or enforce the relevant Administered IP Rights. Notwithstanding anything to the contrary, the Company shall at all times be deemed to have the exclusive right to control, administer, make use of, commercialise or enforce such rights.

*Needletime Special Arrangements*

- 29.12. Notwithstanding anything to the contrary, the Company shall be entitled to, in so far as is lawfully possible, Assign or license all or part the Administered Needletime Rights, together



with the Administered IP Rights, to the Needletime Trust (or another entity established or controlled by the Company). Subject to the deed of the Needletime Trust, the trustees of the Needletime Trust (or the board of such other established or controlled entity) shall be entitled to formulate any rules relating to the Administration of Needletime Rights after consultation with the Board of the Company. These rules shall take effect immediately upon their adoption by the trustees of the Needletime Trust (or the board of such other controlled entity). While such rules shall not be Governance Rules of the Company the Needletime Members agree to be bound by such rules.

#### *Duration and Termination*

29.13. Unless otherwise approved by the Board and agreed to in Writing, any Administration of IP Rights Agreement and deed of assignment executed pursuant to the provisions of this clause 29 shall be in the form prescribed by the Company and shall operate for and during the period of the Member's Membership of the Company and for any longer period provided for in clause 8 (*Termination of Membership*). The Company may at any time, by notice in Writing to any Member, decline to exercise the whole or any part of the Administration Rights, and thereupon the provisions of this clause 29 shall cease to apply to such right, and any related rights and obligations in the Administration of IP Rights Agreement or Assignment thereof already made to the Company by such Member shall be terminated by the Company and the Company's Administration Rights shall terminate and the Company shall Assign any of the Member's Granted IP Rights vested in it that it has elected to exclude to the Member, provided always that the Company may at any time, and from time to time, by further notice in Writing to such Member, withdraw such notice in respect of all or any of the IP Rights comprised therein, whereupon the provisions of this clause 29 shall again apply to such IP Rights and they shall be Assigned to the Company included in the Company's Administration Rights and the Member's Granted IP Rights.

#### *MOI and Governance Rules Prevail*

29.14. Notwithstanding anything to the contrary in an Administration of IP Rights Agreement, except where divergence is expressly permitted, any Administration of IP Rights Agreement (excluding any deed of assignment itself) shall be subject to and be deemed to incorporate the provisions of this MOI and the Governance Rules as amended from time to time, and in the event of a conflict, the provisions of the MOI and the Governance Rules shall prevail.

29.15. The Company may accept assignment of additional rights or act upon additional authorities granted by any Member in relation to IP Rights that are not Assigned to the Company to a greater extent than as defined or contemplated in this MOI in the furtherance of the Company's objects.

29.16. Disputes between Members (including, without limitation, in respect of interests in Administered IP Rights, the subject matter of Works of Music and/or the infringement or use thereof) shall be resolved in accordance with the dispute resolution policy of the Company at the relevant time and subject to the Governance Rules. In so far as is lawful, the Company shall not be liable to any Member in relation to its role in relation to any dispute resolution.

*Restrictions and Qualification*

29.17. Except as expressly provided for in this MOI -

29.17.1. no Member shall be entitled to cede or delegate any of its rights or obligations as against the Company in relation to the Administered IP Rights, or the Administration of the Administered IP Rights by the Company;

29.17.2. no Member shall have any right or authority to alienate or exercise the Administration Rights granted to and/or vested in the Company by the Member, or controlled by the Company in connection with his Membership, or by this MOI required to be so vested or controlled, without the prior Written authorisation of the Company which shall be subject to the restrictions in clause 9 (*Prohibition on Transfer of Membership*).

29.18. No Member shall, without the prior Written consent of the Company, (directly, jointly or otherwise) write, compose or otherwise contribute to any Work of Music (or the creation thereof) in a manner (whether as employee, independent contractor or otherwise ) in which any non-Member may acquire any rights or interests in the Performing Rights in respect of the Work of Music, nor enter into any contract or arrangement to do so, whether for valuable consideration or not, without a written agreement expressly reserving and assigning the Performing Rights in respect of the Work of Music to the Member and acknowledging that such rights are included in the IP Rights assigned to the Company or in the exceptional circumstances in clause 29.7 dealt with in accordance with the provisions of that clause and included in the Administered IP Rights.

29.19. The Members acknowledge the objects of the Company and that while carrying out the Administration of the IP Rights the Company shall pursue its objects and make use of the Permitted Royalty Deductions for this purpose as contemplated in this MOI.

29.20. Notwithstanding anything to the contrary, the Company is not required to actively market and commercialise the use of the Administered IP Rights and is generally passive in this regard. In relation to the Administration of the Administered IP Rights outside of the Principal Territory, the Company shall be entitled to rely exclusively on the efforts of its Affiliates. The Company does not in any way make any representations or give any warranties or

indemnities to its Members with regards to the Administration of the Administered IP Rights, and, insofar as is lawful, disclaims any express or implied warranties and representations.

- 29.21. Unless agreed otherwise in Writing in the Administration of IP Rights Agreement (including any agreement entered into pursuant to clause 29.5), on becoming a Member, pursuant to the Assignment of the Administered IP Rights or other arrangement the Company shall have the sole and exclusive right power and authority to Administer the Administered IP Rights in any manner howsoever as may be determined by the Board, including, without limitation, the right (but not obligation) to -
- 29.21.1. grant the right or licence for the use and exercise of the Administered IP Rights, which may be in the form of granting of blanket licences in respect of all the Administered IP Rights (including the Administered IP Rights of all Members and the Administered IP Rights of Affiliates), and to allocate the Licence Revenue arising therefrom between the Members and Affiliates subject to Permitted Royalty Deductions, in accordance with the Payment Rules;
  - 29.21.2. authorise or permit or forbid the exercise of the Administered IP Rights;
  - 29.21.3. collect and receive and give effectual discharges for, royalties, fees, subscriptions and all monies in connection with the Administered IP Rights or any related agreements or arrangements including by way of damages or compensation for unauthorised use or commercialisation of any Administered IP Rights by all necessary or desirable actions or other proceedings, and to recover such monies, and to restrain against, and recover damages for, the infringement of the Administered IP Rights or any other related rights of the Members or of the Company;
  - 29.21.4. institute and prosecute proceedings against all Persons infringing the Administered IP Rights and, to defend or oppose any proceedings taken against the Company or any Member in respect of the Administered IP Rights, and to compound, compromise, refer to court, arbitration or submit to judgment in any such proceedings, actions, disputes or differences, and generally to represent the Member in all matters concerning the said Administered IP Rights or the Administration thereof;
  - 29.21.5. protect, generally, the Administered IP Rights and exercise and enforce all rights and remedies in this regard to the Administered IP Rights;
  - 29.21.6. delegate authority or assign rights to do any acts as aforesaid to any Affiliated Society or to appoint any agent, trustee or representative in territories overseas or elsewhere within South Africa, for the purpose of exercising the Company's

Administration Rights in respect of the Administered IP Rights in such territories or assigning such rights or the IP Rights vested in the Company to such Affiliated Society, agent, trustee or representative;

- 29.21.7. in the Administration of any Administered IP Rights, without limitation, make, and from time to time rescind, alter or vary any arrangements and agreements with respect to any such use and commercialisation of the Administered IP Rights and to enforce such agreements;
- 29.21.8. in addition to the rights Assigned to the Company, to obtain from the Members such powers of attorney or authorities or instruments as may be deemed reasonably necessary or expedient by the Board to assist the Company with the Administration of the Administered IP Rights;
- 29.21.9. execute any agreements and other instruments and carry out any acts as may be deemed necessary or expedient for the purpose of the Administration of the Administered IP Rights;
- 29.21.10. do all or any of the above things by or through trustees, agents or otherwise, and either alone or in conjunction with others; and
- 29.21.11. do all such other things as are in the reasonable opinion of the Directors incidental or conducive to the Administration of the Administered IP Rights.

29.22. Subject to the restrictions in the Schedule 1 of the Companies Act, except as expressly provided to the contrary in this MOI, the Company may Assign, cede and delegate its rights and obligations under the Administration of IP Rights Agreement, or alienate or further Assign any Administration Rights or Administered IP Rights and, in so far as is lawfully possible, the Administered IP Rights Assigned to it for the purpose of Administration -

- 29.22.1. to the Needletime Trust in respect of Needletime Rights as contemplated in this MOI; or
- 29.22.2. to any Collection Society in the Principal Territory or an Affiliated Society for the purpose of the Administration of the Administered IP Rights.

### 30. **ROYALTY PAYMENT EXPENSE AND GRANT OF RIGHTS PAYMENT EXPENSE**

30.1. Subject to the special arrangements in respect of Needletime Rights in clauses 29.12, 29.22.1 and 30.6, in consideration for the Assignment of Administered IP Rights and the granting of Administration Rights to the Company pursuant to the Administration of IP Rights Agreement (including all deeds of assignment entered into prior to the Harmonisation Effective Date and still in force) and the right to effect the Permitted Royalty Deductions, the

Company shall, after settling and providing for any other matters contemplated in this MOI, pay to the Members periodically as stipulated in the Payment Rules -

- 30.1.1. the Royalty Payment, as determined in accordance with clause 30.2;
  - 30.1.2. the Grant of Rights Payment, as determined in accordance with clause 30.3;  
and
  - 30.1.3. if they are Authors that qualify, the Special Consideration Payment, as determined in accordance with clause 30.4.
- 30.2. Subject to the special arrangements in respect of Needletime Rights in clauses 29.12, 29.22.1 and 30.6, an amount equal to the Licence Revenue (adjusted for transfers to and from Royalty Reserves) received by the Company during the relevant financial year minus the Permitted Royalty Deductions, shall be paid by the Company to the Members ("**Royalty Payment**"), as reasonably determined by the Board, applying the Payment Rules with reference to the Licence Revenue attributed to the respective Member's Granted IP Rights. The Board shall determine the attribution of the Licence Revenue to the respective Member's Granted IP Rights and the proportions in which such Royalty Payment shall be apportioned between the Members, applying the Payment Rules. Royalty Payments shall be made at such times as are determined by the Board in accordance with the Payment Rules and the payment time table published by the Board from time to time.
- 30.3. Subject to the exception in respect of Needletime Rights in clause 30.6, the Company shall make an additional payment ("**Grant of Rights Payment**") to all Ordinary, Associate and Full Members (regardless of whether or not Royalty Payments were paid or allocated to them in respect of their Administered Performing Rights) to be determined and allocated in accordance with the Payment Rules, in an amount reasonably determined to by the Board equal to any Net Collection Holding Revenue and Forfeited Undocumented Performing Rights Royalty Payments (if any) after -
- 30.3.1. settling or providing for any expenses or liabilities of the Company related to the Net Collection Holding Revenue and Forfeited Undocumented Performing Rights Royalty Payments (taking into account those provided for by the Permitted Royalty Deductions deducted from the Licence Revenue); and
  - 30.3.2. providing for any other amount the Board considers as reasonably required or desirable for the operations or objects of the Company.
- 30.4. In addition to the Royalty Payments and Grant of Rights Payments, the Company shall, subject to the exception in respect of Needletime Rights in clause 30.6, as additional consideration ("**Special Consideration Payment**") for the transfer of Administered IP Rights

and arrangement in respect of the Administration of IP Rights (including the provision of the Administration Rights) -

- 30.4.1. the Company shall permit Authors that qualify in terms the applicable Payment Rules and of the SRAF rules to become members of the SRAF and pay the amount determined in accordance with the Payment Rules and use a portion of the Permitted Deductions allocated to social purposes to discharge their contributions due to SRAF in accordance with the terms of the SRAF rules; and
- 30.4.2. procure that those Members that qualify in terms of applicable Payment Rules and the SFBS policy may participate in the SFBS once procured (which shall cover those persons related to the qualifying Member specified in the SFBS policy) and the Company shall use a portion of the Permitted Royalty Deductions allocated to social purposes to pay the premiums due in respect of such participation,

on the basis that such contributions and premiums shall be an amount determined in accordance with the Payment Rules. The Company may, however, alter and replace such policies from time to time as it may reasonably see fit, subject to the terms of the relevant policies and the related laws.

- 30.5. In determining the Royalty Payment due to the Members, the Company shall, subject to the exception in respect of Needletime Rights in clause 30.6, deduct from the Licence Revenue (adjusted for transfers from Royalty Reserves) of the Company, such amounts as are determined by the Board as they regard as reasonably required to settle or provide for the following matters ("**Permitted Royalty Deductions**") in accordance with the Payment Rules in force at the relevant time -

- 30.5.1. the payment of, or provision for, the expenses and liabilities (including all Taxes due or payable) incurred by the Company in connection with the Administration of Administered IP Rights or otherwise in carrying out the purposes and operations of the Company (which liabilities are not limited to those expenses and liabilities incurred in respect of any particular Member's Granted IP Rights);
- 30.5.2. payments or provision for any contributions or payments for any social or cultural purposes as may be reasonably determined by the Board, provided that such social and cultural deductions may not exceed the maximum percentage of the Licence Revenue as stipulated by the guidelines of CISAC (failing which, its successor body) from time to time or any other applicable limits stipulated in the regulations promulgated under the Copyright Act applicable to the Administered IP Rights in respect of which the Company is accredited as a Collecting Society; and

30.5.3. such sums as the Board thinks proper to set aside as a Reserve as contemplated in clause 21.

30.6. The Licence Revenue generated by Needletime Rights and the Royalty Payments payable to Needletime Rights Members (who shall not receive any Grant of Rights Payments or Special Consideration Payments in respect of such Administered IP Rights) and any deductions shall be regulated by the provisions of the Needletime Trust, the Performers' Protection Act and related regulations and shall -

30.6.1. not be payable by the Company, but shall instead be paid to such Needletime Members by the Needletime Trust (or any other entity as contemplated in clause 29.12); and

30.6.2. not be apportioned between the Needletime Rights Members by the Board, but such apportionment shall instead be determined by the trustees (at the relevant time) of the Needletime Trust (or the board of such other entity as contemplated in clause 29.12).

#### 31. **GENERAL PROVISIONS REGARDING PAYMENTS TO MEMBERS**

31.1. For the purposes of this clause 31, "**Payments**" shall include any Royalty Payment and Grant of Rights Payment.

31.2. The Board may decide to make interim payments to Members based on anticipated estimates, pending determination of the Payments to each of the Members.

31.3. The Board, acting reasonably, shall subject to the Governance Rules be entitled to determine the payment cycles for any Payments provided that unless the Board determines otherwise, the Full Royalty Payment Cycle shall, as a default, be from the end of the financial year reflected in the annual financial statements recording the Royalty Payments to the end of the immediately succeeding financial year.

31.4. The Payment Rules may provide for Payments to accrue interest or for Payments to be invested for the benefit of the relevant recipient, however, unless provisions of this MOI or the Payment Rules expressly provide to the contrary or the Board determines otherwise, no Payments shall bear interest against the Company and all interest and investment returns accruing in respect of amounts and property held by the Company shall accrue for the benefit of the Company.

31.5. Except as provided otherwise in this MOI or the Governance Rules, all unclaimed Payments and Undocumented Royalty Payments may be invested or otherwise be made use of by the Directors for the benefit of the Company in pursuing its objects until claimed, provided that Payments remaining unclaimed (including Undocumented Royalty Payments) for a period of

not less than 5 (five) years from the date of its allocation shall be forfeited and dealt with in accordance with the Governance Rules. If the Company is wound-up or deregistered, any such monies that were due to Members in respect of which the 5 (five) year period has not yet lapsed, shall be paid into the Guardian's Fund.

- 31.6. The Company shall be entitled at any time to delegate its obligations in respect of any unclaimed Payments to any one of the Company's bankers from time to time.
- 31.7. Any payments to Persons residing outside of the Common Monetary Area shall be subject to the Exchange Control Regulations. The Directors may resolve that any Payments made to all or any Members whose registered addresses are outside South Africa or who have given Written instructions requesting payment at addresses outside South Africa, shall (subject to any Exchange Control Regulations in force at that time) be paid in such other currency or currencies as may be stipulated by the Directors. The Directors may also stipulate the date (hereinafter referred to as the "**Currency Conversion Date**") upon which, and a provisional rate of exchange at which, the currency of South Africa shall be converted into such other currency or currencies, provided that the currency conversion shall be within a period of 30 (thirty) days prior to the date of payment. If, in the opinion of the Directors, there is no material difference between the rate(s) of exchange ruling on the Currency Conversion Date and the provisional rate(s) of exchange stipulated by the Directors, then the currency of South Africa shall be converted at such provisional rate(s). If, in the opinion of the Directors, there is a material difference, then the currency of South Africa shall be converted into such other currency or currencies at the rate(s) of exchange ruling on the Currency Conversion Date, or at a rate or rates of exchange which, in the opinion of the Directors, is/are not materially different. Any subsequent rise or fall of rate(s) of exchange determined as above shall be disregarded.
- 31.8. The Company may cease, subject to the provisions of this MOI, to -
- 31.8.1. send any cheque, warrant or order by post to the Member's address as reflected in the Members' Register, for any Payment which is normally paid in that manner if, in respect of at least 3 (three) consecutive Payments payable to such Member, the cheque, warrant, or order has been returned undelivered or remains uncashed, but shall recommence sending cheques, warrants or orders;  
or
- 31.8.2. make Payment by means of an electronic transfer of funds, for any Payment which is normally paid in that manner into an account nominated by a Member if, in respect of at least 3 (three) consecutive Payments payable to such Member, such electronic transfer could not be processed, but without any error on the side of the Company, but shall recommence making payment by means of electronic transfer,



in respect of the Payments payable to such Member if the Member (or Person entitled to represent a Member as contemplated in clause 10 (*Representation*)) claims the arrears of the Payments and reaffirms such payment details and/or informs or instructs the Company to pay future Payments in some other way.

### 32. MEMBERS' DUTIES AND SUSPENSION OF MEMBERSHIP

32.1. Every Member shall refrain from doing anything likely to limit or prejudice the success or interests of the Company, and shall co-operate with the Company and its Directors, managers, officers and employees and with his fellow-Members in enforcing the observance of this MOI and the Governance Rules and in furthering the interests of the Company, and shall render to the Company, its Directors, managers, officers and employees and his fellow-Members all reasonable assistance in this regard.

32.2. The Board may resolve to suspend (for such period, and on such terms, as the Board may reasonably determine) the Membership of any Member which fails to comply with the MOI and the Governance Rules. The power to suspend Membership is in addition to, and without limitation to, any other remedies available to the Board and the MOI for such non-compliance.

### 33. THIRD PARTY AGREEMENTS

33.1. Subject to the Companies Act, the Board may contract with any Affiliate on such terms as the Board may agree to in its sole and absolute discretion, however, Affiliates shall not receive Grant of Rights Payments or Special Consideration Payments in respect of any IP Rights Administered by the Company.

33.2. The Company may grant blanket licences in respect of some or all of the Administered IP Rights (including the Administered IP Rights of all Members and the Administered IP Rights of Affiliates) and, subject to the relevant agreements, the Board shall attribute the revenue arising therefrom and related expenses between the Members and Affiliates, applying any applicable Payment Rules.

33.3. A Person who is a member of an Affiliated Society in respect of such Person's Performing Rights that has not agreed to the Administration by the Company of its Performing Rights, may be allowed to be a Member of the Company by virtue of -

33.3.1. agreeing to the Company Administering its Reproduction Rights; and

33.3.2. agreeing to enter into an Administration of IP Rights Agreement providing for the Administration by the Company of such rights; and

33.3.3. such Administered Reproduction Rights earning and being attributed Licence Revenue.

33.4. The Company may exercise and enforce the Administered IP Rights in respect of members or shareholders of any Affiliated Society, pursuant to the terms of any contracts now existing or which may hereafter be concluded between the Company and such Affiliated Society.

33.5. The Company may accept and act upon the authority of an Affiliated Society to exercise any IP Rights they or their members have in any manner whatsoever.

#### 34. **NOTICES**

34.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Member, or by sending them prepaid through the post or by transmitting them by telegram, telex, fax, Electronic Communication or any other method permissible under the Companies Act. The Company must give notice of any General Meeting to each Person entitled to vote at such General Meeting who has elected to receive such notice, other than proxies.

34.2. Any Member who/which has furnished an Electronic Address to the Company, by doing so –

34.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and

34.2.2. confirms that same can be conveniently printed by the Member, within a reasonable time and at a reasonable cost.

34.3. Without limitation to clause 34.1 or clause 34.2, the Company may publish, provide and/or deliver notices and/or documents in the manner contemplated in section 6(10) and section 6(11) of the Companies Act.

34.4. Except where the Companies Act or Regulations expressly provide otherwise, the Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations (currently as set out in Table CR3 (which is included as **Annexure C** for ease of reference but which does not form part of this MOI other than for purposes of information). In any other case, when a given number of days' notice or notice extending over any period is required to be given the method of calculation of the period as set out in clause 1.13 shall be applied.

- 34.5. Subject to the Regulations, any notices sent by the Company by non-registered post shall be deemed to have been received on the 7<sup>th</sup> (seventh) day after which the letter, envelope or wrapper containing the same is posted and, in proving such service, it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and posted.
- 34.6. Notwithstanding the date on which a Person becomes a Member, such Person shall be bound by all notices, documents, records or statements or notices of availability published by the Company prior to such date.
- 34.7. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of, the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.
- 34.8. Every Person who, by operation of law, transfer, or other means whatsoever, becomes entitled to any Membership or interest, shall be bound by every notice in respect of such Membership or interest, which, prior to her/his/its name and address being entered on the Members' Register or Regulator of interests in Administered IP Rights, would have been given to the Person from whom she/he/it derives her/his/its title to such Membership or interest.

## 35. INDEMNITY

- 35.1. For the purposes of this clause 35, "Director" includes -
- 35.1.1. a former Director; and
  - 35.1.2. a Prescribed Officer or a person who is a member of a committee of the Board, or of the Audit Committee,
- irrespective of whether or not the person is also a member of the Board.
- 35.2. The Company may -
- 35.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence, unless the conviction was based on strict liability;

35.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

35.2.3. directly or indirectly indemnify a Director for any liability or expense permitted under the Companies Act.

35.3. The Company may purchase insurance to protect –

35.3.1. a Director against any liability or expenses permitted in terms of the Companies Act (at the date of adoption of this clause, section 78(7)(a)); or

35.3.2. the Company against any contingency to the extent permitted under the Companies Act.

35.4. The Company is entitled to claim restitution from a Director, or a Director of a Related company, for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

## 36. **WINDING UP**

36.1. In the event of and upon the winding-up or deregistration (collectively referred to as "**winding-up**") of the Company, whether voluntary or otherwise -

36.1.1. all Administration of IP Rights Agreements shall immediately terminate and the Administration Rights granted to the Company shall lapse;

36.1.2. all the liabilities of the Company shall be settled and the Administered IP Rights vested in the Company shall revert to the respective Members from whom the Administered IP Rights were acquired (provided that where a Member has transferred the Member's interest to a Permitted Successor then it shall revert to the relevant Permitted Successor in respect of the acquired interest) in accordance with each Member's interest therein and the Company shall Assign such Administered IP Rights back to the respective Members as creditors with effect from the day of the winding-up of the Company;

36.1.3. thereafter the entire net value of the Company after settling all liabilities of the Company shall be distributed to one or more non-profit companies, external non-profit companies carrying on activities within South Africa, voluntary associations or non-profit trusts -

36.1.3.1. having objects similar to its main object; and

36.1.3.2. as determined -

- 36.1.3.2.1. at or immediately before the time of its dissolution, by -
  - 36.1.3.2.1.1. the Members; or
  - 36.1.3.2.1.2. the Board, if the Company has no Members or the Members fail to make such a determination; or
- 36.1.3.2.2. by the court, if the Members and the Board fail to make such determination.

### 37. PROTECTION OF PERSONAL INFORMATION

- 37.1. All Personal Information that is processed by the Company as provided for in the MOI will be done in terms of the Protection of Personal information Act 4 of 2013.
- 37.2. Personal Information includes information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person, including, but not limited to:
  - 37.2.1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - 37.2.2. information relating to the education or the medical, financial, criminal or employment history of the person;
  - 37.2.3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - 37.2.4. the biometric information of the person;
  - 37.2.5. the personal opinions, views or preferences of the person;
  - 37.2.6. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - 37.2.7. the views or opinions of another individual about the person; and
  - 37.2.8. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

37.3. The Company has the obligation to ensure the lawful processing of Personal Information. Lawful processing consists of the following:

- 37.3.1. Personal Information must be processed in accordance with the law. It must be managed in a proper and careful manner so as to not intrude on the privacy of the person whose information is being processed;
- 37.3.2. Personal Information must be collected for a specific purpose, which is properly defined and which relates to the business of the Company;
- 37.3.3. Personal Information must not be processed for a purpose other than the initial purpose for which the Personal Information was collected;
- 37.3.4. The person who collects Personal Information must take proper steps to make sure that the Personal Information is complete, accurate, current and not misleading.

## **Annexure A – Definitions in the Companies Act**

**“accounting records”** means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;

**“acquiring party”**, when used in respect of a transaction or proposed transaction, means a person who, as a result of the transaction, would directly or indirectly acquire or establish direct or indirect control or increased control over all or the greater part of a company, or all or the greater part of the assets or undertaking of a company;

**“advertisement”** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to bring any information to the attention of all or part of the public;

**“agreement”** includes a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties;

**“all or the greater part of the assets or undertaking”**, when used in respect of a company, means -

- (a) in the case of the company's assets, more than 50% of its gross assets fairly valued, irrespective of its liabilities; or
- (b) in the case of the company's undertaking, more than 50% of the value of its entire undertaking, fairly valued;

**“alterable provision”** means a provision of this Act in which it is expressly contemplated that its effect on a particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by that company's Memorandum of Incorporation;

**“alternate director”** means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

**“amalgamation or merger”** means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in-

- (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamating or merging companies; or

- (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

**“amalgamated or merged company”** means a company that either-

- (a) was incorporated pursuant to an amalgamation or merger agreement; or
- (b) was an amalgamating or merging company and continued in existence after the implementation of the amalgamation or merger agreement,

and holds any part of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

**“amalgamating or merging company”** means a company that is a party to an amalgamation or merger agreement;

**“annual general meeting”** means the meeting of a public company required by section 61(7);

**“audit”** has the meaning set out in the Auditing Profession Act, but does not include an **“independent review”** of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

**“Auditing Profession Act”** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

**“auditor”** has the meaning set out in the Auditing Act;

**“Banks Act”** means the Banks Act, 1990 (Act No. 94 of 1990);

**“beneficial interest”**, when used in relation to a company’s securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to-

- (a) receive or participate in any distribution in respect of the company’s securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company’s securities; or
- (c) dispose or direct the disposition of the company’s securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);



“**board**” means the board of directors of a company;

“**business days**” has the meaning determined in accordance with section 5(3);

“**Cabinet**” means the body of the national executive described in section 91 of the Constitution;

“**central securities depository**” has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

“**close corporation**” means a juristic person incorporated under the Close Corporations Act, 1984 (Act No. 69 of 1984);

“**Commission**” means the Companies and Intellectual Property Commission established by section 185;

“**Commissioner**” means the person appointed to or acting in the office of that name, as contemplated in section 189;

“**Companies Tribunal**” means the Companies Tribunal established in terms of section 193;

“**companies register**” means the register required to be established by the Commission in terms of section 187(4);

“**company**” means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date-

- (a) was registered in terms of the-
  - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
  - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2;
- (b) was in existence and recognised as an ‘existing company’ in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

“**Competition Act**”, means the Competition Act, 1998 (Act No. 89 of 1998);

“**consideration**” means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including-

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;

- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

**“Constitution”** means the Constitution of the Republic South Africa, 1996;

**“convertible securities”** .....

**“convertible”**, when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including -

- (a) any non-voting securities issued by the company and which will become voting securities-
  - (i) on the happening of a designated event; or
  - (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

**“co-operative”** means a juristic person as defined in the Co-operatives Act, 2005 (Act No. 14 of 2005);

**“Council”** means the Financial Reporting Standards Council established by section 203;

**“director”** means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated;

**“distribution”** means a direct or indirect-

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares, or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether-
  - (i) in the form of a dividend;
  - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
  - (iii) as consideration for the acquisition-
    - (aa) by the company of any of its shares, as contemplated in section 48; or

- (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
- (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

**“domesticated company”** means a foreign company whose registration has been transferred to the Republic in terms of section 13(5) to (11);

**“effective date”**, with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

**“electronic communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

**“Electronic Communications and Transactions Act”** means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

**“employee share scheme”** has the meaning set out in section 95(1)(c);

**“exchange”** when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**“exercise”**, when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

**“ex officio director”** means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company’s Memorandum of Incorporation;

**“external company”** means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

**“file”**, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

**“financial reporting standards”**, with respect to any particular company’s financial statements, means the standards applicable to that company, as prescribed in terms of section 29(4) and (5);

**“financial statement”** includes-

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company’s securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

**“foreign company”** means an entity incorporated outside the Republic, irrespective of whether it is-

- (a) a profit, or non-profit, entity; or
- (b) carrying on business or non-profit activities, as the case may be, within the Republic;

**“general voting rights”** means voting rights that can be exercised generally at a general meeting of a company;

**“group of companies”** means a holding company and all of its subsidiaries;

**“holding company”**, in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(l)(a);

**“Human Rights Commission”** means the South African Human Rights Commission established in terms of Chapter 9 of the Constitution;

**“incorporator”**, when used-

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

**“individual”** means a natural person;

**“inspector”** means a person appointed as such in terms of section 209(1);

**“inter-related”**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1), and one of them is related to the third in any such manner, and so forth in an unbroken series;

**“investigator”** means a person appointed as such in terms of section 209(3);

**“juristic person”** includes-

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

**“knowing”**, **“knowingly”** or **“knows”**, when used with respect to a person, and in relation to a particular matter, means that the person either-

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have-
  - (i) had actual knowledge;
  - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
  - (iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;

**“listed securities”** has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**“Master”** means the officer of the High Court, referred to in section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), who has jurisdiction over a particular matter arising in terms of this Act;

**“material”**, when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is-

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person’s judgement or decision-making in the matter;

**“member”**, when used in reference to-

- (a) a close corporation, has the meaning set out in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

- (b) a non-profit company, means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1; or
- (c) any other entity, means a person who is a constituent part of that entity;

**“Memorandum”, or “Memorandum of Incorporation”**, means the document, as amended from time to time that sets out rights, duties and responsibilities of shareholders, directors and others within and in relation to a company, and other matters as contemplated in section 15 and by which-

- (a) the company was incorporated under this Act, as contemplated in section 13;
- (b) a pre-existing company was structured and governed before the later of the-
  - (i) effective date; or
  - (ii) date it was converted to a company in terms of Schedule 2;
- (c) a domesticated company is structured and governed;

**“Minister”** means the member of the Cabinet responsible for companies;

**“nominee”** has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**“non-profit company”** means a company-

- (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1;

**“Notice of Incorporation”** means the notice to be filed in terms of section 13(1), by which the incorporators of a company inform the Commission of the incorporation of that company, for the purpose of having it registered;

**“official language”** means a language mentioned in section 6(1) of the Constitution;

**“ordinary resolution”** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8)-

- (a) at a shareholders meeting; or
- (b) by holders of the company’s securities acting other than at a meeting, as contemplated in section 60;

“**organ of state**” has the meaning set out in section 239 of the Constitution;

“**Panel**” means the Takeover Regulation Panel, established by section 196;

“**participant**” has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

“**person**” includes a juristic person;

“**personal financial interest**”, when used with respect to any person-

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

“**personal liability company**” means a profit company that satisfies the criteria in section 8(2)(c);

“**pre-existing company**” means a company contemplated in paragraph (a), (b) or (c) of the definition of ‘company’ in this section;

“**pre-incorporation contract**” means a written agreement entered into before the incorporation of a company by a person who purports to act in the name of, or on behalf of, the proposed company, with the intention or understanding that the proposed company will be incorporated, and will thereafter be bound by the agreement;

“**premises**” includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“**prescribed**” means determined, stipulated, required, authorised, permitted or otherwise regulated by a regulation or notice made in terms of this Act;

“**prescribed officer**” means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

“**present at a meeting**” means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

“**private company**” means a profit company that-

- (a) is not a public, personal liability, or state-owned company; and
- (b) satisfies the criteria set out in section 8(2)(b);

**“profit company”** means a company incorporated for the purpose of financial gain for its shareholders;

**“public company”** means a profit company that is not a state-owned company, a private company or a personal liability company;

**“public regulation”** means any national, provincial or local government legislation or subordinate legislation, or any licence, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

**“records”**, when used with respect to any information pertaining to a company, means any information contemplated in section 24(1);

**“record date”** means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

**“registered auditor”** has the meaning set out in the Auditing Profession Act;

**“registered external company”** means an external company that has registered its office as required by section 23, and has been assigned a registration number in terms of that section;

**“registered office”** means the office of a company, or of an external company, that is registered as required by section 23;

**“registered trade union”** means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

**“registration certificate”**, when used with respect to a-

- (a) company incorporated on or after the effective date, means the certificate, or amended certificate, issued by the Commission as evidence of the incorporation and registration of that company;
- (b) pre-existing company registered in terms of-
  - (i) the Companies Act, 1973 (Act No. 61 of 1973), means the certificate of incorporation or registration issued to it in terms of that Act;
  - (ii) the Close Corporations Act, 1984 (Act No. 69 of 1984), and converted in terms of Schedule 2 to this Act, means the certificate of incorporation issued to the company in terms of that Schedule, read with section 14; or
  - (iii) any other law, means any document issued to the company in terms of that law as evidence of the company’s incorporation; or



- (c) registered external company, means the certificate of registration issued to it in terms of this Act or the Companies Act, 1973 (Act No. 61 of 1973); or
- (d) a domesticated company, means the certificate issued to it upon the transfer of its registration to the Republic in terms of section 13(5) to (11);

**“registry”** means a depository of documents required to be kept by the Commission in terms of section 187(4);

**“regulated person or entity”** means a person that has been granted authority to conduct business by a regulatory authority;

**“regulation”** means a regulation made under this Act;

**“regulatory authority”** means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

**“related”**, when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c);

**“relationship”** includes the connection subsisting between any two or more persons who are related or inter-related, as determined in accordance with section 2;

**“rules”** and **“rules of a company”** means any rules made by a company as contemplated in section 15(3) to (5);

**“securities”** means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;

**“securities register”** means the register required to be established by a profit company in terms of section 50(1);

**“series of integrated transactions”** has the meaning set out in section 41(4)(b)

**“share”** means one of the units into which the proprietary interest in a profit company is divided;

**“shareholder”**, subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;

**“shareholders meeting”**, with respect to any particular matter concerning a company, means a meeting of those holders of that company’s issued securities who are entitled to exercise voting rights in relation to that matter;

**“solvency and liquidity test”** means the test set out in section 4(1);

**“special resolution”** means -

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10)-
  - (i) at a shareholders meeting; or
  - (ii) by holders of the company’s securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the 50 relevant law under which that juristic person was incorporated;

**“state-owned company”** means an enterprise that is registered in terms of this Act as a company, and either-

- (a) is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and is otherwise similar to an enterprise referred to in paragraph (a);

**“subsidiary”** has the meaning determined in accordance with section 3;

**“Takeover Regulations”** means the regulations made by the Minister in terms of sections 120 and 223;

**“this Act”** includes the Schedules and regulations;

**“unalterable provision”** means a provision of this Act that does not expressly contemplate that its effect on any particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by a company’s Memorandum of Incorporation or rules;

**“uncertificated securities”** means any securities defined as such in section 29 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**“uncertificated securities register”** means the record of uncertificated securities administered and maintained by a participant or central securities depository, as determined in accordance with the rules of a central securities depository, and which forms part of the relevant company’s securities register established and maintained in terms of Part E of Chapter 2;

**“voting power”**, with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

**“voting rights”**, with respect to any matter to be decided by a company, means-

- (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

**“voting securities”**, with respect to any particular matter, means securities that-

- (a) carry voting rights with respect to that matter; or
- (b) are presently convertible to securities that carry voting rights with respect to that matter; and

**“wholly-owned subsidiary”** has the meaning determined in accordance with section 3(1)(b).

**Annexure B – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)**

1. A person is ineligible to be a Director if the Person –
  - 1.1. is a Juristic Person;
  - 1.2. is an unemancipated minor, or is under a similar legal disability; or
  - 1.3. does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if –
  - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  
  - 2.2. the Person –
    - 2.2.1. is an unrehabilitated insolvent;
  
    - 2.2.2. is prohibited in terms of any public regulation to be a Director;
  
    - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
  
    - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
      - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
  
      - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
  
      - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

**Annexure C – Prescribed methods of delivery in the Regulations**

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed</p>

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	place of business.	on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>