

**MEMORANDUM OF INCORPORATION**

**OF**

**STELLAR CAPITAL PARTNERS PROPRIETARY LIMITED**

**A PRIVATE COMPANY**

**REGISTRATION NUMBER: 1998/015580/07**

*The Company did not adopt a standard template of a private company Memorandum of Incorporation as provided for by the Commission.*

*This Memorandum of Incorporation replaces the Memorandum of Incorporation of the Company that was in existence at the time of adoption of this Memorandum of Incorporation on 24 February 2022.*

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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 –

1.1.1 "**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 "**Applicable Law**" in relation to a Shareholder or the Company, includes all and any -

1.1.2.1 statutes, subordinate legislation and common law;

1.1.2.2 regulations;

1.1.2.3 ordinances and by-laws;

1.1.2.4 directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and

1.1.2.5 other similar provisions,

from time to time, compliance with which is mandatory for that Shareholder or the Company;

1.1.3 "**B Ordinary Share**" means a B ordinary share of no par value in the authorised B ordinary share capital of the Company as contemplated in clause 10.1.2;

1.1.4 "**Beneficial Owner**" means any Person who, in terms of the Act, has or is deemed to have a beneficial interest in any Security issued by the Company;

1.1.5 "**Board**" means the board of Directors from time to time of the Company;

1.1.6 "**Capital**" means the share capital of the Company as constituted from time to time;

1.1.7 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

- 1.1.8 "**Central Securities Depository**" has the meaning set out in section 1 of the FMA;
- 1.1.9 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.10 "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.11 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.12 "**Distribution**" shall have the meaning attributed to it in section 1 of the Act;
- 1.1.13 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.14 "**Equity**" means, in relation to any Shareholder, the Shares held by such Shareholder plus the Loan Claims (if any) of such Shareholder; and if a Shareholder does not have any Loan Claims, each reference in this Memorandum of Incorporation to the Equity of such Shareholder shall mean the Shares held by such Shareholder;
- 1.1.15 "**FMA**" means the Financial Markets Act, No 19 of 2012, including any amendment, consolidation or re-enactment thereof;
- 1.1.16 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Act;
- 1.1.17 "**Loan Claims**" means any claims which a Shareholder has against the Company for the payment of any amount in respect of any monies lent to the Company by that Shareholder in its capacity as a Shareholder, including any accrued interest thereon or in respect thereof;
- 1.1.18 "**Managing Director**" means the Managing Director of the Group, appointed by the Board from time to time in terms of clause 38.1 and Chief Executive Officer shall have the corresponding meaning;

- 1.1.19 **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on that resolution at a General Meeting;
- 1.1.20 **"Ordinary Shares"** means ordinary shares of no par value in the share capital of the Company as contemplated in clause 10.1.1;
- 1.1.21 **"Participant"** has the meaning set out in section 1 of the FMA;
- 1.1.22 **"Prescribed Officer"** means a Person who, within a Company, performs any function that has been designated in terms of section 66(10) of the Act;
- 1.1.23 **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.24 **"Republic"** means the Republic of South Africa;
- 1.1.25 **"Rules"** means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and clause 48 hereof;
- 1.1.26 **"Securities"** means -
- 1.1.26.1 any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or
- 1.1.26.2 anything falling within the meaning of "securities" as set out in 1 of the FMA;
- 1.1.27 **"Securities Register"** means the register of issued Securities of the Company required to be established in terms of section 50(1) and referred to in clause 12 hereof;
- 1.1.28 **"Share"** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.29 **"Shareholder"** means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57;
- 1.1.30 **"Shareholders Agreement"** means any signed written agreement or signed written agreements in force from time to time between all or some of 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;

- 1.1.31 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;
- 1.1.32 **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights exercised on that resolution at a General Meeting;
- 1.1.33 **"Uncertificated Securities"** means any "securities" defined as such in the Act and section 29 of the FMA; and
- 1.1.34 **"Uncertificated Securities Register"** means the record of uncertificated securities in terms of the Act 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 or elective 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 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;
- 1.2.6 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 "**month**" shall be construed as months of the Gregorian calendar, unless the context requires otherwise;
- 1.3.3 "**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
- 1.3.4 "**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 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Memorandum of Incorporation, then –
- 1.4.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.4.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.4.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.4.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.4.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 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 **NAME**

The name of the Company is Stellar Capital Partners Proprietary Limited.

## 3 **PRIVATE COMPANY**

3.1 The Company:

3.1.1 is a profit company;

3.1.2 is not a state-owned company;

3.1.3 is not a personal liability company; and

3.1.4 may not offer any of its Securities to the public.

3.2 The transferability of the Company's Securities is restricted as provided in this Memorandum of Incorporation.

3.3 The Company is accordingly a private company as contemplated in section 8(2)(b) of the Companies Act.

## 4 **MAIN BUSINESS**

The main business of the Company is to carry on the business of an investment holdings company.

## 5 **JURISTIC PERSONALITY**

5.1 The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a private 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 (continuation of pre-existing companies), and this Memorandum of Incorporation replaces and supersedes the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof.

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

5.2.1 the unalterable provisions of the Act;

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

5.2.3 the other provisions of this Memorandum of Incorporation.

## **6 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.

## **7 POWERS OF THE COMPANY**

7.1 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.

7.2 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).

7.3 Subject to any limitations imposed by the Act, the management and control of any business of the Company shall be vested in the Directors who in addition to the powers and authorities expressly conferred upon them by this Memorandum of Incorporation, may exercise all such powers and do all such acts and things as may be exercised or done by the Company, and are not hereby or by law expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to such management and control not being inconsistent with this Memorandum of Incorporation The general powers given by this clause 7.3 shall not be limited or restricted by any special authority or power given to the Directors by any other clause of this Memorandum of Incorporation.

7.4 The Directors may arrange that any branch of the business carried on by the Company or any other business in which the Company may be interested, shall be carried on by or through one or more subsidiaries of the Company and the Board may on behalf of the Company make such arrangements as they think advisable for taking the profits or bearing the losses of any branch or business so carried on, or for financing, assisting or subsidising any such subsidiary or guaranteeing its contracts, obligations or liabilities.

## **8 RESTRICTIVE CONDITIONS**

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or prohibit the amendment of any particular provision hereof as contemplated in section 15(2)(c).

## 9 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

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

## 10 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 10.1 The Company is authorised to issue –
- 10.1.1 2 000 000 000 Ordinary Shares, of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to–
- 10.1.1.1 vote on any matter to be decided by the Shareholders and to 1 (one) vote in the case of a vote by means of a poll;
- 10.1.1.2 participate proportionally in any distribution made by the Company; and
- 10.1.1.3 receive proportionally the net assets of the Company upon its liquidation;
- 10.1.2 1 000 B Ordinary Shares of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to –
- 10.1.2.1 vote on any matter to be decided by the Shareholders of the Company and to 1 000 000 votes in the case of a vote by means of a poll;
- 10.1.2.2 participate proportionally (as between themselves and the Ordinary Shares contemplated in clause 10.1.1.2) in any distribution made by the Company; and
- 10.1.2.3 receive proportionally (as between themselves and the Ordinary Shares contemplated in clause 10.1.1.3) the net assets of the Company upon its liquidation; and
- 10.1.3 1 000 000 no par value unspecified shares ("**Unspecified Shares**") without any associated preferences, rights, limitations or other terms for that class, and for which the Board must determine the associated preferences, rights, limitations or other terms prior to issuing such shares.
- 10.2 The Board may, subject to clause 10.3, resolve to issue 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.

10.3 Notwithstanding the provisions of clause 10.2, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by Special Resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.

10.4 The Board shall have the power to –

10.4.1 increase or decrease the number of authorised Shares of any class of the Shares; or

10.4.2 consolidate and reduce the number of the Company's issued and authorised Shares of any class; or

10.4.3 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

10.4.4 reclassify any classified Shares that have been authorised but not issued; or

10.4.5 classify any unclassified Shares that have been authorised but not issued; or

10.4.6 determine or vary the preferences, rights, limitations or other terms of any Shares,

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

10.5 Save to the extent –

10.5.1 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

10.5.2 otherwise 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 and the provisions of section 39(2) shall not apply to the Company.

- 10.6 The Board shall have the power to determine the preferences, rights, limitations or other terms of the Unspecified Shares and any other class of shares contemplated in section 36(1)(d) of the Act, and the powers of the Board in this regard are not limited.
- 10.7 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.

## 11 **CERTIFICATED AND UNCERTIFICATED SECURITIES**

- 11.1 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.
- 11.2 Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.
- 11.3 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 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.
- 11.4 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 –
- 11.4.1 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

- 11.4.2 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.
- 11.5 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.

## 12 SECURITIES REGISTER

- 12.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 12.2 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 –
- 12.2.1 the total number of Uncertificated Securities;
- 12.2.2 with respect to Certificated Securities –
- 12.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;
- 12.2.2.2 the number of Certificated Securities issued to each of them;
- 12.2.2.3 the number of, and prescribed circumstances relating to, any Securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;
- 12.2.2.4 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
- 12.2.2.5 any other prescribed information.
- 12.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 11.2, a record must be administered and maintained by a Participant or Central Securities

Depository, in the prescribed form, as the Uncertificated Securities Register, which –

- 12.3.1 forms part of the Securities Register; and
- 12.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 12, any details referred to in clause 12.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 12.4 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.
- 12.5 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.
- 12.6 A certificate evidencing any Certificated Securities of the Company –
  - 12.6.1 must state on its face –
    - 12.6.1.1 the name of the Company;
    - 12.6.1.2 the name of the person to whom the Securities were issued; and
    - 12.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate; and
    - 12.6.1.4 any restriction on the transfer of the Securities evidenced by that certificate;
  - 12.6.2 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
  - 12.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 12.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 12.8 If, as contemplated in clause 12.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –



- 12.8.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and
- 12.8.2 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 12.6 to 12.8 is not a contravention of the Act and does not invalidate that certificate.

### 13 **BRANCH REGISTER**

The Company, or the Board on behalf of the Company, may cause to be kept in any foreign country a branch register or Securities registers of Shareholders resident in such foreign country and the Board may, subject to the provisions of the Act and any relevant law of the foreign country, make and vary such regulations as they may think fit respecting the keeping of any such Securities register.

### 14 **TRANSFER OF SECURITIES**

- 14.1 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.
- 14.2 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.
- 14.3 Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by –
  - 14.3.1 the certificate issued in respect of the Certificated Securities to be transferred; and/or
  - 14.3.2 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.

- 14.4 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.
- 14.5 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, in the event that the transfer is not evidenced by a proper instrument of transfer signed by the transferor and transferee with such proof as the Directors may require of the authority of the signatory/ies to that instrument of transfer and the certificate in respect of securities being transferred to the transfer was effected by operation of law, shall (unless the Directors shall resolve otherwise) be returned on demand to the person who lodged it.
- 14.6 The transfer of Uncertificated Securities may be effected only –
- 14.6.1 by a Participant or Central Securities Depository;
- 14.6.2 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
- 14.6.3 in accordance with section 53 of the Act and the rules of the Central Securities Depository.
- 14.7 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.
- 14.8 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.

## 15 **RESTRICTIONS ON THE DISPOSAL OF SHARES**

15.1 Notwithstanding anything to the contrary in this Memorandum of Incorporation and save for any disposal of Shares pursuant to the exercise by any Shareholder of an appraisal right in terms of section 164 –

15.1.1 no Shareholder shall dispose of any Equity unless such disposal is permitted in terms of this Memorandum of Incorporation; and

15.1.2 no person who owns any Share that is registered in the Securities Register in the name of a nominee (such nominee therefore being a Shareholder in respect of such Share) shall dispose of such Share unless such nominee, in relation to the disposal or intended disposal in question, complies with all the provisions of this Memorandum of Incorporation as fully and effectively as if the Share in question was owned by the nominee Shareholder in question.

15.2 Subject to any other express provisions of this Memorandum of Incorporation to the contrary –

15.2.1 no Shareholder shall be entitled to transfer a Share unless the transfer of such Share has been approved by the Board;

15.2.2 the Board shall not register the transfer of a Share unless it is satisfied that the provisions of clause 15.1 (or the Shareholders Agreement, as the case may be) have been complied with (to the extent that they are applicable), nor shall it register the transfer of a Share where it is disposed of contrary to the provisions of clause 15.1 and/or any relevant provisions of the Shareholders Agreement; and

15.2.3 if the Board refuses to register the transfer of a Share it shall give notice of that refusal to the proposed transferor and transferee within 14 (fourteen) days immediately following the date on which the relevant transfer form is lodged at the Company's registered office.

## 16 **ADOPTION OF A SHARE TRADING MECHANISM**

The Board may from time to time resolve to establish a share trading mechanism in order to facilitate the transfer of Shares among Shareholders and/or third parties, as the case may be on such terms and in accordance with such procedures, as the

Board in its sole discretion deems fit, and may revoke such trading mechanism at any time. For purposes of the aforesaid, the Board shall be entitled to adopt and amend rules, which rules shall bind all Shareholders who elect to transact through the share trading mechanism in force at the time. All Shareholders shall be entitled, but not obliged, to purchase and sell Shares in accordance with the rules of the share trading mechanism. The Board shall publish a notice of the establishment, and if applicable, revocation of a share trading mechanism, and the rules, if any, adopted by the rules for such purpose, on its internet webpage or in such other manner as the Board deems fit.

## 17 **DRAG-ALONG PROVISIONS**

If a third party or any Shareholder (hereafter the "**Offeror**") offers to purchase all the Equity (or if the Offeror is a Shareholder, the remaining Equity) from the Shareholders (or if the Offeror is a Shareholder, the remaining Shareholders) on identical pro rata terms, and provided that 75% (seventy five percent) of the Shareholders (or if the Offeror is a Shareholder, 75% of the remaining Shareholders) accept such offer in respect of the Equity held by them (after first having complied with the provisions of any Shareholders Agreement and such Equity not having been purchased pursuant to such provisions), then all the Shareholders (or if the Offeror is a Shareholder, all the remaining Shareholders) shall be obliged to and shall be deemed to have accepted the offer of the Offeror in respect of their Equity. Each of the Shareholders irrevocably and in rem suam appoints any of the other Shareholders as its attorney and agent to do all such things as may be necessary to comply with the provisions of this clause.

## 18 **REGULATORY APPROVAL**

In the event that the lawful implementation of the sale of any Equity ("**Affected Equity**") in terms of this Memorandum of Incorporation to any Shareholder requires the approval of the Competition Commission, the Competition Tribunal or the Competition Appeal Court, whichever has jurisdiction for the purposes of such sale in terms of the Competition Act, No 89 of 1998, or requires the approval of any other regulator or regulatory authority (such approvals being referred to herein as "**Regulatory Approval**"), then notwithstanding anything to the contrary contained or implied herein –

- 18.1 the entire sale in respect of the Affected Equity shall be subject in its entirety to the fulfilment of the suspensive condition that the requisite Regulatory Approval is granted, either unconditionally, or on terms and conditions acceptable to the seller

and purchaser of the Affected Equity and to the Company, but only if such terms and conditions are likely to affect the Company, which suspensive condition must be fulfilled within such period as may be agreed between all the parties to the sale and the Company. A party shall act reasonably in deciding whether or not such terms and conditions are acceptable to it; and

18.2 the relevant time periods recorded in this Memorandum of Incorporation for the implementation of the sale shall be extended by such period as may be agreed in writing between all the parties to the sales and the Company in order to accommodate the preparation and lodging of the requisite applications for Regulatory Approval and the consideration thereof and the adjudication thereon by the applicable authorities; and

18.3 if all the parties to the sale and the Company do not in writing agree on the periods contemplated in clauses 18.1 and 18.2 within 7 (seven) days of any of such parties calling for agreement, or if there is any dispute as to whether or not a party has acted reasonably or otherwise in regard to the acceptance or otherwise of the terms and conditions referred to in clause 18.1, then such period(s) or such dispute, as the case may be, shall be determined by a practising commercial attorney of not less than 15 (fifteen) years' experience as such, acting as an expert and not as an arbitrator. Such attorney shall be one agreed to between the parties to the sales and, failing such agreement within 7 (seven) days of any of such parties in writing calling for agreement, an independent practising commercial attorney of not less than 15 (fifteen) years' experience as such appointed by the President for the time being of the provincial Law Society of the province in which the registered office of the Company is situated.

## 19 TRANSMISSION OF SECURITIES

19.1 The executor of the estate of a deceased sole holder of a Security or the liquidator of an insolvent estate or the business rescue practitioner in respect of a business plan ("appointed person") shall be the only person recognised by the Company as having any title to such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the appointed person, as determined by the Board, shall be the only person recognised by the Company as having any title to the Security. Any appointed 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 sequestrated or of a Security Holder who is otherwise under a disability or as the

liquidator of anybody 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.

19.2 Subject to the provisions of clause 19.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself –

19.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and

19.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

## 20 **SHARE OPTIONS**

Subject to the provisions of the Act and this Memorandum of Incorporation, the Directors may issue Share options on such terms as they deem fit from time to time.

## 21 **DEBT INSTRUMENTS**

The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2) of the Act, and grant special privileges associated with any such debt instruments as contemplated in section 43(3)(a) of the Act, and the authority of the Board in such regard is not limited by this Memorandum of Incorporation.

## 22 **CAPITALISATION SHARES**

22.1 Subject to fulfilling the requirements provided for in section 47 of the Act, the Board shall have the power and authority to –

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

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

the authority of the Board in such regard is not limited by this Memorandum of Incorporation.

22.2 The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in clause 22.1.2, unless the Board –

22.2.1 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 ensures that the relevant shareholders have the right of election to receive cash or shares; and

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

## 23 **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).

## 24 **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.

## 25 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

25.1 In accordance with and subject to the provisions of section 48 and the further provisions of this clause 25 –

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

25.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –

- 25.1.2.1 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
  - 25.1.2.2 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.
- 25.2 Any decision by the Company to acquire its own Shares must satisfy the requirements of section 46. Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –
- 25.2.1 Shares held by one or more subsidiaries of the Company; or
  - 25.2.2 convertible or redeemable Shares.

## 26 **ODD-LOT OFFERS**

- 26.1 If, upon implementation of any odd-lot offer made by the Company, subject to the majority shareholders approving same by way of an Ordinary Resolution, there are holders of Shares holding in aggregate less than 100 (one hundred) Shares, or such other number of shares as determined by the Board then the Company shall, save in respect of odd-lot holders who have elected to retain their odd-lots, in the Company –
- 26.1.1 cause the odd-lots to be sold in such manner as the Directors may direct; and
  - 26.1.2 procure that the proceeds of such sales are paid to such odd-lot holders.
- 26.2 All unclaimed proceeds (of such sales) may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that such proceeds unclaimed for a period of 3 (three) years from the date on which the Directors caused the odd-lots to be sold may be declared forfeited by the Directors for the benefit of the Company.



## 27 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

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

27.1.1 receive notice of a Shareholders' meeting;

27.1.2 which shareholders are entitled to lodge proxies for a Shareholders' meeting;

27.1.3 participate in and vote at a Shareholders' meeting;

27.1.4 decide any matter by written consent or by Electronic Communication;

27.1.5 receive a distribution;

27.1.6 be allotted or exercise other rights, or

27.1.7 participate in and/or effect any entitlement any other corporate action,

shall be determined by the Board.

27.2 A record date determined by the Board –

27.2.1 may not be earlier than the date on which the record date is determined or more than 10 business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and

27.2.2 must be published to the Shareholders in a manner that satisfies any prescribed requirements.

27.3 If, at any time, the Board fails to determine a record date for any action or event, the record date shall be –

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

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

## 28 SHAREHOLDERS' MEETINGS

### 28.1 Calling of Shareholders' Meetings

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

28.1.2 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, the Company shall hold a Shareholders' meeting –

28.1.2.1 at any time that the Board is required by the Act, or this Memorandum of Incorporation to refer a matter to Shareholders for decision;

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

28.1.2.3 when required in terms of clause 28.1.4 or by any other provision of this Memorandum of Incorporation.

28.1.3 Any Shareholders' resolution requiring relevant shareholder approval may be passed by way of a meeting of Shareholders or by way of a written resolution in terms of section 60 of the Act.

28.1.4 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 –

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

28.1.4.2 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.

## 28.2 **General meetings and annual general meetings**

28.2.1 In accordance with the Act, in addition to other meetings of the Company that may be convened from time to time, the Company may convene an annual general meeting of its Shareholders.

28.2.2 The Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act .

## 28.3 **Location and Notices of Meetings**

28.3.1 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.

28.3.2 The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Shareholders as of the record date for the meeting at least 10 business days before the meeting is to begin.

#### 28.4 **Quorum and Adjournment of Meetings**

28.4.1 The quorum requirement for a Shareholders' meeting to begin or for a matter to be considered are as set out in section 64(1) without variation and, accordingly –

28.4.1.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

28.4.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda,

provided that, if the Company has more than 2 Shareholders, a meeting may not begin, or a matter begin to be debated, unless –

28.4.1.3 at least 3 Shareholders are present at the meeting; and

28.4.1.4 the requirements of clauses 28.4.1.1 and 28.4.1.2 are satisfied.

28.4.2 The time periods specified in sections 64(4) and (5) of the Act 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 28.4.1 –

28.4.2.1 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;

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

28.4.2.2.1 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

28.4.2.2.2 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 28.4.1 may extend the 1 (one) hour limit allowed in clause 28.4.2 for a reasonable period on the grounds that –

- 28.4.2.2.3 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
- 28.4.2.2.4 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 28.4.1.
- 28.4.3 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.
- 28.4.4 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 28.4.2, unless the location for the meeting is different from –
  - 28.4.4.1 the location of the postponed or adjourned meeting; or
  - 28.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 28.4.5 If at the time appointed in terms of clause 28.4.2, for a postponed meeting to begin, or for an adjourned meeting to resume, the quorum requirements of clause 28.4 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 28.4.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.
- 28.4.7 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12) of the Act, without variation.

## 28.5 Conduct of Meetings

28.5.1 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.

28.5.2 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.

28.5.3 The chairperson of a Shareholders' meeting may –

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

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

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

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

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

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

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

28.5.5.2 at the meeting or adjourned meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

28.5.6 Even if he is not a Shareholder -

28.5.6.1 any Director; or

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

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

## 29 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

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

29.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; subject to voting be effected only in terms of lodged proxies or

29.1.2 one or more Shareholders, or proxies for Shareholders, may participate, but not be able to vote, by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

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

29.2 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.

## 30 VOTES OF SHAREHOLDERS

- 30.1 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 Shareholders' meeting of the Company –
- 30.1.1 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; and
- 30.1.2 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 or by a proxy for a Shareholder.
- 30.2 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 –
- 30.2.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 30.2.2 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
- 30.2.3 the chairperson of the meeting.
- 30.3 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 30.2, 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.
- 30.4 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.

- 30.5 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.
- 30.6 A poll demanded on the election of a chairperson (as contemplated in clause 28.5.2) 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.
- 30.7 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.
- 30.8 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 –
- 30.8.1 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 Shares; and
- 30.8.2 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.

### 31 PROXIES AND REPRESENTATIVES

- 31.1 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 –



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

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

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

31.2 A proxy appointment –

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

31.2.2 remains valid for –

31.2.2.1 1 (one) year after the date on which it was signed; or

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

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

31.3 **Electronic proxy**

31.3.1 The form appointing a proxy and the power of attorney or other authority, under which it is signed or a notarially certified copy of such power or authority shall be submitted electronically at the office of the Company or at such other place as is specified for that purpose in the notice convening the meeting or, subject to the conditions imposed by and the approval of the Board (which conditions may be amended and which approval may be withdrawn from time to time in the Board's sole discretion).

31.3.2 A proxy form submitted electronically shall be submitted to the electronic mail address, or pasted on the Web site address, as notified by the Company from time to time (or by such other electronic means as the Directors may determine from time to time) so as to be received not less than 2 (two) Business Days (or such lesser period as the Board may determine in relation to any particular meeting), before the time for holding the meeting (including an adjourned meeting) at which the Person named in the form proposes to vote.

31.4 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.

- 31.5 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 –
- 31.5.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a) of the Act;
- 31.5.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b) of the Act;
- 31.5.3 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy not later than 48 (forty eight) hours before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights; and
- 31.5.4 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7) of the Act,

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

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

*"I/We*

\_\_\_\_\_

–

*being a shareholder of Stellar Capital Partners Proprietary Limited do hereby appoint*

\_\_\_\_\_

\_\_\_\_\_

*or failing him/her*

\_\_\_\_\_

\_\_\_\_\_

*or failing him/her, the chairperson of the meeting as my/our proxy to vote in favour of all resolutions on my/our behalf at the meeting of the*

Company to be held at \_\_\_\_\_ on \_\_\_\_\_ and at  
any adjournment thereof as follows:-

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

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit. Any proxy exercised by the chairman must be voted in favour of all resolutions.

**SIGNED** this \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

\_\_\_\_\_  
SHAREHOLDER'S

SIGNATURE

(Note -- A shareholder entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a shareholder of the Company)."

## 32 SHAREHOLDERS' RESOLUTIONS

- 32.1 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) of the Act.
- 32.2 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) of the Act.
- 32.3 No matters, except –
- 32.3.1 those matters set out in section 65(11) of the Act; or
- 32.3.2 any other matter required by the Act to be resolved by means of a Special Resolution;
- require a Special Resolution adopted at a Shareholders' meeting of the Company.
- 32.4 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.

### **33 SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

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

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

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

33.2 A resolution contemplated in clause 33.1–

33.2.1 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

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

33.3 Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this clause 33, 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.

### **34 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

#### **34.1 Number of Directors**

34.1.1 In addition to 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, the Board shall not be less than 2 (two) nor more than 10 (ten) Directors.

34.1.2 The Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such an election, being the Shareholders of the Company and the holders of any other Securities of the Company to the extent that the terms on which such Securities were issued confer such rights.

34.1.3 Every person holding office as a Director, Prescribed Officer, company secretary or auditor of the Company immediately before the effective date of the Act will, as contemplated in item 7(1) of Schedule 5 to the Act, continue to hold that office.

## 34.2 Election of Directors

34.2.1 In any election of Directors –

34.2.1.1 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 as an addition to the Board, with the series of votes continuing until all vacancies on the Board have been filled; and

34.2.1.2 in each vote:–

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

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

34.2.2 Subject to the power of the Directors to fill a vacancy or to add Directors to the Board in terms of clause 34.4.1.1, the Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors appointed or any person named in this Memorandum of Incorporation able to nominate any person for appointment as a Director as contemplated in section 66(4) of the Act.

## 34.3 Eligibility and Term of Office

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

34.3.2 Each elected Director of the Company shall serve for an indefinite term, as contemplated in section 68(1) and a vacancy in the number of Directors shall only arise in the event of –

34.3.2.1 any elected Director ceasing to hold office or becoming disqualified from holding office as such for any reason; and/or

34.3.2.2 the Shareholders resolving to increase the number of elected Directors;

and/or

34.3.2.3 any of the other circumstances contemplated in section 70(1) arising.

#### 34.4 **Certain Powers of the Directors**

34.4.1 The Board has the power –

34.4.1.1 to at any time from time to time appoint any person as a Director either to fill any vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed and as set out in section 68(3) of the Act (and subject to section 70); and

34.4.1.2 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 34.

34.4.2 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this 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. Any reference to a power of attorney herein shall include any other form of delegation including the right to sub-delegate.

34.4.3 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

- 34.4.4 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 34.4.5 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 34.4.1.1 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the Board 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.
- 34.4.6 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 34.4.5, 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) of the Act, but not for any other purpose, provided that if there is no director able or willing to act, then any Ordinary Shareholder may convene a General Meeting for that purpose.

#### 34.5 **Directors' Interests**

- 34.5.1 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 34.5.2 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.

- 34.5.3 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) 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) has a personal financial interest in any matter to be considered by the Board.
- 34.5.4 Without in any way derogating from the obligations of a Director in terms of section 72(3) of the Companies Act, the Board shall have power to delegate to any Person or Persons any of their powers and discretions and to give to any such Person or Persons power of sub-delegation.

## 35 DIRECTORS' MEETINGS

- 35.1 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.
- 35.2 The Directors may elect a chairperson, and/or 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 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 1 (one) of their number to be chairperson of such meeting.
- 35.3 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.
- 35.4 The Board has the power to –
- 35.4.1 consider any matter and/or adopt any resolution other than at a meeting 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 and such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of directors. Any such



resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it (unless a statement to the contrary is made in that resolution);

- 35.4.2 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;
- 35.4.3 determine the manner and form of providing notice of its meetings contemplated in section 73(4) of the Act, provided that –
  - 35.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 (seven) days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any (two) directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the directors;
  - 35.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 35.4.3.1; and
- 35.4.4 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.

- 35.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5) of the Act, subject only to clauses 35.5.1 and 35.5.5, and accordingly –

- 35.5.1 if all of the Directors of the Company –
  - 35.5.1.1 acknowledge actual receipt of the notice convening a meeting; or
  - 35.5.1.2 are present at a meeting; or

- 35.5.1.3 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;
- 35.5.2 a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;
- 35.5.3 each Director has 1 (one) vote on a matter before the Board;
- 35.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;
- 35.5.5 in the case of a tied vote –
  - 35.5.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; and
  - 35.5.5.2 the matter being voted on fails.
- 35.6 Resolutions adopted by the Board –
  - 35.6.1 must be dated and sequentially numbered; and
  - 35.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 35.7 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.

## 36 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 36.1 The Company may pay fees 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.
- 36.2 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with -
  - 36.2.1 the business of the Company; and

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

36.3 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.

### 37 **TERMINATION OF OFFICE OF DIRECTORS**

37.1 A Director shall cease to hold office as such —

37.1.1 if 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; or

37.1.2 if he becomes of unsound mind; or

37.1.3 if (unless he is not required to hold a share qualification) he has not duly qualified himself within 2 (two) months of his appointment or if he ceases to hold the required number of shares to qualify him for office; or

37.1.4 if he has held office for a continuous period of 10 (ten) years, unless otherwise decided by the Board on an annual basis; or

37.1.5 if he is absent from meetings of the Board for 3 (three) consecutive meetings without leave of the Board and is not represented at any such meetings during such 3 (three) consecutive meetings by an alternate Director and the Board resolves that the office be vacated, provided that the Board shall have power to grant any Director leave of absence for any or an indefinite period; or

37.1.6 if he is removed under clause 36; or

37.1.7 if all of the other members of the Board unanimously decide to remove him from his office as such; or

37.1.8 if he is removed by an Ordinary Resolution adopted at a Shareholders meeting by the Shareholders entitled to exercise voting rights in an election of such Director in accordance with the provisions of section 71 of the Companies Act, subject to compliance with the provisions of section 71(2) of the Companies Act; or

- 37.1.9 1 (one) month or, with the permission of the Board earlier, after he has given notice in writing of his intention to resign; or
- 37.1.10 if he shall pursuant to the provisions of the Companies Act be disqualified or cease to hold office or be prohibited from acting as Director.

## 38 EXECUTIVE DIRECTORS

- 38.1 The Board may from time to time appoint one or more of their number to be Managing Director for the Group or to be the holder of any other executive office in the Company or subsidiaries of the Company as the case may require, subject to any contract between him or them and the Company, and from time to time terminate his or their appointment and appoint another or others in his or their place or places. A Director so appointed shall be subject to retirement in the same manner as the other Directors except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.
- 38.2 Subject to the provisions of any contract between himself and the Company, a Managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 38.3 The Directors may from time to time entrust to and confer upon a Managing Director 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.
- 38.4 Any Director who devotes special attention to the business of the Company, or who otherwise performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director, may be paid such extra amount (in addition to the remuneration he may be entitled to as a Director) by way of salary, provided that such amount shall be limited to a reasonable maximum to be fixed by a disinterested quorum of the Board, but subject to the applicable provisions of the Act.
- 38.5 The meetings and proceedings of any such committee consisting of 2 (two) or more members shall be governed by the provisions herein contained for regulating the

meetings and proceedings of the Board so far as the same are applicable thereto and are not superseded by any regulations made by the Board under this clause 38.

- 38.6 All acts done at any meeting of the Board or of any executive or other committee of the Board, or by any Person acting as a Director 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 they or any of them were disqualified or, had vacated office or were not qualified to vote be as valid as if every such person had been duly appointed and was qualified to be and to act and vote as a Director or a member of such committee.

### 39 **INDEMNIFICATION OF DIRECTORS**

- 39.1 The Company may –

- 39.1.1 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;
- 39.1.2 indemnify a Director in respect of liability as set out in section 78(5) of the Act; and/or
- 39.1.3 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.

- 39.2 The provisions of clause 39.1 shall apply *mutatis mutandis* in respect of any former Director, Prescribed Officer or member of any committee of the Board, including the audit committee.

### 40 **BORROWING POWERS**

- 40.1 Subject to the other provisions of this Memorandum of Incorporation, the Directors may from time to time -
- 40.1.1 borrow for the purposes of the Company such sums as they think fit; and
- 40.1.2 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.

40.2 The Directors shall procure (but as regards subsidiaries of the Company only insofar as by the exercise of voting and other rights or powers of control exercisable by the Company they can so procure) that the aggregate principal amount at any one time outstanding in respect of moneys so borrowed or raised by –

40.2.1 the Company; and

40.2.2 all the subsidiaries for the time being of the Company (excluding moneys borrowed or raised by any of such companies from any other of such companies but including the principal amount secured by any outstanding guarantees or suretyships given by the Company or any of its subsidiaries for the time being for the indebtedness of any other company or companies whatsoever and not already included in the aggregate amount of the moneys so borrowed or raised),

shall not exceed the aggregate amount at that time authorised to be borrowed or secured by the Company or the subsidiaries for the time being of the Company (as the case may be).

#### 41 **COMMITTEES OF THE BOARD**

41.1 The Board may –

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

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

41.1.3 appoint persons resident in a foreign country to be a local committee for the Company in that country, and at its discretion to remove or suspend such local committee and any member thereof, to fix and vary their remuneration;

41.1.4 open office of the Company where necessary and to close the same at its discretion;

41.1.5 appoint and remove agents to represent the Company for the issue, conversion and transmission of shares and for such other purposes as the Board may subject to the provisions of this Memorandum determine, and to give the members of such committee or any such agents the power to appoint alternate committees or substituted agents and to remove such alternates and substitutes; or

- 41.1.6 appoint others to act against themselves, as also to grant to such committee members or agents power to appoint other Persons as co-committee members or joint agents.
- 41.2 Any Director may act on the local committee whenever in the country for which the committee is appointed to act and may take part in the proceedings of such committee and may have the same rights and privileges as any member of the committee.
- 41.3 All appointments of alternate committee members or substituted agents by members of any local committee or agents made in accordance with the provisions of clause 41.1 shall be subject to the approval of the remaining members of the local committee or agents and shall be and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
- 41.4 The authority of a committee appointed by the Board as contemplated in section 72(2)(b) and (c) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 41.5 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.
- 41.6 The Company must, if required, further appoint an audit committee in the manner and for the purposes set out in Part D of Chapter 3 of the Act.

## 42 ANNUAL FINANCIAL STATEMENTS

- 42.1 Notwithstanding the provisions of clause 9.1–
- 42.1.1 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 –
- 42.1.1.1 the Act;
- 42.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 42.1.1.3 this Memorandum of Incorporation.

42.2 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.

#### 43 **DISTRIBUTIONS**

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

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

43.1.2 is authorised by resolution of the Board.

43.2 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.

43.3 Distributions shall be declared in the currency of South Africa.

43.4 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.

43.5 The Directors may from time to time declare and pay to the Shareholders such interim distributions as the Directors consider to be appropriate.

43.6 Dividends are declared by the Directors in accordance with the Act.

43.7 All unclaimed distributions (other than monetary distributions) may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that distributions unclaimed for a period of 3 (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 Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.

43.8 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by electronic funds transfer, free of set-off, in the currency of South Africa to the bank account nominated by such Shareholder, in writing, and verified by means of copy of a bank statement with an original bank stamp or by such other means as may be acceptable to the Directors and, in the in the case of joint holders, to the bank account so nominated and verified of the holder whose name appears first in the Securities Register.



- 43.9 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.
- 43.10 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.
- 43.11 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
- 43.11.1 by the distribution of specific assets; or
- 43.11.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
- 43.11.3 in cash; or
- 43.11.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 43.12 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.
- 43.13 The Directors may -
- 43.13.1 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
- 43.13.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

#### 44 **ACCESS TO COMPANY RECORDS**

- 44.1 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 –
- 44.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;

- 44.1.2 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;
- 44.1.3 all –
  - 44.1.3.1 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
  - 44.1.3.2 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;
- 44.1.4 notice and minutes of all Shareholders' meetings, including –
  - 44.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
  - 44.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
- 44.1.5 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
- 44.1.6 the Securities Register.
- 44.2 A person not contemplated in clause 44.1 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.
- 44.3 A person who wishes to inspect the Securities Register may do so only through the Company in terms of section 26 of the Act. Within 5 (five) business days after the date of a request for inspection, the Company must produce a record of the Securities Register, which record must reflect at least the details referred to in Section (3)(b) of the Act at the close of business on the day on which the request for inspection was made.

#### 45 **PAYMENT OF COMMISSION**

- 45.1 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 any Shares of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Shares of the Company.
- 45.2 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.
- 45.3 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.
- 45.4 The Company may, on any issue of Shares, pay such brokerage as may be lawful.

#### 46 **NOTICES**

- 46.1 All notices shall be delivered by the Company to each Shareholder of the Company and shall be delivered in any manner authorised by the Act and the Regulations, and particularly section 6(9) of the Act or Table CR 3 annexed to the Regulations.
- 46.2 Each Shareholder of the Company –
- 46.2.1 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 provided such an address he shall be deemed to have waived his right to be so served with notices; and
- 46.2.2 may notify in writing to the Company an email address and/or facsimile and or mobile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 46.3 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 address.
- 46.4 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.

- 46.5 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.
- 46.6 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.
- 46.7 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.

#### 47 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 47.1 Subject to the provisions of clause 47.2, this Memorandum of Incorporation may only be altered or amended by way of a Special Resolution of the Shareholders in accordance with section 16(1)(c) of the Act, except if such amendment is in compliance with a Court order as contemplated in sections 16(1)(a) and 16(4) of the Act.
- 47.2 The Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail and filing a notice of the alteration.
- 47.3 An amendment of this Memorandum of Incorporation will take effect from the later of –
- 47.3.1 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

47.3.2 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.

#### 48 **COMPANY RULES**

48.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation by -

48.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each Shareholder by ordinary mail; and

48.1.2 filing a copy of those Rules.

48.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).

48.3 The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

48.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail; and

48.3.2 filing a notice of the alteration.