MEMORANDUM OF INCORPORATION

of

PETCO PRODUCER RESPONSIBILITY ORGANISATION NPC (PETCO)

2004/032347/08

(I do hereby certify that this Memorandum of Incorporation (MOI) has been adopted and substituted in terms of a Special Resolution passed by the members of the Company on the day of 2023.

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Director/Public Officer

PETCO PRODUCER RESPONSIBILITY ORGANISATION NPC (PETCO)

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
NATURE OF COMPANY

The Company is a Non-Profit Company with members, as stated in paragraph 4.

OBJECTS & PURPOSE

The Sole or Principal Object of the Company shall be to undertake, promote and facilitate projects and programmes that are required of a Producer Responsibility Organisation, and that are directed to achieving the objectives stated in paragraph 6.

DIRECTORS

Provision is made for the appointment of a minimum of three (3) Directors and a maximum of thirteen (13) Directors, as stated in paragraph 18.2.1.

SUBSTITUTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation, including its Attachments, has been substituted in place of the pre-existing Memorandum of Incorporation, with effect as and from the day of 2023, being the date of adoption of a Special Resolution, duly passed at a General Meeting of the Members of the Company.

CONTENTS

1. **HISTORY**

1.1. The Company was incorporated in 2004 to represent the South African PET plastic industry's effort to self-regulate the recycling of post-consumer polyethylene terephthalate (PET).

1.2. The Company and its founders have led innovation by providing industry driven and financed targets that facilitate a circular economy.

1.3. Following the introduction of Extended Producer Responsibility (EPR) regulations in South Africa, Producer participation in an EPR Scheme is no longer voluntary.

1.4. The Company will manage its EPR Schemes for all/ various packaging materials to assist its Members to comply with their obligations as Producers.

1.5. The Company seeks to establish diverse EPR Schemes that make it the Producer Responsibility Organisation (PRO) of choice for its Members.

1.6. All EPR Schemes established by the Company will comply with the terms of the National Environmental Management: Waste Act.

1.7. PETCO will manage EPR Scheme obligations of its Members as the leading Producer Responsibility Organisation (PRO) in terms of the National Environmental Management: Waste Act.

2. **DEFINITIONS**

Unless the context clearly otherwise indicates, words and expressions defined in the Companies Act, No. 71 of 2008 and the National Environmental Management: Waste Act, No. 59 of 2008 as amended, bear the same meanings when used in this Memorandum of Incorporation, save to the extent that certain words and phrases are specifically defined, as follows:

2.1 "**Annual General Meeting**" means a meeting of the company, which may occur once per calendar year, but no more than 15 months after the date of the previous annual general meeting;

2.2 "**Board**" means the Directors of the Company acting together;

2.3 "**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;

2.4 "**Chairperson**" means the Chairperson of the Board of the Company;

2.5 "**Code of Conduct**" means the code of conduct of the Company approved by the Board from time to time;

2.6 "**Companies Act**" or the Act means the Companies Act No. 71 of 2008, as amended from time to time;

2.7 "**Company**" or “**the Company**” means **PET RECYCLING COMPANY NPC** or **PETCO**, a non-profit company incorporated in accordance with the laws of the Republic of South Africa;

2.8 "**Contributing Member**" means a Producer admitted as a Member of the Company, as contemplated by paragraph 12.2.1, participating in the EPR Scheme and compliant with all applicable Member’s EPR Contributions

2.9 “**The Department of Environment**” or “**DEFFE**” means the Department of Forestry, Fisheries and the Environment.

2.10 "**Director**" means a Director of the Company;

2.11 "**File**" when used as a verb, means to deliver a document to the Department of Environment/ DFFE inthe manner and form, if any, prescribed for that document;

2.12 "**Good Standing**" means that, for the purposes of the Record Date or at that particular moment in time, the Member in question must be capable of confirming compliance with any Rules of the Company and the NEMWA provisions; and must have satisfied all the requirements for compliance as a Member as determined by the Board from time to time;

2.13 "**Income Tax Act**" means the Income Tax Act No. 58 of 1962, as amended from time to time;

2.14 *“***Interim Period***”* means the time between the adoption of the substituted MOI and June 2023 or the AGM of 2023;

2.15 "**Member**" means a member of the Company, including both Contributing Members and Supporting Members;

2.16 “**Member’s EPR Contribution**” means the total annual financial contribution to the Company by the Member, in order to recover the necessary EPR Fee/funding equitably from all Contributing Members, based on the volume of products placed on the market by the Member and any additional grants or donations made voluntarily, that can be used equivalently by the Company. For clarity the calculation shall exclude voluntary contributions for enterprise development initiatives and any other ring-fenced project funding implemented by the Company.

2.17 “**MOI**” means this Memorandum of Incorporation of the Company, which shall become binding on the company with effect from the date upon which the MOI is filed with the Commission;

2.18 “**NEMWA**” **or “the Waste Act”** means the National Environmental Management: Waste Act No 59 of 2008 and regulations that are promulgated from time to time.

2.19 “**Ordinary Resolution**” means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution;

2.20 “**Record Date**” means the date notified by the Company on which it determines a Members Good Standing and their portion of the EPR Fee as a Contributing Member to calculate the percentage of voting rights available for the purposes of a Meeting;

2.21 “**Rules**” and “**rules of the Company**” means the rules of the Company approved by the Board from time to time as defined in the Companies Act and paragraph 11;

2.22 “**SARS Commissioner**” means the Commissioner of the South African Revenue Services; and

2.23 “**Special Resolution**” means a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution.

2.24 "**Supporting Member**" means a non-voting member of the Company, who may seek association with the Company in order to participate in programmes and comply with such Rules as may be published by the Board from time to time.

3. **INTERPRETATION**

3.1 In this Memorandum:

3.1.1 a reference to a “section” by number refers to the corresponding section of the Companies Act or the National Environmental Management Waste Act;

3.1.2 a reference to a “paragraph” by number refers to the corresponding paragraph in this MOI;

3.1.3 a reference to a “Regulation” by number refers to the corresponding regulation in the NEMWA Regulations;

3.1.4 any reference to a “person” includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;

3.1.5 references to a “day” shall be to any calendar day. Where any number of days or Business Days are prescribed in this MOI, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;

3.1.6 words importing the masculine or feminine gender include all genders; the singular includes the plural and vice versa; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and vice versa;

3.1.7 any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;

3.1.8 words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Environmental Framework legislation shall when used in this MOI in a similar context bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;

3.1.9 each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, NEMWA, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.

4. **INCORPORATION: ADOPTION OF MEMORANDUM OF INCORPORATION**

4.1 The Company was originally incorporated as a private entity and converted into an NPC in 2016.

4.2 In terms of the Companies Act, No. 71 of 2008 ("the Act"), and in accordance with the prescriptive provisions of the Act the Company is incorporated and constituted as A NON-PROFIT COMPANY WITH MEMBERS.

4.3 This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii).

4.4 This MOI was proposed by the Board, and adopted by a Special Resolution of the Members.

This Memorandum of Incorporation supersedes the pre-existing Memorandum pursuant to the passing of a Special Resolution by the Members of the Company.

5. **INCORPORATION AND NATURE OF THE COMPANY**

5.1 The Company is a Non-Profit Company, with members, as defined in the Companies Act.

5.2 The Company is, in terms of section 19(1)(c) read with section 15(2), incorporated in accordance with, and governed by:

5.2.1 the alterable and the unalterable provisions of the Companies Act, that are applicable to Non-Profit Companies.

5.2.2 the provisions of this MOI.

5.3 This MOI does not necessarily refer to or address all of the provisions of the constitution of the Company as contemplated in paragraph 5.2. The persons bound by this MOI in terms of section 15(6), being for the time being the Company and each director and prescribed officer of the Company and each member of a Board committee, are required to familiarise themselves with the relevant provisions of the Companies Act.

6. **OBJECTS OF THE COMPANY**

6.1 The Company is a Producer Responsibility Organisation (PRO) functioning as the 'system operator' within the EPR. It is the joint entity set up by the obliged companies or through legislation that assumes responsibility for the individual obliged companies concerning waste collection and disposal obligations. Joining forces establishes economies of scale, reduces transaction costs for each company and facilitates the management of packaging waste for consumers.

6.2 The main objectives of the Company are as follows:

6.2.1 To operate as an autonomous registered non-profit company for Producers who seek membership and support implementation of an EPR Scheme on their behalf.

6.2.2 To function as the appointed Producer Responsibility Organisation of choice for its Members and to establish and implement a compliant Extended Producer Responsibility (EPR) Scheme(s) in South Africa;

6.2.3 To expand the systems available to achieve the goal of a circular economy on behalf of its members.

6.3 Notwithstanding the explicit terms of the preceding sub-clauses, the Company shall also be entitled at any time to engage in other ancillary EPR activities, provided they are compliant with NEMWA, but with due regard to the provisions of the Income Tax Act, and the other fiscal legislation.

6.4 Without derogating from the generality of the aforegoing, it is further recorded that the Company shall be entitled, in furtherance of the Sole or Principal Object to undertake, promote and facilitate projects and programmes related to the compliance and awareness of the duties of Members in terms of EPR.

7. **POWERS OF THE COMPANY**

7.1 In accordance with the provisions of the Act, this Company shall be a juristic person, and as such it has all the legal powers and capacities of an individual, except to the extent that a juristic person may be incapable of exercising any of such powers or having any such capacity, subject to the further terms of this Memorandum and the relevant provisions of the Act.

7.2 The exercise of the Company's powers and capacities shall at all times comply with the Prescribed Statutory Provisions as are applicable from time to time, of which the provisions currently applicable are referred to as follows, namely:

7.2.1 The prescribed **NPC Provisions**, applicable to non-profit companies without members, as contemplated by Attachment "A" hereto; and

7.2.2 The prescribed **ITA Provisions**, applicable to approved membership organisations, as contemplated by Attachment "B" hereto.

7.3 **Use of assets and funds**

7.3.1 The income, property and assets of the Company, however derived, shall be applied solely towards the promotion of its stated objects as set out in this MOI, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever, to the Directors of the Company or to any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Company, for any services rendered to, or expenses incurred on behalf of, the Company.

7.3.2 The Company may not pay any remuneration to any employee, office bearer, Member or other person, any "remuneration" as defined in the Fourth Schedule to the Income Tax Act, which is reasonably considered to be excessive.

7.3.3 The Company shall not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Member or a Member of a related or inter-related company, or to a person related to any such Member. The aforegoing shall not prohibit a transaction if it:

7.3.3.1 is in the ordinary course of the Company's business and for fair value;

7.3.3.2 constitutes an accountable advance to meet:

(A) legal expenses in relation to a matter concerning the Company; or

(B) anticipated expenses to be incurred by the person on behalf of the Company;

(C) is to defray the person's expenses for removal at the Company's request; or

(D) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

7.4 **Activities**

7.4.1 Substantially the whole of the activities of the Company shall be directed to the furtherance of its stated objects and not for the specific benefit of an individual Member or minority group.

7.4.2 The Company may not have a share or other interest in any business, profession or occupation which is carried on by its Members.

7.4.3 The Company does not knowingly and will not knowingly become a party to, nor permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

7.5 **Payments by the Company**

7.5.1 The Company may not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, of the Company, except:

7.5.1.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company; or

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

7.5.1.3 as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another; or

7.5.1.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or

7.5.1.5 in respect of any legal obligation binding on the Company.

7.6 **Funding**

7.6.1 Substantially the whole of the Company's funding shall be derived from Members' EPR Contribution Fee payments and grants.

8. **FUNDAMENTAL TRANSACTIONS**

8.1 The Company may not:

8.1.1 amalgamate or merge with, or convert to, a profit company; or

8.1.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

9. **AMENDMENT OF THE MOI**

9.1 This MOI may be altered or amended only in the manner set out in section 9 or 16.2.1.1 being:

9.1.1 in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:

9.1.1.1 publishing a notice of the alteration, in any manner required or permitted by this MOI or the Rules of the Company; and

9.1.1.2 filing a notice of the alteration, or

9.1.2 in compliance with a court order, effected by a resolution of the Board; or

9.1.3 at any other time if a Special Resolution to amend the MOI is proposed and adopted by the Contributing Members.

9.2 Any amendment of the Memorandum, save for an amendment contemplated in paragraph 9.1.1 may only be effected by a Special Resolution of the Contributing Members.

9.3 The Company must publish a notice of any alteration of this MOI by delivering a copy of the amendment to each Member by email or via newsletter.

9.4 A copy of all amendments to this MOI must be submitted to the CIPC and SARS Commissioner within 30 days of its amendment.

10. **CONFLICTS WITH THE COMPANIES ACT**

10.1 **Notification of conflicts**

10.1.1 Any person or entity bound by this MOI who has formed the view or forms the view or otherwise becomes aware that any provision of this MOI or any agreement entered into by the Company contravenes or is or has become inconsistent with any provision of the Companies Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2) or otherwise, shall within 10 Business Days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

10.2 **Board must address inconsistencies**

10.2.1 If any provision of the Companies Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Companies Act, then in addition to and without limiting the rights or remedies of any other person in terms of this MOI or otherwise, the Board shall expeditiously:

10.2.1.1 assess that amendment to the Companies Act and/or that inconsistency or contravention; and

10.2.1.2 obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and

10.2.1.3 propose amendments to the agreement in question or propose the Special Resolutions required to appropriately amend the MOI, as the case may be, as is necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

11. **RULES**

11.1 The Company will ensure that it complies with such requirements set out by the Department and the SARS Commissioner, as may be necessary to qualify as a PRO and maintain approval for the Company for tax and other purposes as a Members' association in terms of the provisions of the NEMWA and Income Tax Act respectively.

11.2 Should the Board deem this necessary or desirable at any time, it shall also have power at its discretion to make Rules for the Company; but such power to make Rules shall likewise be limited and restricted to the extent necessary to ensure continued compliance with the provisions of paragraph 6.2.1 of this Memorandum. A copy of any such Rules shall be published, by delivering a copy thereof to each Member of the Company, and by filing a copy thereof with the Commission, in the manner required by the Act.

11.3 A Rule contemplated in paragraph 11.2.

11.3.1 must be consistent with the NEMWA, the Companies Act and this MOI, and any such Rule that is inconsistent with the applicable legislation or this MOI is void to the extent of the inconsistency; and

11.3.2 takes effect on a date that is the later of:

11.3.2.1 10 Business Days after the Rule is filed; or

11.3.2.2 the date, if any, specified in the Rule.

12. **MEMBERS AND MEMBERSHIP**

12.1 The Company may provide for different categories of members to differentiate between different industries, interest groups and conduct requirements of members and, in general, as the Board determines to be in the best interest of the functioning of the Company and the Members as a whole.

12.2 As contemplated in item 4(1) and 4(2)(d) of Schedule 1 of the Companies Act, the Company shall have two classes of Members, being:

12.2.1 Voting Members: which shall be the Contributing Members, who are Producers, each of whom has a proportional vote in any matter to be decided by the Members of the Company in relation to the Members EPR Contribution to the EPR Scheme Fee, hence the calculation (1 x (the percentage of the total portion of their contribution if (Greater Than/=) **≥** 1% of Total EPR).

12.2.2 Non-voting members: who are Supporting Members, which shall have no vote in any matter to be decided by the Members of the Company other than as expressly provided for in this MOI; they may be:

12.2.2.1 Value Chain participants or Converters;

12.2.2.2 Beneficiaries of the Company's EPR Schemes.

12.3 Further Categories of Membership may be established by Special Resolution, subject to the consent of the majority of Members. Any such further Categories shall confer upon its constituent members such rights and prerogatives, and impose such duties and eligibility requirements as may be determined with reference thereto.

12.4 **VOTING MEMBERSHIP**

12.4.1 Admission to Contributing /voting membership is available to Producers (exclusively open to Producers that place packaging or goods in/with packaging on the South African market) admitted to membership in the sole discretion of the Board of Directors.

12.4.2 All Members must:

12.4.2.1 Qualify as Producers in terms of the definitions contained in the NEMWA from time to time;

12.4.2.2 be in Good Standing with the applicable South African laws and regulations (regularly reporting) and in terms of amounts owing to the EPR Scheme in the sole discretion of the Company;

12.4.2.3 be engaged in the provision of identified products accepted by the Company or be the owner of products and make its returns mainly through the sale or importation of identified products;

12.4.3 No Member who is in arears with payment in terms of the Rules or Extended Producer Fee reported in the past 30 days (for more than sixty days) shall be entitled to vote at a Members meeting for so long as they are in arears with either payments or declarations.

12.4.4 Companies and institutions that qualify as Producers may submit an application for membership and be admitted or deemed Contributing Members as set out in paragraph 14.

12.5 **SUPPORTING MEMBERSHIP**

12.5.1 All applicants seeking non-voting membership will be considered on a case-by-case basis by the Board of Directors.

12.5.2 Supporting members will not be represented on the Board, neither will they have a vote in resolutions or special resolutions.

12.5.3 Further definitions, including membership rates, conditions for admission, codes of conduct and the categorisation of Supporting Members shall be contained in the Rules of the Company.

13. NON-TRANSFERABILITY OF MEMBERSHIP

Membership may not be assigned or transferred.

13.1 No Member may directly or indirectly have any personal or private interest in the Company.

13.2 Members may be any person including natural persons, companies or other bodies corporate, or statutory bodies, partnerships or associations of persons. Distinction is made between Contributing Members and Supporting Members.

14. APPLICATIONS FOR ADMISSION

14.1 Applications for admission as a Contributing Member or as a Supporting Member must be addressed in writing to the Chairperson of the Board or the Nominated Officer. Such applications must contain a commitment to abide by the MOI, the Rules, the Code of Conduct of the Company and a commitment to meet the financial obligations of Membership for the entire duration of their participation in the EPR Scheme.

14.2 The Board shall determine procedures for the admission of Members.

14.3 Candidates for membership and accepted members shall disclose such information as reasonably and equitably requested by the Board from time to time and under appropriate and clearly defined conditions of confidentiality.

14.4 The Board shall have a complete and unfettered discretion with respect to the admission of Members, and shall be under no obligation to furnish reasons for, or to otherwise motivate, such decisions.

14.5 Upon its admission to membership, a Member shall become vested with all the rights, prerogatives, and responsibilities of membership of the Company, as contemplated by the Act, this Memorandum, the Code of Conduct and the relevant Rules.

14.6 The Company shall maintain at its registered office a register of Members of the Company as provided in section 24(4) of the Companies Act, containing among other things the email address, postal address and contact details of each Member.

15. TERMINATION AND VALIDATION OF MEMBERSHIP

15.1 A Member's admission to the Company shall terminate, or be suspended, in the sole discretion of the Board if:

15.1.1 they are guilty of conduct contrary to the interests and/or objects of the Company; or

15.1.2 it is contrary to the interests and/or objects of the Company that the Member continues as a Member of the Company;

15.1.3 the Member is wound up or placed in business rescue proceedings (whether provisionally or finally and whether voluntarily or compulsorily);

15.1.4 they commit any act of insolvency;

15.1.5 if any Member assigns or transfers, or purports to assign or transfer, its membership contrary to the provision of this MOI;

15.2 In the event of non-compliance by a Member with any such obligations as may attach to their membership, upon the expiration of a period of three months reckoned from:

15.2.1 the date of written notice by the Company to the Member concerned requiring the remedying of such default, save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate;

15.2.2 the date of written notice by the Company to the Member concerned notifying the Member that its annual levies or contribution, as laid down from time to time by the Board, are overdue,

save that the Board shall have the power to reinstate such Member on such terms as to the payment of arrears and otherwise as the Board think fit.

15.3 A Member whose membership has been terminated shall remain liable for all sums that may at the date of termination of their membership be due to the Company and shall not have any claim against the Company or its officers, its property or its funds.

15.4 The termination of Membership and the rights granted in terms of the Participation Agreement, shall not affect the rights of the Company:

15.4.1 that may have accrued before the termination of the Membership; and/or

15.4.2 which specifically or by their nature survive the termination of the Membership, and shall survive termination of the Participation Agreement.

15.5 A Member shall cease to be a Member of the Company if their membership is terminated in terms of paragraph 15.1.1 or on receipt by the Company of written notice of resignation from the Member. No Member shall be entitled to the return of any membership fees, or contributions paid to the Company and any such resigning Member whose resignation takes effect after the first day in any financial year shall nevertheless be liable for the payment of its annual levies or contributions, as laid down by the Board from time to time, for the year.

15.6 Certificates of membership may be issued under the authority of the Board in such manner and form as the Board may determine from time to time.

16. **MEMBERS MEETINGS**

16.1 **Right to Call Meeting**

16.1.1 The Board may call a Members' meeting at any time.

16.1.2 If the Company is unable to convene a meeting because it has no Directors or because all of its Directors are incapacitated, then the Company authorises any Member to convene a meeting in these circumstances.

16.2 **Requirement to Hold Meetings**

16.2.1 The Company is, subject to paragraph 17, required to hold Members meetings in the following circumstances:

16.2.1.1 when adopting a Special Resolution;

16.2.1.2 whenever required in terms of section 70(3) to fill a vacancy on the Board;

16.2.1.3 when one or more written and signed demands for such a meeting are delivered to the Company, and each such demand describes the specific purpose for which the meeting is proposed, and in aggregate, demands for substantially the same purpose are made and signed by the holders, as of 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.

16.2.2 Notwithstanding paragraph 16.2.1.3 the Company, or any Member, may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.

16.2.3 At any time before the start of a Members meeting contemplated in paragraph 16.2.1.3 a Member who submitted a demand for that meeting may withdraw that demand; and the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage requirement, as set out in paragraph 16.2.1.3, of voting rights required to call a meeting.

16.2.4 An Annual General Meeting (if required) may deal with and dispose of all matters prescribed by the Companies Act, including the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it.

16.3 **Members Acting Other Than at a Meeting**

16.3.1 Notwithstanding paragraph 16.2 and 16.4, an Ordinary Resolution or Special Resolution that could be voted on at a Members meeting may instead be voted on in writing, via a round-robin resolution if:

16.3.1.1 the resolution is submitted to Members entitled to exercise voting rights in relation to the resolution; and

16.3.1.2 is thereafter voted on in writing by the Members within 20 Business Days after the resolution was submitted to them.

16.3.2 A resolution contemplated in paragraph 16.3.1 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 Members meeting and if adopted, has the same effect as if it had been approved by voting at a Members meeting.

16.3.3 Within 10 Business Days after adopting the resolution as set out in paragraph 16.8 , the Company must deliver a statement describing the results of the vote to every Member who was entitled to vote on the resolution.

16.3.4 The written resolution, as set out in paragraph 16.8 , shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Members representing the threshold required for approval by those who are entitled to exercise voting rights in relation to that resolution. The written resolution may consist of two or more documents in the same form, each of which is signed by one or more such Members, as the case may be.

16.4 **Notice of Members' Meetings**

16.4.1 The Company must deliver a notice of each Members' meeting in the prescribed manner and form to all of the Members of the Company with at least 15 Business days' notice in writing in the case of an Annual General Meeting or a General Meeting convened to pass a Special Resolution, and with at least 15 Business days' notice in writing in the case of any other General Meeting.

16.4.2 A meeting of Members may be called on less notice as required in paragraph 16.2, but such meeting may only proceed if 75% of the total voting rights of all Members having a right to attend and vote at the meetings are present at the meeting and vote to waive the required minimum notice of the meeting.

16.4.3 In terms of the Regulations 36(2) to the Companies Act (2011); notice of a Members meeting must be delivered to Members using the necessary form and must include the following information:

16.4.3.1 the date, time and place for the meeting;

16.4.3.2 the purpose of the meeting;

16.4.3.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted; and

16.4.3.4 a reasonably prominent statement that:

16.4.3.5 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;

16.4.3.6 a proxy must be a representative or employee of a Member; and

16.4.3.7 participants will be required to provide satisfactory identification to verify their right to participate at the meeting, as contemplated in paragraph 16.6.1.

16.4.4 in the case of an annual general meeting, the notice shall include -

16.4.4.1 the financial statements to be presented or a summarised form thereof; and

16.4.4.2 directions for obtaining a copy of the annual financial statements for the preceding financial year.

16.4.5 If the Company fails to give the required notice of a Members meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if every Member who is entitled to exercise voting rights in respect of each item on the agenda of the meeting:

16.4.5.1 acknowledges actual receipt of the notice;

16.4.5.2 is present at the meeting; and

16.4.5.3 waives notice of the meeting, or in the case of a material defect in the manner and form of giving notice, ratifies the defective notice.

16.5 **Chairperson of the Board**

16.5.1 The Chairperson of the Board shall be entitled to chair meetings of Members. If, however, there is no Chairperson, or if they have notified their inability to attend a meeting or if at any meeting they are not present within 20 minutes of the time appointed for the meeting, the Members who are entitled to exercise voting rights at the meeting present and represented shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Members shall choose one of their own to be the Chairperson.

16.6 **Verification of right to attend meeting**

16.6.1 A person wishing to attend or participate in a Members meeting (whether as a proxy or Member), must present reasonably satisfactory identification to the chairperson of the meeting at least 24 (twenty-four) Hours before the Record Date of the meeting. The Chairperson must be reasonably satisfied that the right of the Member to attend and vote has been reasonably verified.

16.6.2 For the purposes of this paragraph _16.6, the following forms of identification shall be reasonably satisfactory: a valid identity document, driver's license or passport (or a certified copy of any of these documents), accompanied by a power of attorney, letter of authority or other instrument appointing the proxy or person to attend the meeting on behalf of a Member.

16.7 **Proxies**

16.7.1 The instrument appointing a proxy shall be in writing in a form to be decided by the Board, under the hand of the appointer or of his agent duly authorised in writing. The holder of a General or Special Power of Attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.

16.7.2 The Company shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy, including the Power of Attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been delivered to the Company or to any other person acting on behalf of the Company provided that such instrument of proxy is delivered before the time for holding such meeting or any adjournment thereof. (section 58(3)(c)).

16.8 **Electronic participation in Members' meetings**

16.8.1 A Members meeting may be conducted entirely by electronic communication or one or more participants in the Members meeting may participate using electronic communication, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively. A resolution signed by the requisite majority or percentage of Members who were connected electronically where:

16.8.1.1 all such Members are able to decide or control whether they remain connected for the duration of the electronic meeting;

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

16.8.1.3 the chairperson of the meeting or any other Member certifies in writing that all of the requirements have been met,

shall be deemed to have been passed on the date on which the resolution was signed by the Member last to sign it (unless a statement to the contrary is made in that resolution) and such resolution may consist of several documents, each of which may be signed by one or more Members who participated in the electronic meeting.

16.9 **Quorum**

16.9.1 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

16.9.2 The quorum for a Member's meeting of the Company called for the passing of a Special Resolution or to dissolve the Company shall be at least 25% of the voting rights entitled to be exercised present in person or by proxy or if a Contributing Member is a body corporate, its representative: Provided that a quorum shall never be less than three Contributing Members present in person or if a Contributing Member is a body corporate, its representative.

16.9.3 The quorum for a General Members meeting shall be at 25% of the voting rights entitled to be exercised present in person or by proxy or if a Contributing Member is a body corporate, its representative: Provided that a quorum shall never be less than three Contributing Members present in person or if a Contributing Member is a body corporate, its representative.

16.9.4 The participation by a Member at a meeting of the Members in accordance with paragraph 12.4.3 shall be taken into account for the purposes of constituting a quorum as well as with respect to voting at such meeting.

16.9.5 After a quorum has been established for a meeting (or in respect of a specific matter on the agenda), the meeting may continue (or the matter may be considered) provided the meeting is quorate for the full duration of the meeting.

16.9.6 Written Minutes shall be kept of the proceedings at Members' meetings, including a record of those present or participating at each meeting. The Minutes shall be signed by the Chairperson, and copies shall be made available to each Member.

16.10 **Postponement and adjournment of meetings of Members**

16.10.1 If within 30 minutes of the appointed time for a meeting to begin, a quorum is not present, the meeting will automatically (without any further action or formalities being required, unless the location of the meeting is different):

16.10.1.1 if convened on the requisition of Members, be dissolved; or

16.10.1.2 in any case other than contemplated in paragraph 16.10.1, be postponed to a date determined by the chairperson on written notice to the Members but which shall be no earlier than one week and no later than 15 days from the date of the non-quorate meeting (or if that is not a Business Day, to the next succeeding Business Day) at the same time and place, or to such other time and place as the chairperson of the meeting may appoint.

16.10.2 If a quorum is not present when a matter is called on the agenda, consideration of that matter may be postponed to a later time in the meeting (without further action or formalities being required) if there is other business on the agenda. However, if there is no further business on the agenda, the meeting is automatically (without any further action or formalities being required, unless the location of the meeting is different) adjourned to a date determined by the chairperson on written notice to the Members but which shall be no earlier than one week and no later than 21 days from the date of the meeting (or if that is not a Business Day, to the next succeeding Business Day) to be continued at the same time and place, or to such other time and place as the chairperson of the meeting may appoint.

16.10.3 The 30 minutes limit specified in paragraph 16.10.1 may be extended by the Chairperson presiding at the Members' meeting as contemplated in section 64(5) for a reasonable period on grounds that:

16.10.3.1 Exceptional circumstances, which may affect participation, including weather, transportation or electronic communication, or generally impeding the ability of Members to be present or participate at the meeting; or

16.10.3.2 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of paragraph 16.4.

16.10.4 A Members' meeting (or consideration of a particular matter on the agenda) may be adjourned without further notice to a fixed time and place (but will require a notice if it is adjourned "until further notice") by a vote in favour thereof by holders of a majority of those voting rights present or represented at the meeting and entitled to be exercised on at least one matter remaining on the agenda of the meeting or, where the adjournment is in respect of a particular matter, by a vote in favour thereof by holders of a majority of those voting rights present or represented by proxy and entitled to be exercised in respect of the matter in question.

16.10.4.1 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting which was adjourned.

16.10.4.2 Pursuant to section 64(8), if within 30 minutes of the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Members who are entitled to exercise Voting Rights at the meeting, present or represented at the meeting will be deemed to constitute a quorum.

17. **VOTING**

17.1 Save as is otherwise expressly provided by the Companies Act or by this MOI, all resolutions to be considered at any Members' meeting shall be decided by a majority of votes cast.

17.2 Each Contributing Member will be allocated 1 vote **multiplied** by each full 1% of the previous year's Members' Contribution that it provides to the EPR Scheme Funding, (excluding any ring-fenced funding).

17.3 If a poll is required, it shall be taken in such manner and at such place and time as the chairperson of the meeting directs and either immediately or after an interval or adjournment which shall not exceed seven days, the demand for a poll may be withdrawn. Scrutineers shall be appointed by the Chairperson to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the chairperson of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the dispute and the determination of the Chairperson made in good faith shall be final and conclusive.

17.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

17.5 In the case of an equality of votes, the chairperson shall have a casting vote in addition to any vote or votes to which he may have been entitled as a Member or representative of a Member, either on a show of hands or on a poll.

18. **DIRECTORS**

18.1 **Powers of Directors**

The business of the Company shall be managed and supervised by the Board in accordance with the stated objects of the Company and as envisioned in terms of section 66(1). The Board may exercise all powers of the Company which are not excluded by a statute or this MOI.

18.2 **Appointment**

18.2.1 The Company shall have a minimum of three and a maximum of 13 Directors. No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director. No single Director shall directly or indirectly control the decision-making powers relating to the Company.

18.2.2 The Board shall be constituted from time to time in the manner, and in accordance with the procedures indicated, in order to achieve the objectives of proportionality and representivity of the spectrum of Voting Members, and also to make provision for the appointment of persons having appropriate knowledge, experience and skills. These provisions are intended to ensure that Directors so appointed satisfy the relevant eligibility qualifications and criteria as are specified with reference to the Category concerned, including the requirement of appropriate knowledge, experience, and skills.

18.3 One third of the Directors shall be appointed by the Members annually, such that no more than half of the directors are rotated in a single year.

18.4 The Chief Executive Officer of the Company shall, by virtue of the office they hold, be a member of the Board, save the limitation that this appointment shall not include the right to vote at meetings of the Board.

19. **NOMINATIONS PROCEDURE**

19.1 Prior to the expiry of the term of office of any serving Director(s), the Board shall issue a notice to Directors seeking confirmation of their availability; and to Members seeking nomination of replacement candidates for appointment in the relevant category.

19.2 Following the issuance by the Board of its call for nominations, any Member of the Company shall be entitled to nominate, for the consideration of the Board, a single nominee/ any person/s it may consider qualified, eligible and suitable to be elected to the Board in the Categories where they qualify should vacancies arise. Such nominations must be in writing, and must be delivered by hand or by email, to the Office within twenty (20) Business Days of the date of the notice.

19.3 Each nomination must include at least:

19.3.1 the full name and address of the nominee;

19.3.2 a statement as to the nominee's relationship (whether in the nature of employment, consultancy, or other form of contract,) with the Company itself, as the case may be;

19.3.3 the Category of Directorship within which the nominee is nominated;

19.3.4 a brief curriculum vitae of the nominee; and

19.3.5 the written consent of the person so nominated, which consent may be furnished by email by the person so nominated.

19.4 Subject to the provisions of paragraph 20.4, all serving Directors whose terms of appointment will expire prior to an election shall be deemed to have been nominated for consideration in the Category of Directorship in which they are eligible to serve, unless they advise the Board in writing that they do not wish to be considered for re-appointment.

19.5 The Board shall draw up the shortlist of candidates for recommendation to Members for election as Directors in each Category. In determining the shortlist, the Board shall observe due process and take into account the skills, knowledge, representivity and experience requirements of the Board.

19.6 The subsequent notice of the election shall include the names of the short-listed candidates, together with their curricula vitae and such further information as the Board deems necessary to enable Members to exercise an informed vote.

19.7 The Board shall, of its own accord, be entitled to, consider and evaluate the candidacy as a Director, of any other person, apart from those who have been nominated by the Members of the Company or deemed to have been nominated as aforesaid, having due regard to the transformation objectives of the Company, and such other qualifications and considerations.

19.8 For the avoidance of doubt, it is recorded that neither the Members of the Company, nor the Members of the Board, shall be bound in any way by the suggestions or recommendations of the Board; nor shall the Members be bound by the views or recommendations that may be so expressed on behalf of the Board.

20. **ELECTION OF DIRECTORS**

20.1 Following the Nomination Procedure referred to in paragraph 19, an election shall take place in the manner specified in the call for nominees. All Members in good standing on the Record Date shall be entitled to exercise their vote in the election of Directors representing their category.

20.2 Accordingly, and in order to achieve these objectives, the Directors shall be appointed as follows:

	Producer /Contributing Member Class	**Board Seats**	**Term and Allocation**
CAT. 1	Top 5 contributors in terms of **Member's EPR Contribution** over previous financial year	5	• Each CAT 1 Member company has the opportunity to appoint a representative/ 1 Director • If representative director resigns, the Member may appoint a new representative – if they are still Cat. 1 qualifying for that Director's term • If Cat 1 members don't exercise their option to appoint a representative director, that seat will be passed on to Cat. 2

			• The appointment follows the Member • If there are insufficient nominees – seat will be passed on to Cat. 2
CAT. 2	Next 5 largest contributors in terms of **Member's EPR Contribution** over previous financial year	3	• 5 companies will be represented by a minimum of 3 seats plus any unfilled seats passed on from Cat 1 • Each company not already represented has option to nominate a candidate • If there are more nominees, than vacant seats then it will go to a vote • Each company (of the 5) cast N-1 votes (where N is the number of candidates) • Candidate/s with the most collective votes take up the seat/s • If no nominees – seat will be passed on to Cat. 3
CAT. 3	Remaining members contributing to **Member's EPR Contribution**, including those Producer members paying indirectly via converters.	3	• Remaining companies will be represented by 3 seats plus any unfilled seats passed on from Cat 2 • Any company not represented in another category may nominate a candidate • All members may cast 1 vote with all votes counting equally • The candidate/s with the most votes will take up the seat/s • If no nominees – seat will remain vacant.

20.2.1 Prior to the Record Date for an election, the categorisation of all Members shall be reviewed based on their annual Member EPR Contributions in the previous financial year. Each Member will be advised timeously of their current categorisation and specifically of any changes.

20.2.2 Should the categorisation of any Member represented by a serving Director change, that Director shall resign leaving their seat vacant ahead of the election processes. Any vacant seat/s shall then be filled according to the procedures for nominating and appointing directors in 19.2. For clarity, any individual resigning under such circumstances will be eligible for reappointment as a Director subject to the nomination and election procedure in the Member's new category should a vacancy arise.

20.2.3 The Category 1 Members whose qualification is maintained will confirm the appointment of their Directors annually.

20.2.4 For Directors representing Category two and three appointments the persons receiving the largest number of votes shall be deemed to have been duly elected. If the numbers of votes cast and the application of the above provisions does not serve to determine which persons are duly elected, then there may be a second “run-off” election, as may be determined by and at the sole discretion of the Chairperson.

20.3 Each Director elected or deemed to be elected in terms of the aforegoing provisions shall serve for a three (3) year term.

20.4 Save for persons co-opted as Directors by the Board in the circumstances of a temporary vacancy as contemplated by paragraph 20.5, no person shall be eligible to be appointed as a Director, unless that person has been duly nominated or is deemed to have been duly nominated or is otherwise considered in accordance with the provisions of paragraph 19.

20.5 In the event of a temporary vacancy or vacancies arising during the term of office of any of the Directors nominated or elected as aforesaid, the Board shall be entitled - but shall not be obliged - at its complete and entire discretion, to fill such temporary vacancy/ies by co-opting as a Director another eligible and suitably qualified person, by resolution of the Board passed with a simple majority. Any such Co-opted Director shall serve only for the balance of the term of the Director in whose place that Director shall have been so co-opted, subject however to the overriding discretion of the Board, should it at any time deem this appropriate and in the best interests of the Company, to suspend or terminate the appointment of any such Co-opted Director, in which event the Board shall be under no obligation, express or implied, to provide motivation or reasons for such decisions.

20.6 For the avoidance of doubt, it is further provided that during the period of any such temporary vacancy, the remaining Directors shall be entitled and required to continue acting as if duly constituted and empowered, notwithstanding the existence of such temporary vacancy, provided that if there is more than one such temporary vacancy the remaining Directors may act during the period of such temporary vacancies only to the extent necessary in order to:

20.6.1 secure and promote the interests and enterprise of the Company, and ensure the continuity of its operations and services; and/or

20.6.2 cause any such vacancies to be filled in order that the number of Directors may be increased to at least the required minimum, namely three (3); and/or

20.6.3 initiate a process, which may include the summoning of meetings of the Board and/or a General Meeting of Members, in order to procure the appointment or election of the required Directors; provided that if there is no Director able or willing to act, any Member of the Company may initiate the process and convene the necessary meetings.

20.7 In order to facilitate compliance with the provisions of article 5(*b*) of Schedule 1 to the Act, being the annual appointment of one-third of the elected directors;

20.7.1 the Board may approve an amended term of appointment for a co-opted Director in terms of paragraph 20.5, or

20.7.2 the Board shall be empowered, notwithstanding the provisions of paragraph 20.3, to recommend such reduced term of office of any nominee, to be appointed at an election.

20.8 No person shall be capable of being appointed as a Director unless the provisions of the Companies Act have been duly complied with.

20.9 All decisions adopted and actions taken in good faith by the Board, or by a Committee of the Board, or by a person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such Director, or the person acting as aforesaid, or that any such person was disqualified, shall nonetheless be as valid and effectual as if such person/s had been duly appointed and was duly qualified to serve as a Director.

20.10 Notwithstanding the existence of Membership categories and the particular qualifications and eligibility criteria required of Directors, all Directors irrespective of the manner from which they derive their appointment, shall be required to act at all times **solely in the best interests of the Company as a whole**, and not merely with a view to representing or advancing the special interests of a particular sector or member institution.

20.10.1 Where a vacancy on the board arises, each Contributing Member of the Company shall be entitled but not obliged to nominate one Director to fill such vacancy. Once the nominations have been made to the Board, the Members shall be entitled but not obliged to vote on the nominations by way of a poll.

20.10.2 Every Director must satisfy the qualification and eligibility requirements set out in section 69 to become or remain a Director, and save for the chief executive officer, be a representative of a Contributing Member of the Company.

20.10.3 The Directors may from time to time appoint one or more candidates to the office of executive director or chief executive officer on such terms and conditions as may be determined from time to time and may revoke such appointment. Such appointed chief executive officer shall be appointed to the Board.

20.10.4 The Board shall have the power at any time and from time to time to appoint any other person as a Director (in addition to the 13 Directors appointed in terms of paragraph 19) as an addition to the Board, provided that no more than three Directors so appointed shall be members of the Board at any one time. Any Director so appointed shall be entitled to vote and shall hold office only until the conclusion of the next following election.

20.10.5 At least one third of the Directors who have served on the Board for more than 3 (three) years, must resign annually. Any such Director is eligible for re- election.

20.10.6 The Chairperson shall be elected or confirmed by the Board from amongst the Directors at the first meeting of the Directors following the election, subject always to a maximum continuous term in office of two (2) three-year stints.

20.10.7 The Chairperson shall preside at meetings of the Board. If the Chairperson is not present or willing to act within five minutes of the time appointed for the commencement of such meeting, the Directors then present shall choose any other of their number to be chairperson of such meeting.

21. **VACATION OF OFFICE**

21.1 The office of the Director shall *ipso facto* be vacated if such Director:

21.1.1 is a representative of a Contributing Voting Member and the Contributing Voting Member who appointed them, ceases to be a Member of the Company or qualifies in a different appointment category as envisaged by clause 20.2;

21.1.2 dies;

21.1.3 resigns;

21.1.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;

21.1.5 ceases to be a representative of the Contributing/ Voting Member which appointed them;

21.1.6 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;

21.1.7 holds any other office within the Company, without the consent of the Company, except that of executive director or chief executive officer;

21.1.8 is absent from meetings of Directors for more than six months without permission of the Board;

21.1.9 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner contemplated in paragraph 23;

21.1.10 becomes ineligible or disqualified in terms of section 69; or

21.1.11 is removed in terms of paragraph 21.2.

21.2 **Removal from office**

21.2.1 A Director may further be removed from office by order of the court as contemplated in section 71(5) or (6).

21.3 **Vacancies**

21.3.1 The Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in paragraph 18.2 as the minimum number of Directors, then the remaining Directors may act for the purpose of increasing the number of Directors to that number, but for no other purpose.

22. **BOARD MEETINGS**

22.1 The Directors must meet together at least quarterly for the dispatch of the business of the Company.

22.2 The conduct of meetings shall generally be governed in terms of section 73. Notwithstanding the aforementioned, the Board may regulate their meeting as they think fit.

22.3 The chief executive officer of the company shall attend all Members' meetings and Board meetings and shall not in his /her capacity as chief executive officer have a casting vote in addition to any vote he may have by virtue of being a Director of the Company.

22.4 Any three Directors may at any time convene a meeting of the Directors by requesting such a meeting from the Chairperson, who shall summon the meeting by no later than one month from receipt of the request. A Director while absent from the Republic of South Africa shall, during such absence, be entitled to notice of any meeting.

22.5 Notice of a Board meeting must be given to each Director in writing, (email) not less than 14 days prior to the meeting.

22.6 Where the Chairperson has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Directors:

22.6.1 acknowledge actual receipt of the notice; or

22.6.2 are present at the meeting; or

22.6.3 waive notice of the meeting.

22.7 A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

22.8 The quorum necessary for the transaction of the business of the Directors shall at all times be at least six Directors.

22.9 For all board decisions, each Director shall have an equal vote, regardless of their category or constituency. In the case of dispute, a simple majority is required.

22.10 The chairperson of the Board meeting shall have a casting vote in the event of a tie.

22.11 Unless otherwise provided in this MOI, a majority of the votes cast on a resolution is sufficient to approve that resolution.

22.12 A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.

22.13 Resolutions adopted by the Board:

22.13.1 must be dated; and

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

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

22.14.1 any declaration of personal financial interest given by notice or made by a Director as required by section 75; and

22.14.2 every resolution adopted by the Board.

22.15 Any minutes of a Board meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next Board meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

23. PERSONAL FINANCIAL INTERESTS

If a Director has a personal financial interest, (or knows that a related person has such an interest) he must disclose in advance, in writing, to the Board the nature and extent of that interest. This disclosure must comply with the requirements of the Companies Act. If the personal financial interest (including that of a related person), arises after the matter has been approved by the Board then the Director or prescribed officer concerned must promptly, after the interest arises, disclose same to the Board in accordance with section 75.

24. INDEMNIFICATION

Subject to a resolution of the Directors, the Board may:

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

24.2 may directly or indirectly indemnify a Director for expenses contemplated in paragraph 24.1, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Company may indemnify the Director as provided in terms of sections 78(5) and (6).

24.3 Subject to the limitations imposed by section 78(6), the Company may indemnify a Director, committee member or officer of the Company.

24.4 The Company may purchase insurance to protect:

24.4.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with paragraph 24.2; or

24.4.2 the Company against any contingency including, but not limited to:

24.4.3 any expenses that the Company is permitted to advance in accordance with paragraph 24.4.1; or

24.4.4 any liability for which the Company is permitted to indemnify.

24.4.5 The Company is entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this paragraph 24.4.

25. **REMUNERATION**

25.1 The Directors of the Company shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors (except as contemplated in this MOI).

25.2 Where a Director renders additional services to the Company, other than his/her services as a Director, such Director may be remunerated by the Company for such services, provided that such remuneration is fair and reasonable, and has been approved by Board resolution following the procedure set out in section 75(5) and supported by no less than 75% of the disinterested Directors of the Company.

25.3 **Reimbursements**

25.3.1 A Director of the Company may be reimbursed by the Company for reasonable and necessary expenses incurred in the bona fide performance of his/her duties to the Company, provided that any reimbursement of any expense not of a category of expenses expressly budgeted for in the annual budget of the Company approved by the Board or of an amount exceeding any limit with respect to any category of expenses specified in the annual budget of the Company approved by the Board shall be subject to the prior approval of a disinterested majority of the Directors of the Company by resolution.

25.4 **Loans**

25.4.1 The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company, or to a person related to any such director, unless it:

25.4.2 is in the ordinary course of the Company's business and for fair value and to advance one or more of the stated objects of the Company set out in this MOI; or

25.4.3 constitutes an accountable advance to meet:

25.4.4 legal expenses in relation to a matter concerning the Company; or

25.4.5 anticipated expenses to be incurred by the person on behalf of the Company, or

25.4.6 is to defray the person's expenses for removal at the Company's request; or

25.4.7 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

25.5 **Officers**

25.5.1 The Board may appoint any officers it considers necessary to better achieve the stated objects of the Company.

25.5.2 The Board may appoint any number of committees, and to delegate to any such committees any of the authority of the Board.

25.5.3 Any committee appointed by the Board:

25.5.3.1 may include in any such committees' persons who are not directors, provided that:

25.5.3.2 any such person must not be ineligible or disqualified to be a director in terms of section 69; and

25.5.3.3 no such person has a vote on a matter to be decided by the committee,

25.5.3.4 may consult with or receive advice from any person; and

25.5.3.5 has the full authority of the Board in respect of a matter referred to it.

26. **REGISTERED OFFICE**

26.1 The registered office of the Company from time to time shall be at such location within the Republic of South Africa as the Board may from time to time determine.

27. **COMPANY RECORDS AND ACCOUNTING RECORDS**

27.1 All company records contemplated by section 24, and all accounting records contemplated by section 28 and Regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.

27.2 The Company will comply with such reporting requirements as the SARS Commissioner may determine from time to time.

28. **FINANCIAL YEAR**

28.1 The financial year of the Company shall end on 31 December of each year.

29. **ANNUAL FINANCIAL STATEMENTS**

29.1 Each year, the Company must prepare annual financial statements within six months after the end of its financial year.

29.2 The Company elects, in terms of section 30(2)(b)(ii)(aa), that the annual financial statements of the Company be audited voluntarily.

29.3 The annual financial statements must:

29.3.1 include an auditor's report;

29.3.2 include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Company, including:

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

29.3.4 any prescribed information;

29.3.5 be approved by the Board and signed by an authorised Director; and

29.3.6 be submitted to the Members in the first General Meeting, after such annual financial statements have been approved by the Board and signed by the authorised Director, within six months of the end of the financial year.

30. **ANNUAL RETURNS**

30.1 Each year, the Company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period (currently being 30 days) after the end of the anniversary of the date of its incorporation, which return must:

30.2 include a copy of the Company's annual financial statements;

30.2.1 designate a Director, employee or other person who is responsible for the Company’s compliance with the transparency, accountability and integrity requirements in terms of Part C of Chapter 2 of the Companies Act, and the requirements of Chapter 3 of the Companies Act, if these requirements apply to the Company; and

30.2.2 any other prescribed information.

31. **ENHANCED ACCOUNTABILITY AND TRANSPARENCY**

31.1 The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act.

31.2 The Company may, but is not obliged to, appoint a person to serve as company secretary and/or appoint a person to serve as an auditor, and/or establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.

31.3 The Company elected to have its annual financial statements audited in terms of sections 30(2) and (7), read with Regulation 28 and Regulation 26(2), and therefore the Company shall comply to the extent necessary with the provisions of Chapter 3 of the Companies Act with which it is required to comply.

32. **WINDING UP OR DISSOLUTION OF THE COMPANY**

32.1 A Director shall incur no personal liability for the debts or obligations of the Company, simply by reason of the fact that such person was appointed as a Director.

32.2 The Company may be wound up voluntarily by the Members by means of a special resolution as referenced in clause 16.9.2. Any such voluntary winding up shall be effected in accordance with section 80.

32.3 Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act and section 30B(8) of the Income Tax Act as follows:

32.3.1 to an association approved by the SARS Commissioner in terms of section 30B;

32.3.2 to a public benefit organisation which has been approved in terms of section 30 of the Income Tax Act;

32.3.3 to an institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act; or

32.3.4 to the government of the Republic of South Africa in the national, provincial or local sphere.

32.4 For the avoidance of doubt; no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.

ATTACHMENT A: THE NPC PROVISIONS

The Special Provisions Concerning Non-profit Companies, insofar as they relate to Non-profit Companies with Members – as set out in Schedule 1 to the Act - are applicable, to the Company; and to that extent, such Provisions are deemed to be incorporated in this Memorandum of Incorporation, and are repeated hereunder, for ease of reference, as follows:

1. Objects and Policies

(1) As required in terms of Schedule 1 of the Act, this Memorandum of Incorporation–
  (a) sets out one or more objects of the Company, and each such object is either:
    (i) a public benefit object; or
    (ii) an object relating to one or more cultural or social activities, or communal or **group interests**; and
  (b) is consistent with the principles set out in sub-items (2) to (5) hereunder.

(2) As a Non-profit Company, this Company:
  (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation; and
  (b) subject to paragraph (a), and subject to due compliance with the Prescribed Fiscal Conditions and all other applicable provisions of the Income Tax Act 1962 (Act No. 58 of 1962) with respect to approved Public Benefit Organisations, may:
    (i) acquire and hold securities issued by a profit Company; or
    (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

(3) As a Non-profit Company, this Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of whether the income or asset was derived, to any person who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
  (a) as reasonable:
    (i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
    (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company.
  (b) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  (c) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  (d) in respect of any legal obligation binding on the Company.

(4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of this Company:
  (a) no past or present Member or Director of the Company, or person appointing a Director of this Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
  (b) the entire net value of the Company must be distributed to one or more other non-profit companies, external non-profit companies carrying on activities within the Republic, voluntary associations, or non-profit trusts—
    (i) having objects similar to the main object of this Company; and
    (ii) as determined:
      (aa) in terms of the Company's Memorandum of Incorporation;
      (bb) by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or
      (cc) by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.

(5) In accordance with the provisions of the Act, the Commission may apply to the court, on behalf of this Company, for a determination contemplated in sub-item *(4)(b)(ii)(cc)* if the Company has:

(a) no remaining Members or Directors; and

(b) failed to:

(i) make a determination contemplated in sub-item (4)(b)(ii)(bb); or

(ii) apply to the court for such a determination.

(6) It is hereby acknowledged, as stipulated in terms of Schedule 1 to the Act, that incorporation as a Non-profit Company, or if applicable, registration as an External Non-profit Company in terms of the Act, and compliance by either with the provisions of that Act, does not necessarily qualify that Non-profit Company, or External Non-profit Company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.

(7) As a Non-profit Company with Members, **each voting Member has at least one vote.**

(8) The vote of each Member of a Non-profit Company is of equal value to the vote or each other voting Member on any matter to be determined by vote of the Members, **except to the extent that the Company's Memorandum of Incorporation provides otherwise**.

(9) As a Non-profit Company with Members, the requirements in section 24(4) to maintain a securities register must be read as requiring the Company to maintain a membership register.

2. Fundamental Transactions

(1) As a Non-profit Company, this Company may not—

(a) amalgamate or merge with, or convert to, a profit Company; or

(b) dispose of any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

(2) As a Non-profit Company with voting Members, any proposal to:

(a) dispose of all or the greater part of its assets or undertaking; or

(b) amalgamate or merge with another Non-profit Company,

must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.

(3) Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in sub-item (2).

3. Incorporators of Non-profit Company

As a Non-profit Company with Members, the Incorporators are its-

(a) first Directors; and

(b) its first Members.

4. Members

(1) The Memorandum of Incorporation provides for the Company to have Members.

(2) As the Memorandum of Incorporation provides for the Company to have Members, it:

(a) must not restrict or regulate, or provide for any restriction or regulation of, that membership in any manner that amounts to unfair discrimination in terms of Section 9 of the Constitution;

(b) must not presume the membership of any person, regard a person to be a Member, or provide for the automatic or *ex officio m*embership of any person, on any basis other than life-time membership awarded to a person:

(i) for service to the Company or to the public benefit objects set out in the Company's Memorandum of Incorporation; and

(ii) with that person's consent;

(c) may allow for membership to be held by juristic persons, including profit companies;

(d) may provide for no more than two classes of Members, that is voting and non-voting Members, respectively; and

(e) must set out:
 (i) the qualifications for membership;
 (ii) the process for applying for membership;
 (iii) any initial or periodic cost of membership in any class;
 (iv) the rights and obligations, if any, of membership in any class; and
 (v) the grounds on which membership may, or will, be suspended or lost.

5. Directors

(1) As this is a Non-profit Company with Members, the Memorandum of Incorporation must:
 (a) set out the basis on which the Members choose the Directors of the Company; and
 (b) if any Directors are to be elected by the voting Members, provide for the election each year of at least one-third of those elected Directors.

(2) If this Non-profit Company had no Members, the Memorandum of Incorporation would need to set out the basis on which Directors are to be appointed by its Board, or other persons.

(3) A Non-profit Company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company, or of a related or inter-related Company, or to a person related to any such Director.

(4) Sub-item (3) does not prohibit a transaction if it:
 (a) is in the ordinary course of the Company's business, and for fair value;
 (b) constitutes an accountable advance to meet:
  (i) legal expenses in relation to a matter concerning the Company; or
  (ii) anticipated expenses to be incurred by the person on behalf of the Company;
 (c) is to defray the person's expenses for removal at the Company's request; or
 (d) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

ATTACHMENT B: 30B OF THE INCOME TAX ACT

30B. Associations.—(1) For the purposes of this section—
"entity" means—
(*a*) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or
(*b*) any—
(i) **non-profit company as defined in section 1 of the Companies Act;** [Sub-para. (i) substituted by s. 81 (a) of Act No. 31 of 2013.]
(ii) society; or
(iii) other association of persons,
established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner in accordance with subsection (2);
"member" in the case of a fidelity or indemnity fund includes a contributor to that fund;
(2) Subject to subsections (3) and (4), the Commissioner must approve an entity for the purposes of section 10 (1) (*d*) (iii) or (iv) if—
(*a*) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
(*b*) the constitution or written instrument contemplated in paragraph (a) provides that—
(i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;
(ii) no single person may directly or indirectly control the decision-making powers relating to that entity;
(iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
(iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
(v) no member may directly or indirectly have any personal or private interest in that entity;
(vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
(vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;
(viii) the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
(ix) **substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere**;
(x) the entity must as part of its dissolution transfer its assets to—
(*aa*) another entity approved by the Commissioner in terms of this section;
(*bb*) a public benefit organisation approved in terms of section 30;
(*cc*) an institution, board or body which is exempt from tax under section 10 (1) (*c*A) (i); or
(*dd*) the government of the Republic in the national, provincial or local sphere;
(xi) the persons contemplated in paragraph (b) (i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
(xii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and

(xiii) the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5).
(3) The requirements contained in subsection (2) (b) (iii) and (v) do not apply in respect of a mutual loan association.
(4) Where the constitution or written instrument of an entity does not comply with subsection (2) (*b*), the Commissioner may deem it to so comply if the person who has accepted fiduciary responsibility for the funds and assets of that entity furnishes the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.
(5) Where the Commissioner is—
(*a*) satisfied that any entity approved in terms of subsection (2) has during any year of assessment in any material respect; or
(*b*) during any year of assessment satisfied that any such entity has on a continuous or repetitive basis, failed to comply with this section, or the constitution or written instrument under which it was established to the extent that it relates to this section,
the Commissioner must notify the entity that he or she intends to withdraw approval of the entity if corrective steps are not taken by the entity within the period stated in the notice.
(6) If no corrective steps are taken by the entity contemplated in subsection (5), the Commissioner must withdraw approval of that entity with effect from the commencement of the year of assessment contemplated in subsection (5).
(7) If the Commissioner has withdrawn the approval of an entity as contemplated in subsection (6) the entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2) (*b*) (x).
(8) If an entity is wound up or liquidated, the entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2) (*b*) (x).
(9) If an entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (8), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that entity during the year of assessment in which the withdrawal of approval in terms of subsection (6) or the winding-up or liquidation contemplated in subsection (8) took place.
(10) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved association and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such association is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

SCHEDULE 1: TRANSITIONAL GOVERNANCE

BACKGROUND

1. Upon the initial adoption of this MOI, those persons who held office as Directors of the COMPANY at the Transition Date, shall continue to hold such office for the balance of their respective terms of appointment, subject however to the further provisions of Clause 4 hereunder, and the relevant provisions of the Act.
2. So as to ensure compliance with the NEMWA and the EPR Regulations; these Transitional Governance Rules are adopted simultaneously with the Substituted Memorandum of Incorporation and will be in force during the first Transitional Period.
   2.1. Unless otherwise stated below, the effective date of the Transitional Arrangements is 1 September 2021.
3. The purpose of the Transitional Governance Rules during the Transition Period [September 2021 -mid 2023] is:
   3.1. To effectively guide the Company through this Transition Period and ensure delivery against targets & goals/ COMPLIANCE.

   3.2. To provide a balance between continuity of Activities & transition Membership from old stakeholders to new Members.

   3.3. To bring key "new players"/ Attract Members and therefore Board nominees, likely to contribute significantly to the Company in the future, into the board.

   3.4. Represent a balance of key constituents Members– brand-owners, fillers, retailers & converters.

   3.5. Maintain the necessary diversity / transformation in Membership and Board representation;

   3.6. Implement the Transition Plan, adopted by the Members.

4. The Interim board would serve an adjusted term from 2021 to early 2023 (until AGM), in 2023 the 2022 contributions would be evaluated, and the MOI board seat allocations would be determined.
   4.1. If a Member then qualifies as either Cat 1 or Cat 2, a representative Director who was appointed to the Interim Board may continue their tenure for a second year.
   4.2. If a Producer isn't in either Cat 1 or Cat 2, then an Interim Director will resign their seat and

it will be open to new nominations as per rules of MOI.

4.3. New Directors will then start a 3-year term.

4.4. This will result in staggered tenures that will prevent all board members changing simultaneously.