



petmin

“Committed to growth, dedicated to value”

Petmin Holdings Proprietary Limited

(Incorporated in the Republic of South Africa)

(Registration number 2016/527671/07)

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ANNUAL GENERAL MEETING ("AGM") OF PETMIN HOLDINGS PROPRIETARY LIMITED

Dear Shareholder

Petmin Holdings Proprietary Limited ("**Petmin Holdings**" or the "**Company**") will hold its AGM on Wednesday, 9 September 2020.

Petmin is a private company and as such will only be required to have its annual financial statements audited externally in the event that it is required to do so in terms of section 30(2)(b)(i) of the Companies Act, No. 71 of 2008 (the "**Act**"), as read with regulation 28(2) of the Companies Regulations, 2011 ("**Regulations**"). The Company currently falls within the categories of companies required to have their annual financial statements audited as envisaged in Regulation 28. In the circumstances the Company will propose a resolution at the AGM proposing the reappointment of its external auditor for the financial year ending 30 June 2020.

We are pleased to enclose an extract from the audited financial statements of the Company for the year ended 30 June 2019. The audited annual financial statements of the Company have been emailed to shareholders and are available on request from Bruce Tanner at bruce@petmin.co.za.

Management will provide a brief update at the AGM detailing the current performance of the Company and its subsidiaries (the "**Group**"), including its underlying operations at the Somkhele Anthracite Mine and at Petmin USA Inc., the Ohio-based Pig-Iron project.

Furthermore, as further detailed in the notice of the AGM which accompanies this cover letter, the Company wishes to propose the creation and issue of new preference shares for the purposes of restructuring the Company's funding and incentivising certain management members.

Due to the impact of the Covid-19 pandemic, the Petmin AGM will be held entirely electronically by way of an electronic communication facility as further detailed in the notice of general meeting set out below at 10:00 on Wednesday, 9 September 2020, and we hope to see you there.

The Petmin Team

24 August 2020

ABRIDGED ANNUAL FINANCIAL STATEMENTS

These abridged group annual financial statements comprise a summary of the audited annual financial statements of the group for the year ended 30 June 2019. The unqualified audit report is available for inspection at the Group's offices situated at 37 Peter Place, Bryanston. These abridged financial statements comprise:

- Summarised statement of profit and loss and other comprehensive income;
- Summarised statement of financial position; and
- Summarised statement of cash flows.

For a full appreciation of the financial position and results of the group, readers should refer to the audited annual financial statements.

A copy of the audited annual financial statements of the Company for the year ended 30 June 2019 has been emailed to shareholders and is also available on request from Bruce Tanner at bruce@petmin.co.za.

Petmin Holdings Proprietary Limited

Summarised statement of profit and loss and other comprehensive income
for the year ended 30 June 2019

	Audited Year ended 30 June 2019 R	Audited 7 months ended 30 June 2018 R
Revenue	-	109 276 175
Gain on financial asset at fair value through profit or loss	300 000 000	71 684 463
Gross income	300 000 000	180 960 638
Operating expenses	(135 049)	(715 044)
Administrative expenses	(135 049)	(715 044)
Operating profit before finance costs	299 864 951	180 245 594
Net finance costs	(89 812 603)	(86 265 642)
Finance income	-	174 531
Finance costs	(89 812 603)	(86 440 173)
Profit before taxation	210 052 348	93 979 952
Taxation	(67 200 000)	(7 955 626)
Profit for the period	142 852 348	86 024 326
Other comprehensive income	-	-
Total comprehensive income for the period	142 852 348	86 024 326

Petmin Holdings Proprietary Limited

Summarised statement of Financial Position
at 30 June 2019

	Audited as at 30 June 2019 R	Audited as at 30 June 2018 R
ASSETS		
Non-current assets	1 200 000 100	900 000 000
Investments	1 200 000 100	900 000 000
Current assets	247 804	247 804
Cash and cash equivalents	247 804	247 804
Total assets	1 200 220 914	900 247 804
EQUITY AND LIABILITIES		
Ordinary share capital and reserves	336 135 928	193 283 580
Share capital	438 626	438 626
Retained income	335 697 302	192 844 954
Non-current liabilities	863 766 367	706 753 764
Deferred tax liability	75 105 226	7 905 226
Long-term portion of interest-bearing borrowings	788 661 141	698 848 538
Current liabilities	318 619	210 460
Trade and other payables	318 619	210 460
Current portion of interest-bearing borrowings	-	-
Total liabilities	864 084 986	706 964 224
Total equity and liabilities	1 200 220 914	900 247 804

Petmin Holdings Proprietary Limited

Summarised statement of Cash Flows
for the year ended 30 June 2019

	Audited year ended 30 June 2019 R	Audited 7 months ended 30 June 2018 R
Cash flows from operating activities	(26 890)	107 586 713
- Interest paid	-	(70 116 628)
- Income tax paid	-	(50 400)
Net cash from operating activities	(26 890)	37 419 685
Cash flows from investing activities		
Acquisition of shares in subsidiary	(100)	-
Net cash used in investing activities	(100)	-
Cash flows from financing activities		
Repayment of borrowings	-	(37 632 583)
Interest paid on borrowings	-	(2 151 561)
Net cash used in financing activities	-	(39 784 144)
Net movement in cash and cash equivalents	(26 990)	(2 364 459)
Cash and cash equivalents at beginning of the year	247 804	2 612 263
Cash and cash equivalents at end of the year	220 814	247 804



PETMIN HOLDINGS

PROPRIETARY LIMITED

(Incorporated in the Republic of South Africa)

(Registration number 2016/527671/07)

("Petmin Holdings" or "the Company")

NOTICE OF ANNUAL GENERAL MEETING ("Notice")

Notice is hereby given that the annual general meeting ("**AGM**") of the Company will be held on Wednesday, 9 September 2020 at 10:00 entirely by way of electronic communication by means of an online electronic communication facility as further detailed below, to conduct the business referred to below. The record date in terms of section 59 of the Companies Act, No. 71 of 2008 (the "**Act**"), for shareholders to be recorded in the securities register of the Company in order to be able to electronically attend, participate and vote at the AGM, is Friday, 4 September 2020.

AGENDA

Ordinary business

1. Presentation of audited annual financial statements

The audited annual financial statements of the Company and its subsidiaries, together with the independent auditor's report and the director's report for the year ended 30 June 2019, are presented to the shareholders for their consideration.

A summary of the audited financial statements of the Company for the year ended 30 June 2019 is included on pages 3 to 6 of the letter to shareholders to which this Notice is attached and a complete copy thereof may be obtained on request from Bruce Tanner at bruce@petmin.co.za.

2. Re-appointment of KPMG Inc. as auditors of the Company

To re-appoint KPMG Inc., as independent external auditors of the Company, to hold office until the conclusion of the next annual general meeting of the Company. It is noted that the designated individual registered auditor partner who will undertake the audit during the financial year ending 30 June 2020 is Mr D Dullabh.

Ordinary Resolution number 1

"RESOLVED THAT, KPMG Inc. be and are hereby re-appointed as the independent external auditors of the Company to hold office until the conclusion of the next annual general meeting."

For Ordinary Resolution number 1 to be adopted it must be supported by more than 50% of the voting rights exercised on the resolution.

Special business

3. General financial assistance to related or inter-related companies

This special resolution is required in terms of section 45 of the Act in order to grant the board of directors of the Company ("**Board**") the authority to authorise the Company to provide financial assistance by way of loans, guarantees, the provision of security or otherwise, to any company which is related or interrelated to the Company.

Special Resolution number 1

"RESOLVED THAT, as a special resolution, in terms of section 45 of the Act, that the Company be authorised to provide at any time and from time to time during the period of 2 (two) years commencing on the date of this special resolution, any direct or indirect financial assistance as contemplated in such section of the Act to any 1 (one) or more related or inter-related companies or corporations of the Company, and for the avoidance of doubt will exclude financial assistance to natural persons who are related parties to the Company, provided that:

- 1. the board of directors of the Company from time to time determines: (a) the recipient or recipients of such financial assistance; (b) the form, nature and extent of such financial assistance; and (c) the terms and conditions under which such financial assistance is provided; and*
- 2. the board of directors of the Company may not authorise the Company to provide any financial assistance pursuant to this special resolution unless the board meets all those requirements of Section 45 of the Act which it is required to meet in order to authorise the Company to provide such financial assistance; and*
- 3. such financial assistance to a recipient thereof is, in the opinion of the board of directors of the Company, required for the purpose of: (a) meeting all or any of such recipient's operating expenses (including capital expenditure); and/or (b) funding the growth, expansion, reorganisation or restructuring of the businesses or operations of such recipient; and/or (c) funding such recipient for any other purpose which in the opinion of the board of directors of the Company is directly or indirectly in the interests of the Company; and*
- 4. the aggregate financial exposure of the Company in respect of any financial assistance authorised by the board of directors of the Company pursuant to this special resolution shall be unlimited."*

For Special Resolution number 1 to be adopted it must be supported by more than 60% of the voting rights exercised on the resolution.

4. Creation and issue of A Preference Shares and B Preference Shares, MOI Amendment and Financial Assistance

Nedbank Limited has made a bridge facility in an amount of R85,000,000 ("**Bridge Facility**") and a term loan facility in an amount of R100,000,000 ("**Facility B**") available to Petmin Proprietary Limited ("**Petmin**"). Capitalworks Private Equity Fund II L.P. and the Capitalworks Private Equity Partnership II (the "**Capitalworks Partnerships**") have guaranteed the obligations of Petmin under the Bridge Facility and Facility B and Venator Amicus Investments Proprietary Limited ("**Venator**") has procured a guarantee from the Standard Bank of South Africa Limited ("**SBSA**") in terms of which SBSA guarantees the obligations of Petmin under Facility B against a cash collateral provided by Venator ("**Guarantees**") and each Capitalworks Partnership and Venator being a "**Guarantor**").

The Company has agreed to indemnify each Guarantor against any claims made against it under the applicable Guarantee. Venator has also advanced a loan in the amount of R15,000,000 to the Company ("**Venator Loan**").

The Company wishes to create and issue cumulative and redeemable preference shares in the issued share capital of the Company ("**A Preference Shares**") which confers on its holder the rights and privileges set out in Annexure D to the New MOI (as defined below) ("**A Preference Share Terms**") and issue 13,564,695 ordinary shares in the Company ("**Ordinary Shares**") to Petmin Management Company Proprietary Limited ("**Petmin ManCo**"), acting in its capacity as the general partner of the of the *en commandite* partnership established in terms of the agreement ("**Partnership Agreement**") to be concluded between Petmin ManCo and the limited partners identified therein in order to establish the *en commandite* partnership to be known as the "*Petmin Preference Share SPV Partnership*" (the "**Partnership**") from time to time, in order to –

- provide funding to the Company in order for the Company to advance such proceeds to Petmin in order to repay the Bridge Facility;
- refinance the Venator Loan; and
- refinance any indemnity claims which the Guarantors may acquire against the Company as a result of making payment under the Guarantees,

(the "**A Preference Share and Ordinary Subscription**").

Each holder of Ordinary Shares ("**Ordinary Shareholders**") shall be entitled to apply to the Partnership to participate therein in accordance with the terms set out in the Partnership Agreement, which can be accessed at www.petmin.co.za. Ordinary Shareholders wishing to participate in the Partnership should fill out the deed of adherence attached to the Partnership Agreement in accordance with the instructions contained therein and email a signed copy thereof for the attention of Bruce Tanner to bruce@petmin.co.za.

The Company further wishes to create and issue participating preference shares in the issued share capital of the Company ("**B Preference Shares**") which confers on its holder the rights and privileges set out in Annexure E to the New MOI ("**B Preference Share Terms**"), to certain management members from time to time ("**B Preference Share Subscription**").

As at the date of this Notice, the authorised share capital of the Company comprises –

- 2,000,000,000 no par value Ordinary Shares;
- 100,000,000 no par value B ordinary shares;
- 2,000,000,000 no par value preference shares ("**Preference Shares**"); and
- 1,000,000 no par value unspecified C shares.

In order to give effect to the A Preference Share and Ordinary Share Subscription and the B Preference Share Subscription, the Company wishes to –

- create, as envisaged in section 36(2)(a) of the Act, 1,000,000 A Preference Shares of no par value in the authorised share capital of the Company, which A Preference Shares shall have the associated rights, preferences, limitations or other terms as set out in the A Preference Share Terms;
- create 1,000 B Preference Shares of no par value in the authorised share capital of the Company as envisaged in section 36(2)(a) of the Act, which B Preference Shares shall have the associated rights, preferences, limitations or other terms as set out in the B Preference Share Terms;
- enter into an agreement headed "*"A" Preference Share and Ordinary Share Subscription Agreement*" with the Partnership, the Capitalworks Partnerships, Venator and Petmin, in terms of which, *inter alia*, the Company will issue the A Preference Shares and the Ordinary Shares to the Partnership for the subscription prices determined in accordance with the terms of the agreement ("**A Preference Share and Ordinary Share Subscription Agreement**");
- enter into a pledge and cession agreement, in terms of which, *inter alia*, the Company cedes and pledges in *securitatem debiti* all of its shares in, and non-interest bearing claims against, Petmin and Petmin Projects Proprietary Limited, in favour of the Partnership as security for the Company's obligations to the Partnership in terms of the A Preference Share and Ordinary Share Subscription Agreement and the A Preference Share Terms ("**Company Pledge and Cession Agreement**"); and
- enter into an agreement headed "*"B" Preference Share Subscription Agreement*" with each of the management members who accede to such agreement, in terms of which, *inter alia*, the Company will issue the B Preference Shares to such subscribing management members for a nominal subscription price of R1.00 per B Preference Share ("**B Preference Share Subscription Agreement**").

In order to, *inter alia*, give effect to the necessary changes to the share capital structure of the Company as contemplated above the existing memorandum of incorporation of the Company ("**MOI**") will need to be replaced with a new memorandum of incorporation ("**New MOI**") in the form set out in Annexure A to this Notice.

In terms of section 164 of the Act, as read with section 36(8) of the Act, at any time before the special resolution adopting the New MOI is voted on, a holder of a Preference Shares ("**Pref Holders**") may exercise appraisal rights by giving the Company a written notice objecting to the passing of such special resolution. Within 10 business days after the Company has adopted the special resolution, the Company must send a notice that the special resolution has been adopted to each of the Pref Holders who:

- gave the Company a written notice of objection as contemplated above; and
- has neither withdrawn that notice nor voted in support of the special resolution.

A Pref Holder may demand that the Company pay such Pref Holder the fair value for all of the Preference Shares held by such Pref Holder if:

- such Pref Holder has sent the Company a notice of objection as contemplated above;
- the Company has adopted the special resolution; and
- such Pref Holder voted against the special resolution and has complied with all of the procedural requirements of section 164 of the Companies Act.

A copy of section 164 of the Companies Act is set out in Annexure B to this Notice.

The Partnership Agreement, A Preference Share and Ordinary Share Subscription Agreement, Company Pledge and Cession Agreement, B Preference Share Subscription Agreement, the New MOI and all other documents required to give effect thereto and to the transactions contemplated thereby, are collectively referred to as the "**Authorised Documents**".

The entering into of the Authorised Documents and the transactions contemplated thereby, may amount to direct or indirect "financial assistance" pursuant to sections 44 and 45 of the Act. Accordingly, in terms of sections 44(3) and 45(3) of the Act, the Board may not authorise such financial assistance unless the shareholders have, pursuant to a special resolution adopted within the previous two years, approved such financial assistance.

The Board has or will pass resolutions approving, *inter alia*, the entering into of the Authorised Documents and the implementation thereof, ("**Board Resolutions**").

Each director of the Company confirmed that he may also be a director and/or a shareholder of other group companies in the group within the meaning of a related or inter-related person, as such term is construed under section 75(1)(b) read with section 1 of the Act. Each director accordingly has disclosed that, for the purposes of section 75 of the Act, such other group companies constitute a related person to such director, and that the participation in the transactions contemplated in the Board Resolutions by such other entities may result in such other group companies having a personal financial interest in the matters considered in the Board Resolutions.

The Company wishes to adopt resolutions to ratify the Board Resolutions and any actions taken pursuant thereto.

Special Resolution number 2

"RESOLVED THAT, subject to the passing of Special Resolution 3 and with effect from the registration of the New MOI, in terms of section 36(2)(a) of the Companies Act –

- 1,000,000 A Preference Shares of no par value are created in the authorised share capital of the Company, which A Preference Shares shall have the associated rights, preferences, limitations or other terms as set out in the A Preference Share Terms; and
- 1,000 B Preference Shares of no par value are created in the authorised share capital of the Company, which B Preference Shares shall have the associated rights, preferences, limitations or other terms as set out in the B Preference Share Terms."

For Special Resolution number 2 to be adopted it must be supported by more than 75% of the voting rights exercised on the resolution.

Special Resolution number 3

“RESOLVED THAT, subject to the passing of Special Resolution 2, in terms of section 16(1)(c) as read with sections 16(5)(a) and 36(2)(a) of the Companies Act, the MOI be and is hereby amended by substituting it in its entirety with the New MOI.

For Special Resolution number 3 to be adopted it must be supported by more than 75% of the voting rights exercised on the resolution.

Special Resolution number 4

“RESOLVED THAT, in terms of section 44(3)(a)(ii) of the Companies Act, the Company be and is hereby authorised to provide direct or indirect financial assistance as contemplated in section 44 of the Companies Act to any person or to any one or more related or inter-related (as defined in the Companies Act) companies or corporations of the Company and/or to any one or more members of such related or inter-related company or corporation and/or to any one or more persons related to any such company or corporation, as the case may be, for the purpose of or in connection with the Authorised Documents on such terms and conditions as the Board, or any one or more persons authorised by the Board, deems fit.

For Special Resolution number 4 to be adopted it must be supported by more than 60% of the voting rights exercised on the resolution.

Special Resolution number 5

“RESOLVED THAT, in terms of section 45(3)(a)(ii) of the Companies Act, the Company be and is hereby authorised to provide direct or indirect financial assistance as contemplated in section 45 of the Companies Act to any person or to any one or more related or inter-related (as defined in the Companies Act) companies or corporations of the Company and/or to any one or more members of such related or inter-related company or corporation and/or to any one or more persons related to any such company or corporation, as the case may be, for the purpose of or in connection with the Authorised Documents on such terms and conditions as the Board, or any one or more persons authorised by the Board, deems fit.”

For Special Resolution number 5 to be adopted it must be supported by more than 60% of the voting rights exercised on the resolution.

Special Resolution number 6

“RESOLVED THAT, subject to the passing of Special Resolutions 2 to 5 and Ordinary Resolutions 2 to 4 and the adoption of the New MOI, the terms of, and the transactions contemplated by the Authorised Documents to which the Company is a party be and are hereby authorised and approved and in terms of section 41 of the Companies Act, the Company be and is hereby authorised to issue the A Preference Shares, Ordinary Shares and B Preferences Shares to the relevant subscribers as envisaged in the Authorised Documents in accordance with the terms thereof.”

For Special Resolution number 6 to be adopted it must be supported by more than 60% of the voting rights exercised on the resolution.

Ordinary Resolution number 2

“RESOLVED THAT, subject to the passing of Special Resolutions 2 to 6 and Ordinary Resolutions 3 and 4 and the adoption of the New MOI, in terms of clause 6.2.1.1.2 of the New MOI, the Company be and is hereby authorised to issue the A Preference Shares, Ordinary Shares and B Preferences Shares to the relevant subscribers as envisaged in the Authorised Documents in accordance with the terms thereof.”

For Ordinary Resolution number 2 to be adopted it must be supported by more than 50% of the voting rights exercised on the resolution.

4. Authority to execute requisite documentation

Ordinary Resolution number 3

“RESOLVED THAT, any director of the Company, or the Company Secretary where appropriate, acting alone, be and hereby is authorised to do all such things and to sign all such documents issued by the Company required to give effect to the above resolutions.”

For Ordinary Resolution number 3 to be adopted it must be supported by more than 50% of the voting rights exercised on the resolution.

Ordinary Resolution number 4

“RESOLVED THAT, the Board Resolutions, as well as any actions taken pursuant thereto be and are hereby approved, consented to and ratified in their entirety, to the extent required in terms of section 75 of the Companies Act, the common law or otherwise.”

For Ordinary Resolution number 4 to be adopted it must be supported by more than 50% of the voting rights exercised on the resolution.

IDENTIFICATION, VOTING AND PROXIES

Ordinary shareholders are entitled to electronically attend, speak and vote at the AGM.

In terms of section 63(1) of the Act, any person attending or participating in the AGM must present reasonably satisfactory identification and the person presiding at the AGM must be reasonably satisfied that the right of any person to participate in and vote (whether as a shareholder or as proxy for a shareholder) has been reasonably verified.

Should you not be able to participate electronically at the meeting in person, you may appoint a proxy, which proxy need not be a shareholder of the Company. Forms of proxy (which form may be found enclosed) must be dated and signed by the shareholder appointing a proxy and should be forwarded to reach the transfer secretaries, Computershare Investor Services Proprietary Limited, by no later than 10:00 on Monday, 7 September 2020. Before a proxy exercises any rights of a shareholder at the AGM, such form of proxy must be so delivered or handed to the chairperson of the AGM.

In compliance with the provisions of section 58(8)(b)(i) of the Act, a summary of the rights of a shareholder to be represented by proxy, as set out in section 58 of the Act, is set out immediately below:

- A shareholder of a company may, at any time and in accordance with the provisions of section 58 of the Act, appoint any individual (including an individual who is not a Shareholder) as a proxy to participate in, and speak and vote at, a shareholders' meeting on behalf of such shareholder.
- A proxy may delegate her or his authority to act on behalf of a shareholder to another person, subject to any restriction set out in the instrument appointing such proxy.
- Irrespective of the form of instrument used to appoint a proxy, the appointment of a proxy is suspended at any time and to the extent that the relevant shareholder chooses to act directly and in person in the exercise of any of such shareholder's rights as a shareholder.
- Any appointment by a shareholder of a proxy is revocable, unless the form of instrument used to appoint such proxy states otherwise.
- If an appointment of a proxy is revocable, a shareholder may revoke the proxy appointment by (i) cancelling it in writing, or making a later inconsistent appointment of a proxy and (ii) delivering a copy of the revocation instrument to the proxy and to the relevant company.
- A proxy appointed by a shareholder is entitled to exercise, or abstain from exercising, any voting right of such shareholder without direction, except to the extent that the relevant company's memorandum of incorporation, or the instrument appointing the proxy, provides otherwise.
- If the instrument appointing a proxy or proxies has been delivered by a shareholder to a company, then, for so long as that appointment remains in effect, any notice that is required in terms of the Act or such company's memorandum of incorporation to be delivered to a shareholder must be delivered by such company to –
 - the relevant shareholder; or
 - the proxy or proxies, if the relevant shareholder has: (i) directed such company to do so, in writing and (ii) paid any reasonable fee charged by such company for doing so.
- Shareholders or their duly appointed proxy(ies) that wish to participate in the AGM via electronic communication must either (i) register online using the online registration portal at www.smartagm.co.za; or (ii) apply to Computershare, by delivering notice to: First Floor, Rosebank Towers, 15 Biermann Avenue, Rosebank 2196, or posting it to Private Bag x9000, Saxonwold, 2132 (at the risk of the Participant), or sending it by email to proxy@computershare.co.za so as to be received by Computershare by no later than 10:00 on Monday, 7 September 2020. Computershare will first validate such requests and confirm the identity of the shareholder in terms of section 63(1) of the Companies Act, and, if the request is validated, further details on using the electronic communication facility will be provided. The Company will inform participants who notified Computershare of their intended participation by no later than 10:00 on Tuesday, 8 September 2020 by email of the relevant details through which participants can participate electronically.

By order of the board of directors of the Company

Morestat Corporate Services (Pty) Ltd
Company Secretary

24 August 2020



PETMIN HOLDINGS
PROPRIETARY LIMITED
(Incorporated in the Republic of South Africa)
(Registration number 2016/527671/07)
("Petmin Holdings" or "the Company")

FORM OF PROXY

For use by shareholders of the Company at the annual general meeting ("AGM") to be held on Wednesday, 9 September 2020 at 10:00 entirely by way of electronic communication by means of an online electronic communication facility as further detailed in the relevant notice of general meeting .

I/We (Please print full names) _____

of _____ (address) _____

Telephone (work) _____ (home) _____

Mobile number _____ email address _____

being the holder of _____ shares in the Company, hereby appoint (see Note 1)

1. _____ or failing him /her, _____

2. _____ or failing him/her, _____

the chairperson of the AGM as my/our proxy to participate in, speak and vote for me/us on my/our behalf at the AGM which will be held for the purpose of considering and, if deemed fit, passing the ordinary and special resolutions to be proposed, and at each postponement or adjournment of the meeting and to vote for or against the ordinary and special resolutions or to abstain from voting in respect of the shares in the issued capital of the Company registered in my/our name/s, in accordance with the following instructions (see Note 2).

Insert an "X" or the number of shares (see Note 2)

		NUMBER OF ORDINARY SHARES		
		For	Against	Abstain
1.	Ordinary Resolution number 1 Re-appointment of KPMG Inc. as auditors of the Company			
2.	Special Resolution number 1 General financial assistance provided to related or inter-related companies			
3.	Special Resolution number 2 Creation of A Preference Shares and B Preference Shares			
4.	Special Resolution number 3 Adoption of New MOI			
5.	Special Resolution number 4 Section 44 financial assistance in respect of Authorised Documents			
6.	Special Resolution number 5 Section 45 financial assistance in respect of Authorised Documents			
7.	Special Resolution number 6 Authorisation of Authorised Documents and share issues			
8.	Ordinary Resolution number 2 Authorisation of share issues			

9.	Ordinary Resolution number 3 Authority to execute requisite documentation			
10.	Ordinary Resolution number 4 Ratification of Board Resolutions			

(Indicate with an "X" or the relevant number of shares, in the applicable space, how you wish your votes to cast). Unless otherwise directed the proxy will vote as he/she thinks fit.

Signed at _____ on _____ 2020

Shareholder's Signature _____

Assisted by me (where applicable) _____

Completed forms of proxy must be lodged with Computershare Investor Services Proprietary Limited by no later than 10:00 on Monday, 7 September 2020 or received by the chairperson of the AGM before the commencement of the AGM.

Please read the notes on the next page of this proxy form.

Notes to the form of proxy

1. A shareholder may insert the name of a proxy or the names of alternative proxies of the shareholder's choice in the space/s provided, with or without deleting "the chairperson of the AGM" but any such deletion must be initialed by the shareholder. The person whose name stands first on the form of proxy and who is present at the AGM will be entitled to act as proxy to the exclusion of those whose names follow.
2. Please insert an "X" in the relevant space according to how you wish your votes to be cast. However, if you wish to cast your votes in respect of a lesser number of shares than you own in the Company insert the number of shares held in respect of which you wish to vote. Failure to comply with the above will be deemed to authorise the proxy to vote or to abstain from voting at the AGM as he/she deems fit in respect of all the shareholder's votes exercisable at the meeting. A shareholder or his/her proxy is not obliged to use all the votes exercisable by the shareholder or by his/her proxy, but the total of the votes cast and in respect of which abstention is recorded may not exceed the total of the votes exercisable by the shareholder or by his/her proxy.
3. Forms of proxy must be received by the transfer secretaries, Computershare Investor Services Proprietary Limited ("**Computershare**"), Rosebank Towers, 15 Biermann Avenue, Rosebank, 2196, South Africa (Private Bag X9000, Saxonwold 2132) by no later than 10:00 on Monday, 7 September 2020 or received by the chairperson of the AGM before the commencement of the AGM.
4. The completion and lodging of this form of proxy will not preclude the relevant shareholder from electronically attending the AGM and voting in person at the meeting to the exclusion of any proxy appointed in terms of this form of proxy.
5. Documentary evidence establishing the authority of a person signing this form of proxy in a representative capacity must be attached to this form of proxy unless previously recorded by Computershare or waived by the chairperson of the AGM.
6. Any alterations or corrections made to this form of proxy must be initialed by the signatory/ies.
7. A minor must be assisted by his/her parent or guardian unless the relevant documents establishing his/her legal capacity are produced or have been registered by Computershare.
8. The chairperson of the AGM may accept any form of proxy which is completed other than in accordance with these notes if he is satisfied as to the manner in which the shareholder wishes to vote.

Transfer secretaries

Computershare Investor Services Proprietary Limited
Rosebank Towers
15 Biermann Avenue
Rosebank, 2196
Private Bag X9000, Saxonwold 2132
Telephone: 011 370 5000
Call Centre: 086 110 09818

ANNEXURE A

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THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

PETMIN HOLDINGS PROPRIETARY LIMITED

A PRIVATE COMPANY

REGISTRATION NUMBER: 2016/527671/07

REGISTRATION DATE: 07 December 2016



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PART 1: INTERPRETATION

1 INTERPRETATION

- 1.1 In this MOI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**A Preference Share**" means a cumulative, redeemable preference share in the Company's authorised share capital which confers on each A Preference Shareholder, the preferences, rights and obligations set out in the A Preference Share Terms;
- 1.1.2 "**A Preference Share Terms**" means the preferences, rights, limitations and other terms associated with the A Preference Shares, as set out in Annexure D;
- 1.1.3 "**A Preference Shareholder**" means, in relation to an A Preference Share, its registered holder as reflected in the Securities Register;
- 1.1.4 "**Act**" means the Companies Act, No. 71 of 2008;
- 1.1.5 "**Aggregate Shareholding**" means –
- 1.1.5.1 for purposes of clause 14 and clause 18, the number of Ordinary Shares and B Shares (collectively, the "**Relevant Ordinary Shares**") held by a Shareholder, as a percentage of all of the Relevant Ordinary Shares in issue, excluding the Relevant Ordinary Shares held by the Selling Shareholder or the Deemed Offeror (as the case may be);
- 1.1.5.2 for the purposes of clause 46.2.3, the number of Relevant Ordinary Shares held by a Shareholder, as a percentage of all of the Relevant Ordinary Shares in issue, excluding the Shares held by the Urgent Funding Shareholders; and
- 1.1.5.3 in all other instances, the number of Relevant Ordinary Shares held by a Shareholder, as a percentage of all of the Relevant Ordinary Shares in issue;
- 1.1.6 "**Auditors**" means the auditors of the Company from time to time;
- 1.1.7 "**B Preference Share**" means a participating preference share in the Company's authorised share capital which confers on each B Preference Shareholder, the preferences, rights and obligations set out in the B Preference Share Terms;
- 1.1.8 "**B Preference Share Terms**" means the preferences, rights, limitations and other terms associated with the B Preference Shares, as set out in Annexure E;

- 1.1.9 "**B Preference Shareholder**" means, in relation to an B Preference Share, its registered holder as reflected in the Securities Register;
- 1.1.10 "**B Share**" means a B ordinary share of no par value in the authorised B ordinary share capital of the Company which confers on each B Shareholder, the rights, obligations and privileges set out in the B Share Terms;
- 1.1.11 "**B Share Terms**" means the rights, limitations and other terms associated with the B Shares, as set out in Annexure B;
- 1.1.12 "**B Shareholder**" means, in relation to a B Share, its registered holder as reflected in the Securities Register;
- 1.1.13 "**Board**" means the board of Directors from time to time of the Company or, if there is only one Director, then that Director;
- 1.1.14 "**C Share**" means a C share of no par value in the authorised C share capital of the Company with confers on each C Shareholder the rights, obligations and privileges set out in the C Share Terms;
- 1.1.15 "**C Shareholder**" means, in relation to a C Share, its registered holder as reflected in the Securities Register;
- 1.1.16 "**C Share Terms**" means the rights, limitations and other terms associated with the C Shares as determined by the Board in accordance with section 36(3)(d) of the Act, which shall be set out in a new Annexure to this MOI in accordance with section 36(4) of the Act;
- 1.1.17 "**Capitalworks Advisors**" means Capitalworks Private Equity Advisor Proprietary Limited, registration number 2007/006582/07, a limited liability private company duly incorporated in South Africa, or any of its Related or Inter-related persons acting on behalf of funds under its management and/or funds which it advises;
- 1.1.18 "**Capitalworks Entity**" means Capitalworks Advisors, the funds directly or indirectly, managed or advised by Capitalworks Advisors, and/or any person that represents the interests of any of fund(s) directly or indirectly managed or advised by Capitalworks Advisors;
- 1.1.19 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

- 1.1.20 "**Claims**" means all amounts owing by the Company to a Shareholder from time to time in his capacity as a Shareholder and on loan account, including any interest accrued thereon, but excluding any *bona fide*, arm's-length, market related funding facility granted by a Shareholder to the Company from time to time;
- 1.1.21 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.22 "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.23 "**Competitor**" means a person ("**Direct Competitor**") who, in the reasonable opinion of the Board, either alone or together with any Related or Inter-related person ("**Indirect Competitor**"), conducts a business in competition with any Member of the Group or otherwise competes with (or is reasonably likely in the forthcoming 12 (twelve) months to start competing with) the business conducted by any Member of the Group, and the Indirect Competitor shall also be deemed to be a Competitor;
- 1.1.24 "**Confidential Information**" means any information or data relating to any Member of the Group and/or its business (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), in whatever format and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), which –
- 1.1.24.1 by its nature or content is identifiable as confidential and/or proprietary to a Member of the Group;
- 1.1.24.2 is intended or by its nature or content could reasonably be expected to be confidential and/or proprietary to a Member of the Group; or
- 1.1.24.3 is provided or disclosed by a Member of the Group in confidence;
- 1.1.25 "**Control**" shall bear the meaning ascribed thereto in section 2(2);
- 1.1.26 "**Deemed Offeror**" shall bear the meaning ascribed thereto in clause 18.1 and shall include a reference to the Deemed Offeror's executor, administrator, trustee, curator, or guardian, as the case may be;
- 1.1.27 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;

- 1.1.28 "**Disposal**" means, in the context of a disposal of a Share, the transfer of such Share or all or any rights making up such Share to any other person for his benefit and/or for the benefit of others, whether such transfer is effected pursuant to a sale, cession, assignment, alienation, amalgamation, merger, exchange, donation, renunciation, surrender, waiver, relinquishment, unbundling, distribution in *specie* or otherwise (whether by a voluntary or involuntary single transaction or series of transactions), and the term shall be construed accordingly in the context of a Disposal of Claims and "**Dispose**" and "**Disposing**" shall bear a corresponding meaning;
- 1.1.29 "**Distribution**" shall bear the meaning ascribed thereto in section 1;
- 1.1.30 "**Electronic Communication**" shall bear the meaning ascribed thereto in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.1.31 "**Encumbrance**" means any right of first refusal, right of pre-emption, purchase right, option, mortgage, pledge, lien, cession in the nature of security, assignment in the nature of security, hypothecation, set-off arrangement, security interest or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, and "**Encumber**" shall have a corresponding meaning;
- 1.1.32 "**Equity**" means, in relation to any Shareholder, the Shares held by such Shareholder and the Claims held by such Shareholder, if any;
- 1.1.33 "**Fair Market Value**" means, in relation to any Shares or the Company, as the context may require, the amount determined by the Independent Auditors to be the fair market value of such Shares or the Company, as the case may be, which determination the Board shall procure is made by the Independent Auditors in respect of each class of Shares and the Company as a whole –
- 1.1.33.1 once every year as soon as practicably possible after the finalisation of the Company's annual financial statements and based on such annual financial statements; and/or
- 1.1.33.2 from time to time upon the request of the Board and based on the Company's most recent management accounts,
- and having regard to any valuation provisions set out in the B Share Terms and the C Share Terms (if any), acting as experts and not as arbitrators;
- 1.1.34 "**Filing Date**" means the date on which this MOI was initially filed (as such term is defined in the Act) with the Commission, being 7 December 2016;

- 1.1.35 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012;
- 1.1.36 "**Financial Year**" means the financial year commencing on 1 July each calendar year and terminating on 30 June the subsequent calendar year;
- 1.1.37 "**General Permitted Transferee**" means, in relation to any Shareholder (other than a Capitalworks Entity and/or Management Shareholder) -
- 1.1.37.1 a company (the "**Subject Company**") if, and only for so long as –
- 1.1.37.1.1 all the issued securities in the Subject Company are beneficially owned by and registered in the name of that Shareholder and/or that Shareholder's grandparents, parents, spouse, children, or grandchildren (collectively, the "**Immediate Family**"), or any one of them, and the Subject Company is Controlled by that Shareholder; or
- 1.1.37.1.2 all the issued securities of the Subject Company are beneficially owned by and issued in the name of an *inter vivos* trust which is a General Permitted Transferee of that Shareholder as contemplated in clause 1.1.37.3; or
- 1.1.37.2 a close corporation (the "**Subject Close Corporation**") if, and only for so long as, the entire members' interest in the Subject Close Corporation is beneficially owned by and registered in the name of that Shareholder and/or the members of that Shareholder's Immediate Family, and the Subject Close Corporation is Controlled by that Shareholder; and/or
- 1.1.37.3 an *inter vivos* trust (the "**Subject Trust**") if, and only for so long as, the only beneficiaries of the Subject Trust comprise that Shareholder and Shareholder's Immediate Family or any one or more of them;
- 1.1.38 "**Group**" means the Company, its Subsidiaries and any other person in which it or any of its Subsidiaries holds at least a 25% equity interest from time to time, and "**Member of the Group**" shall mean any one or each of them, as the context may require;
- 1.1.39 "**Independent Auditors**" means, as and when any matter is referred to the Independent Auditors in this MOI, such independent third party auditors as the Board may appoint from time to time for such purpose (being limited to one of the four largest South African auditing firms in South Africa by number of partners);
- 1.1.40 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;

- 1.1.41 **"Insolvency Event"** means, in relation to any person, any of the following events or circumstances –
- 1.1.41.1 it is dissolved or de-registered;
 - 1.1.41.2 an order or declaration is made, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or an order or declaration is made, or a resolution is passed, to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;
 - 1.1.41.3 it convenes any meeting to consider the passing of a resolution for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;
 - 1.1.41.4 it seeks the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or estate;
 - 1.1.41.5 it has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
 - 1.1.41.6 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;
 - 1.1.41.7 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
 - 1.1.41.8 any receiver, administrative receiver, judicial receiver, administrator, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it, its estate or any material part of its assets or it requests any such appointment;

- 1.1.41.9 it commits any act which, if such act was committed by a natural person, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, No. 24 of 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
- 1.1.41.10 it is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Act);
- 1.1.41.11 it causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 1.1.41.1 to 1.1.41.10; or
- 1.1.41.12 if the person is a natural person, it causes or is subject to any event with respect to it which, to the extent applicable and the terms adjusted for the context, has an analogous effect to any of the events specified in clauses 1.1.41.1 to 1.1.41.11; or
- 1.1.41.13 it takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- 1.1.42 "**Inter-related**" shall bear the meaning ascribed thereto in section 1;
- 1.1.43 "**Management Group**" means in relation to a Management Shareholder that is –
- 1.1.43.1 a Management Member, that Management Shareholder and, to the extent that they are Shareholders from time to time, his Management Related Entities and Management Historic Entities; and
- 1.1.43.2 a Management Related Entity or Management Historic Entity, that Management Shareholder, its relevant Management Member and, to the extent that they are Shareholders from time to time, that Management Member's Management Related Entities and Management Historic Entities,
- and "**Member of a Management Group**" shall be construed accordingly, as the context may require;
- 1.1.44 "**Management Historic Entity**" means any person through which a Management Member or any of his Management Related Entities holds any Shares at any time after the Filing Date (regardless of whether such person constitutes a Management Related Entity or whether it ceases to hold any Shares at any time after the Filing Date);
- 1.1.45 "**Management Member**" means a person who is employed by a Member of the Group, and who forms part of the senior management thereof;

- 1.1.46 **"Management Permitted Transferee"** means, in relation to –
- 1.1.46.1 a Management Member, a Management Related Entity; or
- 1.1.46.2 a Management Shareholder that is a Management Related Entity or Management Historic Entity, the relevant Management Member or another Management Related Entity of that Management Member;
- 1.1.47 **"Management Related Entity"** means, in relation to a Management Member –
- 1.1.47.1 a company (the **"Subject Company"**) if, and only for so long as –
- 1.1.47.1.1 all the issued securities in the Subject Company are beneficially owned by and registered in the name of that Management Member and/or that Management Member's grandparents, parents, spouse, children, or grandchildren (collectively, the **"Immediate Family"**), or any one of them, and the Subject Company is Controlled by that Management Member; or
- 1.1.47.1.2 all the issued securities of the Subject Company are beneficially owned by and issued in the name of an *inter vivos* trust which is a Management Related Entity to that Management Member as contemplated in clause 1.1.47.3; or
- 1.1.47.2 a close corporation (the **"Subject Close Corporation"**) if, and only for so long as, the entire members' interest in the Subject Close Corporation is beneficially owned by and registered in the name of that Management Member and/or the members of that Management Member's Immediate Family, and the Subject Close Corporation is Controlled by that Management Member; and/or
- 1.1.47.3 an *inter vivos* trust (the **"Subject Trust"**) if, and only for so long as, the only beneficiaries of the Subject Trust comprise that Management Member and that Management Member's Immediate Family or any one or more of them;
- 1.1.48 **"Management Shareholder"** means a Shareholder that is a (i) Management Member; (ii) Management Related Entity or (iii) Management Historic Entity;
- 1.1.49 **"Minority Protection Matters"** means those matters envisaged in **Annexure A**;
- 1.1.50 **"MOI"** means this memorandum of incorporation, including the Annexures hereto;
- 1.1.51 **"Ordinary Resolution"** shall bear the meaning ascribed thereto in section 1;
- 1.1.52 **"Offeree Shareholder"** shall bear the meaning ascribed thereto in clause 14.2.2;

- 1.1.53 "**Ordinary Share**" means an ordinary share of no par value in the authorised ordinary share capital of the Company, which confers on each Ordinary Shareholder the rights and limitations set out in clause 6.1.1.1;
- 1.1.54 "**Ordinary Shareholder**" means, in relation to an Ordinary Share, its registered holder as reflected in the Securities Register;
- 1.1.55 "**Pre-emptive Offer Process**" means the pre-emptive Equity offer process envisaged in clause 14;
- 1.1.56 "**Preference Share**" means a cumulative, non-participating, no par value preference share in the Company's authorised share capital which confers on each Preference Shareholder, the preferences, rights and obligations set out in the Preference Share Terms;
- 1.1.57 "**Preference Share Terms**" means the preferences, rights, limitations and other terms associated with the Preference Shares, as set out in **Annexure C**;
- 1.1.58 "**Preference Shareholder**" means, in relation to a Preference Share, its registered holder as reflected in the Securities Register;
- 1.1.59 "**Present**" means –
- 1.1.59.1 in the context of a Shareholders' meeting, to be present in person, or be 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; or
- 1.1.59.2 in the context of a Directors' meeting, to be present in person, or be able to participate in the meeting by Electronic Communication;
- 1.1.60 "**Rand**" means the South African Rand, the lawful currency of South Africa, and the term "**cents**" shall be construed accordingly;
- 1.1.61 "**Regulations**" means the regulations published in terms of the Act from time to time;
- 1.1.62 "**Related**" shall bear the meaning ascribed thereto in section 1;
- 1.1.63 "**Relationship Agreement**" means the agreement entitled "*Relationship Agreement*" entered into or to be entered into between among others, the Company and those Management Shareholders which are B Shareholders and/or C Shareholders from time to time and which, pursuant to paragraph 2.5 of **Annexure B**, have bound themselves as a party thereto;

- 1.1.64 "**Sale Equity**" shall bear the meaning ascribed thereto in clause 14.2.1;
- 1.1.65 "**Securities**" means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.66 "**Securities Register**" means the register contemplated in section 50(1) and referred to in clause 10.1;
- 1.1.67 "**Security Holder**" means each person whose name is entered into the Securities Register at any time and who is, with reference to such time, shown as being the holder of 1 or more Securities;
- 1.1.68 "**Selling Shareholder**" shall bear the meaning ascribed thereto in clause 13.2.1;
- 1.1.69 "**Share**" means an Ordinary Share, a B Share, a C Share, a Preference Share, an A Preference Share or a B Preference Share;
- 1.1.70 "**Share Transfer Provisions**" means those provisions which regulate and/or otherwise limit the ability of a Shareholder to Dispose of or Encumber their Equity, as set out in clauses 12 to 24 (both inclusive) and (i) in relation to the B Shares, also in paragraph 2.5 of the B Share Terms; and (ii) in relation to the C Shares, also any applicable provisions of the C Terms (once determined, and if any);
- 1.1.71 "**Shareholder**" means the holder of a Share who is entered as such in the Securities Register, being the Ordinary Shareholders, B Shareholders, C Shareholders, Preference Shareholders, A Preference Shareholders and B Preference Shareholders, provided that, where reference is made to a Shareholders' rights or obligations then, notwithstanding anything to the contrary contained in this MOI, in so far as such rights and obligations pertain to a B Share, a C Share, a Preference Share, an A Preference Share or a B Preference Share, such rights and obligations shall be limited by the B Share Terms, the C Share Terms, the Preference Share Terms, the A Preference Share Terms and the B Preference Share Terms respectively;
- 1.1.72 "**Shareholding**" means, in relation to a particular class of Shares, the number of such Shares held by the Shareholder, as a percentage of all of the Shares of that class in issue;
- 1.1.73 "**Solvency and Liquidity Test**" shall bear the meaning ascribed thereto in section 4;
- 1.1.74 "**South Africa**" means the Republic of South Africa;
- 1.1.75 "**Special Resolution**" shall bear the meaning ascribed thereto in section 1, subject to clause 31.2;

- 1.1.76 **"Sponsor Permitted Transferee"** shall bear the meaning ascribed thereto in clause 19.1;
- 1.1.77 **"Sponsor Shareholder"** means any Capitalworks Entity for so long as it is a Shareholder, provided that where the Sponsor Shareholder is constituted by more than one Shareholder, any reference to the Sponsor Shareholder shall be a reference to those Shareholders acting jointly or individually, as the context may require;
- 1.1.78 **"Sponsor Shareholder Appointed Director"** means a Director appointed by the Sponsor Shareholder in accordance with clause 33.2;
- 1.1.79 **"Subsidiary"** shall bear the meaning ascribed thereto in the Act, provided that such term shall, for the purposes of this MOI, not be limited to Companies, but shall include any Juristic Person (as each of those terms are defined in the Act);
- 1.1.80 **"Trigger Event"** means –
- 1.1.80.1 in relation to any Management Shareholder that is –
- 1.1.80.1.1 a Management Member, –
- 1.1.80.1.1.1 any of the events envisaged in clause 1.1.80.1.2 occurs in relation to any of the Members of his Management Group;
- 1.1.80.1.1.2 he ceases to be employed by a Member of the Group for any reason whatsoever;
- 1.1.80.1.1.3 he dies;
- 1.1.80.1.1.4 any Insolvency Event occurs in respect of that Management Member; or
- 1.1.80.1.1.5 that Management Member is in breach of the Relationship Agreement or this MOI and, to the extent applicable, fails to remedy such breach within the period provided for in those documents (if any); or
- 1.1.80.1.2 a Management Related Entity or a Management Historic Entity –
- 1.1.80.1.2.1 the events envisaged in clause 1.1.80.1.1.2, 1.1.80.1.1.3, 1.1.80.1.1.4 and/or 1.1.80.1.1.5 occurs in relation to that Management Shareholder's relevant Management Member;
- 1.1.80.1.2.2 any Insolvency Event occurs in respect of that Management Shareholder;
- 1.1.80.1.2.3 that Management Shareholder undergoes a change of Control without the prior written consent of the Board;

- 1.1.80.1.2.4 that Management Shareholder is in breach of the Relationship Agreement or this MOI and, to the extent applicable, fails to remedy such breach within the period provided for in those documents (if any); or
- 1.1.80.1.2.5 any of the events envisaged in clauses 1.1.80.1.2.2, 1.1.80.1.2.3 or 1.1.80.1.2.4 occur in relation to any of the other Members of the Management Group of which that Management Shareholder is a member;
- 1.1.80.2 in relation to a Capitalworks Entity that is a Shareholder and is a party to the Relationship Agreement –
- 1.1.80.2.1 any Insolvency Event occurs in respect of that Capitalworks Entity, provided that, notwithstanding anything to the contrary herein contained, a reconstitution of any funds and/or partnerships shall not constitute an Insolvency Event;
- 1.1.80.2.2 that Capitalworks Entity undergoes a change of Control without the prior written consent of the Board, where the party acquiring control is not a Capitalworks Entity;
- 1.1.80.2.3 that Capitalworks Entity is in breach of the Relationship Agreement or this MOI and, to the extent applicable, fails to remedy such breach within the period provided for in those documents (if any); or
- 1.1.80.2.4 any of the events envisaged in clauses 1.1.80.2.1, 1.1.80.2.2 and/or 1.1.80.2.3 occur in relation to any other Capitalworks Entity that is a Shareholder and is a party to the Relationship Agreement; or
- 1.1.80.3 in relation to any Shareholder other than a Capitalworks Entity and/or a Management Shareholder, that Shareholder is in breach of this MOI and, to the extent applicable, fails to remedy such breach within the period provided for herein (if any);
- 1.1.81 "**Uncertificated Securities**" shall bear the meaning set out in section 1 of the Financial Markets Act; and
- 1.1.82 "**Urgent Funding Shareholders**" shall bear the meaning ascribed thereto in clause 46.2.1.

- 1.2 In this MOI, unless the context clearly indicates otherwise –
- 1.2.1 capitalised words and expressions which are not defined herein shall have the meanings given to them in the Act; while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.2 the words "**clause**" or "**clauses**" and "**Annexure**" or "**Annexures**" refer to clauses of and annexures to this MOI; and "**paragraph**" or "**paragraphs**" refers to the paragraph of the Annexure to which reference is being made;
- 1.2.3 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MOI;
- 1.2.4 words and expressions defined in this MOI will bear the same meaning if used in any Annexure;
- 1.2.5 a reference to a "**section**" or a "**regulation**" by number refers to the corresponding section of the Act or the Regulations, as the case may be, notwithstanding the renumbering of such section or regulation after the date on which this MOI is adopted by the Company;
- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes –
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and vice versa; and
- 1.2.7.3 the singular includes the plural and vice versa;
- 1.2.8 if the due date for performance of any obligation in terms of this MOI is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding business day; and
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this MOI to –
- 1.3.1 "**person**" means any juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;

- 1.3.2 "**days**" shall be construed as calendar days unless qualified by the word "**business**", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
- 1.3.3 "**business hours**" shall be construed as a reference to the hours between 08h30 and 17h00 on any business day and any reference to time shall be based on South African Standard Time;
- 1.3.4 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.3.5 "**tax**" means all present or future income tax, capital gains tax, secondary tax on companies, dividend tax, value-added tax, value extraction tax, securities transfer tax, stamp duties, uncertificated securities tax, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties, fines, additional tax or interest payable as a consequence of any failure or delay in paying any taxes imposed; and
- 1.3.6 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.7 Any reference herein to "**this MOI**" or any other agreement or document shall be construed as a reference to this MOI or, as the case may be, such other agreement or document, as amended, varied, restated, novated or supplemented from time to time.

- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of adoption of this MOI and as amended or substituted from time to time.
- 1.9 Whenever any person is required to act "*as experts and not as arbitrators*" in terms of this MOI, then –
- 1.9.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.9.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.9.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.9.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.9.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

PART 2: THE COMPANY

2 JURISTIC PERSONALITY

- 2.1 The Company is incorporated as a private company, as defined in the Act, and has juristic personality from the date and time that the incorporation of the Company is registered, as stated in its registration certificate and as contemplated in section 19(1) and accordingly:
- 2.1.1 the Company shall not offer any of its Securities to the public, as contemplated in section 8(2)(b)(ii)(aa); and
- 2.1.2 the transferability of the Securities of the Company is restricted, as contemplated in section 8(2)(b)(ii)(bb), as set out in the Share Transfer Provisions.
- 2.2 The Company is governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this MOI in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this MOI;

- 2.2.3 the Relationship Agreement (and/or any Shareholders' agreements as envisaged in section 15(7));
 - 2.2.4 its Rules (as such term is defined in the Act), if any; and
 - 2.2.5 the other provisions of this MOI.
- 2.3 In any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MOI and –
- 2.3.1 a provision of any Shareholders' agreement (including, among others, the Relationship Agreement), the provision of this MOI shall prevail to the extent of the conflict unless the Shareholders' agreement imposes on a person a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of the Shareholders' agreement shall prevail to the extent of the conflict;
 - 2.3.2 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict; and
 - 2.3.3 an unalterable or non–elective provision of the Act, the unalterable or non–elective provision of the Act shall prevail to the extent of the conflict unless the MOI imposes on a person a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.

3 LIMITATION OF LIABILITY

No person shall, solely by reason of being an incorporator, a Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

4 POWERS OF THE COMPANY

- 4.1 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c).
- 4.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

5 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

- 5.1 The Company does not elect, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.
- 5.2 The Company, being a private company, does not elect in terms of section 118(1)(c)(ii) to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and to the Takeover Regulations provided for in the Act.

PART 3: SECURITIES

6 SHARES

6.1 Authorised share capital

- 6.1.1 The Company is authorised to issue –
- 6.1.1.1 2 000 000 000 Ordinary Shares, of the same class, each of which entitles the Ordinary Shareholder to –
- 6.1.1.1.1 vote on any matter to be decided by the Shareholders and to 1 vote in the case of a vote by means of a poll;
- 6.1.1.1.2 subject to clause 47.16, participate proportionally in any Distribution made by the Company to the holders thereof; and
- 6.1.1.1.3 receive proportionally the net assets of the Company upon its liquidation;
- 6.1.1.2 100 000 000 B Shares, of the same class, having the rights, limitations and other terms as set out in the B Share Terms;
- 6.1.1.3 2 000 000 000 Preference Shares, of the same class, having the preferences, rights, limitations and other terms set out in the Preference Share Terms;
- 6.1.1.4 1 000 000 A Preference Shares, of the same class, having the preferences, rights, limitations and other terms set out in the A Preference Share Terms;
- 6.1.1.5 1 000 B Preference Shares, of the same class, having the preferences, rights, limitations and other terms set out in the B Preference Share Terms; and
- 6.1.1.6 1 000 000 C Shares, of the same class, having the preferences, rights, limitations and other terms set out in the C Share Terms.
- 6.1.2 All Securities of a class shall rank *pari passu* in all respects.

- 6.1.3 Each Share issued by the Company has associated with it an irrevocable right of the holder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share.
- 6.1.4 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time.
- 6.1.5 Subject to clause 6.1.1.6 and clause 44, the authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares other than C Shares (but only in respect of the Board's initial determination of the preferences, rights, limitations or other terms attaching to such terms and not in respect of any subsequent amendment thereof) may only be changed by an amendment of this MOI by way of a Special Resolution of the Shareholders. Accordingly, the Board shall not have the power to –
- 6.1.5.1 convert one class of Shares into one or more other classes;
 - 6.1.5.2 increase or decrease the number of authorised Shares of any class;
 - 6.1.5.3 consolidate and reduce the number of issued and authorised Shares of any class;
 - 6.1.5.4 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital;
 - 6.1.5.5 reclassify any classified Shares that have been authorised but not issued; or
 - 6.1.5.6 classify any unclassified Shares that have been authorised but not issued.

6.2 **Share issues**

- 6.2.1 The Board may, subject to clause 44 and section 41 and the further provisions of this clause 6.2.1, issue –
- 6.2.1.1 Preference Shares, A Preference Shares, B Preference Shares or Ordinary Shares at any time, but only –
 - 6.2.1.1.1 within the classes and to the extent that those Shares have been authorised by or in terms of this MOI; and

6.2.1.1.2 to the extent that such issue has been approved by an Ordinary Resolution of the Shareholders, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any resolution of the Shareholders prior to such annual general meeting;

6.2.1.2 Shares pursuant to clause 46 at any time, but only to the extent that those Shares have been authorised by or in terms of this MOI; and

6.2.1.3 Shares to any Management Member (or to that Management Member's nominated Management Related Entity) at any time, but only to the extent that those Shares have been authorised by or in terms of this MOI,

and the provisions of this clause 6.2.1 shall apply, the terms adjusted for the context, to any issue of Securities convertible into Shares, or any options to acquire Shares.

6.2.2 No C Shares may be issued until such time as the Board has determined the associated preferences, rights, limitations and other terms as contemplated in section 36(1)(d)(ii) of the Act.

6.2.3 Any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by Special Resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.

6.2.4 The provisions of section 39 shall not apply to the issue of any Shares in accordance with the provisions of this MOI.

7 DEBT INSTRUMENTS

Subject to clause 44, the Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2).

8 CAPITALISATION SHARES

8.1 The Board shall have the power or authority to, as set out in section 47 –

8.1.1 approve the issuing of any authorised Shares as capitalisation Shares; or

8.1.2 issue shares of one class as capitalisation Shares in respect of Shares of another class;
or

8.1.3 resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share,

provided that such issue is effected in accordance with the requirements of section 47.

8.2 The Board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation Share, as contemplated in clause 8.1.3, unless the Board –

8.2.1 has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and

8.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the Distribution.

9 ACQUISITION BY THE COMPANY OF ITS OWN SHARES

9.1 Subject to clause 44, the provisions of section 48 and the remaining provisions of this clause 9 –

9.1.1 the Board may determine that the Company acquire a number of its own Shares; and

9.1.2 the board of any Subsidiary of the Company may determine that such Subsidiary acquire Shares, but –

9.1.2.1 not more than 10%, in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of all of the Subsidiaries of the Company, taken together;
and

9.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that Subsidiary and it remains a Subsidiary of the Company.

9.2 Any decision by the Company to acquire its own Shares must satisfy the requirements of section 46 and, accordingly, the Company may not acquire its own Shares unless –

9.2.1 the acquisition –

9.2.1.1 is pursuant to an existing legal obligation of the Company or a court order; or

9.2.1.2 has been authorised by the Board by way of a resolution;

9.2.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition; and

- 9.2.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition.
- 9.3 A decision of the Board referred to in clause 9.1.1 –
- 9.3.1 must be approved by a Special Resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or prescribed officer of the Company, or a person Related to a Director or prescribed officer of the Company; and
- 9.3.2 is subject to the requirements of sections 114 and 115 if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued Shares of any particular class of Shares.
- 9.4 Notwithstanding any other provision of this MOI, the Company may not acquire its own Shares, and no Subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –
- 9.4.1 Shares held by one or more Subsidiaries of the Company; or
- 9.4.2 convertible or redeemable Shares.

10 SECURITIES REGISTER AND CERTIFICATES

- 10.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 10.2 As soon as practicable after the issue or transfer of any Securities, as the case may be, the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued or which have been transferred –
- 10.2.1 the total number of Uncertificated Securities; and
- 10.2.2 with respect to Certificated Securities –
- 10.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued or transferred;
- 10.2.2.2 the number of Certificated Securities issued or transferred to each of them;
- 10.2.2.3 the number of, and prescribed circumstances relating to, any Securities whose transfer has been restricted;

- 10.2.2.4 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding and the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and
- 10.2.2.5 any other prescribed information.
- 10.3 The Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 10.4 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 10.5 A certificate evidencing any Certificated Securities of the Company –
- 10.5.1 must state on its face –
- 10.5.1.1 the name of the Company;
- 10.5.1.2 the name of the person to whom the Certificated Securities were issued or transferred; and
- 10.5.1.3 the number and class of Certificated Securities and designation of the series, if any, evidenced by that certificate;
- 10.5.2 must be signed by 2 persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 10.5.3 is proof that the named Security Holder owns the Securities, in the absence of evidence to the contrary.
- 10.6 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 10.7 If, as contemplated in clause 10.4, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 10.7.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and
- 10.7.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified.

11 **BENEFICIAL INTERESTS IN SECURITIES**

Securities may not be registered in the name of one person for the beneficial interest of another person as set out in section 56(1).

PART 4: TRANSFERS OF SECURITIES AND DISPOSALS OF SHARES

12 **TRANSFER OF SECURITIES**

12.1 **Securities**

12.1.1 Subject to any restrictions as may be applicable (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question and subject to the Share Transfer Provisions), any Shareholder or Security Holder may transfer all or any of its Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.

12.1.2 Every instrument of transfer in respect of Securities shall be delivered to the principal place of business of the Company, accompanied by –

12.1.2.1 the certificate issued in respect of the Securities to be transferred; and/or

12.1.2.2 such other evidence as the Company may require to prove the title of the transferor, or his or her right to transfer the Securities.

12.1.3 The holder of any Securities shall be deemed to remain the holder of such Securities until the name of the transferee is entered in the Securities Register.

12.2 **Securities transfer tax and legal costs**

Securities transfer tax and other costs payable in respect of any transfer of Securities or Claims will be paid by the person to whom the Securities have been Disposed of unless otherwise agreed or provided.

13 **RESTRICTIONS ON THE DISPOSAL AND ENCUMBRANCE OF SHARES – GENERAL PROVISIONS**

13.1 Notwithstanding anything to the contrary in this MOI, Shares may only be Disposed of in accordance with the Share Transfer Provisions and the remaining provisions of this MOI, or in terms of section 164, and no Disposal of any Shares which conflicts with any provision hereof (unless such Disposal is pursuant to section 164) shall be approved nor shall it be permitted to be registered. The Board shall not register the transfer of a Share unless it is satisfied that the Share Transfer Provisions have been complied with (to the extent that they are applicable).

- 13.2 Unless otherwise pre-approved by the Board in writing –
- 13.2.1 a Shareholder (the "**Selling Shareholder**") may only Dispose of some or all of any Shares of any class held by it (the "**Relevant Shares**") if –
- 13.2.1.1 in the case of a Selling Shareholder that is not a Management Shareholder, in one and the same transaction and to the same acquirer, it sells, in proportion to the number of Relevant Shares to be Disposed of by it as a percentage of the total number of Shares of that class held by it, a proportionate (i) number of Shares of each other class of Shares held by it and (ii) amount of any Claims held by it, rounded up to the nearest whole number; or
- 13.2.1.2 in the case of a Selling Shareholder that is a Management Shareholder, the Selling Shareholder and each Member of the Management Group of which that Selling Shareholder is a member, sell, in proportion to the number of Relevant Shares to be Disposed of by the Selling Shareholder as a percentage of the total number of Shares of that class held by it, a proportionate (i) number of Shares of each other class of Shares held by the Selling Shareholder; (ii) amount of any Claims held by the Selling Shareholder; (iii) number of Shares of each class of Shares held by the Members of that Management Group; and (iv) amount of any Claims held by the Members of that Management Group, rounded up to the nearest whole number; and
- 13.2.2 a Shareholder shall not be entitled to Encumber any or all of its Shares (in this regard, (i) the Board shall not unreasonably withhold its approval and, in the event that the Board fails to notify the relevant Shareholder of its determination in respect of such approval within 30 (thirty) business days of being requested to do so in writing, such approval shall have been deemed to have been given; and (ii) as a condition to the Board pre-approving the Encumbrance, the person in whose favour the Shareholder wishes to Encumber its Shares must agree, in writing, to be bound by the Share Transfer Provisions to the reasonable satisfaction of the Board).

14 RIGHTS OF PRE-EMPTION

- 14.1 Subject to clause 14.7 and save for (i) any Disposal of Shares pursuant to a Shareholder's appraisal rights in terms of section 164; or (ii) any Disposal in accordance with the provisions of clauses 15 (*Drag-Along*) (as the Shareholder being dragged), 16 (*Tag-Along*) (as the Shareholder tagging), 18 (*Deemed Offers*) and/or 19 (*Permitted Transfers*), if a Shareholder wishes to Dispose of all or part of its Equity, it shall not be entitled to do so nor shall it agree to do so (albeit subject to conditions) other than in accordance with the provisions of the Pre-emptive Offer Process in this clause 14.

14.2 Offer

14.2.1 In the event that a Selling Shareholder wishes to Dispose of its Equity or any portion thereof (the "**Sale Equity**") to another person, then the Selling Shareholder shall deliver a notice to the Company ("**Offer Notice**") and, if the Selling Shareholder is a Management Shareholder or a Sponsor Shareholder and for the purpose of clause 16.2, also deliver the Offer Notice to (i) the other Management Shareholders and the Sponsor Shareholders (if the Selling Shareholder is a Management Shareholder) or (ii) to all the Management Shareholders (if the Selling Shareholder is the Sponsor Shareholder).

14.2.2 The Offer Notice shall –

14.2.2.1 state that the Selling Shareholder is offering to sell the Sale Equity to the Company and/or its nominee/s (which nominee shall not be a Shareholder unless that Shareholder is a Member of the Group) ("**Company Offerees**"), failing which, to each of the remaining Shareholders (the "**Offeree Shareholders**") –

14.2.2.1.1 on the terms and subject to the conditions set out in this clause 14 and –

14.2.2.1.1.1 if the Selling Shareholder wishes to Dispose of the Sale Equity pursuant to a *bona fide* offer received from a third party ("**Third Party Offeror**"), on substantially the same terms and conditions as the offer received from the Third Party Offeror ("**Third Party Offer**"), provided that such terms and conditions shall not be inconsistent with the provisions of this MOI and specifically the Pre-emptive Offer Process; or

14.2.2.1.1.2 if the Selling Shareholder has not received a Third Party Offer, on such other specified terms and subject to such other specified conditions, provided that such terms and conditions shall not be inconsistent with the provisions of this MOI and specifically the Pre-emptive Offer Process; and

14.2.2.1.2 for a specified purchase price which shall be expressed in cash and in Rands, provided that the purchase price for any portion of the Claims shall be the face value thereof (the "**Purchase Price**"). For the avoidance of doubt it is recorded that, in the case of a Third Party Offer, the Purchase Price shall be the same as the purchase price specified in the Third Party Offer, provided that where such purchase price is not a cash amount, the Purchase Price shall be specified as a cash equivalent of the purchase price set out in the Third Party Offer. To the extent the Company Offerees disagree with the Selling Shareholder as to whether the specified cash amount for any non-cash consideration envisaged in this clause 14.2.2.1.2 is equivalent, then, failing written agreement between the Selling Shareholder and the relevant Company Offerees within 10 business days of any written request therefor by the Company Offerees, the dispute shall be referred to the Independent Auditors for determination. In this regard, the Independent Auditors shall be acting as experts and not as arbitrators

(the "**Offer**");

14.2.3 specify the details of the Selling Shareholder's bank account into which payment of the Purchase Price payable in respect of the Sale Equity is to be made (the "**Selling Shareholder's Account**");

14.2.4 disclose the identity of the person to whom the Selling Shareholder wishes to Dispose of the Sale Equity (if any) (including details as to each person who directly or indirectly Controls such person);

14.2.5 be accompanied by a copy of the Third Party Offer (if any); and

14.2.6 be accompanied by the original share certificates in respect of the Shares comprising the Sale Equity and duly executed instruments of transfer signed by the Selling Shareholder but blank as to the transferee and, if applicable, a duly executed assignment agreement (in a form approved by the Board) in respect of the Claims comprising the Sale Equity ("**Transfer Documents**"). For the avoidance of doubt, where the Selling Shareholder is the Sponsor Shareholder or a Management Shareholder, the Selling Shareholder shall not be required to deliver the Transfer Documents to (i) the other Management Shareholders and the Sponsor Shareholders (if the Selling Shareholder is a Management Shareholder) or (ii) to all the Management Shareholders (if the Selling Shareholder is the Sponsor Shareholder).

14.3 Acceptance by the Company Offerees

- 14.3.1 Each of the Company Offerees shall be entitled to accept the Offer in respect of all or a portion of the Sale Equity on behalf of the Company Offerees, by the Company delivering a written notice to the Selling Shareholder to such effect by not later than 15 business days after the date of its receipt of the Offer Notice.
- 14.3.2 To the extent that a Company Offeree is neither a Shareholder nor the Company, then –
- 14.3.2.1 the Company shall procure that such Company Offeree complies with the provisions of this clause 14; and
- 14.3.2.2 the provisions of this clause 14 shall operate as a stipulation for the benefit of the such Company Offeree as if this MOI was a common law contract.
- 14.3.3 If the Company accepts the Offer in respect of all or part of the Sale Equity, each Shareholder hereby irrevocably undertakes to vote all of its Shares in favour of all resolutions, including any special resolutions, which are required to be passed for the purpose of authorising the Company to purchase the relevant Sale Equity.

14.4 Acceptance by the Offeree Shareholders

- 14.4.1 If the Company Offerees do not wish to accept the Offer or do not accept the Offer, or if the Company Offerees accept the Offer in respect of a portion of the Sale Equity only, then the Company shall, by no later than 3 business days after the expiry of the period envisaged in clause 14.3.1, send a notice to the Offeree Shareholders informing them of the Offer and stating –
- 14.4.1.1 the details of the Offer;
- 14.4.1.2 the identity of the person/s to whom the Selling Shareholder wishes to Dispose of the Sale Equity as disclosed in the Offer Notice (if any) (including details as to each person who directly or indirectly Controls such person); and
- 14.4.1.3 the portion of the available Sale Equity that is being offered to the Offeree Shareholders (which shall exclude that portion of the Sale Equity in respect of which the Company Offerees have accepted the Offer) ("**Available Portion**"),
- (the "**First Notice**").

- 14.4.2 Each Offeree Shareholder shall be entitled to accept the Offer of the Available Portion *pro rata* to its Aggregate Shareholding by delivering a written notice to such effect to the Company (an "**Acceptance Notice**") by not later than 15 business days after the date on which the First Notice was sent by the Company to the Offeree Shareholder ("**First Acceptance Period**").
- 14.4.3 If the Offeree Shareholders fail or decline to accept the Offer in respect of the entire Available Portion during the First Acceptance Period (that portion of the Available Portion in respect of which no Acceptance Notices were received, being the "**Declined Portion**"), then the Company shall, within 3 business days after the expiry of the First Acceptance Period, send a written notice to those Offeree Shareholders that accepted the Offer ("**Accepting Shareholders**") to such effect specifying the Declined Portion which is being offered ("**Second Notice**"). Each Accepting Shareholder shall be entitled to accept the Offer in respect of all or a portion of the Declined Portion (including accepting the Declined Portion in excess of its *pro rata* Aggregate Shareholding) by delivering a written notice to such effect to the Company by not later than 3 business days after the Second Notice was sent by the Company to the Accepting Shareholder ("**Second Acceptance Period**").
- 14.4.4 If the Accepting Shareholders fail or decline to accept the Offer in respect of the entire Declined Portion during the Second Acceptance Period, then the Company Offerees shall be entitled to accept the Offer in respect of the Declined Portion or the balance thereof, as the case may be, by delivering a written notice to such effect to the Selling Shareholder by not later than 3 business days after the expiry of the Second Acceptance Period ("**Third Acceptance Period**"). The provisions of clause 14.3 shall apply *mutatis mutandis* to any acceptance by the Company of the Offer in respect of any or all of the Declined Portion.

14.5 **Pre-emptive Right Sale**

- 14.5.1 If the Accepting Shareholders and/or the Company Offerees accept the Offer in respect of the entire Sale Equity, then, on the 3rd business day after the date on which the Offer has been accepted in respect of the entire Sale Equity ("**Pre-emptive Sale Date**") –
- 14.5.1.1 the Company shall –
- 14.5.1.1.1 allocate that portion of the Sale Equity in respect of which the Company Offerees have validly accepted the Offer in accordance with clause 14.3 and/or clause 14.4.4 to the relevant Company Offerees; and

14.5.1.1.2 apportion acceptances by the Offeree Shareholders who validly accepted the Offer in accordance with clause 14.4.2 and/or clause 14.4.3 on the basis that the balance of Sale Equity (i.e. after taking into account the portion of the Sale Equity allocated to the Company Offerees as envisaged in clause 14.5.1.1.1) will be apportioned and sold to the Accepting Shareholders as follows –

14.5.1.1.2.1 firstly, as nearly as possible in proportion to their respective Aggregate Shareholdings (*inter se* the Accepting Shareholders), provided that no Accepting Shareholder shall have apportioned and sold to it a greater portion of Sale Equity than what it has accepted to purchase; and

14.5.1.1.2.2 to the extent that any Sale Equity has not been allocated in accordance with clause 14.5.1.1.1 and clause 14.5.1.1.2.1, that Sale Equity shall be apportioned amongst and sold to the Accepting Shareholders who have accepted the Offer in respect of a portion of the Sale Equity which exceeds their proportionate Aggregate Shareholdings, as nearly as possible in proportion to such excess acceptance, provided that no such Accepting Shareholder shall have apportioned and sold to it a greater amount of Sale Equity than the excess it has accepted to purchase,

(that portion of the Sale Equity that is allocated to a Company Offeree or apportioned to an Accepting Shareholder in accordance with this clause 14.5.1.1 shall herein after be referred to as, the "**Sale Portion**"); and

14.5.1.2 the Company shall send written notices to –

14.5.1.2.1 the Selling Shareholder informing the Selling Shareholder that the Offer has been accepted in full and notifying the Selling Shareholder of the details of the Company Offerees that have accepted the Offer (if any) and the Sale Portion accepted by each of them and the identities of the Accepting Shareholders (if any) and their respective Sale Portions; and

14.5.1.2.2 each Company Offeree (provided that the Company will not be required to send a written notice to itself) that has accepted the Offer (if any) and each Accepting Shareholder (if any) (collectively and individually referred to as the "**Accepting Party**") notifying it of (i) the fact that the Offer has been accepted in full; (ii) the Accepting Party's respective Sale Portion; (iii) the purchase price and the costs and taxes payable by the Accepting Party in respect of its respective Sale Portion in accordance with the terms of clause 12.2 ("**Sale Portion Purchase Price**"); (iv) the due date for payment of the Sale Portion Purchase Price; and (v) the details of the Company's bank account into which the Sale Portion Purchase Price is to be paid (the "**Company's Account**"); and

- 14.5.1.3 a series of contracts will automatically come into effect between the Selling Shareholder and each Accepting Party, in terms of which the Selling Shareholder hereby sells, cedes and assigns to each Accepting Party, and each Accepting Party purchases and takes cession and assignment of, the relevant Sale Portion with effect from the Pre-emptive Sale Date and on the terms and conditions set out in the Offer Notice and this clause 14 ("**Pre-emptive Sales**");
- 14.5.1.4 the Selling Shareholder shall be deemed to have given the following warranties to the Accepting Parties in respect of the Sale Equity –
- 14.5.1.4.1 it is the sole beneficial and registered holder of the Shares comprising the Sale Equity;
- 14.5.1.4.2 it is the sole owner of the Claims comprising the Sale Equity;
- 14.5.1.4.3 subject to clause 17 (if applicable), it has the necessary authority and capacity and is entitled to Dispose of the Sale Equity pursuant to and in accordance with the Pre-emptive Sales;
- 14.5.1.4.4 the Sale Equity is not, and will not be, subject to any Encumbrance other than in terms of this MOI; and
- 14.5.1.4.5 it is entitled and able to give full title to the Sale Equity in accordance with the provisions of this MOI; and
- 14.5.1.5 each Accepting Party shall be deemed to warrant in favour of the Selling Shareholder that, subject to clause 17 (if applicable), it has the necessary authority and capacity and is entitled to purchase the relevant Sale Portion pursuant to and in accordance with the Pre-emptive Sale in respect of which it is a counter-party and that it has sufficient funds to discharge its obligation to make payment of its Sale Portion Purchase Price.
- 14.5.2 By no later than 15 business days after the later of (i) the Pre-emptive Sale Date; and (ii) the date on which the Approvals required in respect of a particular Pre-emptive Sale envisaged in clause 17 (if any) are granted, each Accepting Party shall make payment of its respective Sale Portion Purchase Price in Rands free of any deductions, set-off or other withholding whatsoever, by way of electronic transfer of immediately available and freely transferable funds into the Company's Account.

- 14.5.3 As and when payment of the Sale Portion Purchase Price is made by an Accepting Party in accordance with clause 14.5.2, –
- 14.5.3.1 the Company shall complete the Transfer Documents accordingly;
- 14.5.3.2 the Company shall make payment of that Sale Portion Purchase Price to the Selling Shareholder, net of the costs and taxes payable by the Accepting Party in respect of its respective Sale Portion in accordance with the terms of clause 12.2, in Rands and free of any other deductions, set-off or other withholding whatsoever, by way of electronic transfer of immediately available and freely transferable funds into the Selling Shareholder's Account;
- 14.5.3.3 the Company shall where the Company is an Accepting Party, cancel the Shares and the Claims comprising the Sale Equity which were repurchased by the Company (if applicable);
- 14.5.3.4 the Company shall in respect of those Accepting Parties other than the Company (if any) -
- 14.5.3.4.1 record the Accepting Party as the registered owner of the relevant Sale Portion in the Register and issue a new share certificate in respect of the Shares comprising the Sale Portion to the Accepting Party; and
- 14.5.3.4.2 note the Accepting Party as the holder of the Claims comprising the relevant Sale Portion; and
- 14.5.3.5 ownership of and all risk in and all benefit attaching to the Sale Portion will pass to the relevant Accepting Party.

14.6 No Pre-emptive Sale

14.6.1 Subject to clauses 16.1 and 16.3, if (i) the Company Offerees and/or the Offeree Shareholders fail to, or do not, accept the Offer in respect of the entire Sale Equity or (ii) the Approvals required in respect of a particular Pre-emptive Sale envisaged in clause 17 (if any) are not granted within the period stipulated therefor in that clause (as applicable between (i) and (ii)), the "**Pre-emptive Offer Termination Date**", then –

14.6.1.1 the Company shall forthwith return all of the relevant Transfer Documents, as the case may be, to the Selling Shareholder; and

14.6.1.2 the Selling Shareholder shall be entitled to (i) sell the entire Sale Equity or the relevant Sale Portion, as the case may be, to the Third Party Offeror on the terms and conditions as those set out in the Third Party Offer or (ii), where there was no Third Party Offer, procure a third party to purchase the entire Sale Equity or the relevant Sale Portion, as the case may be, on substantially the same terms and conditions as those envisaged in the Offer ("**Third Party Purchaser**"), provided that –

14.6.1.2.1 the Selling Shareholder shall deliver to the Board a copy of the sale agreement duly entered into between the Selling Shareholder and the Third Party Purchaser setting out the full terms and conditions of the sale of the Sale Equity or the Sale Portion, as the case may be, including the purchase price; and

14.6.1.2.2 the resultant sale between the Selling Shareholder and the Third Party Purchaser is concluded (albeit subject only to the condition precedent that regulatory approvals which may be required in terms of law are granted and the time period/s provided for is/are reasonable in the Board's reasonable opinion) within 15 business days after the Pre-emptive Offer Termination Date, failing which the Selling Shareholder shall again be required to offer the Sale Equity or the relevant Sale Portion, as the case may be, to the Company Offerees and the Shareholder Offerees and the remaining provisions of this clause 14 shall again be applicable to any Disposal by the Selling Shareholder of any of its Equity.

14.6.2 Notwithstanding clause 14.6.1, if the Third Party Purchaser is a Competitor and the Selling Shareholder failed to disclose the identity of the Third Party Purchaser in the Offer Notice in accordance with clause 14.2.4, then the Selling Shareholder shall not be entitled to sell the Sale Equity to the Third Party unless it again offers its Sale Equity in accordance with the Pre-emptive Offer Process and, if after complying with the Pre-emptive Offer Process (i) the Company Offerees and/or the Offeree Shareholders fail to, or do not, accept the Offer in respect of the entire Sale Equity or (ii) the Approvals required in respect of a particular Pre-emptive Sale envisaged in clause 17 (if any) are not granted within the period stipulated therefor in that clause, then the Selling Shareholder shall be entitled to Dispose of the entire Sale Equity (and not only a portion thereof) to the Third Party Purchaser in accordance with clause 14.6.1 and the provisions of this clause 14.6.2 shall not apply again.

14.7 **Waiver**

If the Board consents thereto in writing and the remaining Shareholders who would have been entitled to receive an Offer in terms of clause 14 waive, by way of an Ordinary Resolution, compliance with the provisions of this clause 14, then a Shareholder shall be entitled to Dispose of any or all of its Equity without complying with the Pre-emptive Offer Process.

15 **DRAG-ALONG**

15.1 In the event that the Sponsor Shareholder receives an offer for the acquisition of all of its Equity, then the Sponsor Shareholder shall be entitled, after complying with the Pre-emptive Offer Process (and on the condition that its Equity is not purchased pursuant thereto), by written notice delivered to the Company and all the Offeree Shareholders, and within a period of 10 business days following the later of (i) the date on which a mandatory offer by the third party purchaser as envisaged in section 123 has closed (if any); and (ii) the date upon which the Sponsor Shareholder sells its Equity to such third party, to demand that the Offeree Shareholders that have not sold their Shares in terms of such mandatory offer (if any) sell their respective Equity to the same third party at the same price and on the same terms and conditions as the Sponsor Shareholder shall have sold its Equity to such third party, and each Offeree Shareholder shall be obliged so to sell its/their Equity to such third party without first complying with the Pre-emptive Offer Process.

- 15.2 Notwithstanding the provisions of clause 15.1 to the contrary:
- 15.2.1 to the extent, having regard to the rights attaching to any Offeree Shareholders' Equity, that Equity is distinct from the Sponsor Shareholders' Equity, then the sale of such Offeree Shareholders' Equity shall be on comparable terms to the third party's offer. For the avoidance of doubt in this regard, where the Offeree Shareholders' Equity includes B Shares, then specific regard shall be had to paragraph 2.2 of the B Share Terms in determining a comparable offer price for those B Shares; and
- 15.2.2 where any portion of the third party's offer for the Sponsor Shareholder's Equity is not in cash (eg, and among other things, shares in the third party offeror) (the "**Non-Cash Consideration**"), the third party offeror shall, when purchasing the Equity from the Offeree Shareholders, pay to such Offeree Shareholders a cash equivalent for the Non-Cash Consideration they would have otherwise received, had the offer for their Equity been at the same price and on the same terms and conditions as the Sponsor Shareholder sold its Equity.
- 15.3 To the extent there is any disagreement as to whether the consideration contemplated in clause 15.2 is comparable, or whether the cash amount for any Non-Cash Consideration is equivalent, then, failing written agreement between the Sponsor Shareholder and the relevant Offeree Shareholder(s) within 10 business days of any written request therefor by the Sponsor Shareholder or the relevant Offeree Shareholder(s), the dispute shall be referred to the Independent Auditors for determination. In this regard, the Independent Auditors shall be acting as experts and not as arbitrators.

16 TAG-ALONG

16.1 Complete Disposal by the Sponsor Shareholder

16.1.1 If –

16.1.1.1 a third party offers to purchase all of the Sponsor Shareholder's Shares; and

16.1.1.2 within the First Acceptance Period (as defined in clause 14.4.2) any Offeree Shareholder delivers a written notice to the Sponsor Shareholder indicating it wishes to Dispose of all of its Equity to the third party,

then, notwithstanding that the Sponsor Shareholder may have complied with the Pre-emptive Offer Process, the Sponsor Shareholder shall not be entitled to sell its Equity to such third party unless the third party, during the 30 business day period described in clause 14.6.1.2.2, makes such offer to the Offeree Shareholder envisaged in clause 16.1.1.2 to acquire its Equity, at the same purchase price and on the same terms and conditions as shall be applicable as between the Sponsor Shareholder and such third party (subject to clause 15.2, which shall apply the terms adjusted for the context as necessary), failing which the Sponsor Shareholder, notwithstanding the stipulations of clause 14.6, shall not be entitled to and shall not sell its Equity. Where an Offeree Shareholder exercises its rights in terms of clause 16.1.1.2, it shall not be required to comply with the Pre-emptive Offer Process before being entitled to Dispose of its Equity to the third party in question.

16.2 Disposals by Management Shareholders and the Sponsor Shareholder

16.2.1 In the event that the Sponsor Shareholder wishes to dispose of all of its Equity, then this clause 16.2 will not apply and the provisions of clause 16.1 will instead apply.

16.2.2 If any Management Shareholder or the Sponsor Shareholder ("**Disposing Party**") delivers an Offer Notice to the Company as envisaged in clause 14.2.1, then in the case of a Disposing Party who is –

16.2.2.1 a Management Shareholder, each of the remaining Management Shareholders and the Sponsor Shareholder; and

16.2.2.2 a Sponsor Shareholder, each of the Management Shareholders,

shall be entitled to deliver an Offer Notice to the Company ("**Tag Along Notice**") within 5 business days after receiving the Offer Notice from the Disposing Party.

- 16.2.3 The Tag Along Notice shall –
- 16.2.3.1 state that the relevant Shareholder ("**Tag Along Shareholder**") is offering to sell a portion of its Equity, which portion shall be proportional to the percentage which the Shares comprising the Disposing Party's Sale Equity bears to the Disposing Party's Aggregate Shareholdings ("**Tag Along Equity**"), to the Company Offerees, failing which, to each of the Offeree Shareholders on *mutatis mutandis* on the same terms and conditions as the Offer, subject to the necessary consequential changes ("**Tag Along Offer**");
- 16.2.3.2 specify the details of the Tag Along Shareholder's bank account into which payment of the Purchase Price payable in respect of the Tag Along Equity is to be made (the "**Tag Along Shareholder's Account**"); and
- 16.2.3.3 be accompanied by the original Transfer Documents in respect of the Tag Along Equity.
- 16.2.4 Upon delivery of the Tag Along Notice, the Pre-emptive Offer Process shall *mutatis mutandis* apply to the Tag Along Offer and –
- 16.2.4.1 the Company shall be obliged to run the Pre-emptive Offer Process in respect of the Disposing Party's Offer concurrently with the Tag Along Shareholder's Tag Along Offer, the time periods adjusted such that the periods entirely overlap;
- 16.2.4.2 the Tag Along Shareholder shall not be included as an Offeree Shareholder and shall instead be deemed to be a Selling Shareholder;
- 16.2.4.3 the Tag Along Offer shall be deemed to be an Offer;
- 16.2.4.4 the Tag Along Equity shall be deemed to be Sale Equity;
- 16.2.4.5 the Tag Along Shareholder's Account shall be deemed to be the Selling Shareholder's Account; and
- 16.2.4.6 before such time as the Offer or the Tag-Along Offer can be accepted in terms of clause 14.5, there must be sufficient acceptances received such that both the Offer and the Tag-Along Offer are accepted in respect of the entirety of the Sale Equity and Tag Along Equity.

- 16.3 Notwithstanding that the Disposing Party may have complied with the Pre-emptive Offer Provisions, the Disposing Party shall not be entitled to sell any of the Sale Equity to a Third Party Purchaser as envisaged in clause 14.6.1.2, unless the Disposing Party procures that the Third Party Purchaser, during the 30 business day period described in clause 14.6.1.2.2, makes an offer to the Tag Along Shareholders to acquire their Tag-Along Equity, at the same purchase price and on the same terms and conditions as shall be applicable as between the Disposing Party and such third party (subject to clause 15.2, which shall apply the terms adjusted for the context as necessary), failing which the Disposing Party, notwithstanding the stipulations of clause 14.6, shall not be entitled to and shall not sell its Equity. Where a Tag-Along Shareholder exercises its rights in terms of clause 16.1.1.2, it shall not be required to comply with the Pre-emptive Offer Process before being entitled to Dispose of its Equity to the Third Party Purchaser.

17 APPROVALS

In the event that the lawful implementation of any sale of any Equity ("**Affected Equity**") by any Shareholder in terms of a Pre-emptive Sale as envisaged in clause 14.5 or a Deemed Sale as envisaged in clause 18 (a "**Sale**") requires (i) the prior approval or consent of any regulator or regulatory authority in terms of any applicable law or (ii) in the case of where the Company repurchases any Shares, prior Shareholder approval (such approvals being referred to herein as "**Approvals**"), then, notwithstanding anything to the contrary contained or implied herein –

- 17.1 the particular sale in respect of the Affected Equity, shall be subject to the fulfilment of the suspensive condition that the requisite Approvals are granted, either unconditionally, or on terms and conditions acceptable to the seller and purchaser of the Affected Equity (to the extent that any such party is adversely affected by the condition) and the Board (acting reasonably), which suspensive condition must be fulfilled within 3 months of the date of the Sale or such other period as may be agreed to in writing between all the parties to the Sale and the Company ("**Fulfilment Date**"); and
- 17.2 if the Approvals are not granted by the Fulfilment Date, then the Sale shall lapse and be of no further force or effect, and, in the case of a Sale in terms of –
- 17.2.1 a Pre-emptive Sale, the provisions of clause 14.6 shall apply; and
- 17.2.2 a Deemed Sale, the provisions of clause 18.4 shall apply.

18 DEEMED OFFERS

18.1 Upon the occurrence of a Trigger Event –

18.1.1 the Management Shareholder in respect of whom a Trigger Event has occurred (together with the relevant Management Member and each other Member of that Management Group which holds Equity);

18.1.2 the Capitalworks Entity in respect of whom a Trigger Event has occurred (together with the other Capitalworks Entities who are Shareholders and are parties to the Relationship Agreement, if any); or

18.1.3 the Shareholder (other than a Capitalworks Entity and/or Management Shareholder) in respect of whom the Trigger Event has occurred,

(as the case may be, the "**Deemed Offeror**") shall, subject to clause 18.5, be deemed to have offered all its Equity (collectively, the "**Deemed Sale Equity**") for sale to the Company and/or its nominee/s which nominee shall not be a Shareholder unless that Shareholder is a Member of the Group ("**Deemed Company Offerees**"), failing which, to each of the remaining Shareholders (the "**Deemed Offeree Shareholders**"), on the day immediately preceding the day on which the relevant Trigger Event occurred, on the further terms and subject to the conditions set out in in this clause 18 ("**Deemed Offer**"), and on the basis that –

18.1.4 the purchase consideration payable for the –

18.1.4.1 Offer Shares comprising the Deemed Sale Equity will be the Fair Market Value thereof; and

18.1.4.2 Claims comprising the Deemed Sale Equity will be the face value thereof,

or such lesser amount as the Deemed Offeror may, upon written notice to the Company, indicate it is willing to accept as the purchase consideration for the Deemed Sale Equity; and

18.1.5 the Deemed Offeror irrevocably appoints the Company (or its nominee) as its authorised agent to, on its behalf, perform such actions and sign such documents as may be required to conclude or give effect to this clause 18 including any documents required to give effect to a transfer of the Deemed Sale Equity.

18.2 As soon as practicably possible after the Company becomes aware of the occurrence of a Trigger Event, the Company shall notify the Deemed Offeror in writing that the provisions of this clause 18 have been triggered and the reason therefor ("**Deemed Offer Trigger Notice**").

- 18.3 The provisions of clauses 14.3 to 14.5 (both inclusive) shall apply to a Deemed Offer, the terms adjusted for the context as necessary.
- 18.4 If (i) the Deemed Company Offerees and/or the Deemed Offeree Shareholders fail to, or do not, accept the Deemed Offer in respect of the entire Deemed Sale Equity within the period provided therefor in accordance with clause 18.3 or (ii) the Approvals required in respect of a particular a sale pursuant to this clause 18 (a "**Deemed Sale**") envisaged in clause 17 (if any) are not granted within the period stipulated therefor in that clause, then –
- 18.4.1 if the Trigger Event is continuing, the provisions of this clause 18 shall apply anew; or
- 18.4.2 if the Trigger Event has ceased, the Deemed Offer shall lapse and there shall be no further consequences in this clause as a result of such Trigger Event occurring.
- 18.5 Where the Trigger Event in respect of any Management Shareholder is the relevant Management Member's death (as per clause 1.1.80.1.1.3 and/or clause 1.1.80.1.2.1, as the case may be), then, despite the provisions of this clause and clause 13.2 to the contrary, that Management Member and each of his Management Related Entities and Management Historic Entities shall only be deemed to have offered for sale in accordance with clause 18.1 that Equity which they acquired after the date of registration of this MOI (specifically including any B Shares or C Shares allotted to them), with the exception of (and excluding) any Equity acquired by them pursuant to clause 14.

19 PERMITTED TRANSFERS

19.1 Sponsor Shareholder

Notwithstanding anything to the contrary contained in this MOI, the Sponsor Shareholder shall be entitled at any time and from time to time and without complying with the Pre-emptive Offer Process and/or being subject to clauses 15 or 16 (but specifically subject to the provisions of clause 13.2), to Dispose of any or all of its Equity to any Capitalworks Entity (the "**Sponsor Permitted Transferee**"), provided that –

- 19.1.1 as a condition to registering the Equity in the Sponsor Permitted Transferee's name, that Sponsor Permitted Transferee shall be obliged to execute an adherence undertaking, binding itself as a party to the Relationship Agreement. The adherence undertaking shall be in a form (i) substantially similar to the version attached to the Relationship Agreement, and (ii) acceptable to the Board, acting reasonably; and

- 19.1.2 if the person to which the Sponsor Shareholder transfers its Equity (or a portion thereof) in accordance with this clause at any time ceases to qualify as a Sponsor Permitted Transferee, then such transferee shall, within 30 business days of any Shareholder requesting it in writing to do so, cause the Equity to be transferred back to the initial Sponsor Shareholder or to another Sponsor Permitted Transferee.

19.2 **Management Shareholders**

- 19.2.1 Notwithstanding anything to the contrary contained in this MOI, a Management Shareholder shall be entitled at any time and from time to time and without complying with the Pre-emptive Offer Process and/or being subject to clauses 15 or 16 (but specifically subject to the provisions of clause 13.2), to Dispose of any or all of its Equity to a Management Permitted Transferee provided that, as a condition to registering any B Shares or C Shares in the Management Permitted Transferee's name, that Management Permitted Transferee shall be obliged to execute an adherence undertaking, binding itself as a party to the Relationship Agreement. The adherence undertaking shall be in a form (i) substantially similar to the version attached to the Relationship Agreement, and (ii) acceptable to the Board, acting reasonably.
- 19.2.2 If the person to which the Management Shareholder transfers its Equity (or a portion thereof) in accordance with this clause at any time ceases to qualify as a Management Permitted Transferee, then such transferee shall, within 30 business days of the date on which it ceases to qualify as a Management Permitted Transferee, cause the Equity to be transferred back to the original Management Shareholder or another Member of that Management Group.

19.3 **Shareholders other than the Sponsor Shareholder and Management Shareholders**

- 19.3.1 Notwithstanding anything to the contrary contained in this MOI, a Shareholder, other than the Sponsor Shareholder and/or a Management Shareholder, shall be entitled, with the Board's prior written approval (subject to clause 19.3.2), at any time and from time to time and without complying with the Pre-emptive Offer Process and/or being subject to clauses 15 or 16, to Dispose of all of its Equity (and not part only) to its General Permitted Transferee.

- 19.3.2 The Shareholder in question shall make written application to the Board for their written approval in terms of clause 19.3.1, which application shall be accompanied with reasonable evidence to substantiate that, among other things, the intended transferee of such Shareholder's Equity qualifies as a General Permitted Transferee. The Board shall be entitled, from time to time and on written notice to the Shareholder in question, to interrogate the information provided and to require that further evidence be produced so as to reasonably satisfy the Board. The Board shall not unreasonably withhold or delay its written approval and, if the Board fails to give notice of its decision to the Shareholder in question within 30 days of the Board's receipt of the Shareholder's application and all evidence necessary and/or requested by it to make its determination, then the Board shall be deemed to have given its written approval to the Disposal. Despite this deeming provision, no deemed approval shall be valid if the entity in question does not qualify as a General Permitted Transferee of the Shareholder in question.
- 19.3.3 If the person to which the Shareholder in question transfers its Equity in accordance with this clause at any time ceases to qualify as a General Permitted Transferee of that Shareholder, then such transferee shall, within 30 business days of the date on which it ceases to qualify as a General Permitted Transferee, cause the Equity to be transferred back to the original Shareholder or to another General Permitted Transferee of such Shareholder.

20 **CONFLICT BETWEEN PRE-EMPTIVE AND DEEMED OFFER PROVISIONS**

- 20.1 If, after a Shareholder has delivered an Offer Notice in terms of the Pre-Emptive Process and before the sale of any Equity is implemented pursuant thereto, a Trigger Event occurs which results in that Shareholder's Equity being made available for purchase in accordance with the provisions of clause 18 (the "**Deemed Offer Provisions**"), then, at the election of the Company (which election shall be made by notice to such Shareholder at any time before such Pre-emptive Sale Date), the sale process or the sales, as the case may be, under the Pre-emptive Offer Process, in relation to such Equity, shall be deemed to have been abandoned or cancelled and instead the Deemed Offer Provisions shall apply.
- 20.2 For so long as the Equity of a Shareholder is available for purchase in terms of the Deemed Offer Provisions, such Equity shall not be offered for sale in terms of the Pre-emptive Offer Process.

21 REGULATED COMPANY

The Parties record that, to the extent that the Company constitutes a "regulated company" as contemplated in section 117, the rights granted to the Shareholders in this MOI with regard to the Share Transfer Provisions may, both generally and with regard to the timelines applicable to such rights, be affected by the application of Chapter 5 of the Act, as read together with the Takeover Regulations. As such, and where (and to the extent) applicable, the Share Transfer Provisions shall be interpreted to give effect firstly to the Act, and thereafter to the Share Transfer Provisions (to the extent possible).

22 CO-OPERATION

22.1 Each Shareholder undertakes to, at its own cost and expense, do all such things, perform all such actions, take all such steps and co-operate in good faith and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary to give effect to and implement the provisions of this MOI.

22.2 Notwithstanding anything to the contrary herein contained, if any Shareholder fails or neglects to take any of the actions required of it in terms of the Share Transfer Provisions within 5 business days of the Company dispatching written notice to the relevant Shareholder calling on it to do so (a "**Defaulting Shareholder**"), then such Defaulting Shareholder hereby irrevocably appoints the Company (or its nominee) as its authorised agent to, on its behalf, perform such actions and sign such documents as may be required to conclude or give effect to the Share Transfer Provisions.

22.3 The Company shall be entitled, despite any provision in this MOI to the contrary, to recover from the Defaulting Shareholder (including by way of set-off or deduction from any amounts owed by the Company to the Defaulting Shareholder or received by the Company on the Defaulting Shareholders' behalf) any amounts incurred by the Company or for which it is liable as a result of implementing the provisions of clause 22.2 or as a consequence of any action taken by the Company or its nominee on the Defaulting Shareholders' behalf pursuant to clause 22.2.

23 NO LIEN

It is recorded for the avoidance of doubt that fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

24 TRANSMISSION OF SECURITIES

- 24.1 The executor of the estate of a deceased sole Security Holder shall be the only person recognised by the Company as having any right to deal with the Security. In the case of a Security registered in the names of 2 or more Security Holders, the survivor or survivors, or the executor of any deceased Security Holder shall be the only person recognised by the Company as having any right to deal with that Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or Security Holder or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security Holder.
- 24.2 Subject to the provisions of clause 24.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors deem sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself –
- 24.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 24.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

PART 5: SHAREHOLDERS, SHAREHOLDERS' MEETINGS AND RESOLUTIONS

25 SINGLE SHAREHOLDER'S AUTHORITY TO ACT

- 25.1 If, at any time, as contemplated in section 57(2), the Company has only 1 Shareholder –
- 25.1.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this MOI; and
- 25.1.2 the provisions of clauses 26 (Record Date for Exercise of Shareholder Rights), 27 (Shareholders' Meetings), 28 (Shareholders' Meetings by Electronic Communication), 29 (Votes of Shareholders), 31 (Shareholders' Resolutions) and 32 (Shareholders Acting Other Than at a Meeting) shall not apply to the Company.
- 25.2 If at any time every Shareholder is also a Director –
- 25.2.1 any matter that is required to be referred by the Board to the Shareholders for decision may be decided by the Shareholders at any time after being referred by the Board, without notice or compliance with any other internal formalities, provided that –
- 25.2.1.1 every such Person was present at the Board meeting when the matter was referred to them in their capacity as Shareholders;
- 25.2.1.2 sufficient persons are Present in their capacity as Shareholders to satisfy the quorum requirements set out in clause 27.4; and
- 25.2.1.3 a resolution adopted by those persons in their capacity as Shareholders has at least the support that would have been required for it to be adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 25.2.2 when acting in their capacity as Shareholders, those persons are not subject to the provisions of sections 73 to 78 relating to the duties, obligations, liabilities and indemnification of Directors.

26 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

- 26.1 The record date for the purpose of determining which Shareholders are entitled to –
- 26.1.1 receive notice of a Shareholders' meeting;
- 26.1.2 participate in and vote at a Shareholders' meeting;
- 26.1.3 decide any matter by written consent or by Electronic Communication;

26.1.4 receive a Distribution; or

26.1.5 be allotted or exercise other rights,

shall be determined by the Board.

26.2 Save in respect of the record date applicable to Preference Shareholders, if, at any time, the Board fails to determine a record date for any action or event, the record date shall be –

26.2.1 in the case of a meeting, the latest date by which the Company is required to give Shareholders notice of that meeting; or

26.2.2 in any other case, the date of the relevant action or event.

27 SHAREHOLDERS' MEETINGS

27.1 Calling of Shareholders' Meetings

27.1.1 Each of the Board members or any prescribed officer of the Company authorised by the Board are entitled to call a Shareholders' meeting at any time.

27.1.2 Subject to clause 25 and to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –

27.1.2.1.1 at any time that the Board is required by the Act or this MOI to refer a matter to Shareholders for decision;

27.1.2.1.2 whenever required in terms of the Act to fill a vacancy on the Board; or

27.1.2.1.3 when required in terms of clause 27.1.3 or by any other provision of this MOI.

27.1.3 The Board shall call a meeting of Shareholders if 1 or more written and signed demands calling for such a meeting are delivered to the Company and –

27.1.3.1.1 each such demand describes the specific purpose for which the meeting is proposed; and

27.1.3.1.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

- 27.1.4 Should the Board fail to call a meeting of the Shareholders in accordance with clause 27.1.3 within a period of 20 business days of receiving demand therefor, then any of the Shareholders who made demand therefor, shall be entitled, within a further period of 20 business days from the elapse of such period, acting on behalf of the Company and on notice to the Shareholders in accordance with this MOI, to call such meeting.
- 27.1.5 The Board shall be entitled, after notice of a meeting has been dispatched, at any time up to 7 business days prior to the date of such meeting, and on notice to all of the Shareholders to which notice of such meeting was given –
- 27.1.5.1 to withdraw the notice and cancel the proposed meeting (or withdraw or any proposed resolution of which notice was given), provided that, where the meeting (or any proposed resolution to be voted on at such meeting) was called pursuant to a demand in terms of clause 27.1.3, then the meeting (or the relevant resolution(s)) may only be withdrawn or cancelled (as applicable) with the consent of the Shareholders that demanded that meeting or resolution; and/or
- 27.1.5.2 subject to section 59, to postpone the meeting until a later date, which later date shall not be more than 60 business days after the date of the original meeting date.
- 27.2 Annual general meetings**
- 27.2.1 To the extent that the Company is required to appoint an Auditor, the Company shall convene an annual general meeting of its Shareholders for such purpose.
- 27.2.2 Any such annual general meeting –
- 27.2.2.1.1 shall be capable of being held by Electronic Communication in accordance with the further provisions of this MOI; and
- 27.2.2.1.2 shall not be capable of being held in accordance with the provisions of section 60, as envisaged in clause 32.
- 27.2.3 Each annual general meeting of the Company contemplated in clause 27.2.1 shall provide for at least the appointment of an Auditor for the following Financial Year, to the extent that the annual financial statements of the Company are required to be audited in terms of the Act or by clauses 48.3 and/or 48.4.
- 27.2.4 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act.

27.3 Location and notice of meeting

- 27.3.1 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in South Africa or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this MOI.
- 27.3.2 The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Shareholders who are Shareholders on the relevant record date for the meeting at least 10 business days before the meeting is to begin.
- 27.3.3 The Company shall deliver notices of meetings to each Shareholder entitled to vote at such meeting.

27.4 Quorum and adjournment of meetings

- 27.4.1 The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 Shareholders entitled to attend and vote and be Present at the meeting, provided that, if there is a Sponsor Shareholder, then at least 1 of such Shareholders be the Sponsor Shareholder. In addition –
- 27.4.1.1 a Shareholders' meeting may not begin until sufficient persons are Present at the meeting to exercise, in aggregate, at least 25% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 27.4.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are Present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.
- 27.4.2 The time periods allowed in section 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 hour after the appointed time for a meeting to begin, the requirements of clause 27.4.1 –
- 27.4.2.1.1 for that meeting to begin have not been satisfied, the meeting is postponed, without any motion, vote or further notice, for 1 week; or
- 27.4.2.1.2 for consideration of a particular matter to begin have not been satisfied –
- 27.4.2.1.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

- 27.4.2.1.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned, without any motion or vote, for 1 week,
- provided that the person intended to chair a meeting that cannot begin due to the operation of clause 27.4.1 may extend the 1 hour limit allowed in this clause 27.4.2 for a reasonable period on the grounds that –
- 27.4.2.1.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be Present at the meeting; or
- 27.4.2.1.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 27.4.1.
- 27.4.3 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders, or an immaterial defect in the manner or form of giving notice of any such meeting, shall not invalidate any resolution passed at any such meeting.
- 27.4.4 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 27.4.2 unless the location for the meeting is different from –
- 27.4.4.1 the location of the postponed or adjourned meeting; or
- 27.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 27.4.5 If at the time appointed in terms of clause 27.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 27.4.2 have not been satisfied, the Shareholders Present at the meeting will be deemed to constitute a quorum, provided that, if there is a Sponsor Shareholder, that Sponsor Shareholder is Present at the meeting.
- 27.4.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be Present at the meeting to hear any matter that must be considered at the meeting.
- 27.4.7 The chairperson of a meeting may with the consent of a meeting at which a quorum is Present (and must if the meeting resolves thus) adjourn the meeting from time to time and from place to place, but an adjourned meeting may only deal with matters which could legally be dealt with at the meeting on which the adjournment took place.

27.4.8 As set out in section 64(12), the maximum period allowable for an adjournment of a Shareholders' meeting is the earlier of –

27.4.8.1 the date that is 120 business days after the record date determined in accordance with clause 26; and

27.4.8.2 the date that is 60 business days after the date on which the adjournment occurred.

27.5 **Conduct of meetings**

27.5.1 The chairperson, if any, of the Board shall preside as chairperson at every Shareholders' meeting.

27.5.2 If there is no such chairperson, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders Present shall choose one of their number to be chairperson of the meeting.

27.5.3 The chairperson of a Shareholders' meeting may –

27.5.3.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting; and

27.5.3.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

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

27.5.4.1 it is brought to the attention of the chairperson at the meeting; and

27.5.4.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

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

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

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

27.5.6 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Shareholders, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

27.5.7 Even if he is not a Shareholder –

27.5.7.1 any Director; or

27.5.7.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof),

may attend and speak at any general meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

28 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

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

28.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or

28.1.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

28.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

29 VOTES OF SHAREHOLDERS

29.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this MOI, at a meeting of the Shareholders –

29.1.1 every person Present and entitled to exercise voting rights shall be entitled to 1 vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and

29.1.2 on a poll any person who is Present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Shares held by that Shareholder.

29.2 All voting shall in respect of any matter to be voted on at a meeting of Shareholders be conducted by means of a polled vote, unless the Shareholders Present at such meeting decide otherwise by means of a polled motion.

29.3 A poll 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 meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.

29.4 In the case of an equality of votes the chairperson of the meeting shall not be entitled to a second or casting vote.

29.5 Where there are joint registered holders of any Share, any 1 of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he were solely entitled thereto. If more than 1 of such joint holders is Present at any meeting, personally or by proxy, the person so Present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.

29.6 The board of any company or the controlling body of any other juristic person that holds any Shares may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –

29.6.1 the person so authorised may exercise the same powers of the authorising company, juristic person as it could have exercised if it were an individual holder of Shares; and

29.6.2 the authorising company or juristic person shall deliver a resolution of the directors of such company or controlling body of such other juristic person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

30 PROXIES AND REPRESENTATIVES

30.1 Any Shareholder may at any time appoint any natural person, including a natural person who is not a Shareholder, as a proxy to –

30.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or

30.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60,

provided that a Shareholder may appoint more than 1 proxy to exercise voting rights attached to different Securities held by the Shareholder.

30.2 A proxy appointment –

30.2.1 must be in writing, dated and signed by the Shareholder; and

30.2.2 remains valid for –

30.2.2.1 1 year after the date on which it was signed; or

30.2.2.2 any longer or shorter period expressly set out in the appointment,

unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.

- 30.3 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Shareholders and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting. A Shareholder so represented at a meeting of the Shareholders shall be deemed for purposes of this MOI to be a Shareholder who is Present at the meeting.
- 30.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –
- 30.4.1 a Shareholder has the right to appoint 2 or more persons concurrently as proxies as set out in section 58(3)(a) ("**Concurrent Proxies**"), provided that the instrument appointing such Concurrent Proxies clearly states the order in which the votes of the Concurrent Proxies are to take precedence in the event that both or all of the Concurrent Proxies are Present, and vote, at the meeting concerned;
- 30.4.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);
- 30.4.3 a Shareholder or his proxy must deliver to the Company or its nominee a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights, provided that within 48 hours before the commencement of such meeting up until the time of commencement of such meeting such instrument shall be delivered to the chairperson of the meeting; and
- 30.4.4 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7),
- and none of such rights or powers are limited, restricted or varied by this MOI.

- 30.5 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We _____ being a shareholder of **Petmin Holdings Proprietary Limited** do hereby appoint _____ or failing him/her _____ or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the shareholders to be held at _____ on _____ and at any postponement or adjournment thereof as follows:

	<u>In favour of</u>	<u>Against</u>	<u>Abstain</u>
Special Resolution 1
Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she deems fit.

SIGNED this ____ day of _____ in the year of _____.

SHAREHOLDER'S SIGNATURE

SUMMARY OF RIGHTS CONTAINED IN SECTION 58 OF THE COMPANIES ACT

In terms of section 58 of the Companies Act:

- **a shareholder of a company may, at any time and in accordance with the provisions of section 58 of the Companies Act, appoint any individual (including an individual who is not a Shareholder) as a proxy to participate in, and speak and vote at, a shareholders' meeting on behalf of such shareholder;**
- **a proxy may delegate her or his authority to act on behalf of a shareholder to another person, subject to any restriction set out in the instrument appointing such proxy;**
- **irrespective of the form of instrument used to appoint a proxy, the appointment of a proxy is suspended at any time and to the extent that the relevant shareholder chooses to act directly and in person in the exercise of any of such shareholder's rights as a shareholder;**
- **any appointment by a shareholder of a proxy is revocable, unless the form of instrument used to appoint such proxy states otherwise;**
- **if an appointment of a proxy is revocable, a shareholder may revoke the proxy appointment by (i) cancelling it in writing, or making a later inconsistent appointment of a proxy and (ii) delivering a copy of the revocation instrument to the proxy and to the relevant company;**
- **a proxy appointed by a shareholder is entitled to exercise, or abstain from exercising, any voting right of such shareholder without direction, except to the extent that the relevant company's memorandum of incorporation, or the instrument appointing the proxy, provides otherwise; and**
- **if the instrument appointing a proxy or proxies has been delivered by a shareholder to a company, then, for so long as that appointment remains in effect, any notice that is required in terms of the Companies Act or such company's MOI to be delivered to a shareholder must be delivered by such company to –**

- *the relevant shareholder; or*
- *the proxy or proxies, if the relevant shareholder has: (i) directed such company to do so, in writing and (ii) paid any reasonable fee charged by such company for doing so."*

30.6 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy was 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 meeting or adjourned meeting at which the proxy is used.

31 SHAREHOLDERS' RESOLUTIONS

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

31.2 For a Special Resolution to be approved it must be supported by –

31.2.1 in the case of a Minority Protection Matter, 75% of the voting rights exercised on the resolution; and

31.2.2 in every other case, more than 60% of the voting rights exercised on the resolution.

31.3 No matters, except –

31.3.1 those matters set out in section 65(11); or

31.3.2 any other matter required by the Act or by this MOI to be resolved by means of a Special Resolution,

require a Special Resolution of the Company.

31.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

32 **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 32.1 In accordance with the provisions of section 60, but subject to clause 33.3.1, a resolution that could be voted on at a Shareholders' meeting may instead be –
- 32.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 32.1.2 voted on in writing by such Shareholders within a period of 20 business days after the resolution was submitted to them.
- 32.2 A resolution contemplated in clause 32.1 –
- 32.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Shareholders' meeting. For the avoidance of doubt, this shall require that, to extent that there is a Sponsor Shareholder, the Sponsor Shareholder exercises their vote on the matter; and
- 32.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 32.3 Within 10 business days after adopting a resolution, the Company shall deliver a statement describing the results of the vote to every Shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

PART 6: DIRECTORS

33 **COMPOSITION OF THE BOARD OF DIRECTORS**

33.1 **Number of Directors**

- 33.1.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an independent board, an audit committee (if applicable) or a social and ethics committee, the Board must comprise at least 3 Directors and not more than 10 Directors.
- 33.1.2 If the number of Directors falls below 3, the remaining Directors must as soon as possible and in any event not later than 3 months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 33.6 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors while their number is below the minimum number fixed in accordance with this MOI.

33.1.3 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 month period contemplated in clause 33.1.2, their number remains below 3 Directors, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

33.2 Appointment of Directors

33.2.1 The Sponsor Shareholder shall be entitled, on written notice to the Company, to appoint up to 5 persons to act as Directors, provided that at least 50% of the Directors on the Board from time to time shall have been elected by the Shareholders in accordance with clause 33.3.

33.2.2 The Sponsor Shareholder shall be entitled, on written notice to the Company, to remove and replace those Directors which it appointed to the Board. In this regard the Sponsor Shareholder shall be responsible for and shall indemnify the Company against any claim by any Director which it removes pursuant to this clause, for wrongful or unfair dismissal or redundancy or other compensation arising out of such removal or loss of office.

33.3 Election of Directors

33.3.1 A maximum of 5 Directors shall be elected by way of an Ordinary Resolution of the Shareholders at a general meeting of Shareholders and no Director may be elected by way of a resolution passed in terms of section 60.

33.3.2 In any election of Directors –

33.3.2.1 the election is to be conducted as a series of votes, 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 have been filled; and

33.3.2.2 in each vote to fill a vacancy –

33.3.2.2.1 each vote entitled to be exercised may be exercised once; and

33.3.2.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate.

33.4 The Company shall not have *ex officio* Directors as contemplated in section 66(4) (in other words, no person shall automatically become a Director by virtue of the office they occupy).

33.5 Eligibility and Rotation of Directors

- 33.5.1 No person shall be appointed or elected as a Director if such person is, in terms of the Act or in terms of this MOI, ineligible to serve or is disqualified from serving as a Director.
- 33.5.2 Apart from satisfying the qualification and eligibility requirements set out in section 69, unless otherwise agreed to by the Company in writing, a person shall, save for the prior written consent of the Board (against full disclosure by such person of all material facts), be disqualified from becoming or remaining a Director or a prescribed officer of the Company if such person –
- 33.5.2.1 is a director, officer, representative or employee of any person which has any direct or indirect interest in a Competitor, whether as a proprietor, partner, director, shareholder, member of a syndicate or close corporation or advisor (in any way) or otherwise. Provided that, a person shall not be deemed to have an interest in a Competitor only by reason of –
- 33.5.2.1.1 holding directly or indirectly, for investment purposes only, not more than 1% of the shares or other securities of any Competitor which securities are listed on a recognised stock exchange;
- 33.5.2.1.2 an interest which is held by way of a passive investment in a fund on the basis that the fund is managed by a fund manager or an equivalent and the persons in question does not have a discretion over the underlying investments of such fund;
or
- 33.5.2.1.3 that the person in question is a registered pension fund or an institutional investor which is a "*Financial Services Provider*" as defined in the Financial Advisory and Intermediary Services Act, No. 37 of 2002, or a wholly-owned subsidiary thereof;
or
- 33.5.2.2 has any other material conflict of interest in acting as a Director.
- 33.5.3 Each Director shall serve for an indefinite term and accordingly a Director shall only cease to be a Director if –
- 33.5.3.1.1 he becomes disqualified from holding office as such for any reason; or
- 33.5.3.1.2 he is removed pursuant to an Ordinary Resolution in terms of sections 71(1) and (2);
- 33.5.3.1.3 in the case of a Sponsor Shareholder Appointed Director, he is removed by the Sponsor Shareholder in accordance with clause 33.2.2;

- 33.5.3.1.4 in circumstances where the Board comprises 3 or more Directors, she or he is removed (i) pursuant to a resolution by the Board in terms of section 71(3) and (4) or (ii) by a court in terms of section 71(6);
- 33.5.3.1.5 in circumstances where the Board comprises less than 3 Directors, she or he is removed by the Companies Tribunal in terms of section 71(8); or
- 33.5.3.1.6 any of the other circumstances contemplated in section 70(1) arises in respect of such Director.

33.6 **Vacancies**

- 33.6.1 The Board has the power to fill any vacancy on the Board in the number of Directors (i) which the Shareholders are entitled to elect in terms of clause 33.3 or (ii) required to satisfy any requirement in terms of the Act to appoint an independent board, an audit committee (if applicable) or a social and ethics committee on a temporary basis, as set out in section 68(3), provided that such appointment must be confirmed by the Shareholders, in accordance with clause 33.3.1, at the next annual general meeting of the Company, as required in terms of section 70(3)(b)(i).
- 33.6.2 The Board shall not have the power to fill a vacancy on the Board in the number of Sponsor Shareholder Appointed Directors.

34 **ALTERNATE DIRECTORS**

- 34.1 Each Director may appoint either another Director or any person approved for that purpose by a resolution of the Directors to act as alternate Director in his place and during his absence and may at his discretion remove such alternate Director, provided that at least 50% of all alternate Directors shall be elected by the Shareholders *mutatis mutandis* in accordance with clause 33.3.
- 34.2 Any alternate Director shall, except with regard to the power to appoint an alternate, and remuneration, be subject in all respects to the terms and conditions existing with reference to the other Directors, and each alternate Director, whilst so acting, shall be entitled to receive notices of all meetings of the Directors or of any committee of the Directors of which his appointer is a member, and to attend and vote at any such meeting at which his appointer is a member, and to attend and vote at any such meeting at which his appointer is not personally Present and he shall generally be entitled to exercise and discharge all the functions, powers and duties of his appointer in such appointer's absence as if he were a Director.
- 34.3 Any Director acting as alternate shall (in addition to his own vote) have a vote for each Director for whom he acts as alternate.

- 34.4 An alternate Director shall *ipso facto* cease to be an alternate Director if his appointer ceases for any reason to be a Director, provided that if any Director retires by rotation or otherwise but is re-elected at the same meeting, any appointment made by him pursuant to this clause which was in force immediately before his retirement shall remain in force as though he had not retired.
- 34.5 Any appointment or removal of an alternate Director shall be effected by notice in writing delivered at the Company's registered office and signed by the appointer or remover, as the case may be.
- 34.6 The remuneration of an alternate Director shall be payable only out of the remuneration payable to the Director appointing him and he shall have no claim against the Company for his remuneration.

35 POWERS OF THE BOARD OF DIRECTORS

- 35.1 Subject to clause 44 and the remaining provisions of this MOI, the Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1).
- 35.2 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MOI) and for such period and subject to such conditions as the Directors may from time to time deem fit. Any such appointment may, if the Directors deem fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors deem fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 35.3 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

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

36 **BORROWING POWERS**

Subject to clause 44, the Directors may from time to time, exercise all of the powers of the Company to –

- 36.1 borrow for the purposes of the Company such sums as they deem fit; and
- 36.2 secure the payment or repayment of any such sums, or any other sum, as they deem fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company.

37 **DIRECTORS' INTERESTS**

- 37.1 A Director may hold any other office or place of profit under the Company (except that of Auditor) or any Subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 37.2 A Director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.
- 37.3 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a Related person to them) have a personal financial interest in any matter to be considered by the Board.

38 SINGLE DIRECTOR'S AUTHORITY TO ACT

If at any time the Company has only 1 (one) Director, as contemplated in section 57(3), that Director may, subject to any restrictions or limitations imposed in terms of section 66(1), exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities, and the provisions of sections 71(3) to (7), 73 and 74 shall not apply in respect of the governance of the Company.

39 DIRECTORS' MEETINGS

- 39.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 39.2 For so long as there is a Sponsor Shareholder, the Sponsor Shareholder shall be entitled to appoint and remove the chairperson. If there is no Sponsor Shareholder, then the Directors may elect a chairperson and determine the period for which he is to hold office.
- 39.3 The chairperson shall be entitled to preside over all meetings of Directors. If no chairperson is elected, or if at any meeting the chairperson is not Present or willing to act as chairperson thereof within 10 minutes of the time appointed for holding the meeting, then: if there is a Sponsor Shareholder, the Sponsor Shareholder shall choose 1 of their number to be chairperson of such meeting; or, if there is no Sponsor Shareholder, the Directors Present shall choose 1 of their number to be chairperson of such meeting.
- 39.4 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 39.5 The Board has the power to –
- 39.5.1 consider any matter and/or adopt any resolution other than at a meeting as contemplated in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that –
- 39.5.1.1 each Director has received notice of the matter to be decided and that the Sponsor Shareholder Appointed Directors have cast their vote in respect of such resolution; and

- 39.5.1.2 each Director has 1 vote, provided that those Sponsor Shareholder Appointed Directors voting on the matter shall have such number of votes as is equal to the aggregate number of votes held by the Directors elected in terms of clause 33.3 and appointed in terms of clause 33.6 (if any) (regardless of whether they vote on the matter in question), divided by the number of Sponsor Shareholder Appointed Directors voting on the matter;
- 39.5.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 39.5.3 determine the manner and form of providing notice of its meetings as set out in section 73(4), provided that –
- 39.5.3.1 the notice period for the convening of any meeting of the Board will be at least 7 days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any 2 Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors; and
- 39.5.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 39.5.3.1;
- 39.5.4 cancel any meeting of which notice has been given upon no less than 2 business days' written notice to all the Directors; and/or
- 39.5.5 proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5),
- and the powers of the Board in respect of the above matters are not limited or restricted by this MOI.
- 39.6 Any resolution adopted in terms of clause 39.5.1 or 39.5.2 and inserted in the minute book shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution).

- 39.7 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as follows –
- 39.7.1 if all of the Directors of the Company –
- 39.7.1.1 acknowledge actual receipt of the notice convening a meeting;
- 39.7.1.2 are Present at a meeting; or
- 39.7.1.3 waive notice of a meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 39.7.2 a majority of the Directors must be Present at a meeting before a vote may be called at any meeting of the Directors, provided that at least one Sponsor Shareholder Appointed Director is Present at the Meeting;
- 39.7.3 each Director has 1 vote on a matter before the Board, provided that those Sponsor Shareholder Appointed Directors Present and voting on the matter shall have such number of votes as is equal to the aggregate number of votes held by the Directors elected in terms of clause 33.3 and appointed in terms of clause 33.6 (if any) (regardless of whether they are Present and voting on the matter in question), divided by the number of Sponsor Shareholder Appointed Directors Present and voting on the matter. For the avoidance of doubt, it is recorded that the Sponsor Shareholder Appointed Directors Present and voting at a meeting shall collectively have the same number of votes as all other Directors Present and voting on such matter;
- 39.7.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution; and
- 39.7.5 in the case of a tied vote, the chairperson shall not have a second or casting vote in addition to any deliberative vote.
- 39.8 The Directors shall keep minutes of every meeting of the Board and any of its committees, and include in the minutes –
- 39.8.1 any declaration given by notice or made by a Director as required by section 75; and
- 39.8.2 every resolution adopted by the Board.

- 39.9 Resolutions adopted by the Board –
- 39.9.1 must be dated and sequentially numbered; and
- 39.9.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 39.10 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

40 EXECUTIVE DIRECTORS

- 40.1 The Board may from time to time appoint 1 or more persons to the office of executive Director for such term and at such remuneration as they may deem fit (subject only to the requirements of section 66(8) and (9)), and may revoke such appointment subject to the terms of any agreement entered into in any particular case.
- 40.2 Should an executive Director's employment with the Company be suspended for any reason whatsoever, such executive Director shall, for so long as his employment is suspended, *ipso facto* be suspended from holding office as a Director.
- 40.3 An executive Director shall *ipso facto* cease to hold office as a Director should such executive Director cease to be employed by the Company for any reason whatsoever.
- 40.4 Subject to the provisions of any contract between himself and the Company and clause 40.3, an executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 40.5 The Directors may from time to time entrust to and confer upon an executive Director for the time being such of the powers exercisable in terms of this MOI by the Directors as they may deem fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they deem expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 40.6 For the avoidance of doubt, an executive Director is not limited to persons only employed by the Company, but shall include any person who is appointed as a Director by virtue of their employment with any Member of the Group.

41 DIRECTORS' COMPENSATION

41.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a Special Resolution approved by the Shareholders within the previous 2 years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this MOI.

41.2 Any Director who –

41.2.1 serves on any executive or other committee; or

41.2.2 devotes special attention to the business of the Company; or

41.2.3 goes or resides outside South Africa for the purpose of the Company; or

41.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.

41.3 The Directors may also be paid all their travelling and other expenses properly and necessarily incurred by them in connection with –

41.3.1 the business of the Company; and

41.3.2 attending meetings of the Directors or of committees of the Directors of the Company.

42 COMMITTEES OF THE BOARD

The Board may –

42.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or

42.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a); and

shall, unless exempted from doing so by the Tribunal in terms of section 72(5), appoint such committees as it is required by the Act to appoint.

43 INDEMNIFICATION OF DIRECTORS

43.1 The Company may –

43.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

43.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or

43.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this MOI.

43.2 The provisions of clause 43.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board.

44 MINORITY PROTECTION MATTERS

Notwithstanding anything to the contrary contained in this MOI, the Company shall not engage in, agree to, perform or undertake any Minority Protection Matter, unless approved by an Ordinary Resolution or Special Resolution, as the case may be as set out in the Minority Protection Matters, and the powers of the Board shall be limited accordingly.

PART 7: FINANCIAL MATTERS

45 FINANCIAL ASSISTANCE

45.1 The Board may authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a Related or Inter-related company, or for the purchase of any such Securities, as set out in section 44, and the authority of the Board in this regard is limited and restricted by this MOI.

45.2 Subject to clause 44, the Board may authorise the Company to provide direct or indirect financial assistance to a Director or prescribed officer of the Company or to a director or prescribed officer of a Related or Inter-related company (as defined in the Act), or to a Related or Inter-related company or corporation, or to a member of a Related or Inter-related corporation, or to a person Related to any such company, corporation, director, prescribed officer or member, as set out in section 45, and the authority of the Board in this regard is limited and restricted by this MOI.

46 FINANCING OF THE COMPANY

46.1 General

46.1.1 The Board shall, from time to time, determine the amount of any funding required by the Company, time or times when such funding shall be required and the manner in which and the terms on which such funding shall be obtained, including, *inter alia*, by way of loans or by way of subscriptions for Shares .

46.1.2 The Parties record that no Shareholder will be required or obliged to issue any guarantee, suretyship or indemnity to third parties for the obligations of the Company pursuant to obtaining funding from external resources.

46.2 Urgent funding

46.2.1 If the Board determines that the Company requires urgent funding ("**Urgent Funding**"), which funding is required within 10 business days of such determination, any of the Shareholders ("**Urgent Funding Shareholders**") shall be entitled to provide such Urgent Funding to the Company ("**Urgent Funding Shareholder Loans**"). In this regard, the Board shall not have an obligation to notify all of the Shareholders of (or otherwise invite all of the Shareholders to provide) the Urgent Funding Shareholder Loans.

46.2.2 The Urgent Funding Shareholder Loans shall –

46.2.2.1 bear interest at a such rate as may be agreed to by the Board with the Urgent Funding Shareholders, calculated from the date upon which such is advanced by the Urgent Funding Shareholder to the Company until the date of payment thereof (both days inclusive);

46.2.2.2 save for the initial repayment in clause 46.2.3, be repayable to Urgent Funding Shareholders simultaneously and proportionately and in accordance with clause 46.3;

46.2.2.3 be subordinated in accordance with clause 46.3;

46.2.2.4 become immediately repayable in the event that the Company becomes subject to an Insolvency Event; and

46.2.2.5 be subject to such other terms and conditions that the Board may agree to in writing with the Urgent Funding Shareholders.

- 46.2.3 Within 30 business days (or such later date as the Board may reasonably determine) of the Board receiving the Urgent Funding, the Board shall dispatch a notice to each of the Shareholders (other than the Urgent Funding Shareholders) (the "**Previously Non-Funding Shareholders**") inviting them to contribute that portion of the Urgent Funding as is *pro rata* to their Aggregate Shareholding. Each Previously Non-Funding Shareholder shall have a period of 15 business days after the date of the Company sending the notice within which to contribute its *pro rata* portion of the Urgent Funding. To the extent that the Company receives any funding from the Previously Non-Funding Shareholders, those funds shall be used by the Company to repay the Urgent Funding Shareholder Loans of the Urgent Funding Shareholders, in proportion to the amounts owed by the Company to each Urgent Funding Shareholder by way of Urgent Funding Shareholder Loans.
- 46.2.4 If the Board does not repay the Urgent Funding Shareholder Loans within 6 months of the date upon which those Urgent Funding Shareholder Loans were advanced, the Urgent Funding Shareholders (including those Shareholders which contribute pursuant to clause 46.2.3), shall be entitled, by joint signed written notice of all of the Urgent Funding Shareholders to the Company ("**Urgent Funding Notice**"), to oblige the Company to settle each of the Urgent Funding Shareholder Loans through the issue of Shares, which Shares shall, for the purposes of calculating the number of Shares to be issued to each Urgent Funding Shareholder, be valued at their Fair Market Value less 20% ("**Urgent Funding Shares**").
- 46.2.5 The Company shall, within 15 business days after the receipt of the Urgent Funding Notice, issue the Urgent Funding Shares to the Urgent Funding Shareholders in terms of clause 46.2.4, subject to each of such Urgent Funding Shareholders entering into of a subscription agreement, the terms of which shall be that –
- 46.2.5.1 such subscription shall be subject to the Company and the Urgent Funding Shareholders obtaining all South African regulatory approvals which may be required for the issue of the Urgent Funding Shares to the Urgent Funding Shareholders ("**Regulatory Approvals**"). The Company undertakes to do all things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to expediting any regulatory approval process. For the avoidance of doubt, the Company shall bear all filing and/or similar costs associated with obtaining the Regulatory Approvals;

- 46.2.5.2 the Company shall, within 10 business days of the later of the signature date of such agreements and, where Regulatory Approvals are required, the date upon which any such Regulatory Approvals are obtained (either without conditions, or on conditions which are acceptable to the Company and to those parties which they affect, acting reasonably), deliver to the Urgent Funding Shareholders –
- 46.2.5.2.1 the relevant share certificates in respect of the Urgent Funding Shares; and
- 46.2.5.2.2 a resolution of the Board approving the issue of the Urgent Funding Shares to the Urgent Funding Shareholders; and
- 46.2.5.3 against delivery by the Company in terms of clause 46.2.5.2, the Urgent Funding Shareholders' respective obligations to make payment to the Company of the subscription price for the Urgent Funding Shares shall be discharged by way of set-off against the Company's obligation to make repayment to each of the Urgent Funding Shareholders of the Urgent Funding Shareholder Loans owed to them (inclusive of accrued and unpaid interest).
- 46.2.6 If any Regulatory Approvals are required in terms of clause 46.2.5.1 and any of such Regulatory Approvals cannot be obtained, or cannot be obtained without conditions or with conditions which are acceptable to the Company and the parties they affect, then –
- 46.2.6.1 to the extent that some of the Urgent Funding Shares can be issued to the Urgent Funding Shareholders (whether to all or some of them) without Regulatory Approvals or in terms of Regulatory Approvals which were obtained without conditions or on conditions which are acceptable, then those Urgent Funding Shares shall be issued by the Company, and the relevant Urgent Funding Shareholders' Urgent Funding Shareholder Loans shall be settled to the extent of the Urgent Funding Shares issued in accordance with this clause 46.2; and
- 46.2.6.2 in respect of the remaining Urgent Funding Shareholder Loans (which may be all of them if no Urgent Funding Shares can be issued due to an absence of Regulatory Approvals), they shall remain in place until such time as they have been repaid in accordance with clause 46.2.2.
- 46.2.7 The Company hereby undertakes, at its own cost and expense, to sign all such documents required to be signed by it and to do all such things as may be reasonably required to give effect to the intention of this clause 46.2 and to the extent required to ensure that each of the Urgent Funding Shareholders is able to exercise its rights in terms hereof.

- 46.2.8 Each of the Shareholders hereby –
- 46.2.8.1 consents to any dilution of its shareholding pursuant to this clause 46.2;
- 46.2.8.2 consents to the issue of the Urgent Funding Shares by the Company to the Urgent Funding Shareholders; and
- 46.2.8.3 acknowledges that any such dilution pursuant to this clause 46.2 will not constitute unjust, inequitable or oppressive conduct on the part of the Urgent Funding Shareholders or by the Company.

46.3 **Repayment waterfall**

The following waterfall shall apply in relation to payments made by the Company to the Shareholders (each item on the below list being settled, paid or repaid (as appropriate) before such time as proceeding to the subsequent item on the list) –

- 46.3.1 the repayment of interest on all Urgent Shareholder Loan Funding;
- 46.3.2 the repayment of capital in respect of all Urgent Shareholder Loan Funding;
- 46.3.3 the repayment of interest on all *bona fide*, arm's-length, market related funding facility granted by a Shareholder to the Company from time to time;
- 46.3.4 the repayment of capital on all any *bona fide*, arm's-length, market related funding facility granted by a Shareholder to the Company from time to time;
- 46.3.5 the repayment of interest in respect of all Claims;
- 46.3.6 the repayment of capital in respect of all Claims;
- 46.3.7 the payment of all A Preference Share Dividends (as defined in the Preference Share Terms);
- 46.3.8 the redemption of and/or, to the extent applicable, the return of capital in respect of all A Preference Shares;
- 46.3.9 the payment of all Preference Share Dividends (as defined in the Preference Share Terms);
- 46.3.10 the redemption of all Preference Shares;
- 46.3.11 the payment of all B Preference Share Dividends (as defined in the Preference Share Terms); and

- 46.3.12 the declaration of any Distributions to the Shareholders (excluding Distributions in terms of (a)(iii) and (iv), and (b) and (c) of the definition of Distribution in the Act, which shall not be subordinated and/or otherwise subject to this clause).

47 DISTRIBUTIONS

- 47.1 Subject to the provisions of the Preference Share Terms, the A Preference Share Terms, the B Preference Share Terms, the provisions of the Act (particularly section 46) and clause 46.3 –

- 47.1.1 the Company may make a proposed Distribution if such Distribution –

- 47.1.1.1 is pursuant to an existing legal obligation of the Company, or a Court order; or

- 47.1.1.2 is authorised by resolution of the Board,

provided that if such Distribution is a repayment of capital, the Company shall not be entitled to make such Distribution on the basis that it may be called up again.

- 47.2 No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such Distribution is payable.

- 47.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.

- 47.4 The Directors may from time to time declare and pay to the Shareholders such interim Distributions as the Directors consider appropriate.

- 47.5 All unclaimed Distributions (other than monetary Distributions) may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that Distributions unclaimed for a period of 3 years (or such longer period as the law may prescribe for the prescription of a claim) from the date on which they were declared may be declared forfeited by the Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they deem fit. All unclaimed monies due to any Shareholder/s shall be held by the Company in trust until lawfully claimed by such Shareholder/s, provided that such unclaimed monies shall be subject to the laws of prescription.

- 47.6 Any Distribution, interest or other sum payable in cash to a Shareholder may be paid by cheque or warrant sent by post and addressed to –

- 47.6.1 the Shareholder at his address set out in the Securities Register; or

- 47.6.2 such person and at such address as the Shareholder may in writing direct.

- 47.7 Every such cheque or warrant shall –
- 47.7.1 be made payable to the order of the person to whom it is addressed; and
- 47.7.2 be sent at the risk of the Shareholder.
- 47.8 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.
- 47.9 A Shareholder or any one or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any Distributions or other moneys paid in respect of a Share held by such Shareholder or joint Shareholders.
- 47.10 When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 47.11 A Distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 47.12 Without detracting from the ability of the Company to issue capitalisation Shares, any Distribution may be paid wholly or in part –
- 47.12.1 by the Distribution of specific assets; or
- 47.12.2 by the issue of Shares, debentures or Securities of the Company or of any other company; or
- 47.12.3 in cash; or
- 47.12.4 in any other way which the Directors may at the time of declaring the Distribution determine.
- 47.13 Where any difficulty arises in regard to such Distribution, the Directors may settle that difficulty as they deem expedient, and in particular may fix the value which shall be placed on such specific assets on Distribution.
- 47.14 The Directors may –
- 47.14.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of Distribution; and
- 47.14.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the Distribution as the Directors deem expedient.

- 47.15 Any Distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.
- 47.16 The Company may, if authorised by way of Special Resolution of the relevant class of Shares in respect of which the Distribution is to be paid, pay a Distribution to the Shareholders on a disproportionate basis (including that some of the Shareholders of the relevant class do not receive any portion of the Distribution). The provisions of this clause 47.16 shall not apply to the payment of dividends on a class of Shares and dividends shall always be declared and paid on a class of Shares on a proportionate basis.

48 ANNUAL FINANCIAL STATEMENTS

- 48.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
- 48.1.1 the Act;
- 48.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 48.1.3 this MOI.
- 48.2 The Company shall each year prepare annual financial statements within 6 months after the end of its Financial Year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 48.3 In the event that the annual financial statements of the Company –
- 48.3.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and
- 48.3.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 48.4 Notwithstanding clause 48.3, the Board or the Shareholders may, either in respect of a particular financial year of the Company or for any other fixed or indefinite period, resolve that the annual financial statements shall be audited or independently reviewed, as the case may be, in which event such audit or independent review shall be conducted in accordance with the requirements and parameters set out in the relevant resolution.

- 48.5 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 48.4, the annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non–elective provision of the Act and shall satisfy, as to form and content, the financial reporting standards of IFRS and, subject to and in accordance with IFRS –
- 48.5.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 48.5.2 show the Company's assets, liabilities and equity, as well as its income and expenses and any other prescribed information;
- 48.5.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 48.5.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

PART 8: GENERAL

49 ACCESS TO COMPANY RECORDS

- 49.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
- 49.1.1 this MOI, and any amendments or alterations thereof;
- 49.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
- 49.1.3 all –
- 49.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 years after the date of any such meeting; and
- 49.1.3.2 annual financial statements required by the Act for a period of 7 years after the date on which each such particular statements were issued;

- 49.1.4 notice and minutes of all Shareholders' meetings, including –
- 49.1.4.1 all resolutions adopted by them, for 7 years after the date each such resolution was adopted; and
- 49.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
- 49.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 years after the date on which each of such communications was issued; and
- 49.1.6 the Securities Register of the Company.
- 49.2 A person not contemplated in clause 49.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

50 CONFIDENTIALITY

- 50.1 Other than in the circumstances contemplated in this clause, the Shareholders undertake to each other and the Company that they will not at any time use or divulge or communicate to any person other than to professional advisers or to officers or employees of the Company whose province it is to know the same or on the instructions of the Directors any Confidential Information or the confidential information of one another which may come to their knowledge, and they shall use their best commercial endeavours to prevent the publication or disclosure of any confidential information concerning such matters ("**Confidential Information**").
- 50.2 A Shareholder may disclose Confidential Information –
- 50.2.1 with the written consent of the Company and the Sponsor Shareholder (subject to any conditions imposed by those parties in giving such consent);
- 50.2.2 to the extent required by any rules of any stock exchange by which that Shareholder is bound; provided that no such disclosure shall be made unless the Company and the Sponsor Shareholder has received notice thereof, if such notice is legally permitted;
- 50.2.3 to the extent required by law, rule, regulation, subpoena, court order or similar judicial process (other than in terms of a contractual obligation of the Shareholder divulging such Confidential Information); and

- 50.2.4 if any Shareholder Disposes of his Equity to any *bona fide* third party, to that third party provided that such third party signs a confidentiality agreement on terms and conditions acceptable to the Company and the Sponsor Shareholder.
- 50.3 The Shareholders and the Company acknowledge and agree that the Sponsor Shareholder shall be entitled, in respect only of such material and information which is usually disclosed within the private equity transaction environment generally, including (without limitation) broad commentary on the investment, the enterprise value of the Group, a results synopsis and valuation, to disclose such information, notwithstanding that it may be Confidential Information, to any person which has an actual beneficial interest in the Sponsor Shareholder and/or any Capitalworks Entity.
- 50.4 The undertaking and obligations contained in this clause do not apply to information which –
- 50.4.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Shareholder;
- 50.4.2 a Shareholder demonstrates that it was already in its possession prior to its receipt by or disclosure to such Shareholder;
- 50.4.3 is required by law or any regulatory authority to be disclosed; or
- 50.4.4 after being disclosed to the Shareholder in question is disclosed by any other person to such Shareholder otherwise than in breach of any obligation of confidentiality.
- 50.5 The Shareholders shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

51 **AMENDMENT OF THE MOI**

- 51.1 Subject to clause 44, the Preference Share Terms, the A Preference Share Terms and the B Preference Share Terms, this MOI may only be altered or amended by way of a Special Resolution in accordance with section 16(1)(c) or, for purposes of determining the C Share Terms, in terms of section 36(4) of the Act.

- 51.2 An amendment of this MOI will take effect from the later of –
- 51.2.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and
- 51.2.2 the date, if any, set out in the said notice of amendment,
- save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

52 NOTICES

- 52.1 All notices shall be delivered by the Company to each Shareholder, as the case may be, physically, by fax, by email, by registered post, or by any other means authorised in terms of Table CR 3 annexed to the Regulations (and shall be deemed to have been received in accordance with the time periods specified in Table CR 3) provided that, for the purposes of giving notices in terms of the Share Transfer Provisions, if any Shareholder has failed to provide the Company with an email address, the Company may give any notice to the Shareholder required in terms of this MOI by posting such notice on its website, which notice shall be deemed to have been delivered to such Shareholder on the 3rd business day after such notice has been posted to the Company's website.
- 52.2 Each Shareholder of the Company –
- 52.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 52.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication (and by doing so the Shareholder concerned shall be deemed to have confirmed that notices sent to such address can conveniently be printed by that Shareholder within a reasonable time and at a reasonable cost as contemplated in section 6(10)).
- 52.3 Any Shareholder whose address in the Securities Register is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.

- 52.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 52.5 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 52.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 52.7 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this MOI shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this MOI be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

53 WINDING-UP

- 53.1 If the Company is wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows –
- 53.1.1 to repay to the Shareholders the amounts paid up on the Shares respectively held by each of them; and
- 53.1.2 the balance (if any) shall be Distributed among the Shareholders in proportion to the number of Shares respectively held by each of them,
- provided that the provisions of this clause shall be subject to the rights of the Preference Shareholders, the A Preference Shareholders, the B Preference Shareholders and the holders of any other Shares (if any) issued upon special conditions and the B Share Terms.
- 53.2 In a winding-up, any part of the assets of the Company, including any shares or securities of other companies may, with the sanction of a Special Resolution of the Company, be paid to the Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

54 RULES

Subject to clause 44, the Board may make, amend or repeal any rules as contemplated in section 15(3).

55 RESOLUTION OF DISPUTES

- 55.1 Should any dispute arise out of or in connection with this MOI, or related thereto, whether directly or indirectly, the Company, the Shareholders, the Directors and/or the prescribed officers of the Company who are a party to the dispute (as the case may be, the "**Disputing Parties**") shall be obliged to refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of arbitration. The reference to negotiation is a pre-condition to the Disputing Parties having the dispute resolved by arbitration.
- 55.2 A dispute shall arise if the dispute and the particularity thereof, is communicated in writing by one Disputing Party to another.
- 55.3 Within 15 business days of the dispute arising, the Disputing Parties shall seek an amicable resolution to such dispute by referring such dispute to the duly authorised representatives of each of the Disputing Parties for their negotiation and resolution of the dispute. Such representatives shall be authorised, *inter alia*, to resolve the dispute.
- 55.4 In the event of the negotiation envisaged failing for any reason whatsoever (which shall include, among other things, the Disputing Parties failing to resolve the matter, or any part thereof, within the 15 business day period provided, for any reason whatsoever, including a Disputing Party's failure or refusal to participate in such process), the Disputing Parties shall be obliged, within 15 business days of such failure to refer the dispute for resolution by way of arbitration as envisaged below.
- 55.5 The aforementioned prescribed 15 business day period for negotiation may be shortened or lengthened by written agreement between the Disputing Parties.
- 55.6 The Disputing Parties agree that –
- 55.6.1 the arbitration will be held as an "expedited arbitration" in South Africa in accordance with the then current rules for expedited arbitrations of the Arbitration Foundation of Southern Africa ("**AFSA**"); and

- 55.6.2 the arbitrator shall, if the dispute is principally a legal matter, be (i) a practising advocate (of the Johannesburg Bar) and who has been practising as such for at least 15 years; or (ii) a practising attorney who is a director/partner of one of the five largest law firms in South Africa (based on the number of partners/directors), in Johannesburg and with at least 15 years post-qualification experience. If the dispute is principally an accounting matter, the arbitrator shall be a chartered account who is a director/partner of one of the four largest audit firms in South Africa (based on the number of partners/directors), in Johannesburg and with at least 15 years post-qualification experience. If there is any dispute as to whether the matter is principally an accounting matter or principally a legal matter, the matter shall be deemed to be principally a legal matter.
- 55.7 If the Disputing Parties cannot agree on the identity of the arbitrator within a period of 10 business days after any Disputing Party calls for agreement in writing, the arbitrator shall be appointed by the Secretariat of AFSA (subject to such appointee complying with the requirements of clause 55.6.2).
- 55.8 The arbitrator shall, in his sole and reasonable discretion, determine the manner in which the arbitration shall be conducted.
- 55.9 The arbitration shall be held in Sandton, Johannesburg at a venue determined by the arbitrator unless another venue is agreed to by the arbitrator and the Disputing Parties.
- 55.10 The decision of the arbitrator shall, save in the event of manifest error, be final and binding on the Disputing Parties and shall not be subject to any appeals.
- 55.11 The following provisions shall apply if, during any of the arbitral proceedings contemplated above, the dispute between the Parties is settled –
- 55.11.1 the arbitrator shall terminate the substantive proceedings and, if so requested by any of the Parties, shall record the settlement in the form of an agreed award (the "**Award**");
- 55.11.2 the Award shall have the same status and effect as any other award by an arbitrator on the merits of the dispute; and
- 55.11.3 any Party to the dispute shall be entitled to have the Award made an order of any appropriate court.
- 55.12 The provisions of this clause shall not preclude any Party from access to an appropriate court of law for interim or other appropriate relief in respect of urgent matters by way of an interdict, or *mandamus*, for which purpose the Parties irrevocably submit to the jurisdiction of the South Gauteng High Court, Johannesburg.

55.13 This clause is separate and divisible from the rest of this MOI and shall remain in effect even if this MOI terminates, is nullified or cancelled for whatsoever reason or cause.

Annexure A

Minority Protection Matters

In this **Annexure A**, unless inconsistent with or otherwise indicated by the context, all expressions defined in the MOI to which these Minority Protection Matters form **Annexure A**, shall have the same meanings when used in this **Annexure A**.

All Rand amounts reflected in this **Annexure A** shall be increased annually on 1 January of each year following the date on which this Memorandum of Incorporated prior was initially Filed with the Commission being 7 December 2016, in the same ratio as any increase in the South African Consumer Price Index year–on–year (All Items CPI Headline), as published by Statistics South Africa or any replacement thereof.

The following matters constitute the Minority Protection Matters, each of which, other than as expressly stated to the below, require approval by way of Special Resolution of the Shareholders –

Matter	Required Shareholder approval	Relevant Clause of the MOI
Alteration of share capital/authorised shares/amendments to rights attaching to any class of securities (excluding any act of determining the preference, rights, limitations or other terms associated with C Shares)	Special Resolution	6.1.4
<ol style="list-style-type: none"> 1. Issues of Shares other than where such issue is pursuant to clauses 6.2.1.2 or 6.2.1.3 or falls within the exclusions in 2 or 3 below; or 2. Issues of Shares for cash, other than: <ol style="list-style-type: none"> a. as envisaged in 1 above; or b. where the Shares to be issued were first offered to existing Shareholders, <i>pro rata</i> to their Shareholdings (and on such terms and in accordance with such procedures as the Board may determine), unless the existing Shareholders waive their right to receive such offer by way of Special Resolution; or c. where such issue results in a dilution of 0.25% or less to all existing Shareholders, and such Shares are issued at Fair Market Value or at a premium thereto; or 3. Issues of Shares other than for cash, other than <ol style="list-style-type: none"> a. as envisaged in 1 above; or b. where the Shares are not issued at a discount to the Fair Market Value, alternatively they are issued at a discount which does not exceed 10% of Fair Market Value 	Special Resolution	6.2.1

Matter				Required Shareholder approval	Relevant Clause of the MOI
The granting of special privileges to holders of debt instruments as contemplated in section 43(3)				Special Resolution	7
Any acquisition by the Company of its own securities (whether by way of specific or general authority) which is not <i>pro rata</i> , other than a repurchase (i) of B Shares and/or C Shares; and/or (ii) as envisioned in, or pursuant to, the MOI				Special Resolution	9.1
Distributions/specific payments <i>qua</i> Shareholder which are not (i) <i>pro rata</i> to all Shareholders of the same class and/or (ii) as envisioned in, or pursuant to, the MOI				Special Resolution	9.1 and 47.16
Odd lot offers				Special Resolution	9.1
A transaction envisaged below, to the extent that (i) such transaction has not been approved by Shareholders pursuant to another Minority Protection Matter and (ii) the value of such transaction exceeds the relevant threshold percentage of R1,000,000,000 as at the date of implementation of the transaction, escalating annually in accordance with the South African Producer Price Index (" Reference Value ")				Special Resolution	35.1 and 36
Capital raising	Asset disposal (current portfolio)	New business / asset	Debt		
30% of the Reference Value	50% of the Reference Value	30% of the Reference Value	40% of the Reference Value		
A transaction with a Related person other than (i) at arm's length and not in the ordinary course of business or (ii) where the Related person will be part of transaction in which Shareholders of a particular class were generally entitled to participate or (iii) where the transaction is envisioned in, or is pursuant to, the MOI				Ordinary Resolution, excluding the votes of the Related person and its Related and Inter-related persons	35.1 and 45.2
Any adjustment to the Reference Value excluding any annual adjustment in terms of the annual escalation in accordance with the South African Producer Price Index				Special Resolution	51
The directors' power to make, amend or appeal rules as contemplated in section 15(3)				Special Resolution	54
The amendment of any of the provisions set out above				Special Resolution	51

Annexure B**B Share Terms****1 TERMS AND INTERPRETATION**

1.1 In this **Annexure B**, unless inconsistent with or otherwise indicated by the context, all expressions defined in the MOI to which these B Share Terms form **Annexure B**, shall have the same meanings when used in this **Annexure B**.

1.2 In these B Share Terms, unless the context clearly indicates a contrary intention -

1.2.1 "**Exit Event**" means the Disposal by the Sponsor Shareholder of all its Equity with effect from a date which falls in the period from the B Share Issue Date (and including) the 4th anniversary of the B Share Issue Date; and

1.2.2 "**B Share Issue Date**" means, having regard to each B Share separately, the date on which the B Share in question was issued to the B Shareholder. For the avoidance of doubt, it is recorded that each B Share shall, with reference to every other B Share having a different B Share Issue Date, have different rights associated therewith in the first four years subsequent to its B Share Issue Date (as function of paragraphs 2.1 and 2.2).

2 TERMS AND CONDITIONS ATTACHING TO THE B SHARES

Save for the terms and conditions set out in this **Annexure B**, each and every B Share shall rank *pari passu*, in every respect with an Ordinary Share.

2.1 Distributions

2.1.1 The B Shares shall rank *pari passu* with the Ordinary Shares in relation to the right to receive Distributions, save that –

2.1.1.1 any Distribution declared in the period from the B Share Issue Date until (and including) the 1st anniversary of the B Share Issue Date shall be deferred such that the Distribution (net of any applicable taxes paid on declaration) is paid in four equal tranches, the first tranche payable on the first anniversary of the B Share Issue Date, and each subsequent tranche payable on each succeeding anniversary of the B Share Issue Date;

- 2.1.1.2 any Distribution declared in the period from the day following the 1st anniversary of the B Share Issue Date until (and including) the 2nd anniversary of the B Share Issue Date shall be deferred such that the Distribution (net of any applicable taxes paid on declaration) is paid in four equal tranches –
- 2.1.1.2.1 the first tranche payable contemporaneously with the payment of the Distribution to the Ordinary Shareholders; and
- 2.1.1.2.2 the second tranche payable on the second anniversary of the B Share Issue Date, and each subsequent tranche payable on each succeeding anniversary of the B Share Issue Date;
- 2.1.1.3 any Distribution declared in the period from the day following the 2nd anniversary of the B Share Issue Date until (and including) the 3rd anniversary of the B Share Issue Date shall be deferred such that the Distribution (net of any applicable taxes paid on declaration) is paid in three tranches –
- 2.1.1.3.1 the first tranche, equal to 50% of the Distribution, payable contemporaneously with the payment of the Distribution to the Ordinary Shareholders;
- 2.1.1.3.2 the second tranche, equal to 25% of the Distribution, payable on the third anniversary of the B Share Issue Date; and
- 2.1.1.3.3 the third tranche, equal to 25% of the Distribution, payable on the fourth anniversary of the B Share Issue Date; and
- 2.1.1.4 any Distribution declared in the period from the day following the 3rd anniversary of the B Share Issue Date until the 4th anniversary of the B Share Issue Date shall be deferred such that the Distribution (net of any applicable taxes paid on declaration) is paid in two tranches –
- 2.1.1.4.1 the first tranche, equal to 75% of the Distribution, payable contemporaneously with the payment of the Distribution to the Ordinary Shareholders; and
- 2.1.1.4.2 the second tranche, equal to 25% of the Distribution, payable on the fourth anniversary of the B Share Issue Date.
- 2.1.2 Notwithstanding the provisions of paragraph 2.1.1, should an Exit Event occur, the restrictions set out in paragraph 2.1.1 shall cease to apply to any issued B Shares and such B Shares shall rank *pari passu* with the Ordinary Shares in relation to the right to receive Distributions.

2.2 Valuation

Where for the purposes of the acquisition, subscription or Disposal of a B Share the value of a B Share needs to be determined, such value will be determined by determining the fair market value thereof with reference to the fair market value of an Ordinary Share and the Distribution rights that the B Share would be entitled to at the relevant time.

2.3 Liquidation

2.3.1 On liquidation or winding up of the Company, to the extent that any Distribution is to be made in relation to a Distribution in respect of a B Share, if the date of the Distribution is -

2.3.1.1 prior to or on the 1st anniversary of the B Share Issue Date, the B Share shall not be entitled to receive a Distribution;

2.3.1.2 after the 1st anniversary of the B Share Issue Date but prior to or on the 2nd anniversary of the B Share Issue Date, the B Share shall be entitled to receive 25% of the Distribution in respect of each Ordinary Share;

2.3.1.3 after the 2nd anniversary of the B Share Issue Date but prior to or on the 3rd anniversary of the B Share Issue Date, the B Share shall be entitled to receive 50% of the Distribution in respect of each Ordinary Share; and

2.3.1.4 after the 3rd anniversary of the B Share Issue Date but prior to or on the 4th anniversary of the B Share Issue Date, the B Share shall be entitled to receive 75% of the Distribution in respect of each Ordinary Share.

2.3.2 Notwithstanding the provisions of paragraph 2.3.1, should an Exit Event occur, the restrictions set out in paragraph 2.3.1 shall cease to apply to any issued B Shares and such B Shares shall rank *pari passu* with the Ordinary Shares in relation to the right to receive Distributions.

2.4 Fourth anniversary

With effect from the day following the 4th anniversary of the B Share Issue Date of any B Share, that B Share shall rank *pari passu*, in every respect, with an Ordinary Share including in respect of Distributions and the value thereof for the purposes of the Share Transfer Provisions.

2.5 **Relationship Agreement**

No Management Shareholder shall be entered into the Securities Register as a B Shareholder unless such person has bound themselves (in the manner contemplated in such document) to the Relationship Agreement. Despite the contents of this paragraph to the contrary, the Board may, where the Management Shareholder in question will, together with the B Shares to be subscribed and/or purchased by him or it, have an Aggregate Shareholding of 0.25% or less, and on written notice to the Management Shareholder in question, exclude such Management Shareholder from the requirement in this clause that he or it bind himself or itself to the Relationship Agreement.

Annexure C

Preference Share Terms

1 DEFINITIONS

- 1.1 In these terms and conditions, unless inconsistent with or otherwise indicated by the context -
- 1.1.1 **Accumulated Dividends** means, at any time (the **Applicable Time**), the aggregate of any Scheduled Dividends for any Dividend Period which ended on or before the Applicable Time to the extent to which those Scheduled Dividends have not been declared;
- 1.1.2 **Actual Issue Date** means, in respect of any Subject Preference Share, the date on which the Company issues that Subject Preference Share to the Subscribers;
- 1.1.3 **Actual Redemption Date** means, in relation to any Subject Preference Share, the date on which the Company redeems that Subject Preference Share by paying its Redemption Price to the applicable Holder (provided that the Company has declared and paid all the Preference Share Dividends in respect of that Subject Preference Share);
- 1.1.4 **Basic Calculation Formula** means the formula contained in clause 2.4;
- 1.1.5 **Calculation Period** means each calendar month provided that –
- 1.1.5.1 the first Calculation Period in respect of any Outstanding Preference Share shall commence on its Actual Issue Date and end on the last day of the calendar month during which that Actual Issue Date occurs;
- 1.1.5.2 the last Calculation Period in respect of any Outstanding Preference Share shall commence on the first day of the calendar month during which the Actual Redemption Date of that Outstanding Preference Share occurs, and end on that Actual Redemption Date; and
- 1.1.5.3 if a Dividend Payment Date occurs on any day other than the last day of a calendar month –
- 1.1.5.3.1 the period from the first day of that calendar month until the date prior to the Dividend Payment Date shall constitute a Calculation Period; and
- 1.1.5.3.2 the period from the Dividend Payment Date until the last day of that Calendar Month shall constitute a Calculation Period;

- 1.1.6 **Continuing** means, in relation to a Trigger Event or a Potential Trigger Event, that it has occurred and that it has neither been remedied within the time period provided for such remedy in these Preference Share Terms, if any, nor waived by the Majority Holders;
- 1.1.7 **Dividend Payment Date** means, in relation to any Outstanding Preference Share, the date on which any Preference Share Dividend are actually paid by the Company to the applicable Holder;
- 1.1.8 **Dividend Period** means each period which commences on a Dividend Payment Date and ends on the day before the next Dividend Payment Date provided that –
- 1.1.8.1 the first Dividend Period in respect of any Preference Share shall commence on its Actual Issue Date and end on the day before the first Dividend Payment Date; and
- 1.1.8.2 the last Dividend Period in respect of any Preference Share shall (i) commence on the last Dividend Payment Date that occurs before the Actual Redemption Date on which that Preference Share is redeemed, and (ii) end on that Actual Redemption Date;
- 1.1.9 **Dividend Rate** means, subject to adjustment in accordance with these Preference Share Terms, a rate equal to the aggregate of the Prime Rate plus 200 (two hundred) basis points during the applicable Dividend Period;
- 1.1.10 **Dividend Tax Declaration** means, to the extent applicable, the Subscribers' Dividend Tax declarations, required to be delivered under sections 64G and 64H of the Tax Act, confirming that the Subscriber is exempt from Dividend Tax;
- 1.1.11 **Holder** means, in relation to any Subject Preference Share, the person who then holds that Subject Preference Share;
- 1.1.12 **Insolvency Event** means, in relation to any person, any of the following events or circumstances:
- 1.1.12.1 it is dissolved or de-registered;
- 1.1.12.2 an order or declaration is made, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or an order or declaration is made, or a resolution is passed, to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

- 1.1.12.3 it convenes any meeting to consider the passing of a resolution for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;
- 1.1.12.4 it seeks the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or estate;
- 1.1.12.5 it has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- 1.1.12.6 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;
- 1.1.12.7 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
- 1.1.12.8 any receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it, its estate or any material part of its assets or it requests any such appointment;
- 1.1.12.9 it commits any act which, if such act was committed by a natural person, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
- 1.1.12.10 it is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Act);

- 1.1.12.11 it causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction to which it is subject, has an analogous effect to any of the events specified in Clauses 1.1.12.1 to 1.1.12.10; or
- 1.1.12.12 it takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- 1.1.13 **Majority Holders** means such number of Holders who hold Outstanding Preference Shares whose Redemption Prices are equal to at least 60% (sixty percent) of the Redemption Prices of all of the Outstanding Preference Shares;
- 1.1.14 **Outstanding Preference Share** means, on any day, any Subject Preference Share which has not yet been redeemed;
- 1.1.15 **Penalty Dividend Rate** means, on any day, a rate equal to the Dividend Rate on that day plus 200 (two hundred) basis points;
- 1.1.16 **Potential Trigger Event** means the occurrence of any facts and/or circumstances which will become a Trigger Event if those facts and/or circumstances are not remedied -
- 1.1.16.1 within the applicable grace period (if any) stipulated in clause 3 of these Preference Share Terms; or
- 1.1.16.2 after any notice required by clause 3 of these Preference Share Terms has been given and has expired;
- 1.1.17 **Preference Share Dividends** means, in respect of each Subject Preference Share, the applicable Scheduled Dividends which the Company becomes obliged to declare and pay in respect of that Subject Preference Share, and includes any Accumulated Dividends;
- 1.1.18 **Preference Shares** means cumulative redeemable preference shares in the issued share capital of the Company which will, as a result of the determination by the Company Board, confer on their Holders the rights and privileges set out in these Preference Share Terms;
- 1.1.19 **Preference Share Terms** means the rights and privileges (which apply to each Preference Share) set out in this Annexure "C";

- 1.1.20 **Prime Rate** means the publicly quoted basic rate of interest (expressed as a nominal annual compounded monthly in arrears rate) levied by Nedbank Limited from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, *prima facie*, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any employee of Nedbank Limited who is employed in a managerial capacity, whose appointment and authority need not be proved;
- 1.1.21 **Redemption Price** means, in relation to each Subject Preference Share, an amount equal to the Subscription Price;
- 1.1.22 **Scheduled Dividend** means, for each Subject Preference Share and in respect of each Dividend Period, the dividend calculated in accordance with the Basic Calculation Formula;
- 1.1.23 **Scheduled Redemption Date** means the 10th (tenth) anniversary of the Actual Issue Date;
- 1.1.24 **Subject Preference Shares** means such number of Preference Shares as are required to be issued to the Subscribers pursuant to the offer made by the Company to the existing shareholders of Petmin Limited (**Petmin**) to acquire their shares in Petmin (the **Offer**);
- 1.1.25 **Subscribers** means the persons who, in terms of the Offer, have elected to receive, amongst other things, and are allocated certain Preference Shares as consideration for the disposal of their shares in Petmin;
- 1.1.26 **Subscription Price** means, for each Subject Preference Share, an amount equal to R1.599;
- 1.1.27 **STT** means the Securities Transfer Tax, levied in terms of the Securities Transfer Tax Act, 2007;
- 1.1.28 **Trigger Event** means any event listed in clause 3 of these Preference Share Terms; and
- 1.1.29 **Unpaid Dividend** means any Preference Share Dividend which the Company declares but does not pay on the date on which it is declared.

2 DIVIDENDS

Entitlement

- 2.1 Each Holder shall be entitled, in respect of each Outstanding Preference Share held by it, to the Preference Share Dividends calculated in accordance with the provisions of this clause 2.
- 2.2 The Preference Share Dividends shall be declared and paid –
- 2.2.1 after the declaration and/or payment of dividends and/or any other distributions in respect of the A Preference Shares; and
- 2.2.2 in priority to the declaration and/or payment of dividends and/or any other distributions in respect of any other classes of shares (other than the A Preference Shares) in the Company's share capital including, but without limitation, the Ordinary Shares, the B Shares, the C Shares and the B Preference Shares.
- 2.3 The Preference Shares shall, however, rank *pari-passu* with one another in relation to the payment of any dividends and any other distributions.

Scheduled Dividends

- 2.4 For each Dividend Period each Outstanding Preference Share shall be entitled to a Scheduled Dividend equal to the aggregate of the amounts calculated in accordance with the following formula for each Calculation Period that occurs during that Dividend Period -

$$a = b \times c \times d$$

in which formula -

a = the Scheduled Dividend for the applicable Calculation Period;

b = the aggregate of (i) the Subscription Price of that Outstanding Preference Share, plus (ii) the Accumulated Dividends (if any) in respect of that Outstanding Preference Share on the first day of that Calculation Period, plus (iii) any Unpaid Dividends (if any) in respect of that Outstanding Preference Share on the first day of that Calculation Period;

c = the Dividend Rate increased, for so long as a Trigger Event is Continuing, by the Penalty Dividend Rate; and

d = the number of days in the applicable Calculation Period divided by 365 (three hundred and sixty five).

- 2.5 Each Scheduled Dividend shall, for the purposes of calculation, accrue on a daily basis during the applicable Calculation Period; and

Actual Redemption Date

- 2.6 The Company shall, to the extent to which it has not yet done so, declare and/or pay all the Preference Share Dividends in respect of each Preference Share on the Actual Redemption Date of that Preference Share.

3 TRIGGER EVENTS

- 3.1 Each of the events or circumstances set out in this clause 3 is a Trigger Event, whether or not the occurrence of such event is within the Company's control.

Scheduled Redemption

- 3.2 The Company fails to –

- 3.2.1 redeem all the Outstanding Preference Shares on the Scheduled Redemption Date; and/or

- 3.2.2 declare and pay all the Preference Share Dividends in respect of all the Preference Shares by the Scheduled Redemption Date,

and such event is not remedied within 1 (one) Business Day of receipt of written notice from the Majority Holders requiring the Company to remedy such event or procure that such event is remedied.

Insolvency Events

- 3.3 An Insolvency Event occurs in relation to the Company, and such event is not remedied within 1 (one) Business Day of receipt of written notice from the Majority Holders requiring the Company to remedy such event or procure that such event is remedied.

Creditors' process

- 3.4 Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution affects any asset or assets of the Company, and such event is not remedied within 1 (one) Business Day of receipt of written notice from the Majority Holders requiring the Company to remedy such event or procure that such event is remedied.

Cessation of business

- 3.5 The Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business, and such event is not remedied within 1 (one) Business Day of receipt of written notice from the Majority Holders requiring the Company to remedy such event or procure that such event is remedied.

4 REDEMPTION

Scheduled Redemption

- 4.1 The Company shall redeem all the Outstanding Preference Shares on the Scheduled Redemption Date.

Compulsory Redemption

- 4.2 If a Trigger Event occurs -
- 4.2.1 the Majority Holders shall be entitled (but not obliged) to deliver written notice (a **Cure Notice**) to the Company in which the Holders requires the Company to remedy that Trigger Event; and
- 4.2.2 if the Company does not remedy the applicable Trigger Event by 17h00, Johannesburg time, on the fifth Business Day after receipt of the Cure Notice by it, the Company shall redeem all the Outstanding Preference Shares on the next Business Day.

Voluntary Redemption

- 4.3 Subject to clause 4.5 the Company shall be entitled to redeem some or all of the Outstanding Preference Shares voluntarily out of internally generated cash flows in accordance with clauses 4.4 to 4.6.
- 4.4 If the Company elects to redeem all of the Outstanding Preference Shares prior to its Scheduled Redemption Date the Company shall deliver written notice (a **Voluntary Redemption Notice**) to the Holders, and in its Voluntary Redemption Notice, set out -
- 4.4.1 the number of Outstanding Preference Shares (the **Voluntary Redemption Preference Shares**) which the Company intends to redeem; and
- 4.4.2 the date (the **Voluntary Redemption Date**) on which the Company intends to redeem the Voluntary Redemption Preference Shares, the Voluntary Redemption Date to be no sooner than 10 (ten) days after the date on which the Company delivers the applicable Voluntary Redemption Notice to the Holders.

- 4.4.3 Companythe Company shall be entitled to revoke a Voluntary Redemption Notice at any time prior to the Voluntary Redemption Date;
- 4.4.4 the Company shall be entitled, but not obliged, to redeem the applicable Voluntary Redemption Preference Shares on the applicable Voluntary Redemption Date;
- 4.4.5 no Holder shall have any right to compel the Company to redeem the Voluntary Redemption Preference Shares (or any other Outstanding Preference Shares) on the Voluntary Redemption Date (or any other date prior to the Scheduled Redemption Date save as envisaged in clause 4.2.2); and
- 4.4.6 if the Company does not redeem the Voluntary Redemption Preference Shares on the Voluntary Redemption Date, the Company shall not thereafter redeem those Voluntary Redemption Preference Shares without again delivering a Voluntary Redemption Notice to the Holders.
- 2.6 Subject to clause 46.3 of the Memorandum of Incorporation, the Company shall be entitled, but not obliged to redeem the Outstanding Preference Shares prior to the date which occurs 3 (three) years and one day after the Actual Issue Date.

Procedure for Redemption

- 4.5 The Company shall not redeem any Outstanding Preference Share except if it has declared and paid the Preference Share Dividends in respect of that Subject Preference Share in full.
- 4.6 The Company shall redeem each Outstanding Preference Share by paying its Redemption Price to the applicable Holder.

Share Certificates

- 4.7 If any Outstanding Preference Shares are redeemed, the applicable Holder shall, once the Redemption Prices of those Outstanding Preference Shares have been paid, surrender its share certificate in respect of those Outstanding Preference Shares to the Company (or, if such certificate(s) has/have been lost or destroyed, such proof of loss or destruction).
- 4.8 The Company shall, within 5 (five) Business Days of receipt of the applicable share certificates (unless all of the Outstanding Preference Shares held by that Holder have been redeemed) and to the extent necessary, issue a share certificate(s) to that Holder in respect of those Outstanding Preference Shares held by the applicable Holder which were not redeemed.

Costs of Redemption

- 4.9 The Company shall pay all the costs of redeeming the Outstanding Preference Shares including any STT.

5 VOTING

- 5.1 No Subject Preference Share shall have any votes except if -
- 5.1.1 a Trigger Event has occurred and is continuing;
- 5.1.2 circumstances in which the Act prescribes that the applicable Subject Preference Share shall have a vote have occurred and are continuing;
- 5.1.3 the shareholders of the Company propose a resolution which affects the rights and privileges attaching to any Subject Preference Shares or the interests of the Holders, including a resolution for the winding-up, commencement of business rescue proceedings or liquidation of the Company or the reduction of the Company's capital.
- 5.2 If the circumstances envisaged in clause 5.1 occur and are continuing, the Holders shall –
- 5.2.1 be entitled to exercise 1 (one) vote for every Outstanding Preference Share held by that Holder at general meetings of the Company; and
- 5.2.2 be entitled to convene a general meeting of the Company on 1 (one) Business Day's notice.

6 RETURN OF CAPITAL

- 6.1 If the Company is liquidated each Subject Preference Share shall be entitled to a return of capital equal to -
- 6.1.1 its Subscription Price; and
- 6.1.2 the Accumulated Dividends up to the date on which that return of capital is paid to the Holders.
- 6.2 Each Subject Preference Share's right to a return of capital shall rank –
- 6.2.1 after the rights (to returns of capital) of the holders of the A Preference Shares; and
- 6.2.2 in priority to the rights (to returns of capital) of the holders of any other classes of shares in the Company (other than the A Preference Shares) including, without limitation, the Ordinary Shares and B Shares.

- 6.3 Except for the rights conferred on the Subject Preference Shares in terms of clauses 6.1 and 6.2, no Subject Preference Share shall have any right to participate in excess assets in the event of the Company's liquidation.

7 GENERAL

- 7.1 To the extent applicable, each Subscriber shall deliver its Dividend Tax Declaration to the Company before the first Dividend Payment Date.
- 7.2 These Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the Majority Holders.
- 7.3 No shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or *pari passu* with the Subject Preference Shares shall be created or issued without the prior written consent of the Majority Holders.
- 7.4 A certificate delivered by the Holders to the Company, reflecting the amount owing by the Company to the Holders, will be prima facie proof of the amount owing. The appointment of the manager or employee of the Holders shall not be required to be proved.

Annexure D

A Preference Share Terms1 **DEFINITIONS**

- 1.1 In this Annexure, unless inconsistent with or otherwise indicated by the context, all expressions defined in the Memorandum of Incorporation, shall have the same meanings when used in this Annexure.
- 1.2 In addition, in these terms and conditions, unless inconsistent with or otherwise indicated by the context -
- 1.2.1 **A Preference Share** means a cumulative redeemable preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in these A Preference Share Terms;
- 1.2.2 **A Preference Share Terms** means the rights and privileges (which apply to each A Preference Share) set out in this Annexure "D" to the Memorandum of Incorporation;
- 1.2.3 **Accumulated Dividends** means, on any day, the aggregate of any Scheduled Dividends for any Dividend Period which ended on or before that day to the extent to which those Scheduled Dividends have not been declared and paid;
- 1.2.4 **Actual Issue Date** means, in respect of any A Preference Share, the date on which the Company issues that A Preference Share to the applicable Subscriber;
- 1.2.5 **Actual Redemption Date** means, in relation to any A Preference Share, the date on which the Company redeems that A Preference Share by paying its Redemption Price to the applicable Holder (provided that the Company has declared and paid all the A Preference Share Dividends in respect of that A Preference Share);
- 1.2.6 **B Participation Dividends** means a "*Participation Dividends*" as defined in the B Preference Share Terms;
- 1.2.7 **B Preference Share** means a participating preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in the B Preference Share Terms;
- 1.2.8 **B Preference Share Terms** means the rights and privileges (which apply to each B Preference Share) set out in Annexure "E" to the Memorandum of Incorporation;
- 1.2.9 **Basic Calculation Formula** means the formula contained in clause 2.2;
- 1.2.10 **Board** means the Company's board of directors;

- 1.2.11 **Calendar Month** means each month of the Gregorian Calendar;
- 1.2.12 **Continuing** means, in relation to a Trigger Event or a Potential Trigger Event, that it has occurred and that it has neither been remedied within the time period provided for such remedy in these A Preference Share Terms, if any, nor waived by the Holders;
- 1.2.13 **Contributed Tax Capital** means, in relation to any company, its "contributed tax capital" as defined in section 1 of the Income Tax Act;
- 1.2.14 **Distribution** means, in relation to any company, any payment (whether in cash or in specie and whether by way of set-off, counterclaim or otherwise) by way of interest or principal (whether in respect of an inter-company loan or otherwise), dividend, redemption, fee, royalty or other distribution or payment (including by way of the repurchase of any shares) by or on behalf of that company to or for the account of any direct or indirect shareholder of that company (in its capacity as such), and the term Distribution shall include a "distribution" as defined in the Companies Act;
- 1.2.15 **Dividend Period** means each Calendar Month provided that –
- 1.2.15.1 the first Dividend Period in respect of any Outstanding A Preference Share shall commence on its Actual Issue Date and end on the last day of the Calendar Month during which that Actual Issue Date occurs; and
- 1.2.15.2 the last Dividend Period in respect of any Outstanding A Preference Share shall commence on the first day of the Calendar Month during which the Actual Redemption Date of that Outstanding A Preference Share occurs, and end on that Actual Redemption Date;

- 1.2.16 **Dividend Rate** means, on any day -
- 1.2.16.1 if the Company has a contingent obligation to issue Tranche Two A Preference Shares in accordance with the Subscription Agreement, the rate calculated in accordance with the following formula and expressed as a percentage –
- 1.2.16.1.1
$$a = \{10\% * (b - c) / (c + d)\} + 20\%$$
- 1.2.16.1.2 where -
- a = the Dividend Rate on that day, expressed as a rate per annum;
- b = the Tranche Two A Preference Share Commitment;
- c = the aggregate Subscription Prices of the Tranche Two A Preference Shares that have issued on or before that day, if any;
- d = the aggregate Subscription Prices of the Tranche One A Preference Shares;
- 1.2.16.2 if the Company no longer has a contingent obligation to issue Tranche Two A Preference Shares in accordance with the Subscription Agreement, a rate of 20% (twenty percent) per annum;
- 1.2.17 **Dividend Tax Declaration** means the Subscriber's Dividend Tax declaration, required to be delivered under sections 64G and 64H of the Tax Act, confirming that the Subscriber is exempt from Dividend Tax;
- 1.2.18 **Holder** means, in relation to any A Preference Share, the person who is entered into the Company's securities register as the holder of that A Preference Share;
- 1.2.19 **Insolvency Event** means, in relation to any person, any of the following events or circumstances:
- 1.2.19.1 it is dissolved or de-registered;
- 1.2.19.2 an order or declaration is made, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or an order or declaration is made, or a resolution is passed, to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

- 1.2.19.3 it convenes any meeting to consider the passing of a resolution for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;
- 1.2.19.4 it seeks the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or estate;
- 1.2.19.5 it has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- 1.2.19.6 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;
- 1.2.19.7 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
- 1.2.19.8 any receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it, its estate or any material part of its assets or it requests any such appointment;
- 1.2.19.9 it commits any act which, if such act was committed by a natural person, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
- 1.2.19.10 it is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Act);

- 1.2.19.11 it causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction to which it is subject, has an analogous effect to any of the events specified in Clauses 1.2.19.1 to 1.2.19.10; or
- 1.2.19.12 it takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- 1.2.20 **Penalty Dividend Rate** means, on any day, a rate equal to the Dividend Rate on that day plus 200 (two hundred) basis points;
- 1.2.21 **Petmin** means Petmin Proprietary Limited, registration number 1972/001062/07, a private company incorporated in South Africa;
- 1.2.22 **Petmin Projects** means Petmin Projects Proprietary Limited, registration number 2018/280702/07, a private company incorporated in South Africa;
- 1.2.23 **Potential Trigger Event** means the occurrence of any facts and/or circumstances which will become a Trigger Event if those facts and/or circumstances are not remedied -
- 1.2.23.1 within the applicable grace period (if any) stipulated in clause 3 of these A Preference Share Terms; or
- 1.2.23.2 after any notice required by clause 3 of these A Preference Share Terms has been given and has expired;
- 1.2.24 **Redemption Price** means, in relation to each Outstanding A Preference Share, an amount equal to the Subscription Price of that A Preference Share;
- 1.2.25 **Return of Capital** means any Distribution made by any company which reduces the Contributed Tax Capital of that company;
- 1.2.26 **Scheduled Dividend** means, for each A Preference Share and in respect of each Dividend Period, the dividend calculated in accordance with the Basic Calculation Formula;
- 1.2.27 **Scheduled Redemption Date** means, in relation to each A Preference Share, the 10th (tenth) anniversary of the Actual Issue Date of that A Preference Share;
- 1.2.28 **Subscriber** means the person or partnership who, in terms of the Subscription Agreement, has agreed to subscribe for A Preference Shares on the terms and subject to the conditions set out therein;

- 1.2.29 **Subscription Agreement** means the agreement titled "A Preference Share and Ordinary Share Subscription Agreement" entered into or to be entered into by the Company and the Subscriber, pursuant to which the Company has agreed to issue A Preference Shares on the terms and subject to the conditions set out therein;
- 1.2.30 **Subscription Price** means, for each A Preference Share, the amount paid by the Subscriber to the Company as consideration for the issue of that A Preference Share, as set out in the Subscription Agreement;
- 1.2.31 **STT** means the Securities Transfer Tax, levied in terms of the Securities Transfer Tax Act, 2007;
- 1.2.32 **Tranche One A Preference Shares** means the first tranche of A Preference Shares issued in terms of the Subscription Agreement;
- 1.2.33 **Tranche Two A Preference Shares** means the second tranche of A Preference Shares issued in terms of the Subscription Agreement;
- 1.2.34 **Tranche Two A Preference Share Commitment** means the aggregate Subscription Prices of all the Tranche Two A Preference Shares that have, or may, be issued in terms of the Subscription Agreement; and
- 1.2.35 **Trigger Event** means any event listed in clause 3 of these A Preference Share Terms.

2 SCHEDULED DIVIDENDS

Entitlement

- 2.1 Each Holder shall be entitled, in respect of each Outstanding A Preference Share held by it, to the Scheduled Dividends calculated in accordance with the provisions of clause 2.2.

- 2.2 For each Dividend Period each Outstanding A Preference Share shall be entitled to a Scheduled Dividend equal to the aggregate of the amounts ("**Daily Amounts**") calculated in accordance with the following formula for each day within that Dividend Period -

$$a = (b \times c) \div d$$

in which formula -

a = the Daily Amount;

b = the aggregate of (i) the Redemption Price of that Outstanding A Preference Share, plus (ii) the Accumulated Dividends (if any) in respect of that A Preference Share on that day;

c = the applicable Dividend Rate (expressed as a daily rate), increased, for so long as a Trigger Event is Continuing, by the Penalty Dividend Rate; and

d = 365 (three hundred and sixty five).

- 2.3 Each Scheduled Dividend shall, for the purposes of calculation, accrue on a daily basis during the applicable Dividend Period.
- 2.4 Subject to clause 2.5, the Scheduled Dividends shall be declared and paid as and when the Board determines to do so, in priority to the declaration and/or payment of dividends and/or any other Distributions in respect of any other classes of shares in the Company's share capital.
- 2.5 The Company shall, to the extent to which it has not yet done so, declare and pay all the Scheduled Dividends in respect of each A Preference Share on the earlier of the Scheduled Redemption Date and the Actual Redemption Date of that A Preference Share.

3 TRIGGER EVENTS

- 3.1 Each of the events or circumstances set out in this clause 3 is a Trigger Event, whether or not the occurrence of such event is within the Company's control.

Scheduled Redemption

- 3.2 The Company fails to –
- 3.2.1 redeem each Outstanding A Preference Shares by the Scheduled Redemption Date of that Outstanding A Preference Share; and/or

- 3.2.2 declare and pay all the Scheduled Dividends in respect of all the A Preference Shares by the Scheduled Redemption Date,

and such event is not remedied within 5 (five) Business Days of receipt of written notice from the Holders requiring the Company to remedy such event or procure that such event is remedied.

Insolvency Events

- 3.3 An Insolvency Event occurs in relation to the Company, and such event is not remedied within 1 (one) Business Day of receipt of written notice from the Holders requiring the Company to remedy such event or procure that such event is remedied.

Creditors' process

- 3.4 Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution affects any asset or assets of the Company, and such event is not remedied within 5 (five) Business Day of receipt of written notice from the Holders requiring the Company to remedy such event or procure that such event is remedied.

Cessation of business

- 3.5 The Company, Petmin or Petmin Projects suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business (other than (i) temporary closures on account of strikes or pandemics, or (ii) the scheduled closure of one wash plant at Somkhele), and such event is not remedied within 5 (five) Business Days of receipt of written notice from the Holders requiring the Company to remedy such event or procure that such event is remedied.

4 REDEMPTION

Scheduled Redemption

- 4.1 The Company shall redeem all the Outstanding A Preference Shares by the Scheduled Redemption Date.

Compulsory Redemption

- 4.2 If a Potential Trigger Event occurs, and the Holders deliver a notice requiring remedy of that Potential Trigger Event in accordance with clause 3, and the Company fails to remedy that Potential Trigger Event within the prescribed remedy period such that it becomes a Trigger Event, the Company shall redeem all the Outstanding A Preference Shares on the next Business Day.

Voluntary Redemption

- 4.3 Subject to clause 5, and provided (i) there are Tranche Two A Preference Shares in issue on that day, or (ii) the Company no longer has a contingent obligation to issue Tranche Two A Preference Shares in accordance with the Subscription Agreement, the Company shall be entitled (but not obliged) to redeem some or all of the Outstanding A Preference Shares voluntarily, in accordance with clauses 4.4 to 4.9.
- 4.4 If the Company is entitled in terms of clause 4.3, and elects to redeem some or all of the Outstanding A Preference Shares prior to its Scheduled Redemption Date the Company shall deliver written notice (a **Voluntary Redemption Notice**) to the Holders, and in its Voluntary Redemption Notice, set out -
- 4.4.1 the number of Outstanding A Preference Shares (the **Voluntary Redemption Preference Shares**) which the Company intends to redeem; and
- 4.4.2 the date (the **Voluntary Redemption Date**) on which the Company intends to redeem the Voluntary Redemption Preference Shares, the Voluntary Redemption Date to be no sooner than 10 (ten) days after the date on which the Company delivers the applicable Voluntary Redemption Notice to the Holders.
- 4.5 The Company shall be entitled to revoke a Voluntary Redemption Notice at any time.
- 4.6 The Company shall be entitled, but not obliged, to redeem the applicable Voluntary Redemption Preference Shares on the applicable Voluntary Redemption Date.
- 4.7 No Holder shall have any right to compel the Company to redeem the Voluntary Redemption Preference Shares (or any other Outstanding A Preference Shares) on the Voluntary Redemption Date (or any other date prior to the Scheduled Redemption Date save as envisaged in clause 4.2).
- 4.8 If the Company does not redeem the Voluntary Redemption Preference Shares on the Voluntary Redemption Date, the Company shall not thereafter redeem those Voluntary Redemption Preference Shares without again delivering a Voluntary Redemption Notice to the Holders.

Procedure for Redemption

- 4.9 The Company shall not redeem any Outstanding A Preference Share except if it has declared and paid the Scheduled Dividends in respect of that A Preference Share in full.
- 4.10 The Company shall redeem each Outstanding A Preference Share by paying its Redemption Price to the applicable Holder.

Share Certificates

- 4.11 If any Outstanding A Preference Shares are redeemed, the applicable Holder shall, once the Redemption Prices of those Outstanding A Preference Shares have been paid, surrender its share certificate in respect of those Outstanding A Preference Shares to the Company (or, if such certificate(s) has/have been lost or destroyed, such proof of loss or destruction).
- 4.12 The Company shall, within 5 (five) Business Days of receipt of the applicable share certificates (unless all of the Outstanding A Preference Shares held by that Holder have been redeemed) and to the extent necessary, issue a share certificate(s) to that Holder in respect of those Outstanding A Preference Shares held by the applicable Holder which were not redeemed.

Costs of Redemption

- 4.13 The Company shall pay all the costs of redeeming the Outstanding A Preference Shares including any STT.

Return of Capital

- 4.14 The Board will be entitled (but not obliged) to make a determination, in relation to all or any of the A Preference Shares, and in accordance with the provisions of the Income Tax Act, that any redemption pursuant to this clause 4 results instead in a *pro rata* reduction of the Company's Contributed Tax Capital in relation to the Outstanding A Preference Shares and constitutes a Return of Capital, provided that such Return of Capital shall not be in excess of the Redemption Price applicable to any such Outstanding A Preference Share (and the Company shall, prior to paying any Return of Capital in respect of any A Preference Share, pay all outstanding Scheduled Dividends in respect of that A Preference Share to its Holder).

5 RANKING

5.1 The A Preference Shares shall rank –

5.1.1 in relation to the payment of Scheduled Dividends, in priority to the payment of Distributions to any other classes of shares in the Company's share capital including, but without limitation, the Ordinary Shares, the B Shares, the Preference Shares and the B Preference Shares and accordingly the Company shall not pay any Distributions in respect of the Ordinary Shares, the B Shares, the Preference Shares or the B Preference Shares unless all Accumulated Dividends in respect of the Outstanding A Preference Shares have been paid in full; and

5.1.2 in relation to the payment of Redemption Prices which are due and owing, in priority to the payment of Distributions to any other classes of shares in the Company's share capital including, but without limitation, the Ordinary Shares, the B Shares, the Preference Shares and the B Preference Shares and accordingly the Company shall not pay any Distributions in relation to the Ordinary Shares, the B Shares, the Preference Shares and the B Preference Shares unless all Redemption Prices which are due and owing in respect of the Outstanding A Preference Shares have been paid in full;

5.1.3 *pari-passu* with each other A Preference Share in relation to the payment of any Distributions to the Holders.

6 VOTING

The A Preference Shares shall not have any voting rights.

7 LIQUIDATION

7.1 If the Company is liquidated, each A Preference Share shall be entitled to a return of capital equal to -

7.1.1 its Redemption Price; and

7.1.2 the Accumulated Dividends up to the date on which that return of capital is paid to the Holders.

7.2 Each A Preference Share's right to a return of capital shall rank in priority to the rights (to returns of capital) of the holders of any other classes of shares in the Company including, without limitation, the Ordinary Shares, the B Shares, the B Preference Shares and the Preference Shares.

- 7.3 Except for the rights conferred on the A Preference Shares in terms of clause 7.1, no A Preference Share shall have any right to participate in excess assets in the event of the Company's liquidation.

8 GENERAL

- 8.1 To the extent applicable, each Subscriber shall deliver its Dividend Tax Declaration to the Company before the first date on which a Distribution is declared in favour of the Holders of the A Preference Shares.
- 8.2 These A Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the Holders.
- 8.3 No shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or *pari passu* with the A Preference Shares shall be created or issued without the prior written consent of the Holders.
- 8.4 A certificate delivered by the Holders to the Company, reflecting the amount owing by the Company to the Holders, will be *prima facie* proof of the amount owing. The appointment of the manager or employee of the Holders shall not be required to be proved.

Annexure E

B Preference Share Terms

1 DEFINITIONS

- 1.1 In this Annexure E, unless inconsistent with or otherwise indicated by the context, all expressions defined in the Memorandum of Incorporation to which these B Preference Share Terms form Annexure E, shall have the same meanings when used in this Annexure E.
- 1.2 In addition, in these terms and conditions, unless inconsistent with or otherwise indicated by the context -
- 1.2.1 **A Preference Share** means a cumulative redeemable preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in the A Preference Share Terms;
- 1.2.2 **A Preference Share Obligation** means, on any day, all the A Preference Share Dividends (as defined in the A Preference Share Terms) which the Company would be obliged to pay, and (ii) the Redemption Prices (as defined in the A Preference Share Terms) that would become payable by the Company, if all the Outstanding A Preference Shares were to be redeemed on that day;
- 1.2.3 **A Preference Share Terms** means the rights and privileges (which apply to each A Preference Share) set out in Annexure "D" to the Memorandum of Incorporation;
- 1.2.4 **B Preference Share** means a participating preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in these B Preference Share Terms;
- 1.2.5 **B Preference Share Dividends** means, in respect of each B Preference Share, the applicable Participation Dividends, which the Company becomes obliged to declare and pay in respect of that B Preference Share;
- 1.2.6 **B Preference Share Terms** means the rights and privileges (which apply to each B Preference Share) set out in this Annexure "E" to the Memorandum of Incorporation;
- 1.2.7 **Board** means the Company's board of directors;
- 1.2.8 **Disposal** means any sale, transfer, cession, assignment, lease, alienation, donation, renunciation, surrender, waiver, relinquishment, exchange or other disposal of any nature whatsoever, and **Dispose** has a corresponding meaning;

- 1.2.9 **Dividend Tax Declaration** means the Subscriber's Dividend Tax declaration, required to be delivered under sections 64G and 64H of the Tax Act, confirming that the Subscriber is exempt from Dividend Tax;
- 1.2.10 **Exit Event** means –
- 1.2.10.1 a Disposal by the Company of all of its shares and claims in Petmin; or
- 1.2.10.2 a Disposal by Petmin of the whole or greater part of its business;
- 1.2.11 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of -
- 1.2.11.1 moneys borrowed or credit obtained;
- 1.2.11.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- 1.2.11.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- 1.2.11.4 any amount raised pursuant to any issue of shares which are expressed to be redeemable whether at the instance of the issuer or the holder of such shares;
- 1.2.11.5 the amount of any liability in respect of any lease, hire purchase contract or licence agreement which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- 1.2.11.6 any liability in respect of any advance or deferred purchase agreement if one of the primary reasons for entering into such agreement is to raise finance or if such agreement is not in the ordinary course of business;
- 1.2.11.7 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.2.11.8 any agreement or option to re-acquire an asset if one of the primary reasons for entering into such agreement or option is to raise finance;
- 1.2.11.9 any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- 1.2.11.10 any Treasury Transaction and, for the purpose of calculating the amount of any person's Financial Indebtedness, a Treasury Transaction shall be valued at an amount equal to (i) the marked to market value thereof, plus (ii) if an amount owing by that person under the applicable Treasury Transaction has not been paid, that amount;

- 1.2.11.11 any counter-indemnity obligation in respect of a guarantee, surety, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- 1.2.11.12 the amount of any liability in respect of any guarantee, surety or indemnity for any of the items referred to in clauses 1.2.11.1 to 1.2.11.11 above;
- 1.2.12 **Gross Disposal Proceeds** means, -
- 1.2.12.1 if an Exit Event envisaged in clause 1.2.10.1 occurs, the consideration payable to the Company on account of that Disposal; or
- 1.2.12.2 if an Exit Event envisaged in clause 1.2.10.2 occurs, the Distribution received by the Company out of the proceeds received by Petmin on account of that Disposal;
- 1.2.13 **Holder** means, in relation to any B Preference Share, the person who is entered into the Company's securities register as the holder of that B Preference Share;
- 1.2.14 **Majority of the Holders** means 60% (sixty percent) of the Holders;
- 1.2.15 **Outstanding A Preference Share** means, on any day, any A Preference Share which has not yet been redeemed by the Company in accordance with the A Preference Share Terms;
- 1.2.16 **Outstanding Preference Share** means, on any day, any Preference Share which has not yet been redeemed by the Company in accordance with the Preference Share Terms;
- 1.2.17 **Participation Hurdle** means ZAR1,000,000,000 (one billion Rand);
- 1.2.18 **Petmin** means Petmin Proprietary Limited, registration number 1972/001062/07, a private company incorporated in South Africa;
- 1.2.19 **Petmin International** means Petmin International Holdings Proprietary Limited, registration number 2015/243573/07, a private company incorporated in South Africa;
- 1.2.20 **Petmin International Outstandings** means, on any day, the aggregate of all amounts (whether in respect of interest, principal, fees, costs or charges) then owing by Petmin International to Petmin;
- 1.2.21 **Preference Share** means a cumulative redeemable preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in the Preference Share Terms;

- 1.2.22 **Preference Share Obligation** means, on any day, all the Preference Share Dividends (as defined in the Preference Share Terms) which the Company would be obliged to pay, and (ii) the Redemption Prices (as defined in the Preference Share Terms) that would become payable by the Company, if all the Outstanding Preference Shares were to be redeemed on that day;
- 1.2.23 **Preference Share Terms** means the rights and privileges (which apply to each Preference Share) set out in Annexure "C" to the Memorandum of Incorporation;
- 1.2.24 **Subscriber** means, in relation to each B Preference Share, the person who, in terms of the Subscription Agreement, has agreed to subscribe for that B Preference Shares on the terms and subject to the conditions set out therein; and
- 1.2.25 **Subscription Agreement** means the agreement titled "B Preference Share Subscription Agreement" entered into or to be entered into by the Company and the Subscribers, pursuant to which the Company has agreed to issue B Preference Shares on the terms and subject to the conditions set out therein.

2 DIVIDENDS

Entitlement

- 2.1 Each Holder shall be entitled, in respect of each Outstanding B Preference Share held by it, to the Participations Dividends calculated in accordance with the provisions of this clause 2.

Participation Dividend

- 2.2 If an Exit Event occurs and the Gross Disposal Proceeds in relation thereto exceed the Participation Hurdle, each B Preference Share shall be entitled to a Participation Dividend calculated in accordance with the following formula –

$$a = [(b - c - d + e) \times 0.08] \div f$$

in which formula –

- a = the Participation Dividend;*
- b = the Gross Disposal Proceeds;*
- c = a provision for the Tax payable by the Company on account of receipt of the Gross Disposal Proceeds;*
- d = any and all outstanding Financial Indebtedness of the Company as at the Dividend Determination Date (including, without limitation the A Preference Share Obligation and the Preference Share Obligation, but specifically excluding any B Preference Share Dividends payable in terms of these B Preference Share Terms);*
- e = the Petmin International Outstandings as at that Dividend Determination Date (to the extent that value has been ascribed to the Petmin International Outstandings by the applicable purchaser in the determination of “b”); and*
- f = the number of Outstanding B Preference Shares,*

and, for the avoidance of doubt, should the Gross Disposal Proceeds not exceed the Participation Hurdle, no Participation Dividends shall be payable in respect of the B Preference Shares.

- 2.3 For the purposes of determining the Participation Dividends due upon the occurrence of an Exit Event, the Company shall, as soon as reasonably possible but in any event within 10 (ten) Business Days of the occurrence of an Exit Event, calculate the Participation Dividends and in writing advise the Holders of such determination (a **Value Notice**).
- 2.4 The Company shall, subject to clause 3, pay the Participation Dividends (if any) to the Holders within 5 (five) Business Days of the date of delivery of the Value Notice.

3 RANKING

- 3.1 The B Preference Shares shall rank in relation to the payment of Participation Dividends which are due and owing –
- 3.1.1 after (i) the Accumulated Dividends (as defined in the A Preference Share Terms) and Redemption Prices (as defined in the A Preference Share Terms) which are due and owing in respect of the A Preference Shares, and (ii) the Accumulated Dividends (as defined in the Preference Share Terms) and Redemption Prices (as defined in the Preference Share Terms) which are due and owing in respect of the Preference Shares, and accordingly the Company shall not pay any Participation Dividends unless aforesaid Distributions in respect of the A Preference Shares and the Preference Shares have been paid in full;
- 3.1.2 in priority to the payment of Distributions to the Ordinary Shares and the B Shares and accordingly the Company shall not pay any such Distributions in relation to the Ordinary Shares and/or the B Shares unless all Participation Dividends which are due and owing have been paid in full; and
- 3.1.3 *pari passu* with each other B Preference Share in relation to the payment of any Distributions to the Holders.

4 REDEMPTION

- 4.1 The Company shall be entitled (but not obliged) to redeem the B Preference Shares at any time after the occurrence of an Exit Event once all the B Preference Share Dividends (if any) have been declared and paid in full, at a redemption price of ZAR1.00 (one Rand).
- 4.2 The Holders shall not under any circumstances be entitled to require the Company to redeem the B Preference Shares.

5 VOTING

No B Preference Share shall have any votes.

6 GENERAL

- 6.1 To the extent applicable, each Subscriber shall deliver its Dividend Tax Declaration to the Company before the date of payment of the B Preference Dividends.
- 6.2 These B Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the Majority of the Holders.

- 6.3 No shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to (other than the Preference Shares and A Preference Shares) or *pari passu* with the B Preference Shares shall be created or issued without the prior written consent of the Majority of the Holders.
- 6.4 A certificate delivered by the Holders to the Company, reflecting the amount owing by the Company to the Holders, will be *prima facie* proof of the amount owing. The appointment of the manager or employee of the Holders shall not be required to be proved.

ANNEXURE B

Section 164 of the Act. Dissenting shareholders appraisal rights.—(1) This section does not apply in any circumstances relating to a transaction, agreement or offer pursuant to a business rescue plan that was approved by shareholders of a company, in terms of section 152.

- (2) If a company has given notice to shareholders of a meeting to consider adopting a resolution to—
 - (a) amend its Memorandum of Incorporation by altering the preferences, rights, limitations or other terms of any class of its shares in any manner materially adverse to the rights or interests of holders of that class of shares, as contemplated in section 37 (8); or
 - (b) enter into a transaction contemplated in section 112, 113, or 114, that notice must include a statement informing shareholders of their rights under this section.
- (3) At any time before a resolution referred to in subsection (2) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution.
- (4) Within 10 business days after a company has adopted a resolution contemplated in this section, the company must send a notice that the resolution has been adopted to each shareholder who—
 - (a) gave the company a written notice of objection in terms of subsection (3); and
 - (b) has neither—
 - (i) withdrawn that notice; or
 - (ii) voted in support of the resolution.
- (5) A shareholder may demand that the company pay the shareholder the fair value for all of the shares of the company held by that person if—
 - (a) the shareholder—
 - (i) sent the company a notice of objection, subject to subsection (6); and
 - (ii) in the case of an amendment to the company's Memorandum of Incorporation, holds shares of a class that is materially and adversely affected by the amendment;
 - (b) the company has adopted the resolution contemplated in subsection (2); and
 - (c) the shareholder—
 - (i) voted against that resolution; and
 - (ii) has complied with all of the procedural requirements of this section.
- (6) The requirement of subsection (5) (a) (i) does not apply if the company failed to give notice of the meeting, or failed to include in that notice a statement of the shareholders rights under this section.
- (7) A shareholder who satisfies the requirements of subsection (5) may make a demand contemplated in that subsection by delivering a written notice to the company within—
 - (a) 20 business days after receiving a notice under subsection (4); or
 - (b) if the shareholder does not receive a notice under subsection (4), within 20 business days after learning that the resolution has been adopted.
- (8) A demand delivered in terms of subsections (5) to (7) must also be delivered to the Panel, and must state—
 - (a) the shareholder's name and address;
 - (b) the number and class of shares in respect of which the shareholder seeks payment; and
 - (c) a demand for payment of the fair value of those shares.
- (9) A shareholder who has sent a demand in terms of subsections (5) to (8) has no further rights in respect of those shares, other than to be paid their fair value, unless—
 - (a) the shareholder withdraws that demand before the company makes an offer under subsection (11), or allows an offer made by the company to lapse, as contemplated in subsection (12) (b);
 - (b) the company fails to make an offer in accordance with subsection (11) and the shareholder withdraws the demand; or
 - (c) the company, by a subsequent special resolution, revokes the adopted resolution that gave rise to the shareholder's rights under this section.
- (10) If any of the events contemplated in subsection (9) occur, all of the shareholder's rights in respect of the shares are reinstated without interruption.
- (11) Within five business days after the later of—
 - (a) the day on which the action approved by the resolution is effective;
 - (b) the last day for the receipt of demands in terms of subsection (7) (a); or
 - (c) the day the company received a demand as contemplated in subsection (7) (b), if applicable, the company must

send to each shareholder who has sent such a demand a written offer to pay an amount considered by the company's directors to be the fair value of the relevant shares, subject to subsection (16), accompanied by a statement showing how that value was determined.

- (12) Every offer made under subsection (11)—
- (a) in respect of shares of the same class or series must be on the same terms; and
 - (b) lapses if it has not been accepted within 30 business days after it was made.
- (13) If a shareholder accepts an offer made under subsection (12)—
- (a) the shareholder must either in the case of—
 - e
 - (b) the company must pay that shareholder the agreed amount within 10 business days after the shareholder accepted the offer and—
 - (i) tendered the share certificates; or
 - (ii) directed the transfer to the company of uncertificated shares.
- (14) A shareholder who has made a demand in terms of subsections (5) to (8) may apply to a court to determine a fair value in respect of the shares that were the subject of that demand, and an order requiring the company to pay the shareholder the fair value so determined, if the company has—
- (a) failed to make an offer under subsection (11); or
 - (b) made an offer that the shareholder considers to be inadequate, and that offer has not lapsed.
- (15) On an application to the court under subsection (14)—
- (a) all dissenting shareholders who have not accepted an offer from the company as at the date of the application must be joined as parties and are bound by the decision of the court;
 - (b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of their right to participate in the court proceedings; and
 - (c) the court—
 - (i) may determine whether any other person is a dissenting shareholder who should be joined as a party;
 - (ii) must determine a fair value in respect of the shares of all dissenting shareholders, subject to subsection (16);
 - (iii) in its discretion may—
 - (aa) appoint one or more appraisers to assist it in determining the fair value in respect of the shares; or
 - (bb) allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective, until the date of payment;
 - (iv) may make an appropriate order of costs, having regard to any offer made by the company, and the final determination of the fair value by the court; and
 - (v) must make an order requiring—
 - (aa) the dissenting shareholders to either withdraw their respective demands or to comply with subsection (13) (a); and
 - (bb) the company to pay the fair value in respect of their shares to each dissenting shareholder who complies with subsection (13) (a), subject to any conditions the court considers necessary to ensure that the company fulfils its obligations under this section.
- (15A) At any time before the court has made an order contemplated in subsection (15) (c) (v), a dissenting shareholder may accept the offer made by the company in terms of subsection (11), in which case—
- (a) that shareholder must comply with the requirements of subsection 13 (a); and
 - (b) the company must comply with the requirements of subsection 13 (b).
- (16) The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under this section.
- (17) If there are reasonable grounds to believe that compliance by a company with subsection (13) (b), or with a court order in terms of subsection (15) (c) (v) (bb), would result in the company being unable to pay its debts as they fall due and payable for the ensuing 12 months—
- (a) the company may apply to a court for an order varying the company's obligations in terms of the relevant subsection; and
 - (b) the court may make an order that—
 - (i) is just and equitable, having regard to the financial circumstances of the company; and
 - (ii) ensures that the person to whom the company owes money in terms of this section is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.
- (18) If the resolution that gave rise to a shareholder's rights under this section authorised the company to

amalgamate or merge with one or more other companies, such that the company whose shares are the subject of a demand in terms of this section has ceased to exist, the obligations of that company under this section are obligations of the successor to that company resulting from the amalgamation or merger.

- (19) For greater certainty, the making of a demand, tendering of shares and payment by a company to a shareholder in terms of this section do not constitute a distribution by the company, or an acquisition of its shares by the company within the meaning of section 48, and therefore are not subject to—
- (a) the provisions of that section; or
 - (b) the application by the company of the solvency and liquidity test set out in section 4.
- (20) Except to the extent—
- (a) expressly provided in this section; or
 - (b) that the Panel rules otherwise in a particular case,
- a payment by a company to a shareholder in terms of this section does not obligate any person to make a comparable offer under section 125 to any other person.