



MEMORANDUM OF INCORPORATION

OF

ADAPTIT HOLDINGS LIMITED

A PUBLIC COMPANY

REGISTRATION NUMBER: 1998/017276/06

DATE OF INCORPORATION: 1998/09/01

I, the undersigned, in my capacity as Chairperson declare that this Memorandum of Incorporation was duly adopted at the annual general meeting of shareholders held on 22 November 2019.

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CHAIRPERSON

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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 –

"Act"	the Companies Act, 2008 (Act 71 of 2008), as amended, consolidated or re-enacted from time to time, and includes all schedules to such Act;
"Board"	the board of Directors from time to time of the Company;
"Central Securities Depository"	has the meaning set out in section 1 of the Financial Markets Act;
"Certificated Securities"	Securities issued by the Company that are not Uncertificated Securities;
"Commission"	the Companies and Intellectual Property Commission established by section 185;
"Company"	the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
"Director"	a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
"Electronic Communication"	has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
"Financial Markets Act"	the Financial Markets Act 19 of 2012, including any amendment, consolidation or re-enactment thereof;
"IFRS"	the International Financial Reporting Standards;
"JSE"	the exchange, licensed under the Financial Markets Act, operated by JSE Limited (Registration number 2005/022939/06), a public company duly incorporated in South Africa;

"JSE Listings Requirements"	the Listings Requirements of the JSE applicable from time to time;
"Law"	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.
"Participant"	has the meaning set out in section 1 of the Financial Markets Act;
"Regulations"	the regulations published in terms of the Act from time to time;
"Republic"	the Republic of South Africa;
"Securities"	any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or 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;
"Securities Register"	the register of issued Securities of the Company required to be established in terms of section 50(1) of the Act and referred to in clause 10 hereof;
"SENS"	the Securities Exchange News Service established and operated by the Listings Division of the JSE;
"Share"	one of the units into which the proprietary interest in the Company is divided;
"Shareholder"	the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57;
"Shareholders Agreement"	any signed written agreement or agreements in force from time to time between all the Shareholders and the Company in terms of which the rights and obligations of the Shareholders amongst themselves (in their capacities as Shareholders) are regulated and in terms of which the relationship between each Shareholder and the Company is regulated;

"Solvency and Liquidity Test"	has the meaning attributed thereto in section 4;
"Sub-register"	the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Act;
"Uncertificated Securities"	any "securities" defined as such in section 29 of the Financial Markets Act;
"Uncertificated Securities Register"	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; and

- 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, notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.4 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.5 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.6 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
- 1.2.6.1 a provision of any Shareholders Agreement, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.6.2 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and

- 1.2.6.3 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the 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;
- 1.2.7 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.
- 1.2.11 any reference to "**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;
- 1.2.12 any reference to "**writing**" shall mean 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.
- 1.3 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.

- 1.4 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.
- 1.5 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.7 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 2.1 Subject to the provisions of clause 8.6, this Memorandum of Incorporation may only be altered or amended by way of a special resolution of the ordinary Shareholders in accordance with section 16(1)(c), except if such amendment is in compliance with a Court order as contemplated in section 16(1)(a). **S10.5(d)**
- 2.2 An amendment of this Memorandum of Incorporation will take effect from the later of –
 - 2.2.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and
 - 2.2.2 the date, if any, set out in the said notice of amendment,save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

3 JURISTIC PERSONALITY

3.1 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.

3.2 The Company is incorporated in accordance with and governed by –

3.2.1 the unalterable provisions of the Act, save to the extent that this Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement; and

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

3.2.3 the other provisions of this Memorandum of Incorporation.

4 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.

5 POWERS OF THE COMPANY

5.1 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.

5.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

6 COMPANY RULES

The Board is prohibited from making, amending or repealing any rules as contemplated in section 15(3) and the Board's capacity to make such rules is hereby excluded. **S10.4**

7 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).

8 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 8.1 The Company is authorised to issue 300,000,000 (three hundred million) ordinary no par value Shares, of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to – **S10.5(a)**
- 8.1.1 vote, whether in person or by proxy, on any matter to be decided by the Shareholders of the Company; **S10.5(b)**
- 8.1.2 participate proportionally in any distribution made by the Company; and
- 8.1.3 receive proportionally the net assets of the Company upon its liquidation.
- 8.2 The Board may resolve to issue further Shares of the Company at any time, but only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 8.3 The number of authorised Shares as set out in clause 8.1 may only be increased, as contemplated in clause 8.4.1 below, following the conversion of such ordinary par value Shares to ordinary no par value Shares by way of special resolution of the Shareholders. **S10.5(d)(iv)**
- 8.4 The Board shall not have the power to –
- 8.4.1 increase or decrease the number of authorised Shares of any class of the Company's Shares; or **S10.5(d)(iv)**
- 8.4.2 consolidate and reduce the number of the Company's issued and authorised Shares of any class; or **S10.5(d)(v)**

- 8.4.3 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital; or **S10.5(d)(vi)**
- 8.4.4 reclassify any classified Shares that have been authorised but not issued; or
- 8.4.5 classify any unclassified Shares that have been authorised but not issued; or
- 8.4.6 determine the preferences, rights, limitations or other terms of any Shares, or **S10.5(d)(ii)**
- 8.4.7 convert one class of Shares into one or more other classes of Shares; or **S10.5(d)(iii)**
- 8.4.8 create any class of Shares, **S10.5(d)(i)**

and such powers shall only be capable of being exercised by the Shareholders by way of a special resolution of the Shareholders.

- 8.5 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in clause 22.2. **S10.5(e)**
- 8.6 The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the Shareholders and in accordance with the JSE Listings Requirements, and such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting. **S10.5(d)(ii) & (iii); S10.5(e) & S10.9(c)**
- 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). **S10.5(g)**
- 8.8 No further securities ranking in priority to, or *pari passu* with an existing class of Shares, shall be created without a special resolution being passed at a **S10.5(f)**

separate general meeting of shareholders.

- 8.9 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. **S10.2(a)**
- 8.10 All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be in accordance with the JSE Listings Requirements. **S10.9(a)**
- 8.11 All Securities of the Company for which a listing is sought on the JSE and all Securities of the same class as Securities of the Company which are listed on the JSE must, notwithstanding the provisions of section 40(5), but unless otherwise required by the Act, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.
- 8.12 Subject to what may be authorised by the Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with clause 8.14, and subject to clause 8.13, the Board may only issue unissued Shares if such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such Shares are issued for the acquisition of assets by the Company. **S10.1**
- 8.13 Notwithstanding the provisions of clauses 8.3, 8.4, 8.12 and 8.14, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions. **S10.1**
- 8.14 Notwithstanding the provisions of clause 8.12, the Shareholders may at a general meeting authorise the Directors to issue Shares of the Company at any time and/or grant options to subscribe for Shares as the Directors in their **S10.1**

discretion think fit, provided that such transaction(s) comply with the JSE Listings Requirements.

- 8.15 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.

9 CERTIFICATED AND UNCERTIFICATED SECURITIES

- 9.1 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.

- 9.2 Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities.

- 9.3 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. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by that person 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, which must within five business days notify the relevant company to provide the requested certificate, and remove the details of the uncertificated securities from the uncertificated securities register.

- 9.4 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 –

- 9.4.1 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
 - 9.4.2 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.
- 9.5 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 SECURITIES REGISTER

- 10.1 The Company must establish or cause to be established a Securities Register in the form prescribed by section 50 of the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 10.2 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 –
 - 10.2.1 the total number of Uncertificated Securities;
 - 10.2.2 with respect to Certificated Securities –
 - 10.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;
 - 10.2.2.2 the number of Certificated Securities issued to each of them;
 - 10.2.2.3 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding, and the names and addresses of the registered owners of the Securities and

any holders of beneficial interests therein; and

10.2.2.4 any other prescribed information.

10.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 9.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

10.3.1 forms part of the Securities Register; and

10.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 10, any details referred to in clause 10.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.

10.4 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.

10.5 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.

10.6 A certificate evidencing any Certificated Securities of the Company –

10.6.1 must state on its face –

10.6.1.1 the name of the Company;

10.6.1.2 the name of the person to whom the Securities were issued; and

10.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;

10.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and

10.6.3 is proof that the named Security holder owns the Securities, in the

absence of evidence to the contrary.

10.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.

10.8 If, as contemplated in clause 10.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

10.8.1.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and

10.8.1.2 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, the failure of any Share certificate to satisfy the provisions of clauses 10.6 to 10.8 is not a contravention of the Act and does not invalidate that certificate.

11 TRANSFER OF SECURITIES

11.1 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.

11.2 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), 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.

11.3 Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by –

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

- 11.3.2 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.
- 11.4 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. **S10.2(b)**
- 11.5 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.
- 11.6 The transfer of Uncertificated Securities may be effected only –
- 11.6.1 by a Participant or Central Securities Depository;
- 11.6.2 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
- 11.6.3 in accordance with section 53 and the rules of the Central Securities Depository.
- 11.7 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.

11.8 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 therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

12 NO LIEN

Securities shall not be subject to any lien in favour of the Company and shall be freely transferable by the holder thereof. **S10.12**

13 TRANSMISSION OF SECURITIES

S10.13

13.1 The executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to such Security.

13.2 In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholder, as determined by the Board, shall be the only person recognised by the Company as having any title to the Security.

13.3 Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestered or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security Holder.

14 DEBT INSTRUMENTS

S10.10

The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2), but no special privileges associated with any such debt instruments as contemplated in section 43(3) may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation.

15 CAPITALISATION SHARES

S10.6

- 15.1 Save to the extent authorised by the Shareholders by means of ordinary resolution, and unless such transaction(s) has/have been approved by the JSE (and the JSE Listings Requirements have been complied with), the Board shall not have the power or authority, as in terms of section 47, to –
- 15.1.1 approve the issuing of any authorised Shares as capitalisation Shares; or
 - 15.1.2 to issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
 - 15.1.3 to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share.
- 15.2 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

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).

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, 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

- 18.1 Subject to the JSE Listings Requirements, the provisions of section 48 and **s10.9(b)**
the further provisions of this clause 18 –
- 18.1.1 the Board may determine that the Company acquire a number of its own
Shares; and
- 18.1.2 the board of any subsidiary of the Company may determine that such
subsidiary acquire Shares of the Company, but –
- 18.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued
Shares of any class may be held by, or for the benefit of, all of the
subsidiaries of the Company, taken together; and
- 18.1.2.2 no voting rights attached to those Shares may be exercised while the
Shares are held by that subsidiary and it remains a subsidiary of the
Company.
- 18.2 Any decision by the Company to acquire its own Shares must satisfy the JSE
Listings Requirements and the requirements of section 46 and, accordingly,
the Company may not acquire its own Shares unless –
- 18.2.1 for as long as it is required in terms of the JSE Listings Requirements, the
acquisition has been approved by a special resolution of the
Shareholders, whether in respect of a particular repurchase or generally
approved by Shareholders and unless such acquisition otherwise
complies with sections 5.67 to 5.69 of the JSE Listings Requirements (or
such other sections as may be applicable from time to time);
- 18.2.2 the acquisition –
- 18.2.2.1 is pursuant to an existing legal obligation of the Company, or a court
order; or
- 18.2.2.2 the Board, by resolution, has authorised the acquisition;
- 18.2.3 it reasonably appears that the Company will satisfy the Solvency and
Liquidity Test immediately after completing the proposed acquisition; and
- 18.2.4 the Board, by resolution, has acknowledged that it has applied the

Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition.

19 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

S10.15

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 is entitled to call a Shareholders' meeting at any time.

20.2 Subject to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting – **S10.11(c)**

20.2.1 at any time that the Board is required by the Act, the JSE Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or **S10.11(d)**

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

20.2.3 when required in terms of clause 20.3 or by any other provision of this

Memorandum of Incorporation.

- 20.3 Any Shareholders' meeting convened in terms of the JSE Listings Requirements shall be held in person and not by means of a written resolution as contemplated in section 60. **S10.11(e)**
- 20.4 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –
- 20.4.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 20.4.2 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 percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 20.5 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.
- 20.6 Subject to the provisions of the JSE Listings Requirements, any such annual general meeting shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation; and
- 20.7 Each annual general meeting of the Company contemplated in clause 20.5 shall provide for at least the following business to be transacted –
- 20.7.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 20.7.2 the election of Directors, to the extent required by the Act and by clause 25.6 of this Memorandum of Incorporation;
- 20.7.3 the appointment of an auditor and an audit committee for the following

- financial year; and
- 20.7.4 any matters raised by the Shareholders, with or without advance notice to the Company.
- 20.8 Notwithstanding clause 20.7 above, the business of a general meeting shall include the power to sanction/declare dividends. **S10.11(g)**
- 20.9 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. **S10.11(d)**
- 20.10 The Board may determine the location of any Shareholders' meeting, and the Company may only hold any such meeting in the Republic.
- 20.11 Every Shareholder's meeting shall be reasonably accessible within the Republic for electronic participation by Shareholders.
- 20.12 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice. **S10.11(a) & (b)**
- 20.13 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 present in person. In addition – **S10.11(h)**
- 20.13.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 20.13.2 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 percent) 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.

20.14 The time periods specified in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 20.13 –

20.14.1 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;

20.14.2 for consideration of a particular matter to begin have not been satisfied –

20.14.2.1 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

20.14.2.2 if there is no other business on the agenda of the meeting, the meeting may be adjourned, without any motion or vote, for 1 (one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 20.13 may extend the 1 (one) hour limit allowed in clause 20.14 for a reasonable period on the grounds that –

20.14.3 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

20.14.4 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 20.13.

20.15 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.

20.16 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of 20.14 unless the location for the meeting is different from –

20.16.1 the location of the postponed or adjourned meeting; or

20.16.2 the location announced at the time of adjournment, in the case of an

adjourned meeting.

- 20.17 If at the time appointed in terms of clause 20.14 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 20.13 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 20.18 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. **S10.11(h)**
- 20.19 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.
- 20.20 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 20.21 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 1 (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.
- 20.22 The chairperson of a Shareholders' meeting may –
- 20.22.1 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;
- 20.22.2 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.

20.23 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 -

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

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

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.

21 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

21.1 Subject to the provisions of the JSE Listings Requirements, the Company may conduct a Shareholders' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation.

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 **S10.5(b)**

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 1 (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 Securities 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. **S10.5(c)**
- 22.2 If any resolution is proposed as contemplated in clause 8.5, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders as contemplated in clause 22.1, provided that – **S10.5(e) & S10.5(c)**
- 22.2.1 the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and the Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held; and
- 22.2.2 the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point ninety nine percent) of the total votes (including the votes of the 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). **10.5(c) & (e)**
- 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 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; 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 percent) of the voting rights entitled to be voted on that matter; or
- 22.3.3 the chairperson of the meeting.
- 22.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 22.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 22.5 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.
- 22.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 22.7 A poll demanded on the election of a chairperson (as contemplated in clause 20.21) 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.
- 22.8 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he 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 Share shall alone be entitled to vote in respect thereof.

23 PROXIES AND REPRESENTATIVES

23.1 The board of any company or the controlling body of any other entity or **s10.5(b)** 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 –

23.1.1 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 Shares; and

23.1.2 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.

23.2 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –

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

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

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

23.3 A proxy appointment –

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

23.3.2 remains valid for –

23.3.2.1 1 (one) year after the date on which it was signed; or

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

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

23.4 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.

23.5 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –

23.5.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a);

23.5.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b); and

23.5.3 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7),

and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

23.6 Every instrument of proxy shall, as far as circumstances permit, be substantially in the form as set out in Annexure 1 of this Memorandum of Incorporation, or in such other 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 percent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7).
- 24.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9). **S10.11(a)**
- 24.3 No matters, except –
- 24.3.1 those matters set out in section 65(11); or
- 24.3.2 the proposed change of the name of the Company; or **S10.5(d)(vii)**
- 24.3.3 any other matter required by the Act to be resolved by means of a special resolution; or
- 24.3.4 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,
- require a special resolution adopted at a Shareholders' meeting of the Company.
- 24.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

25 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

- 25.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee and a social and ethics committee, the Board must comprise at least 4 (four) Directors and the Shareholders shall be entitled, by ordinary resolution, to determine such maximum number of Directors as they from time to time shall consider appropriate. **S10.16(a)**
- 25.2 All Directors shall be elected by an ordinary resolution of the Shareholders **S10.16(b) & S10.16(h)**

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 shall be competent.

25.3 In any election of Directors –

25.3.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled; and

25.3.2 in each vote to fill a vacancy –

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

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

25.4 The Company may appoint *ex officio* Directors as contemplated in section 66(4)(ii).

25.5 Apart from satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.

25.6 No Director shall be appointed for life or for an indefinite period and the Directors shall rotate in accordance with the following provisions of this clause 25.6 – **S10.16(k)**

25.6.1 at each annual general meeting referred to in clause 20.5, 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, provided that if a Director is appointed as managing Director or as an employee of the Company in any other capacity, he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of Directors; **S10.16(g)**

25.6.2 the Directors to retire in every year shall be those who have been longest

- in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 25.6.3 a retiring Director shall be eligible for re-election at such annual general meeting contemplated in clause 25.6.1 above, provided that such meeting is held in person and not by means of a written resolution as contemplated in section 60; **S10.16(g)**
- 25.6.4 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 20.14 to 20.17 (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.
- 25.7 Subject to the provisions of clause 25.2 above, the Board shall provide the Shareholders with a recommendation in the notice of the meeting at which the election or 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. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the Director is to be proposed to allow nominations to reach the Company's office from any part in the Republic. **S10.16(g) & (h)**
- 25.8 The Board has the power –
- 25.8.1 on a temporary basis, to appoint directors in order to fill any vacancy or as an addition to the Board: provided that such appointment must be confirmed by the Shareholders, in accordance with clause 25.2, at the next annual general meeting of the Company, as required in terms of section 70(3)(b)(i) (with reference to vacancies); and **S10.16(c)**
- 25.8.2 to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1),

and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 25.

- 25.9 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.
- 25.10 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.
- 25.11 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.
- 25.12 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 in accordance with clause 25.8.1 or convene a general meeting for the

S10.16(d)

purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation.

- 25.13 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 (three) month period contemplated in clause 25.12, 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 filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.
- 25.14 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, provided that the appointment and remuneration (in addition to the remuneration to which he may be entitled as a Director) in respect of such other office must be determined by a disinterested quorum of the Directors. **S10.16(e)**
- 25.15 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 addition to the remuneration to which he may be entitled as a Director) in respect of such other office must be determined by a disinterested quorum of Directors. **S10.16(e)**
- 25.16 Unless otherwise agreed with the JSE, the proposal of any resolution to Shareholders in terms of sections 20(2) and 20(6) of the Act shall be prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the JSE Listings Requirements. **S10.3**

25.17 Each Director may in writing appoint no more than one alternate Director at a time to act in such Director's place during such Director's absence or inability to act as such. Such alternate Director shall be a person who:

25.17.1 is not disqualified from holding the office of Director;

25.17.2 is not already appointed as an alternate Director for another Director; and

25.17.3 has been elected or approved by Shareholders by ordinary resolution: provided that an alternate Director may be appointed with the approval of the Board in lieu of the Shareholders if as a result no less than 50% of the alternate Directors on the Board are Directors that have been elected or approved by Shareholders, in compliance with section 66(4)(b) of the Act.

25.18 On the appointment of an alternate Director being duly made and approved, the alternate Director shall, whilst acting in the place of the Director who appointed such alternate, exercise and discharge all the duties and functions of the Director being represented.

25.19 The appointment of an alternate Director shall cease if such alternate Director is removed or disqualified from acting as a Director in terms of this Memorandum of Incorporation or the Act, or if the appointing Director ceases to be a Director or gives notice to the Company Secretary that the appointment of the alternate Director representing such Director has been revoked. An alternate Director shall look to the Director who appointed such alternate Director for remuneration.

26 DIRECTORS' MEETINGS

26.1 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.

26.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. 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 S10.16(i)

Directors present shall choose 1 (one) of their number to be chairperson of such meeting.

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

26.4 The Board has the power to –

26.4.1 consider any matter and/or adopt any resolution other than at a meeting contemplated in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. Such written consent shall be as valid and effective as if it had been passed at a meeting of Directors. Any such written consent should be included in the minute book and may consist of several documents, which shall be deemed to have been passed on the date on which it was signed by the last Director (unless the written consent includes a statement to the contrary); S10.16(j)

26.4.2 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), 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;

26.4.3 determine the manner and form of providing notice of its meetings as contemplated in section 73(4); and

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

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

26.5 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), subject only to clause 26.5.5, and accordingly –

26.5.1 if all of the Directors of the Company –

26.5.1.1 acknowledge actual receipt of the notice convening a meeting; or

26.5.1.2 are present at a meeting; or

26.5.1.3 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;

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

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

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

26.5.5 in the case of a tied vote –

26.5.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; and

26.5.5.2 the matter being voted on fails.

26.6 Resolutions adopted by the Board –

26.6.1 must be dated and sequentially numbered; and

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

26.7 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.

27 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 27.1 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 section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation. **S10.16(f)**
- 27.2 Any Director who - **S10.16(f)**
- 27.2.1 serves on any executive or other committee; or
- 27.2.2 devotes special attention to the business of the Company; or
- 27.2.3 goes or resides outside South Africa for the purpose of the Company; or
- 27.2.4 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.
- 27.3 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with - **S10.16(f)**
- 27.3.1 the business of the Company; and
- 27.3.2 attending meetings of the Directors or of committees of the Directors of the Company.
- 27.4 The Board may, as contemplated in and subject to the requirements of section 45, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

28 INDEMNIFICATION OF DIRECTORS

28.1 The Company may –

28.1.1 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);

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

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

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

28.2 The provisions of clause 28.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee.

29 BORROWING POWERS

29.1 The Directors may from time to time exercise all of the powers of the Company to -

29.1.1 borrow for the purposes of the Company such sums as they think fit; and

29.1.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company.

29.2 For the purposes of clause 29.1, the borrowing powers of the Company shall be unlimited.

30 COMMITTEES OF THE BOARD

30.1 The Board may –

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

- 30.1.2 appoint any particular director to more than one committee of the Board.
- 30.1.3 include in any such committee persons who are not Directors, as contemplated in section 72(2)(a),
- and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
- 30.2 The authority of a committee appointed by the Board as contemplated in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.
- 30.3 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), the Board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 and the Regulations.
- 30.4 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.
- 30.5 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.

31 ANNUAL FINANCIAL STATEMENTS

- 31.1 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 –
- 31.1.1 the Act;
- 31.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 31.1.3 this Memorandum of Incorporation.
- 31.2 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).

31.3 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.

31.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Act.

31.5 A copy of the annual financial statements must be sent to Shareholders 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. **S10.19**

31.6 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –

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

31.6.2 subject to and in accordance with IFRS –

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

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

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

31.6.2.4 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.

32 COMPANY SECRETARY

- 32.1 The Company must appoint a company secretary.
- 32.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.
- 32.3 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.

33 DISTRIBUTIONS

- 33.1 Subject to the provisions of the Act, and particularly section 46, the Company may make a proposed distribution if such distribution –
- 33.1.1 is pursuant to an existing legal obligation of the Company, or a court order;
or
- 33.1.2 is authorised by resolution of the Board and in compliance with the JSE Listings Requirements, provided that such resolution does not provide for capital to be repaid upon the basis that it may be called up again. **S10.8**
- 33.2 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.
- 33.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 33.4 The Directors may from time to time declare and pay to the Shareholders such interim distributions as the Directors consider to be appropriate.
- 33.5 No larger distribution shall be declared by the Company in general meeting than is recommended by the Directors, but the Company in general meeting may declare a smaller distribution. **S10.17(a)**
- 33.6 All unclaimed dividends shall be held by the Company in trust until claimed, provided that dividends unclaimed for a period of 3 (three) years from the date on which they were declared may be declared forfeited by the Directors **S10.17(c)**

for the benefit of the Company. All unclaimed monies, other than dividends, that are due to a Shareholder/s shall be held by the Company in trust for an indefinite period until lawfully claimed by such Shareholder/s, subject to the laws of prescription.

33.7 Any distribution, interest 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 -

33.7.1 the holder at his registered address; or

33.7.2 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

33.7.3 such person and at such address as the holder or joint holders may in writing direct. **S10.18**

33.8 Every such cheque or warrant shall -

33.8.1 be made payable to the order of the person to whom it is addressed; and

33.8.2 be sent at the risk of the holder or joint holders.

33.9 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.

33.10 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.

33.11 When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.

33.12 A distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.

33.13 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part –

33.13.1 by the distribution of specific assets; or

33.13.2 by the issue of Shares, debentures or securities of the Company or of any other company; or

33.13.3 in cash; or

33.13.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.

33.14 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.

33.15 The Directors may -

33.15.1 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

33.15.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

33.16 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. **S10.17(b)**

34 ACCESS TO COMPANY RECORDS

34.1 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), being –

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

34.1.2 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);

34.1.3 all –

34.1.3.1 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

34.1.3.2 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;

34.1.4 notice and minutes of all Shareholders' meetings, including –

34.1.4.1 all resolutions adopted by them; and

34.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution,

for 7 (seven) years after the date each such resolution was adopted

34.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and

34.1.6 the Securities Register.

34.2 A person not contemplated in clause 34.1 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 for any such inspection.

34.3 A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26, and in accordance with the rules of the Central Securities Depository.

35 PAYMENT OF COMMISSION

35.1 The Company may pay a commission at a rate not exceeding 10% (ten percent) of the issue price of a Share to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for

S10.14

any Shares of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Shares of the Company.

- 35.2 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.
- 35.3 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.
- 35.4 The Company may, on any issue of Shares, pay such brokerage as may be lawful.

36 NOTICES

- 36.1 All notices shall be given by the Company to each Shareholder of the Company and simultaneously to the Issuer Regulation Division of the JSE, and shall be given in writing in any manner authorised by the JSE Listings Requirements and the Regulations, and particularly Table CR 3 annexed to 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. **S10.11(f)**
- 36.2 Each Shareholder of the Company –
- 36.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and if he has not named such an address he shall be deemed to have waived his right to be so served with notices; and **S10.11(e)**
- 36.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 36.3 Any Shareholder whose address in the Securities Register is an address not within South Africa, shall be entitled to have notices served upon him at such **S10.18**

address.

- 36.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 36.5 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 36.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 36.7 Any notice or document delivered or sent by post to or left at the registered address of any 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 Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this 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 Shares.

FORM OF PROXY

Name of beneficial shareholder

Name of registered shareholder

Address

Telephone work ()

Telephone home ()

Cellular Number

being the holder/custodian of _____ ordinary shares in the Company, hereby appoint (see note):

1. _____ or failing him / her,

2. _____ or failing him / her,

3. the Chairperson of the meeting,

as my/our proxy to attend and act for me/us on my/our behalf at the Annual General Meeting of the company convened for purpose of considering and, if deemed fit, passing, with or without modification, the special and ordinary resolutions to be proposed thereat ("resolutions") and at each postponement or adjournment thereof and to vote for and/or against such resolutions, and/or abstain from voting, in respect of the ordinary shares in the issued share capital of the Company registered in my/our name/s in accordance with the following instructions:

	In favour of	Against	Abstain
Special Resolution 1
Ordinary Resolution 1

Please indicate instructions to proxy in the space provided above by the insertion therein of the relevant number of votes exercisable.

A member entitled to attend and vote at the Annual General Meeting may appoint one or more proxies to attend and act in his stead. A proxy so appointed need not be a member of the Company.

Signed at _____ on _____ [insert year]

Signature _____

Assisted by (if applicable) _____