

**THE COMPANIES ACT, NO. 71 OF 2008**

(AS AMENDED)

**MEMORANDUM OF INCORPORATION**

of

**HOSPITALITY PROPERTY FUND LIMITED**

a public company

Registration Number: 2005/014211/06

**WHEREBY IT IS AGREED AS FOLLOWS:****1. INTERPRETATION**

1.1. In this Memorandum of Incorporation, 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. **“Act”** or the **“Companies Act”** means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to such Act;
- 1.1.2. **“the Board”** means the board of Directors from time to time of the Company;
- 1.1.3. **“Certificated Securities”** means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.4. **“Central Securities Depository”** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.5. **“Commission”** means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.1.6. **“Company”** means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.7. **“Deliver”** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 43 and the Companies Act and the Regulations, and shall, where permitted by the Companies Act and the JSE Listings Requirements, include delivery of an abridged document together with instructions as to how the recipient may obtain an unabridged version of such document;
- 1.1.8. **“Director”** means a member of the Board as contemplated in section 66 of the Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.9. **“Electronic Communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

- 1.1.10. **“Equity Securities”** shall have the meaning ascribed thereto in the JSE Listings Requirements;
- 1.1.11. **“File”** or **“Filed”** when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.1.12. **“Financial Markets Act”** means the Financial Markets Act, No 19 of 2012, including any amendment, consolidation or re-enactment thereof;
- 1.1.13. **“IFRS”** means the International Financial Reporting Standards, as adopted from time to time by the International Accounting Standards Board, or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Act;
- 1.1.14. **“JSE”** means the exchange, licensed under the Financial Markets Act, operated by JSE Limited (Registration number 2005/022939/06), a public company duly incorporated in the Republic;
- 1.1.15. **“JSE Listings Requirements”** means the Listings Requirements of the JSE applicable from time to time;
- 1.1.16. **“Ordinary Share”** means a no par value share, which has the rights and restrictions set out in clause 9;
- 1.1.17. **“Ordinary Shareholder”** means the holder of an Ordinary Share;
- 1.1.18. **“Participant”** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.19. **“Prescribed Officer”** means a person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) of the Act, as defined in the Act;
- 1.1.20. **“Regulations”** means the regulations published in terms of the Act from time to time;
- 1.1.21. **“Republic”** means the Republic of South Africa;
- 1.1.22. **“Securities”** means –
- 1.1.22.1. any shares, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the

Company and shall include Equity Securities, as the context may indicate or require; or

- 1.1.22.2. anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act, and includes shares held in a private company;
  - 1.1.23. **"Securities Register"** means the register of issued Securities (including Certificated and Uncertificated Securities) of the Company required to be established in terms of section 50(1) of the Act and referred to in clause 11 hereof;
  - 1.1.24. **"SENS"** means the Stock Exchange News Service established and operated by the Issuer Regulation Division of the JSE;
  - 1.1.25. **"Share"** means one of the units into which the proprietary interest in the Company is divided, which at the date of adoption of this Memorandum of Incorporation comprises only Ordinary Shares;
  - 1.1.26. **"Shareholder"** means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57 of the Act;
  - 1.1.27. **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4 of the Act;
  - 1.1.28. **"Uncertificated Securities"** means any "Uncertificated Securities" defined as such in section 1 of the Financial Markets Act; and
  - 1.1.29. **"Uncertificated Securities Register"** means the record of Uncertificated Securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.
- 1.2. In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1. words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
  - 1.2.2. a reference to the Act shall include reference to the Regulations;
  - 1.2.3. a reference to a section by number refers to the corresponding section of the Act;

- 1.2.4. a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.5. in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
  - 1.2.5.1. an alterable provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
  - 1.2.5.2. an unalterable provision of the Act, the unalterable provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 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 Memorandum of Incorporation 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;
- 1.2.9. 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 Memorandum of Incorporation;
- 1.2.10. 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 Memorandum of Incorporation to –
- 1.3.1. “**days**” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2. “**law**” means any law of general application, as amended and re-enacted from time to time, 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
- 1.3.3. “**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. Unless otherwise provided, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, in the case of business days, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7. 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.
- 1.8. Any reference herein to “this Memorandum of Incorporation” shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

## 2. **JURISTIC PERSONALITY**

2.1. The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof.

2.2. The Company is incorporated in accordance with and governed by –

2.2.1. the unalterable provisions of the Act, save to the extent that this Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement; and

2.2.2. the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and

2.2.3. the other provisions of this Memorandum of Incorporation.

## 3. **LIMITATION OF LIABILITY**

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

## 4. **PUBLIC COMPANY**

The Company is a public company as it is not a private company or a state-owned company or a personal liability company.

## 5. **POWERS OF THE COMPANY**

Save for those restrictions, limitations and/or qualifications as contemplated in the JSE Listings Requirements (including as regards Real Estate Investment Trusts), the Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

## 6. **SPECIAL CONDITIONS**

This Memorandum of Incorporation does not contain any special conditions applicable to the Company as contemplated in section 15(2)(b) or (c) of the Act.

## 7. ACQUISITION AND CESSATION OF RIGHTS

A person –

- 7.1. acquires the rights associated with any particular Securities of the Company when that person's name is entered in the Company's Securities Register as a person to whom those Securities have been issued or transferred; and
- 7.2. ceases to have the rights associated with any particular Securities of the Company when the transfer to another person or the re-acquisition by the Company or surrender to the Company of those Securities has been entered in the Company's Securities Register.

## 8. ISSUE OF EQUITY SECURITIES AND VARIATION OF RIGHTS

- 8.1. Securities in each class for which listing is applied shall rank *pari passu* in all respects.
- 8.2. The Company is authorised to issue the Shares as set out in clause 9.
- 8.3. Equity Securities of a particular class in the Company which are authorised but unissued and which are intended to be issued shall be offered to the existing Shareholders of that class of Equity Securities *pro rata* to their shareholding in the Company immediately before the offer was made with a reasonable time allowed to subscribe, unless –
  - 8.3.1. otherwise empowered by a general meeting of Shareholders, subject to the Companies Act and the JSE Listings Requirements (where necessary); or
  - 8.3.2. a capitalisation issue, as contemplated in clause 15, an issue for the acquisition of assets (including another company) or an issue for the purposes of an amalgamation or merger, is to be undertaken; or
  - 8.3.3. the Equity Securities are to be issued in terms of an option to subscribe for unissued Equity Securities or conversion rights pursuant to clause 8.4.7.

After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Person to whom the offer is made that he/she/it declines to accept the Equity Securities offered, the Directors may, subject to the foregoing provisions, issue such Equity Securities in such manner as they think most beneficial to the Company.



- 8.4. Subject to the provisions of the Act and the JSE Listings Requirements, save for –
- 8.4.1. correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the Memorandum of Incorporation and for complying with any applicable requirements of the Act when debentures and other debt instruments are created and/or issued, which the Board is empowered to do; and
  - 8.4.2. amendments of the Memorandum of Incorporation effected in compliance with a court order in the manner contemplated in section 16(1)(a), read with section 16(4) of the Companies Act,
- all other amendments to this Memorandum of Incorporation, including but not limited to –
- 8.4.3. an increase or decrease in the number of authorised Equity Securities of any class;
  - 8.4.4. the classification of any unclassified Shares that have been authorised but not issued;
  - 8.4.5. the variation of the preferences, rights, limitations or other terms of any issued Shares other than in accordance with the remaining provisions of this Memorandum of Incorporation and the JSE Listings Requirements, if applicable;
  - 8.4.6. the creation of any class of Shares;
  - 8.4.7. the conversion of any Shares in the capital of the Company to shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert Ordinary Shares or preference shares to redeemable preference shares;
  - 8.4.8. the consolidation and/or sub-division of its Equity Securities;
  - 8.4.9. the change of the name of the company,

must be approved by special resolution of Ordinary Shareholders, save where such an amendment is ordered by a court in terms of section 16(1)(a) and 16(4), subject to the requirements of the Act.

- 8.5. All or any of the preferences, rights, limitations and other terms associated with or for the time being attached to any class of Shares may (unless otherwise provided by the terms of issue of the Shares of that class) whether or not the Company is being wound up, be varied in any manner with the sanction of a special resolution of the Company at a separate general meeting of the holders of the Shares of that class. The provisions of this Memorandum of Incorporation relating to a general meeting shall *mutatis mutandis* apply to any such separate general meeting except that –
- 8.5.1. the necessary quorum shall be Shareholders of the class present at a meeting and holding at least 51% (fifty one per cent) of the issued shares of that class;
- 8.5.2. if at any adjourned meeting of such holders a quorum, as contemplated in clause 8.5.1, is not present, those holders who are present shall be a quorum; and
- 8.5.3. any holder of Shares of the class present at a meeting may demand a poll and, on a poll, shall have 1 (one) vote for each Share of the class of which he is the holder.
- 8.6. Alterations of share capital, authorised shares and rights attaching to a class/es of Shares, all issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition to the foregoing provisions, be in accordance with the JSE Listings Requirements.
- 8.7. No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Act.
- 8.8. The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 8.9. Subject to section 40(5) to (7) of the Act, when the Company has received the consideration approved by the Board for the issuance of any Shares –
- 8.9.1. those Shares are fully paid up; and

- 8.9.2. the Company must issue those Shares and cause the name of the holder to be entered onto the Company's Securities Register in accordance with sections 49 to 56 of the Act.
- 8.10. Notwithstanding anything to the contrary in this Memorandum of Incorporation, 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) of the Act, 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% (thirty per cent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.
- 8.11. Notwithstanding anything to the contrary in this Memorandum of Incorporation, any issue of Shares, Securities convertible into Shares, or a grant of options contemplated in section 42 of the Companies Act, or a grant of rights exercisable for Shares to a –
- 8.11.1. Director, future Director, prescribed officer or future prescribed officer of the Company; or
- 8.11.2. person related or inter-related to the Company, or to a Director or prescribed officer of the Company,
- or nominees of such person, shall require the approval of Ordinary Shareholders by special resolution, unless section 41(2) of the Act applies.
- 8.12. Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.
- 8.13. The granting of special privileges to holders of debt instruments, as defined in section 43(1)(a) of the Companies Act, such as attending and voting at general meetings and the appointment of Directors, as detailed in section 43(3)(b) of the Companies Act, is prohibited.

## 9. AUTHORISED SHARES

The Company is authorised to issue **2 000 000 000 (two billion)** Ordinary Shares, each of which ranks *pari passu* with the other Ordinary Shares and each of which entitles the Ordinary Shareholder –

- 9.1. on a vote by poll, to 1 (one) vote per issued Ordinary Share on any resolution to be determined by the Shareholders in accordance with this Memorandum of Incorporation, in person or by proxy; and
- 9.2. to participate proportionally with every other Ordinary Shareholder in distributions (except for the payment in lieu of a capitalisation Share as contemplated in section 47(1)(c) of the Act and any consideration payable by the Company for any of its own Shares or for any shares of another company within the same group as contemplated in paragraph (a)(iii)(aa) and (a)(iii)(bb) of the definition of “distribution” in the Act), made by the Company;
- 9.3. upon a winding up of the Company, to participate in the proceeds of the winding up proportionately with every other Shareholder.

## 10. CERTIFICATED AND UNCERTIFICATED SECURITIES

- 10.1. Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.
- 10.2. Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities.
- 10.3. Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities.
- 10.4. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant

Participant or Central Securities Depository as required by the rules of the Central Securities Depository.

10.5. After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –

10.5.1. immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in uncertificated form; and

10.5.2. within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.

10.6. The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

10.7. At the request of the Company, and on payment of the fee prescribed in the Act or the Regulations, if any, a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, must furnish the Company with all details of the Company's Uncertificated Securities reflected in the Uncertificated Securities Register.

## 11. **SECURITIES REGISTER**

11.1. The Company has established a Securities Register in the form prescribed by the Act and the Regulations and shall continue to maintain the Securities Register in accordance with the prescribed standards.

11.2. As soon as practicable after issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –

11.2.1. the total number of Uncertificated Securities;

- 11.2.2. with respect to Certificated Securities –
    - 11.2.2.1. the names and addresses of the persons to whom the Certificated Securities were issued;
    - 11.2.2.2. the number of Certificated Securities issued to each of them;
  - 11.2.3. in the case of Securities other than Shares as contemplated in section 43 of the Act, 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
  - 11.2.4. any other prescribed information.
- 11.3. If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 10.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –
- 11.3.1. forms part of the Securities Register; and
  - 11.3.2. must contain, with respect to all Uncertificated Securities contemplated in this clause 11, any details referred to in clause 11.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 11.4. The Securities Register or Uncertificated 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.
- 11.5. 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.
- 11.6. A certificate evidencing any Certificated Securities of the Company –
- 11.6.1. must state on its face –
    - 11.6.1.1. the name of the Company;
    - 11.6.1.2. the name of the person to whom the Securities were issued;
  - and

- 11.6.1.3. the number and class of Shares and designation of the series, if any, evidenced by that certificate;
  - 11.6.2. must be signed by two persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
  - 11.6.3. is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 11.7. A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 11.8. If, as contemplated in clause 11.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 11.8.1. each certificate issued in respect of those Shares must be distinguished by a numbering system; and
  - 11.8.2. 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,

provided that in terms of Schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of clauses 11.6 to 11.8 is not a contravention of the Act and does not invalidate that certificate.

## 12. **TRANSFER OF SECURITIES**

- 12.1. The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.
- 12.2. Subject to such restrictions as may be applicable (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question) but in no way derogating from the provisions of clauses 8.8 and 14 regarding Shares and Securities being freely transferable, any Shareholder or holder of other Securities may

transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.

12.3. Every instrument of transfer shall be delivered to the principal place of business of the Company, alternatively the offices of the Company's transfer secretaries, as appointed from time to time, accompanied by –

12.3.1. the certificate issued in respect of the Certificated Securities to be transferred; and/or

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

12.4. All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its registered office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.

12.5. All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide. Any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who lodged it.

12.6. The transfer of Uncertificated Securities may be effected only –

12.6.1. by a Participant or Central Securities Depository;

12.6.2. on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and

12.6.3. in accordance with section 53 of the Act and the rules of the Central Securities Depository.



- 12.7. Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 12.8. Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefore in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

13. **NO LIEN**

It is recorded for the avoidance of doubt that no Securities shall be subject to any lien in favour of the Company and shall be freely transferable.

14. **TRANSMISSION OF SECURITIES**

- 14.1. The parent or guardian of a registered holder of Securities who is a minor, the executor or administrator of a registered holder of Securities who is deceased, the trustee of a registered holder of Securities who is an insolvent or the *curator bonis* of any registered holder of Securities who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered holder of Securities shall be the only person recognised by the Company as having any title to any Security registered in the name of such holder of Securities, including for voting purposes. Any such person who submits proof of his appointment as the guardian, executor, administrator or trustee, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security holder.
- 14.2. If when called upon by the Directors to do so the executor fails to register the deceased's Securities in its name or the names of the heir or legatees, the Securities shall not be capable of being forfeited, but shall continue to be registered in the names of the deceased or the executor's name *nomine officio*.
- 14.3. Subject to the provisions of clause 14.1, any person becoming entitled to any Security by virtue of the death of a holder of Securities shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such holder of Securities could have made, provided that in respect of a transfer other than to himself –

- 14.3.1. 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 holder of Securities before his death; and
- 14.3.2. a person becoming entitled to any Security shall not, unless and until he is himself registered as a holder of Securities 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.

## 15. CAPITALISATION SHARES

15.1. Provided such transaction(s) has/have been approved by the JSE, if so required under the JSE Listings Requirements, (and the JSE Listings Requirements have been complied with), the Board shall, in accordance with section 47 of the Act, have the power or authority to –

- 15.1.1. approve the issue of any authorised Shares, as capitalisation Shares, on a *pro rata* basis to the Shareholders of one or more classes of Shares; or
- 15.1.2. issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 15.1.3. resolve to permit Shareholders, that are entitled, to elect to receive a cash payment in lieu of a capitalisation Share or a Scrip Dividend (as defined in the JSE Listings Requirements), at a value determined by the Board,

and accordingly, this Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to do so.

15.2. Without derogating from the restrictions in clause 15.1, the Board may not resolve to offer a cash payment in lieu of awarding a capitalisation Share, as contemplated in clause 15.1.3, unless the Board –

- 15.2.1. 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
- 15.2.2. is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

**16. BENEFICIAL INTERESTS IN SECURITIES**

16.1. The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1) of the Act.

16.2. The Company shall not permit Securities to be voted upon by the holder of a beneficial interest who does not hold a proxy appointment from the holder of the Securities notwithstanding any agreement permitting the holder of the beneficial interest to vote the Securities to the exclusion of the holder of the Securities between the holder of the Securities and the holder of the beneficial interest.

**17. FINANCIAL ASSISTANCE**

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 of the Act, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

**18. ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

Repurchases of the Company's Securities, as provided for in section 48 of the Companies Act and the Listings Requirements, are authorised to be effected.

**19. RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

19.1. The record date for the purpose of determining which Shareholders are entitled to –

- 19.1.1. receive notice of a Shareholders' meeting;
- 19.1.2. participate in and vote at a Shareholders' meeting;
- 19.1.3. decide any matter by written consent or by Electronic Communication;
- 19.1.4. receive a distribution; or
- 19.1.5. be allotted or exercise other rights,

shall be determined by the Board, provided that, for as long as the JSE Listings Requirements apply to the Company, such record date shall be the record date as required by the JSE Listings Requirements.

- 19.2. Such record date must be published to the Shareholders in a manner that satisfies the JSE Listings Requirements and any other prescribed requirements.

20. **SHAREHOLDERS' MEETINGS**

- 20.1. The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.

- 20.2. Subject to the provisions of section 60 of the Act, dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, and clause 25.4 of this Memorandum of Incorporation, the Company shall hold a Shareholders' meeting –

- 20.2.1. at any time, that the Board is required by –

20.2.1.1. the Act, to hold a meeting;

20.2.1.2. the JSE Listings Requirements, to refer a matter to Shareholders for decision and accordingly nothing in this Memorandum of Incorporation shall be construed as prohibiting or restricting the Company from calling any meeting for the purposes of adhering to the JSE Listings Requirements; or

20.2.1.3. this Memorandum of Incorporation, to hold a meeting; or

- 20.2.2. when required in terms of clause 20.3 or by any other provision of this Memorandum of Incorporation.

- 20.3. The Board shall call a meeting of Shareholders if one or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –

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

20.3.2. 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% (ten per cent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

- 20.4. In addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting.
- 20.5. Subject to the provisions of the Act and the JSE Listings Requirements, any such annual general meeting –
- 20.5.1. shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation; and
- 20.5.2. shall not be capable of being held in accordance with the provisions of section 60 of the Act set out in clause 25.
- 20.6. Each annual general meeting of the Company contemplated in clause 20.4 shall provide for at least the following business to be transacted –
- 20.6.1. the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company, an audit committee report and a social and ethics committee report;
- 20.6.2. the election of Directors, to the extent required by the Act and by clause 27.3 of this Memorandum of Incorporation;
- 20.6.3. the appointment of an auditor and an audit committee for the following financial year; and
- 20.6.4. any matters raised by the Shareholders, with or without advance notice to the Company.
- 20.7. Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act and the JSE Listings Requirements.
- 20.8. The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 20.9. Every Shareholder's meeting shall be reasonably accessible within the Republic for electronic participation by Shareholders, irrespective of whether the meeting is held in the Republic or elsewhere.

- 20.10. All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice.
- 20.11. Notice of Shareholders' meetings shall be delivered to each Shareholder entitled to vote at such meeting and who has elected or is otherwise entitled to receive such notice.
- 20.12. The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and who are present in person or able to participate in the meeting by Electronic Communication, or represented by a proxy who is present in person or able to participate in the meeting by Electronic Communication. In addition –
- 20.12.1. a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five per cent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 20.12.2. 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% (twenty five per cent) 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.
- 20.13. The time periods specified in sections 64(4) and (5) of the Act apply to the Company without variation and, accordingly, if within 20 (twenty) minutes after the appointed time for a meeting to begin, the requirements of clause 20.11 –
- 20.13.1. for that meeting to begin have not been satisfied, the meeting may be postponed, without any motion, vote or further notice, for 1 (one) week, to the same time on the same day in the next week or, if that day is not a business day, to the next succeeding business day;
- 20.13.2. for consideration of a particular matter to begin have not been satisfied –
- 20.13.2.1. 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

20.13.2.2. if there is no other business on the agenda of the meeting, the meeting may be adjourned, without any motion or vote, for one week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 20.11 may extend the 20 (twenty) minute limit allowed in clause 20.13 for a reasonable period on the grounds that –

20.13.2.3. 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

20.13.2.4. 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 20.11.

20.14. The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders shall not invalidate any resolution passed at any such meeting.

20.15. The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 20.13, unless the location for the meeting is different from –

20.15.1. the location of the postponed or adjourned meeting; or

20.15.2. the location announced on SENS at the time of adjournment, in the case of an adjourned meeting.

20.16. If at the time appointed in terms of clause 20.13 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 20.11 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

20.17. 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 for the matter to be considered at the meeting.

20.18. The maximum period allowable for an adjournment of a Shareholders' meeting under section 64(10) of the Act is as set out in section 64(12) of the Act, without variation.

- 20.19. The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 20.20. If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose one of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 20.21. The chairperson of a Shareholders' meeting may –
- 20.21.1. 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;
  - 20.21.2. 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.
- 20.22. 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 –
- 20.22.1. it is brought to the attention of the chairperson at the meeting; and
  - 20.22.2. in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 20.23. In the case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.
- 20.24. Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised –
- 20.24.1. at the meeting or adjourned meeting at which the vote objected to was recorded; or
  - 20.24.2. 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.

20.25. Even if he is not a Shareholder –

20.25.1. any Director; or

20.25.2. the company's attorney and/or advisors (or where the company's attorneys and/or advisors are a firm, any partner or director thereof),

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

20.26. Every shareholder shall be entitled to vote at every general meeting or annual general meeting in person or by proxy.

## 21. **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

21.1. Any Shareholders' meeting may be conducted entirely by Electronic Communication or 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, provided that the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

21.2. 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.

## 22. **VOTES OF SHAREHOLDERS**

22.1. Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –

22.1.1. every person present and entitled to exercise voting rights shall be entitled to one vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;

- 22.1.2. 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 Securities held by that Shareholder; and
  - 22.1.3. the holders of Shares other than Ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 22.2.
- 22.2. If any resolution is proposed as contemplated in clause 8.5 in respect of securities other than Ordinary Shares and any special shares created for the purposes of black economic empowerment in terms of the BEE Act and the BEE Codes, as contemplated in the JSE Listings Requirements, (such securities being referred to herein as “**Affected Shares**”), the holders of such Affected Shares (“**Affected Shareholders**”) may be entitled to vote at the meeting of Ordinary Shareholders as contemplated in clause 22.1 (only if expressly included as a term of issue of the Affected Shares), provided that the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24,99% (twenty four comma nine nine per cent) of the total votes (including the votes of the remaining Ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 22.3. Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote by –
- 22.3.1. at least five persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders, as set out in section 63(7)(a) of the Act; or
  - 22.3.2. a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten per cent) of the voting rights entitled to be voted on that matter, as set out in section 63(7)(b) of the Act; or
  - 22.3.3. the chairperson of the meeting.
- 22.4. The demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the 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.

- 22.5. In the case of an equality of votes, whether on a poll or on a show of hands, the chairperson of the meeting at which the poll or show of hands takes place, shall not be entitled to a second or casting vote.
- 22.6. A poll demanded on the election of a chairperson (as contemplated in clause 20.20) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 22.7. Where there are joint registered holders of any Security, any one of such persons may exercise all of the voting rights attached to that Security at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) 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 Security shall alone be entitled to vote in respect thereof.
- 22.8. The board of any company or the controlling body of any other entity or person that holds any Securities of the Company 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 –
- 22.8.1. the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Securities; and
- 22.8.2. the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or 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.

## 23. PROXIES AND REPRESENTATIVES

- 23.1. Any Shareholder may at any time appoint any natural person as a proxy to –
- 23.1.1. participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or
  - 23.1.2. give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60 of the Act.
- 23.2. A proxy need not be a Shareholder of the Company.
- 23.3. The right of a Shareholder to –
- 23.3.1. appoint two or more persons concurrently as proxies (“**Concurrent Proxies**”) applies without limitation or restriction; provided that the instrument appointing the Concurrent Proxies clearly states the order in which the Concurrent Proxies votes are to take precedence in the event that both or all of the Concurrent Proxies are present, and vote, at the relevant meeting;
  - 23.3.2. more than one proxy to exercise voting rights attached to different Shares held by that Shareholder is not limited or restricted.
- 23.4. A proxy is prohibited from delegating that proxy’s authority to act on behalf of the Shareholder appointing him to another person (section 58(3)(b)).
- 23.5. A copy of the instrument appointing a proxy maybe delivered to the registered office of the Company, or to any other person specified by the Company, immediately prior to the meeting and before the proxy exercises any rights of the Shareholder entitled to vote at a the meeting.
- 23.6. The right of a proxy to exercise, or abstain from exercising, any voting right of the Shareholder appointing him without direction, except to the extent that the instrument of proxy provides otherwise, applies without restriction or limitation (section 58(7)).
- 23.7. A proxy appointment –
- 23.7.1. must be in writing, dated and signed by the Shareholder; and
  - 23.7.2. remains valid for one year after the date on which it was signed or any period expressly set out in the proxy appointment, unless it is revoked in

a manner contemplated in the Act or expires earlier as contemplated in the Act.

- 23.8. 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 Company 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.
- 23.9. The chairman of any Shareholder's meeting may reject or accept any form of proxy which is completed and/or received, other than in compliance with the provisions of clause 23.5, provided that, in respect of acceptances, he is satisfied as to the manner in which the Shareholder(s) concerned wish(es) to vote.
- 23.10. Every instrument of proxy shall, subject to the provisions of the Act and the JSE Listings Requirements, be in any usual or common form as the Directors may approve from time to time.

#### 24. **SHAREHOLDERS' RESOLUTIONS**

- 24.1. For an ordinary resolution to be approved it must be supported by more than 50% (fifty per cent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7) of the Act. Notwithstanding the foregoing, to the extent that the JSE Listings Requirements requires the support of a higher percentage of voting rights to be exercised in respect of any ordinary resolution, the Company shall not implement such resolution unless such resolution is proposed and supported as a special resolution, as provided in section 65(12) of the Act.
- 24.2. For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five per cent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(9) of the Act.
- 24.3. No matters, except –
- 24.3.1. those matters set out in section 65(11) of the Act; or
  - 24.3.2. any other matter required by the Act or this Memorandum of Incorporation to be resolved by means of a special resolution; or
  - 24.3.3. for so long as the Company's Securities are listed on the JSE, any other matter required by the JSE Listings Requirements to be resolved by means of a special resolution in terms of the JSE Listings Requirements,

require a special resolution adopted at a Shareholders' meeting of the Company.

**25. SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

25.1. In accordance with the provisions of section 60 of the Act, but subject to clause 25.4, a resolution that could be voted on at a Shareholders' meeting (other than in respect of the election of Directors) may instead be –

25.1.1. submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and

25.1.2. voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.

25.2. A resolution contemplated in clause 25.1 –

25.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and

25.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.

25.3. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this clause 25, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution.

25.4. For so long as is required under the JSE Listings Requirements or unless the JSE allows otherwise, the provisions of this clause 25 shall not apply to any Shareholder meetings that are called for in terms of the JSE Listings Requirements (which for the avoidance of any doubt, must be held "in person") or the passing of any resolution in terms of clause 27.3 or to any annual general meeting of the Company.

**26. REQUIREMENTS AS TO MEETINGS, NOTICES, QUORUM, VOTING AND RESOLUTIONS IN RESPECT OF SECURITIES OTHER THAN SHARES**

Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the requirements as to meetings, notices, quorum, voting and resolutions in respect of Securities other than Shares, shall be in accordance with the specific terms and conditions set out in the

document/s in terms of which such Securities have been and/or will be issued, insofar as such terms and conditions amend the relevant provisions of the Companies Act.

## 27. COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

27.1. Until otherwise determined by Shareholders in general meeting, the Board must comprise at least 5 (five) Directors (which shall include the minimum number of directors that the Company must have to satisfy any requirement in terms of the Act, to appoint an audit committee and a social and ethics committee), and no more than 15 (fifteen) Directors to be elected by the Shareholders as contemplated in section 68 of the Act.

27.2. This Memorandum of Incorporation does not provide for any Shareholder appointed or ex officio directors of the Company, as contemplated in section 66(4) of the Act.

27.3. Subject to clause 27.13, all Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed in terms of section 60 of the Act shall be competent.

27.4. In any election of Directors –

27.4.1. 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 or to confirm an additional appointment, with the series of votes continuing until all vacancies on the Board have been filled or all additional appointments have been confirmed; and

27.4.2. in each vote to fill a vacancy or confirm an additional appointment –

27.4.2.1. each vote entitled to be exercised may be exercised once; and

27.4.2.2. the vacancy is filled or the additional appointment confirmed only if a majority of the votes exercised support the candidate.

27.5. A Director shall cease to hold office as such if –

27.5.1. he becomes insolvent, or assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors;

27.5.2. he becomes of unsound mind;

- 27.5.3. he is prohibited from being, is removed as or is disqualified from acting as a director of a company in terms of the Act;
  - 27.5.4. he is required to do so in terms of the JSE Listings Requirements;
  - 27.5.5. he absents himself from meetings of the Board for 6 (six) consecutive months without the leave of the other Directors and is not represented at such meetings during such 6 (six) months by an alternate Director, and the Directors resolve that his office shall be vacated, provided that the Directors shall have the power to grant any Director leave of absence for an indefinite period; or
  - 27.5.6. he has given notice in writing of his intention to resign, in which instance such Director shall cease to hold office with immediate effect, unless a notice period that has been agreed with the Company applies.
  - 27.5.7. he is removed under clause 27.6;
  - 27.5.8. he has been given notice, signed by Shareholders holding in aggregate more than 50% (fifty per cent) of the total voting rights of all Shareholders entitled to vote at a general meeting, of the termination of his appointment; or
  - 27.5.9. the Board resolved to remove him in accordance with section 71(3) of the Act.
- 27.6. The Company may by ordinary resolution in accordance with clause 27.5.8 remove any Director before the expiration of his period of office and by an ordinary resolution elect another person in his stead.
- 27.7. No Director shall be appointed for life or for an indefinite period and all of the Directors shall rotate in accordance with the following provisions –
- 27.7.1. at each annual general meeting referred to in clause 20.4-
    - 27.7.1.1. 1/3 (one third) of the Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 1/3 (one third), but not less than 1/3 (one third), shall retire from office; and
    - 27.7.1.2. any Director who is 70 (seventy) years or older, shall (in addition to the Directors retiring from office in terms of



clause 27.7.1.1) retire from office at such Meeting (notwithstanding that he may have retired from office at the previous Annual General Meeting either in terms of clause 27.7.1.1 or 27.7.1.2);

- 27.7.2. the Directors to retire in terms of clause 27.7.1.1 shall be those who have been longest in office since their last election provided that:
- 27.7.2.1. if more than one of them were elected as Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;
- 27.7.2.2. if at any annual general meeting any Director will have held office for 3 (three) years since his or her election, he or she shall also retire at such annual general meeting;
- 27.7.2.3. the length of time a director has been in office shall, subject to the provisions of clause 27.7.2.2, be reckoned from the date of his or her last election as a Director;
- 27.7.3. a retiring Director may be re-elected, provided he is eligible for election. If elected or re-elected he shall be deemed not to have vacated his office;
- 27.7.4. a retiring Director shall act as a Director throughout the annual general meeting at which he retires;
- 27.7.5. the Company, at the annual general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with the provisions of section 60 of the Act as set out in clause 25;
- 27.7.6. if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 20.13 to 20.16 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting, subject to their recommendation by the Board, in accordance with clause 27.8.

- 27.8. The Board shall, through its nomination committee (if so constituted in terms of clause 33), provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution. Any Shareholder shall have the right to nominate Directors, provided that such nomination shall –
- 27.8.1. be made in writing;
  - 27.8.2. be accompanied by a written confirmation of the person's willingness to be elected, signed by the person proposed, and by the *curriculum vitae* of such person; and
  - 27.8.3. be delivered to the company secretary at least 60 (sixty) days before the day appointed for such shareholders meeting or annual general meeting, so as to allow the Board sufficient time to comply with the foregoing requirements of this clause, failing which the Board does not have to take account the nomination for purposes of the shareholders meeting or annual general meeting in question.
- 27.9. 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) of the Act, and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 27.
- 27.10. 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 Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, 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 think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 27.11. 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.

- 27.12. 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.
- 27.13. The Board may appoint any person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on a temporary basis until the vacancy is filled by election in accordance with section 68(1) of the Act.
- 27.14. Subject to the requirements of the Act, the Board shall be entitled to appoint any person who satisfies the requirements for election as a Directors as an addition to the Board, and to serve as a Director in terms of section 66(4)(a)(i) of the Act, provided that such appointment must be approved by the Shareholders at the next Shareholders' meeting or annual general meeting.
- 27.15. If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number falls below such minimum, fill the vacancy/ies, provided that such Director/s are elected by the Shareholders at the next annual general meeting or call a general meeting for the purpose of filling the vacancy/ies.
- 27.16. The failure by the Company to have the minimum number of Directors, during a 3 (three) month period from the date that the number of directors falls below the minimum number of directors required in terms of this Memorandum of Incorporation, 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 Memorandum of Incorporation.
- 27.17. The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of 3 (three) months, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of –
- 27.17.1. filling vacancies in their body in terms of section 68(3) of the Act; or

27.17.2. summoning general meetings of the Company for that purpose, provided that if there is no Director able or willing to act, then any Shareholder may convene a general meeting for that purpose

but not for any other purpose.

27.18. 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.

27.19. A Director of the Company 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.

27.20. 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) of the Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 of the Act 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.

27.21. A Director may not vote on any resolution pertaining to any matter in which he has a personal financial interest as contemplated in section 75 of the Act. However, notwithstanding his interest in any matter, such Director may be counted for the purposes of determining a quorum for a Board meeting.

## 28. **ALTERNATE DIRECTORS**

28.1. Any Director shall have the power to nominate another person approved by the Board to act as alternate Director in his place during his absence or inability to act as such Director, provided 50% (fifty per cent) of all alternate directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company in accordance with section 66(4)(b) of the Companies Act. Upon being elected or appointed as an alternate Director, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company. A person may be elected or appointed as alternate to more than one Director. Where a person is alternate to more than one Director or where an

alternate Director is a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.

28.2. The alternate Directors, whilst acting in the place of the Directors whom they represent, shall exercise and discharge all the duties and functions of the Directors they represent.

28.3. The appointment of an alternate Director shall cease on the happening of any event which, if he was a Director, would cause him to cease to hold office in terms of this Memorandum of Incorporation or if the Director whom he represents ceases to be a Director, or gives notice to the secretary of the Company that the alternate Director representing him shall have ceased to do so. An alternate Director shall look to the Director whom he represents for his remuneration.

## 29. **DIRECTORS' MEETINGS**

29.1. 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 think fit.

29.2. The Directors may elect a chairperson and one or more deputy chairpersons to preside in the absence of the chairperson. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose one of their number to be chairperson of such meeting.

29.3. In addition to the provisions of section 73(1) of the Act, any Director shall at any time be entitled to call a meeting of the Directors.

29.4. The Board has the power to –

29.4.1. consider any matter and/or adopt any resolution other than at a meeting, as contemplated in section 74 of the Act 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 each Director has received notice of the matter to be decided. Such resolution, inserted in the minute book, shall be as valid and effective as if it has 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);

29.4.2. 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) of the Act, 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;

29.4.3. proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5) of the Act,

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

29.5. The quorum requirement for a Directors' meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5) of the Act, subject only to clause 29.5.5, and accordingly –

29.5.1. if all of the Directors of the Company –

29.5.1.1. acknowledge actual receipt of the notice convening a meeting;  
or

29.5.1.2. are present at a meeting; or

29.5.1.3. 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;

29.5.2. a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;

29.5.3. each Director has 1 (one) vote on a matter before the Board;

29.5.4. a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;

29.5.5. in the case of a tied vote at any meeting of the Directors, the chairperson of the Board may not have a second or deciding vote in addition to any deliberative vote and the matter being voted on shall fail.

29.6. Resolutions adopted by the Board –

29.6.1. must be dated and sequentially numbered; and

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

29.7. 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.

29.8. Minutes of all board meetings, resolutions and Directors' declarations shall be kept in accordance with the provisions of section 24 of the Act.

### 30. **DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

30.1. 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 (two) years, as set out in sections 66(8) and (9) of the Act, and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

30.2. In addition remuneration paid to the Directors for their services as Directors, as contemplated in clause 30.1 above, any Director who –

30.2.1. serves on any executive or other committee; or

30.2.2. devotes special attention to the business of the Company; or

30.2.3. goes or resides outside the Republic for the purpose of the Company; or

30.2.4. 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.

- 30.3. The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with –
- 30.3.1. the business of the Company; and
  - 30.3.2. attending meetings of the Directors or of committees of the Directors of the Company.
- 30.4. The Board may, as contemplated in and subject to the requirements of section 45 of the Act, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2) of the Act, and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

**31. CHIEF EXECUTIVE OFFICER**

- 31.1. The Directors may from time to time appoint one or more of their body to be Chief Executive Officer of the Company or to be the holder of any other executive office of the Company, for such term as they may think fit (subject only to the requirements of sections 66(8) and (9) of the Act), and may revoke such appointment subject to the terms of any agreement entered into in any particular case.
- 31.2. Notwithstanding the provisions of any contract between himself and the Company, a Chief Executive Officer shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 31.3. The Directors may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think 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 think 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.
- 31.4. A Director appointed in terms of the provisions of clause 31.1 to the office of Chief Executive Officer of the Company, or to any other executive office in the Company, may be paid, in addition to the remuneration payable in terms of clause 30.1, such remuneration – not exceeding a reasonable maximum in each year – in respect of such office as may be determined by a disinterested quorum of the directors.



## 32. INDEMNIFICATION OF DIRECTORS

32.1. The Company may –

32.1.1. 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) of the Act;

32.1.2. indemnify a Director in respect of liability as set out in section 78(5) of the Act; and/or

32.1.3. purchase insurance to protect the Company or a Director as set out in section 78(7) of the Act,

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

32.2. The provisions of clause 32.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any board and / or statutory committee, including the audit committee.

## 33. STATUTORY AND BOARD COMMITTEES

33.1. The Board may –

33.1.1. appoint committees and delegate to any such committee any of the authority of the Board as contemplated in section 72(1) of the Act; and/or

33.1.2. include in any such committee persons who are not Directors, as contemplated in section 72(2)(a) of the Act,

and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

33.2. The authority of a committee appointed by the Board as contemplated in sections 72(2)(b) and (c) of the Act is not limited or restricted by this Memorandum of Incorporation.

33.3. If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal in terms of section 72(5) of the Act, the Board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 of the Act and the Regulations.

33.4. If and for as long as any of the Company's Securities are listed on the JSE, the Board shall appoint such Board committees as are required by the JSE Listings Requirements, having such functions and powers as are prescribed by or in terms of the JSE Listings Requirements.

33.5. The Company must further appoint an audit committee in the manner and for the purposes set out in Part D of Chapter 3 of the Act.

**34. PRESCRIBED OFFICERS**

In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, in order to become or remain a prescribed officer of the Company, a person may not be older than 70 (seventy) years of age.

**35. ANNUAL FINANCIAL STATEMENTS**

35.1. 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 –

35.1.1. the Act;

35.1.2. the Regulations;

35.1.3. any other law with respect to the preparation of financial statements to which the Company may be subject; and

35.1.4. this Memorandum of Incorporation.

35.2. The Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) of the Act.

35.3. The Company shall appoint an auditor each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

35.4. The annual financial statements of the Company must be prepared and audited in accordance with the provisions the Act.

35.5. A copy of the complete annual financial statements or a summarised version thereof, along with directions for obtaining the complete annual financial statements, must be Delivered to Shareholders and a notice of the publication of the annual financial

statements setting out the required steps to obtain a copy of the annual financial statements may be Delivered to beneficial Shareholders by Electronic Communication at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.

35.6. The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable provision of the Act and shall –

35.6.1. satisfy, as to form and content, the financial reporting standards of IFRS; and

35.6.2. subject to and in accordance with IFRS –

35.6.2.1. present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;

35.6.2.2. show the Company's assets, liabilities and equity, as well as its income and expenses;

35.6.2.3. set out the date on which the statements were produced and the accounting period to which they apply; and

35.6.2.4. bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

## 36. **COMPANY SECRETARY**

36.1. The Company must appoint a company secretary.

36.2. The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.

36.3. The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

## 37. **DISTRIBUTIONS**

37.1. Subject to the provisions of the Act, and particularly section 46, the Company may make a proposed distribution if such distribution –

- 37.1.1. is pursuant to an existing legal obligation of the Company, or a court order;  
or
- 37.1.2. is authorised by resolution of the Board,
- and in compliance with the JSE Listings Requirements.
- 37.2. 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.
- 37.3. Subject to the provisions of the Income Tax Act, No 58 of 1962, 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.
- 37.4. All unclaimed monies due to Shareholders will be held in trust by or on behalf of the Company for the benefit of the Shareholder concerned until claimed, provided that, subject to the provisions of the Prescription Act, No 68 of 1969, as amended from time to time and any other applicable laws of prescription, monies unclaimed for a period of 3 (three) years from the date on which they were declared (or such longer period as may be required under the laws of prescription) may be declared forfeited by the Board for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.
- 37.5. Without in any way limiting the company's entitlement to make any payment to a shareholder payable in cash by way of electronic funds transfer, should such an account for receipt of same have been furnished by the Shareholder to the Company at any time, any distribution or other sum payable in cash to the holder of a Share may be paid by cheque or warrant sent by post and addressed to –
- 37.5.1. the holder at his registered address; or
- 37.5.2. in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the share, at his registered address; or
- 37.5.3. such person and at such address as the holder or joint holders may in writing direct.
- 37.6. Should the Directors determine that any payments to Shareholders, either all or any of them, is to be made by cheque or warrant, then the Directors shall be entitled to suppress the issue of cheques or warrants with a value lower than R100.00 (one hundred rand) to any 1 (one) Shareholder. The unpaid distribution will be retained in

the Company's unclaimed distribution account and once the accumulated amount exceeds R100.00 (one hundred rand), such payment may be claimed by the Shareholder by submitting a written claim.

- 37.7. Every such cheque or warrant shall –
- 37.7.1. be made payable to the order of the person to whom it is addressed; and
  - 37.7.2. be sent at the risk of the holder or joint holders.
- 37.8. When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 37.9. A distribution may also be paid in any other way determined by the Directors, including without limitation by means of electronic funds transfer, 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.
- 37.10. Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
- 37.10.1. by the distribution of specific assets; or
  - 37.10.2. by the issue of Shares, debentures or securities of the Company or of any other company; or
  - 37.10.3. in cash; or
  - 37.10.4. in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 37.11. Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 37.12. The Directors may –
- 37.12.1. 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
  - 37.12.2. vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

37.13. 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.

37.14. All payments to Shareholders must be provided for in accordance with the JSE Listings Requirements and must not provide that capital shall be repaid upon the basis that it may be called up again.

### 38. **COMPANY AND ACCOUNTING RECORDS**

All records of the company contemplated in section 24 of the Act and all accounting records contemplated in section 28 of the Act, shall be kept and maintained, and shall be accessible at or from the registered office of the Company.

### 39. **ACCESS TO COMPANY RECORDS**

39.1. Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1) of the Act, being –

39.1.1. this Memorandum of Incorporation, and any amendments or alterations thereof;

39.1.2. a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5) of the Act;

39.1.3. all –

39.1.3.1. reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting; and

39.1.3.2. annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;

39.1.4. notice and minutes of all Shareholders' meetings, including –

- 39.1.4.1. all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
  - 39.1.4.2. any document that was made available by the Company to the holders of Securities in relation to each such resolution;
  - 39.1.5. any written communications Delivered generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and
  - 39.1.6. the Securities Register.
- 39.2. A person not contemplated in clause 39.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of an amount not exceeding the prescribed maximum fee, as set out in the Act, for any such inspection.
- 39.3. A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26 of the Act, and in accordance with the rules of the Central Securities Depository. Within 5 (five) business days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details referred to in section 50(3)(b) of the Act at the close of business on the day on which the request for inspection was made.
- 39.4. This Memorandum of Incorporation does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and (2) of the Act.

#### 40. **RATIFICATION OF ULTRA VIRES ACTS**

Unless otherwise agreed with the JSE, the ratification of the Company's actions as provided for in sections 20(2) and 20(6) of the Act is prohibited to the extent that such ratification is contrary to the JSE Listings Requirements.

#### 41. **PAYMENT OF COMMISSION**

- 41.1. The Company may pay a commission at a rate not exceeding 10% (ten per cent) of the issue price of a Security to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities of the Company.

41.2. Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.

41.3. Such commission may be paid in cash or, if authorised by the Company in general meeting, by the allotment of fully or partly paid-up Shares, or partly in one way and partly in the other.

41.4. The Company may, on any issue of Securities, pay such brokerage as may be lawful.

#### 42. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any holder of Securities or to any other address requested by the holder of Securities.

#### 43. **NOTICES**

43.1. All notices shall be Delivered by the Company to each Shareholder of the Company and simultaneously to the Issuer Regulation Division of the JSE, and maybe Delivered in any manner authorised by the JSE Listings Requirements and the Regulations, and particularly Table CR3 annexed to the Regulations, provided that where a method of Delivery contemplated in Table CR3 is used by the Company, the notice shall be deemed to have been Delivered on the date and time determined in accordance with Table CR3 in the Regulations. All notices shall, in addition to the above, be released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Act.

43.2. Any notice of a general meeting shall state the place, day and hour of, and the nature of the business to be transacted at the general meeting.

43.3. Notices of general meetings and annual general meetings shall be delivered to all Shareholders in compliance with section 62(1) of the Act.

43.4. Each Shareholder of the Company –

43.4.1. shall notify the Company in writing of an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and if he has not named such an address he shall



be deemed to have waived his right to be so served with notices until such time as that Shareholder notifies the Company in writing of an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and

- 43.4.2. may notify the Company in writing of an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 43.5. Any Shareholder whose address in the Securities Register is an address not within the Republic shall be entitled to have notices served upon him at such address.
- 43.6. In the case of joint holders of a Security, all notices shall, unless such holders otherwise in writing request and the Directors agree, be Delivered to that Shareholder whose name appears first in the Securities Register and a notice so Delivered shall be deemed sufficient notice to all the joint holders.
- 43.7. Any notice Delivered by any means permitted in Table CR3 annexed to the Regulations shall be deemed to have been Delivered as provided for that method of delivery in such Table.
- 43.8. Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Security, shall be bound by every notice in respect of that Security which, previously to his name and address being entered in the Securities Register, was Delivered to the person from whom he derives his title to such Security.
- 43.9. Any notice or document Delivered to a Shareholder in pursuance of this Memorandum of Incorporation 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 Securities, 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 Memorandum of Incorporation 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 Securities.

44. **AMENDMENT OF THE MEMORANDUM OF INCORPORATION**

- 44.1. Every provision of this Memorandum of Incorporation is capable of amendment in accordance with sections 16, 17 and 152(6)(b) of the Act. There is accordingly no

provision of this Memorandum of Incorporation which may not be amended as contemplated in sections 15(2)(b) and (c) of the Act.

44.2. This Memorandum of Incorporation may only be altered or amended as contemplated in clause 8.4.

44.3. An amendment of this Memorandum of Incorporation will take effect from the later of –

44.3.1. the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7) of the Act; and

44.3.2. 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.

45. **COMPANY RULES**

The Board is prohibited from making, amending or repealing any rules as contemplated in section 15(3) of the Act and the Board's capacity to make, amend or repeal such rules is hereby excluded.

46. **AUTHENTICATION OF DOCUMENTS**

46.1. Any Director or the company secretary or any person appointed by the Directors for this purpose shall have power to authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts. Where any books, records, documents or accounts are elsewhere than at the Company's registered office, the local manager or other officer of the Company having the custody thereof shall be deemed to be the person appointed by the Directors aforesaid.

46.2. A document purporting to be a copy of a resolution of the Directors or an extract from the minutes of a meeting of the Directors which is certified as such in accordance with the provisions of clause 46.1 shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

