



Memorandum of Incorporation

of

Exxaro Resources Limited

a public company

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Memorandum of Incorporation

of

Exxaro Resources Limited (registration number 2000/011076/06) (Company)

1 Definitions and interpretation

1.1 In this Memorandum of Incorporation:

- (1) unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation; and
- (2) the headings to the clauses are used for reference purposes only and do not affect the terms of this Memorandum of Incorporation.

1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the *Companies Act, 2008*, as amended, together with any regulations published in terms of it;
- (2) **BEE Act** and **BEE Codes** means the *Broad-Based Black Economic Empowerment Act, 2003* and the Codes of Good Practice on Black Economic Empowerment published under such Act;
- (3) **Chief Executive Officer** means the individual appointed as such in terms of clause 6.10(1);
- (4) **Chief Financial Officer** means the individual appointed as such in terms of clause 6.10(1)
- (5) **Commission** means the Companies and Intellectual Property Commission established by section 185 of the Act;
- (6) **Director** means a member of the board of the Company and his or her alternate, if any;
- (7) **Group Company Secretary** means the company secretary of the group of companies of which the Company is a part;
- (8) **JSE** means the JSE Limited (registration number 2005/022939/06) a company duly registered and incorporated with limited liability under the company laws of South Africa and a licensed exchange under the *Financial Markets Act, 2012*;
- (9) **Law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law;
- (10) **Listings Requirements** means the Listings Requirements of the JSE as amended;
- (11) **Participant** means a “participant” as defined in section 1 of the *Financial Markets Act, 2012*;

- (12) **Securities** has the meaning set out in the Act which includes Shares;
 - (13) **Shareholder** means, subject to section 57(1) of the Act, the holder of a share issued by the Company and who is registered as such in the Company's securities register; and
 - (14) **Shares** means one of the units into which the proprietary interests of the Company is divided as contemplated in clause 3.1.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.
- 1.4 Unless inconsistent with the context, an expression which denotes:
- (1) any gender includes the other genders;
 - (2) a natural person includes an artificial person (including a trust) and vice versa; and
 - (3) the singular includes the plural and vice versa.
- 1.5 When, in this Memorandum of Incorporation, a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by:
- (1) excluding the day on which the first such event occurs;
 - (2) including the day on or by which the second event is to occur; and
 - (3) excluding any public holiday in South Africa, Saturday or Sunday that falls on or between the days contemplated in clauses 1.5(1) and 1.5(2), respectively.

[s 5(3)]

- 1.6 Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.
- 1.7 Any reference in this Memorandum of Incorporation to any agreement or document will be construed as a reference to that agreement or document as initially concluded, and as amended, varied, novated or supplemented afterwards from time to time.

2 Incorporation and nature of the company

2.1 Incorporation

- (1) The Company was incorporated as from the date reflected in its registration certificate as a public company and is a profit company.
- (2) The Company is constituted subject to:
 - (a) the unalterable provisions of the Act;
 - (b) any provisions set out in this Memorandum of Incorporation imposing on the Company a higher standard, greater restriction, longer period of time or

any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Act;

- (c) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this Memorandum of Incorporation; and
- (d) the provisions of this Memorandum of Incorporation.

2.2 Powers of the Company [s 15(2)(b) or (c); s 19(1)(b)(ii)]

- (1) This Memorandum of Incorporation does not:
 - (a) contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
 - (b) prohibit the amendment of any particular provision hereof.
- (2) The Company has all of the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

2.3 Memorandum of Incorporation and Company rules [s 16(1); s 16(5); s 16(7); s 16(9); s 15(3); s 15(5)]

- (1) This Memorandum of Incorporation of the Company may be altered or amended:
 - (a) by a resolution of the Company's board, in compliance with a court order; or
 - (b) by a special resolution of the Shareholders but subject to that special resolution having been proposed by:
 - (i) the board; or
 - (ii) Shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such resolution. **[LR 10.5(d)]**
- (2) Despite clause 2.3(1), if any amendment relates to the variation of any preferences, rights, limitations and other terms attaching to any class of Shares (other than the ordinary Shares) already in issue (**Other Shares**), that amendment must not be implemented without:
 - (a) firstly, a special resolution, taken by the holders of the Other Shares at a separate class meeting; and
 - (b) secondly, a special resolution taken at a meeting of Shareholders, as contemplated in clause 2.3(1)(b).

In instances where the holders of such Other Shares are allowed to vote at a general or annual general meeting, they will be allowed to vote at such meeting, subject to the restrictions set out in clause 4.3(4). **[LR 10.5(e)]**

- (3) An amendment contemplated in clause 2.3(1)(b) or 2.3(2) may take the form of:
 - (a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or

- (b) one or more alterations to the existing Memorandum of Incorporation by:
 - (i) changing the name of the Company; **[LR10.5(d)(vii)]**
 - (ii) deleting, altering or replacing any of its provisions; or
 - (iii) inserting any new provisions.
- (4) Amendments to this Memorandum of Incorporation include, but are not limited to:
 - (a) the creation of any class of Securities;
 - (b) the variation of any preferences, rights, limitations attaching to any other class of Securities;
 - (c) the conversion of one class of Securities into one or more other classes;
 - (d) the increase in the number of Securities of a class;
 - (e) consolidation of Securities;
 - (f) sub-division of Securities;
 - (g) conversion of shares from par value to no par value; and
 - (h) making any combination of such alterations. **[LR 10.5(d)]**
- (5) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8) of the Act.
- (6) An amendment to this Memorandum of Incorporation takes effect:
 - (a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or
 - (b) in any other case, on the later of:
 - (i) the date on, and time at, which the Notice of Amendment is filed with the Commission; or
 - (ii) the date, if any, set out in the Notice of Amendment.
- (7) Preferences, rights, limitations or other terms of any class of Shares of the Company may not be varied and no resolution may be proposed to or passed by Shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and (7) of the Act. **[LR 10.5(g)]**
- (8) The board does not have the authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in terms of section 15(3) of the Act. **[LR 10.4]**

2.4 Alterations of Memorandum of Incorporation, translations and consolidations of Memorandum of Incorporation [s 17(1); s 17(3); s 17 (6); s 152(6)(b)]

- (1) Subject to the approval of the JSE to the extent required by the Listings Requirements, the Company's board, or an individual authorised by the board, may alter the Company's 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:
 - (a) delivering a copy of the amendment or repeal thereof to every Shareholder by hand, by ordinary mail (at such Shareholder's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the Shareholder has given the Company an email address for the purposes of receiving communications; and
 - (b) filing a notice of the alteration with the Commission.
- (2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of South Africa, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.
- (3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 2.4(3) must be accompanied by:
 - (a) a sworn statement by a Director; or
 - (b) a statement by an attorney or notary public,

stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.
- (4) To the extent necessary to implement an adopted business rescue plan and provided that the business rescue plan was approved by the Shareholders, as contemplated in section 152(3)(c) of the Act, the Practitioner may in terms of section 152(6)(b) of the Act, amend this Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any Securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of this Memorandum of Incorporation or of sections 16, 36 or 37 of the Act, to the contrary.

2.5 Public company provisions [s 8(2)]

- (1) The Company is a public company and is listed on the JSE; and
 - (a) Securities for which listing is sought must be fully paid up; **[LR 10.2(a)]**
 - (b) there is no restriction on the transferability of any Securities of the Company, save as required by Law; **[LR 10.2(a)]** and
 - (c) it is not prohibited from offering any Securities to the public.
- (2) The Company, being a public company:

- (a) must comply with all of the extended accountability requirements contained in Chapter 3 of the Act; and
- (b) will be and have its Securities subject to Part B and Part C of the Act, including the Takeover Regulations.

3 Securities of the company

3.1 Shares [s36(1); s 36(2); s 38(1); s 36(3); s 39; s 41; s 44(2); s 47; s 49; s 51]

- (1) The Company is authorised to issue the following Shares:

Number	Class
500 000 000	ordinary Shares with a par value of R0.01 per shares

- (2) Each Share entitles the holder to the rights attaching to the particular class of Share set out in this clause 3.1(2).
 - (a) Each ordinary Share shall rank *pari passu* [LR 10.5(a)] and entitles the holder to:
 - (i) vote on any matter to be decided by a vote of the ordinary Shareholders on the basis contemplated in clause 4.3(1);
 - (ii) participate in any distribution to the ordinary Shareholders; and
 - (iii) participate in the distribution of the residual value of the Company upon its dissolution.
- (3) Subject to the approval of the JSE to the extent required by the Listings Requirements, the Company's board is authorised to issue unissued equity Securities for cash and/or grant options to subscribe for unissued equity Securities, provided those Securities (or options) are first offered to the existing holders of equity Securities in proportion to their existing holdings. Only to the extent that those Securities (or options) are not taken up by the holders of equity Securities under the offer may they then be issued for cash to other persons or otherwise than in the proportion mentioned above. These provisions shall not apply:
 - (a) where the equity Securities (or options) are to be issued for the acquisition of assets (other than cash); or
 - (b) to the extent that the JSE has waived these requirements; or
 - (c) to the extent that the holders of equity Securities have provided their authorisation by way of an ordinary resolution (as contemplated in the Listings Requirements). Any such approval may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any equity Securities or grant options to subscribe for unissued equity securities in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of equity Securities or grant of options. If any such approval is given in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting but it may be varied or revoked by any general meeting of the Company prior to the holding of the next annual general meeting.

[LR 10.1 and 10.9(a)]

- (4) Any issue of Securities other than equity Securities or the granting of any options to subscribe for any unissued non-equity Securities is subject to the prior approval of the Shareholders of the Company in general meeting and the JSE, if necessary. Any such approval may be in the form of a general or specific authority to the Directors, as contemplated in clause 3.1(3)(c), with the necessary changes. **[LR 10.1 and LR 10.9(a)]**
- (5) Notwithstanding clauses 3.1(3) and 3.1(4), any issue of Shares or any Securities convertible into Shares, or grant of options contemplated in terms of section 42 of the Act, or a grant of any other rights exercisable for Securities, must be approved by a special resolution of the Shareholders, if the Shares, Securities or options are issued to a:
 - (a) director, future director, prescribed officer, or a future prescribed officer of the Company;
 - (b) person related or inter-related to the Company, or to a director or prescribed officer of the Company; or
 - (c) nominee of a person contemplated in clause 3.1(5)(a) and 3.1(5)(b).
- (6) The authority of the board to increase or decrease the number of authorised Shares of any class, to reclassify any classified Shares that have been authorised but not issued, to classify any unclassified Shares that have been authorised but not issued, or to determine the preferences, rights, limitations or other terms of any class of Shares, is restricted or varied in the manner contemplated in clauses 2.3(1) and 2.3(2), and must be exercised in accordance with the Listings Requirements. **[LR 10.9(c)]** Shares may only be issued within the classes and only to the extent that the Shares have been authorised by or in terms of this Memorandum of Incorporation.
- (7) Subject to clauses 3.1(3), 3.1(4) and 3.1(5) and the provisions of section 47 of the Act, the board may approve the issuing of any authorised Shares of the Company as capitalisation Shares or the issuing of Shares of one class as capitalisation Shares in respect of Shares of another class and may permit Shareholders to elect to receive a cash payment in lieu of a capitalisation share. **[LR 10.6]**
- (8) Subject to the provisions of sections 46 and 48 of the Act and to the Listings Requirements, the board may determine that the Company will acquire a number of its own Shares provided that such resolution by the board:
 - (a) is approved by a special resolution of the Shareholders, if any shares are to be acquired by the Company from a director or prescribed officer of the Company, or a person related to a director or prescribed officer of the Company; and
 - (b) is subject to the requirements of sections 114 and 115 of the Act, if, considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued shares of any particular class of the Company's shares. **[LR 10.9(b)]**
- (9) Subject to the provisions of sections 46 and 48 of the Act, the Company may determine that it will acquire shares in its holding company provided that:

- (a) not more than 10%, in aggregate, of the number of issued shares of any class of shares of the holding company may be held by, or for the benefit of, all of the subsidiaries of the holding company, taken together; and
 - (b) no voting rights attached to those shares may be exercised while the shares are held by the Company, and it remains a subsidiary of the holding company whose shares it holds. **[LR 10.9(b)]**
- (10) The Company may not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company. **[LR 10.14]**
- (11) Securities of the Company are to be issued in either certificated or uncertificated form.
- (12) A certificate evidencing any certificated Securities of the Company:
- (a) must state on its face:
 - (i) the name of the Company;
 - (ii) the name of the person to whom the Securities were issued;
 - (iii) the number and class of Securities and the designation of the series, if any, evidenced by that certificate;
 - (iv) a number distinctive for each certificate; and
 - (v) any restriction on the transfer of the Securities evidenced by that certificate,

provided that any share certificate issued by the Company as a pre-existing company will not be invalidated solely by reason of it failing to comply with these requirements;
 - (b) must be signed by two persons authorised by the board; and
 - (c) is proof that the named Security holder owns the securities, in the absence of evidence to the contrary.
- (13) A signature contemplated in clause 3.1(12)(b) may be affixed to or placed on the certificate by autographic, mechanical or electronic means.
- (14) Every person who holds Securities in certificated form and whose name is entered as a Securities holder in the register is entitled, without payment, to receive one certificate for all their Securities of any one class, but the Directors are entitled to charge for the reasonable costs of every subsequent certificate issued in respect of a withdrawal requested in terms of clause 3.1(21). A Securities holder, who has transferred a part of his or her holding of Securities of any class, is entitled to receive a certificate free of charge for the balance of his or her Securities holding.
- (15) If a Securities certificate is defaced, lost or destroyed, it may be replaced on payment of any duty payable on the new certificate and on such terms (if any) as to evidence, indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same, as the board may think fit and, in the case of defacement, on delivery of the old certificate to the Company.

- (16) Subject to clause 3.1(17), the Company must enter in its Securities register every transfer of certificated Securities, including in the entry:
- (a) the name and address of the transferee;
 - (b) the description of the Securities or interest transferred;
 - (c) the date of the transfer; and
 - (d) the value of any consideration still to be received by the Company on each Security or interest, in the case of a transfer of Securities contemplated in sections 40(5) and (6) of the Act.
- (17) The Company may make an entry contemplated in clause 3.1(16) only if the transfer:
- (a) is evidenced by a proper instrument of transfer in a form and substance satisfactory to the board that has been delivered to the Company; or
 - (b) was effected by operation of Law.
- (18) The provisions of the Act will apply in respect of the issuance and transfer of uncertificated Securities. In particular:
- (a) the holders of uncertificated Securities in the Company shall not be entitled to Securities certificates and the Company shall not issue certificates evidencing or purporting to evidence title to uncertificated Securities of the Company, subject to clause 3.1(21);
 - (b) in the event of a withdrawal referred to in clause 3.1(21), Securities certificates shall be issued in terms of the provisions of this clause 3.1;
 - (c) upon entry of the name of a person into the sub-register, that person shall become a Securities holder and will be recognised as such in respect of the uncertificated Securities registered in their name;
 - (d) transfer of ownership and Securities holding in accordance with clauses 3.1(18)(b) and 3.1(18)(c) will occur notwithstanding any fraud or illegality which may affect the uncertificated Securities in respect of which the transfer was effected or which may have resulted in the transfer being effected provided that a transferee who was party to or had notice of such fraud or illegality may not rely on the provisions of this clause 3.1(18)(d);
 - (e) the Company shall be liable to the CSDP for the fee prescribed from time to time in terms of the provisions of the Act in respect of the transfer of ownership in uncertificated Securities;
- (19) The Company shall be entitled to allow the dematerialisation of any of its Securities. Once such dematerialisation has been allowed:
- (a) any new Securities that are issued may be issued in uncertificated form if so requested by the subscriber to those Securities; or
 - (b) Securities holders may dematerialise Securities already issued into uncertificated Securities, in such manner as may be decided by the Directors from time to time.

- (20) Securities that are dematerialised as contemplated in clause 3.1(19) will have the same rights as attached to such Securities prior to their dematerialisation.
- (21) If a Securities holder wishes to rematerialise all or part of his uncertificated Securities held by the CSDP and to obtain a certificate in respect of such uncertificated Securities they should notify the CSDP accordingly.
- (22) The CSDP shall, within 5 business days of receipt of the notification referred to in clause 3.1(21), notify the Company to provide a certificate and shall remove the uncertificated Securities so rematerialised from the sub-register.
- (23) The Company shall immediately upon receipt of the notification from the CSDP, enter the necessary details of the Securities holders and their Securities holding into the register and indicate in the register that the uncertificated Securities so rematerialised are no longer held in uncertificated form.
- (24) The Company will within, 10 business days if the relevant Securities holder is a resident of South Africa and 20 business days if the relevant Securities holder is not a resident of South Africa, of receipt of the notification from the CSDP, prepare and deliver to the relevant Securities holder a certificate and notify the CSDP that those Securities are no longer held in uncertificated form.
- (25) Where two or more persons are registered as the holders of any Securities, they shall be deemed to hold those Securities jointly, and:
- (a) notwithstanding anything to the contrary in this Memorandum of Incorporation, on the death, sequestration, liquidation or legal disability of any one of such joint holders, the remaining joint holder(s) may be recognised, at the discretion of the Directors, as the only person(s) having title to such Securities;
 - (b) any one of such joint holders may give effectual receipts for any distributions, bonuses or returns of capital or other accruals payable to such joint holders;
 - (c) only the joint holder whose name stands first in the register shall be entitled to delivery of the certificate relating to those Securities, or to receive notices from the Company. In case of the legal incapacity of any one or more of the joint registered holders of any Security, the survivor then named first in the register will be the only person recognised by the Company as being entitled to such certificate, or any new certificate which may be issued in its place. Any notice given to such joint holder shall be deemed to be notice to all the joint holders;
 - (d) any one of the joint holders of any Securities conferring a right to vote may vote either personally or by proxy at any meeting in respect of such Securities as if he were solely entitled thereto, and if more than one of such joint holders is present at any meeting, either personally or by proxy, the joint holder who tenders a vote and whose name stands in the register before the other holders who are present in person or by proxy, shall be entitled to vote in respect of those Securities; and
 - (e) the Company shall be entitled but not obliged to refuse to register more than five persons as the joint holders of Securities.
- (26) All authorities to sign transfer deeds granted by holders of Securities in the Company for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices 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 the Company's transfer office at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notice the Company will 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. **[LR 10.2(b)]**

- (27) Shareholders may provide the Company with an address either in South Africa or elsewhere to be inserted in the Securities register. **[LR 10.18]**
- (28) The Company is prohibited from claiming a lien on any Securities issued by the Company. **[LR 10.12]**

3.2 Debt Instruments [s 43]

- (1) The authority of the Company's board to authorise the Company to issue secured or unsecured debt instruments at any time, is not restricted or varied by this Memorandum of Incorporation.
- (2) The board shall not grant special rights to holders of debt instruments relating to attending and voting at general meetings and the appointment of Directors or any rights of a similar nature. **[LR 10.10]**

3.3 Registration of Beneficial Interests [s 56(1)]

The authority of the Company's board to allow the Company's issued securities to be held by, and registered in the name of, one person for the Beneficial Interest of another person, is not restricted or varied by this Memorandum of Incorporation.

4 Shareholders

4.1 Shareholders' right to information [s 26]

Other than the rights to access information set out in section 26 of the Act, a Shareholder has no additional rights to information pertaining to the Company.

4.2 Shareholders' authority to act [s 60]

- (1) Shareholders' resolutions required only in terms of the Listing Requirements may not be voted on in writing by Shareholders entitled to exercise voting rights as contemplated in section 60 of the Act. **[LR 10.11(c)]**

4.3 Votes of Shareholders [s 63(4), (5), (6) and (7); s 57(5) and (6)]

- (1) Subject to the Act and subject to any special terms as to voting upon which any Share may be issued or may for the time being be held, any person who is present at the meeting, whether in person or by proxy, and is entitled to exercise voting rights has one vote per ordinary share. **[LR 10.5(b)]**
- (2) Voting must be by way of a poll.
- (3) Scrutineers must be elected to count the votes and to declare the result of the poll. The scrutineers' declaration, which shall be announced by the chairperson of the meeting, will be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.

- (4) The holders of any Securities other than ordinary Shares or any special Shares created for the purposes of black economic empowerment in terms of the BEE Act and BEE Codes shall not be entitled to vote on any resolution taken by the Company, save as may be expressly provided for in clauses 2.3(2) and 3.1 (as the latter may be amended from time to time). In such instances, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each Share that they hold, provided that their total voting right at a general or annual general meeting may not exceed 24.99% of the total voting rights of all Shareholders at such meeting. **[LR 10.5(c)]**
- (5) In the case of joint holders of a Share, only the vote of the senior holder shall be accepted, whether in person or by proxy. For the purpose of this clause, seniority shall be determined by the order in which the names appear in the register or, in the case of persons entitled to a Share by transmission, the order in which their names were given in the notice to the Company of that transmission.
- (6) Any entity holding Shares conferring the right to vote may, by resolution of the directors or other governing body of that entity, authorise one person to act as its representative at any Shareholders meeting. The representative shall be entitled to exercise the same powers as that entity could exercise if it were an individual Shareholder. The board may require proof to their satisfaction of the appointment or authority of a representative to act.
- (7) A declaration by the chairperson that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to be or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

4.4 Proxies and voting under power of attorney [s 58]

- (1) A Shareholder may, at any time, appoint any individual, including an individual who is not a Shareholder, as a proxy to:
 - (a) participate in, and speak and vote at, a Shareholders meeting on behalf of the Shareholder; or
 - (b) give or withhold written consent on behalf of the Shareholder to a decision by Shareholders acting other than at a meeting.
- (2) The instrument that appoints a proxy must:
 - (a) be in writing, dated and signed by the Shareholder; and
 - (b) be given by the person appointing such proxy or by their attorney duly authorised in writing or, if the appointor is a corporation, given by a representative so authorised.
- (3) The holder of a power of attorney from a Shareholder may, if so authorised by the power of attorney, vote for and represent such Shareholder at any meeting of the Company.
- (4) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act and subject thereto be in the following format, or in such other form as the Company's board may approve, and the board may, if

they think fit, send out with the notice of any meeting proxy forms for use at the meeting:

I/We (please print names in full)

of (address)

being the holder/s of _____ shares in the company, do hereby appoint:

1 _____ or, failing him/her

2 _____ or, failing him/her

the chairman of the annual general meeting as my/our proxy to attend, participate in, speak and, on a poll, vote on my/our behalf at the annual general meeting of shareholders to be held at _____ on _____ at _____ or at any adjournment or postponement of that meeting, and to vote or abstain from voting as follows on the ordinary and special resolutions to be proposed at such meeting:

	For	Against	Abstain
Ordinary resolutions			
Special resolutions			

Please indicate with an 'X' in the appropriate spaces above how you wish your vote to be cast. If no indication is given, or if a resolution is proposed at the meeting itself the proxy may vote or abstain as he/she sees fit.

Signed at _____ this _____ day of _____

Signature

Assisted by me, where applicable (name and signature)

4.5 Representation by concurrent proxies [s 58(3)(a)]

The right of a Shareholder to appoint two or more persons concurrently as proxies, and to appoint more than one proxy to exercise voting rights attached to different Shares held by the Shareholder is not restricted or varied by this Memorandum of Incorporation.

4.6 Authority of proxy to delegate [s 58(3)(b)]

The authority of a Shareholder's proxy to delegate that proxy's authority to act on behalf of the Shareholder, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

4.7 Requirement to deliver proxy instrument to the Company [s 58(3)(c)]

A copy of the instrument appointing a proxy must be delivered to the Company, or to any other person authorised by the Company to accept the instrument on its behalf, before the person appointed as proxy exercises any rights of the relevant Shareholder.

4.8 Deliberative authority of proxy [s 58(7)]

The authority of a Shareholder's proxy to decide without direction from the Shareholder whether to exercise, or abstain from exercising, any voting right of the Shareholder, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

4.9 Validity of appointment

- (1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy is suspended at any time and to the extent that the Shareholder chooses to act directly and in person in the exercise of any rights as a Shareholder.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Shareholder or the transfer of the securities in respect of which the vote is given, unless notice in writing of such legal incapacity or transfer is received by or on behalf of the Company at any time prior to the time at which the proxy is to exercise the rights of the Shareholder at a particular meeting.
- (4) A notice of revocation of the proxy instrument or power of attorney appointing a proxy will be effective as of the later of:

- (a) the date stated in the instrument revoking the proxy appointment, if any; and
- (b) the date on which the instrument revoking the proxy appointment is received.

4.10 **Record date for exercise of Shareholder rights [s 59(3)]**

- (1) If required by the Listings Requirements, the record date for any corporate action or event is the date upon which the holdings, upon which the event entitlement is based, are ascertained. The record date is one settlement period (as defined in the Listings Requirements) after the last day to trade (as defined in the Listings Requirements) and must be on a Friday or, if that Friday is a public holiday, the last trading day of the week. **[LR 10.15]**
- (2) Should the Listings Requirements not require a record date, then the record date will be determined in accordance with the Act.

5 Shareholders Meetings

5.1 **Requirement to hold meetings [s 61]**

The Company is not required to hold any Shareholders meetings other than those specifically required by section 61 of the Act and this clause 5, but may do so.

5.2 **Right to call meeting [s 61(1)]**

The Company's board or the Group Company Secretary may in terms of section 61(1) of the Act call a Shareholders meeting at any time. **[LR 10.11d)]**

5.3 **Shareholders' right to requisition a meeting [s 61(1); s 61(3)]**

The right of Shareholders to requisition the Company's board to call a Shareholders meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.

5.4 **Location of Shareholders meetings [s 61(9)]**

The authority of the Company's board to determine the location of any Shareholders meeting and the authority of the Company to hold any such meeting in South Africa or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

5.5 **Calling a Shareholders meeting [s 61(11)]**

If the Company is unable to convene a Shareholders meeting because it has no Directors or because all of its Directors are incapacitated, any Shareholder may convene a meeting.

5.6 **Notice of Shareholders meetings [s 62(1)(a); s 62(3) and s 63(3)]**

- (1) Unless the provisions of section 62(2A) of the Act are applied, the minimum number of days for the Company to deliver a notice of a Shareholders meeting to the Shareholders is 15 business days before the meeting is to begin. **[LR 10.11(a), LR 10.11(b), LR 10.11(e)]**
- (2) A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3) of the Act. Notices of general meetings must be delivered

to each Shareholder entitled to vote at such meeting and who has elected to receive such documents. **[LR 10.11(e)]**

- (3) All notices of meetings of Shareholders issued by the Company must simultaneously be sent to the JSE and announced on the Stock Exchange News Service (SENS). **[LR 10.11(f)]**

5.7 **Chairperson of Shareholders' meeting**

- (1) The chairperson, if any, of the board of Directors shall preside as chairperson at every Shareholders' meeting.
- (2) If:
 - (a) there is no chairperson of the board;
 - (b) the chairperson is not present within 10 minutes after the time appointed for the Shareholders' meeting to begin; or
 - (c) the chairperson is unwilling to act as chairperson of the Shareholders' meeting,

the Directors will nominate a chairperson or, if no Director be present or if all the Directors present decline to take the chair, the Shareholders present must, in accordance with the requirements in this Memorandum of Incorporation to approve an ordinary resolution, choose a Shareholder present to be the chairperson of the meeting.

5.8 **Electronic participation in Shareholders meeting [s 63(2); s 61(10)]**

- (1) Every Shareholders meeting of the Company must be reasonably accessible within South Africa for electronic participation by Shareholders, irrespective of whether the meeting is held in South Africa or elsewhere.
- (2) The authority of the Company to conduct a Shareholders meeting entirely by electronic communication is not restricted or varied by this Memorandum of Incorporation.
- (3) The electronic communication employed at a Shareholders meeting shall ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

5.9 **Quorum for Shareholders meetings [s 64(1); s 64(2); s 64(3); s 64(4); s 64(5); s 64(8); s 64(9)]**

- (1) Subject to the provisions of clause 5.3(2) to clause 5.3(6) (both inclusive), the quorum for:
 - (a) a Shareholders meeting to begin is sufficient persons 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 at least one matter to be decided at the meeting; and
 - (b) a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda. **[LR 10.11(g)]**

- (2) Notwithstanding clause 5.3(1), a meeting may not begin, or a matter begin to be considered, unless at least three Shareholders are present at the meeting and the requirements of clause 5.9(1) are satisfied. **[LR 10.11(g)]**
- (3) If, within 30 minutes after the appointed time for a meeting to begin, the requirements of clauses 5.3(1), or 5.3(2) if applicable:
 - (a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
 - (b) for consideration of a particular matter to begin have not been satisfied:
 - (i) 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 motion or vote; or
 - (ii) if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- (4) The person intended to preside at a meeting, where the quorum requirements in clause 5.3(1), or clause 5.3(2) if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:
 - (a) exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Shareholders to be present at the meeting; or
 - (b) one or more delayed Shareholders have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the quorum requirements; or
 - (c) any other reason such person considers appropriate.
- (5) After a quorum has been established for a meeting, the Shareholders constituting the quorum must remain present at the meeting for all matters that must be considered at the meeting.
- (6) If the quorum requirements in clause 5.3(1), or clause 5.3(2) if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

5.10 **Adjournment of Shareholders meetings [s 64(10); s 64(11); s 64(12)]**

- (1) Subject to clauses 5.3, 5.4(2) and 5.4(3), a Shareholders meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms of clause 5.10(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:

- (a) 120 business days after the record date determined in accordance with clause 4.10; or
- (b) 60 business days after the date on which the adjournment occurred.

5.11 Shareholders resolutions [s 65(7); s 65(9)]

- (1) For an ordinary resolution to be approved by Shareholders, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.
- (2) For a special resolution to be approved by Shareholders, it must be supported by the holders of at least 75% of the voting rights exercised on that resolution. **[LR 10.11(a)]**

5.12 Ratification of ultra vires acts

Unless otherwise approved by the JSE, no resolution may be proposed to Shareholders in terms of sections 20(2) and 20(6) of the Act if the adoption of any such resolution would lead to the ratification of an action that is in contravention of the Listings Requirements, unless otherwise agreed with the JSE. **[LR 10.3]**

5.13 Annual General Meeting [s 61(7) and (8)]

- (1) The Company must hold an annual general meeting:
 - (a) initially, no more than 18 months after its date of incorporation; and
 - (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- (2) In addition to the requirements of clause 5.6, the notice calling an annual general meeting must include:
 - (a) the audited financial statements to be presented, or a summarised form thereof; and
 - (b) directions for obtaining a copy of the complete annual financial statements and annual report for the preceding financial year.
- (3) The agenda at an annual general meeting shall include but shall not be limited to:
 - (a) presentation of the Directors' report, audited annual financial statements for the immediately preceding financial year and, if required, an audit committee report;
 - (b) election of Directors, to the extent required by the Act or this Memorandum of Incorporation;
 - (c) appointment of an auditor for the ensuing financial year, and, if required, an audit committee; and
 - (d) any matters raised by Shareholders, with or without advance notice to the Company.

6 Directors and officers

6.1 Composition of the board [s 66(2); s 66(11); s 67(1); s 68(1); s 68(2)(a); s 68(2)(b); s 66(4)(a)(ii); s 68(3); s 69(3) and (4); s 69(7); s 69(8)(a); s 69(8)(b)]

- (1) The Company's board must comprise not less than four and not more than 20 Directors, elected by the Shareholders, provided that any Shareholder may nominate any Director for the purposes of such election. **[LR 10.16(a) and 10.16(b)].**
- (2) The Company may by ordinary resolution in a general meeting held in person from time to time increase (or reduce but not below four) the number of Directors and may also determine in what manner or rotation such increased (or reduced) number is to go out of office. Whenever such increase is made the Shareholders at the said meeting, or failing them the Directors, may fill the new seats so created.
- (3) Subject to clause 6.1(9) and 6.2, each Director must be elected by the persons entitled to exercise voting rights in such an election to serve for a term to be determined by those persons entitled to exercise voting rights in the election of that Director, provided that no director may be appointed for life or for an indefinite period. **[LR 10.16(k)]**
- (4) Subject to clause 6.1(5), the Directors may elect a chairperson, deputy chairperson and/or any vice chairperson of the board and determine the period for which they respectively hold office.
- (5) The chairperson of the Company will be an independent non-executive Director.
- (6) In any election of Directors, 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.
- (7) In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- (8) There are no ex officio Directors in addition to any Directors appointed in terms of this Memorandum of Incorporation and the elected Directors. **[LR 10.16(b)]**
- (9) The authority of the board to fill any vacancy on the board on a temporary basis is not restricted or varied by this Memorandum of Incorporation. A Director appointed on a temporary basis:
 - (a) must be a person who satisfies the requirements for election as a Director; and
 - (b) has all the powers, functions and duties, and is subject to all the liabilities, of any other Director.
- (10) The appointment of a director, whether to fill a casual vacancy, or as an addition to the board (or otherwise), must be confirmed by Shareholders at the annual general meeting following such appointment. **[LR 10.16(b) and LR 10.16(c)]**
- (11) If the number of Directors falls below the minimum provided in clause 6.1(1), the remaining Directors must as soon as possible and, in any event not later than three months from the date that the number of Directors falls below the minimum, fill the vacancies or call a general meeting for the purpose of filling the vacancies, provided that the failure by the Company to have the minimum number of Directors during the three month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board or the Company. After the expiry of the three month period the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of Shareholders. **[LR 10.16(d)]**

- (12) To become or to continue to act as a Director or a prescribed officer of the Company, a person must not be:
- (a) a juristic person;
 - (b) an unemancipated minor, or a person under a similar legal disability;
 - (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 162 of the Act or section 47 of the Close Corporations Act, 1984, except to the extent permitted by the order of probation;
 - (d) an unrehabilitated insolvent;
 - (e) prohibited in terms of any public regulation to be a Director;
 - (f) removed from an office of trust, on the grounds of misconduct involving dishonesty;
 - (g) a person who has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
 - (i) involving fraud, misrepresentation or dishonesty;
 - (ii) in connection with the promotion, formation or management of a company;
 - (iii) in connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
 - (iv) under the Act, the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act, 1998*, the *Financial Intelligence Centre Act, 2001*, the *Financial Markets Act, 2012*, or Chapter 2 of the *Prevention and Combating of Corruption Activities Act, 2004*;
 - (h) absent from meetings of the Directors for two consecutive meetings without leave of the Directors and not represented at any such meetings by an alternate Director and the Directors resolve that the office be vacated, provided that the Directors shall have power to grant any Director leave of absence; or
 - (i) an executive Director, whose employment with the Company is terminated for whatever reason.
- (13) A person need not satisfy any further eligibility requirements or qualifications.
- (14) Subject to the provisions of the Act, the Company may by ordinary resolution of the Shareholders remove any Director before the expiration of his or her period of office.

6.2 Rotation of Directors

- (1) All Directors required to do so in terms of clause 6.2(2), and at least one third of non-executive Directors must retire at the Company's annual general meetings or other general meetings on an annual basis, provided the meeting is not conducted in terms of section 60 of the Act. These retiring members of the board of Directors

may be re-elected, provided they are eligible. The board of Directors through the nomination committee, should recommend eligibility, taking into account past performance and contribution made. **[LR 10.16(g)]**

- (2) The retiring Directors at each annual general meeting shall be:
 - (a) those non-executive directors who have reached the retirement age of 70 years;
 - (b) those Directors elected by Shareholders other than at the annual general meeting; and
 - (c) Lastly, to the extent that the Directors who retire in terms of clauses 6.2(2)(a) and 6.2(2)(b) do not amount to one third of all non-executive directors, sufficient number of those non-executive Directors who have been longest in office since their last election or appointment so that the total number of retiring Directors equal at least one third of all non-executive directors. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot,

provided that the Board will be entitled to recommend the re-election of the retiring non-executive directors who are suitable for re-election.

6.3 **Alternate Directors [s 66(4)(a)(iii)]**

- (1) An alternate Director may be elected or removed by the shareholders entitled to exercise voting rights in such an election to act as an alternate Director in a Director's place as the occasion arises and during that Director's absence. **[LR 10.16(b)]**
- (2) An alternate Director shall, except as regards the power to receive remuneration, be subject in all respects to the terms and conditions applicable to the Director on whose behalf the alternate acts, and each alternate Director shall be entitled:
 - (a) to receive notice of all meetings of the Directors or of any committee of the Directors of which the Director on whose behalf the alternate acts is a member;
 - (b) to attend and vote at any such meetings at which the Director on whose behalf the alternate acts is not personally present;
 - (c) to furnish written consent to adopt a decision which could be voted on at a board meeting;
 - (d) to be appointed as an alternate to more than one Director and shall have a vote for each Director for whom such alternate acts, in addition to their own vote as Director, if any; and
 - (e) generally, to exercise and discharge all the functions, powers and duties of the Director on whose behalf the alternate acts in such Director's absence as if such alternate were a Director.
- (3) In addition to clause 6.3(1), an alternate Director shall also cease to be an alternate Director if the Director on whose behalf the alternate acts ceases for any reason to be a Director, but if any Director retires and is re-elected at the same meeting, any appointment made in respect of such Director shall remain in force as though the Director had not retired.

6.4 Authority of the board [s 66(1); s 57(3)]

- (1) The authority of the Company's board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (3) The Board may from time to time, adopt a charter to, *inter alia*, regulate the parameters within which the Board shall operate and to ensure the application of the principles of good corporate governance in all dealings by, in respect and on behalf of, the Company.

6.5 Directors' meetings [s 73(1); s 73(3); s 73(4); s 73(5)(a); s 73(5)(b); s 73(5)(c) and (d); s 73(5) (e); s 74]

- (1) A Director authorised by the board of the Company:
 - (a) may call a meeting of the board at any time; and
 - (b) must call such a meeting if required to do so by at least:
 - (i) 25% of the Directors, in the case of a board that has at least 12 members; or
 - (ii) two Directors, in any other case.
- (2) Notwithstanding clause 6.5(1), any Director may call a meeting of Directors if such Director considers there is good reason to do so.
- (3) The authority of the board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the board to adopt a decision, that could be voted on at a board meeting, by way of written consent of at least 75% of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 6.5(4):
 - (a) has the same effect as if it had been approved by voting at a meeting; [LR 10.16(j)]
 - (b) must be inserted into the minute book of the Company; and [LR 10.16(j)]
 - (c) may consist of several documents and will be deemed to have been passed on the date on which it was signed by the last director who signed it (unless otherwise stated in the resolution). [LR 10.16(j)]
- (5) The board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this

Memorandum of Incorporation, provided that no meeting of the board shall be convened without notice to all of the Directors subject, however, to the provisions of clause 6.5(6).

- (6) The authority of the board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (7) The quorum requirement for a meeting is a majority of Directors.
- (8) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (9) The board is entitled to elect a chairperson, deputy chairperson and/or any vice-chairperson from one of its number and may determine the period for which such persons will hold office. In the case of a tied vote the chair will have a second or casting vote. **[LR 10.16(i)]**
- (10) The board is entitled to elect a lead independent director (**LID**) and may determine the period for which such person will hold office. If the nominated chairperson is absent from a meeting, the LID will act as chair in his stead.

6.6 Directors' power to effect borrowing

The Company's board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

6.7 Directors' compensation and financial assistance [s 66(8) and (9); s 44(2); s 45(2)]

- (1) The authority of the Company to pay remuneration to the Directors, in accordance with a special resolution approved by the Shareholders within the previous two years, is not restricted or varied by this Memorandum of Incorporation.
- (2) A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a major subsidiary of, this Company, provided that their appointment and remuneration in respect of such other office is determined by:
 - (a) a disinterested quorum of Directors in the case of executive Directors; and **[LR 10.16(e)]**
 - (b) the Shareholders, within the previous two years, in the case of non-executive Directors.
- (3) The Directors may be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Directors or of committees thereof. If any Director is required to perform extra services or to reside abroad or will be specifically occupied about the Company's business, they may be entitled to receive such remuneration as is determined in accordance with clause 6.7(2). **[LR 10.16(f)]**
- (4) The authority of the Company's board to authorise the Company to provide financial assistance by way of a 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 Securities of the Company or a related or inter-related company, subject to the provisions of sections 44(3) and 44(4) of the Act, is not restricted or varied by this Memorandum of Incorporation.

- (5) The authority of the Company's board to authorise the Company to provide financial assistance to a Director or prescribed officer of the Company or a related or inter-related company, or to a related or inter-related company or corporation or to a member of a related or inter-related company or corporation, or to a person related to any such person or entity, subject to the provisions of sections 45(3) and 45(4) of the Act, is not restricted or varied by this Memorandum of Incorporation.

6.8 Indemnification of Directors [s 78(1); s 78(3); s 78(4); s 78(5); s 78(7); s 78(8)]

- (1) For purposes of this clause 6.8, **Director** includes a former Director, an alternate Director, a prescribed officer or a person who is a member of a committee of a board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the board.
- (2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.
- (3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
 - (a) a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 6.8(2) or clause 6.8(3); or
 - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director as contemplated in clause 6.8(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 6.8(3),is not restricted or varied by this Memorandum of Incorporation.
- (5) The Company shall be entitled to claim restitution from a Director or a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 6.8 or the Act.

6.9 Committees of the board [s 72(1)(a); s 72(1)(b)]

- (1) The authority of the Company's board to appoint committees is varied in the manner set out below in this clause 6.9.
- (2) The board may appoint any number of committees for managing any of the affairs of the Company and may delegate to any such committee any authority of the board.
- (3) Persons who are not Directors:

- (a) may be included on such committees, provided those persons are not ineligible or disqualified from being a Director, as contemplated in clause 6.1(12) and the Act; and
 - (b) will, unless otherwise determined by the board, each have a vote on all matters to be decided by the committee on which they sit.
- (4) Unless otherwise determined by the board, a committee will be entitled to:
- (a) consult with or receive advice from any other person; and
 - (b) exercise the full authority of the board in respect of the matter referred to it.

6.10 **Chief Executive Officer and other executive officers**

- (1) The Directors may from time to time appoint a Chief Executive Officer, joint Chief Executive Officers and a Chief Financial Officer of the Company (provided that each of them must be a Director), or, any other executive office in the Company and may, subject to any contract between him or her or them and the Company, from time to time terminate his, her or their appointment and appoint another or others in his, her or their place or places.
- (2) A Chief Executive Officer or holder of any other executive office in the Company appointed in terms of clause 6.10 may be appointed by contract for a maximum period as determined by the Directors from time to time and he or she shall not be subject to retirement by rotation and not be taken into account in determining the rotation of retirement of Directors, during the period of any such contract, provided always that the number of directors so appointed shall at all times be less than one half of the number of Directors in office. The Chief Executive Officers or other executive directors shall be eligible for re-appointment at the expiry of any period of appointment. Subject to the terms of his or her contract, he or she shall be subject to the same provisions as to removal as the other Directors and if he or she ceases to hold the office of Director from any cause he or she shall by that very fact cease to be the Chief Executive Officer.
- (3) The Directors may from time to time entrust and confer upon a Chief Executive Officer or other executive officer such of the powers and authorities vested in them as they think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may deem expedient and they may confer such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Directors in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities. A Chief Executive Officer appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Directors in terms hereof he or she shall be deemed to derive such powers directly from this clause.

6.11 Authentication of documents

- (1) Any Director, the Group Company Secretary or any person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Shareholders or the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody of the documents at such other place shall be deemed to be the person so appointed.
- (2) A document purporting to be a copy of a resolution of the Directors or Shareholders or an extract from the minutes of a meeting of the Directors or Shareholders which is certified in accordance with clause 6.11(1) is *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or Shareholders.

6.12 Audit committee [s 94]

- (1) If required in terms of the Act, the Company must, at each annual general meeting of the Company, elect an audit committee comprising at least three members, each of which member must:
 - (a) be a director of the Company, who satisfies any applicable requirements prescribed in terms of section 94(5) of the Act;
 - (b) not be:
 - (i) involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
 - (ii) a prescribed officer, or full-time employee, of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
 - (iii) a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and
 - (c) not be related to any person who falls within any of the criteria set out in clause 6.12(1)(b).
- (2) The audit committee shall be appointed in accordance with, and its duties regulated by, section 94 of the Act.

6.13 Social and Ethics Committee [s 72 (4)]

The Company must, at each annual general meeting of the Company, elect a social and ethics committee comprising at least three directors or prescribed officers of the Company, with the majority being independent, non-executive directors of the Company.

6.14 **Company Secretary [s 86; s 87]**

- (1) The Board shall appoint a company secretary in accordance with sections 86 and 87 of the Act.
- (2) Should any vacancy arise in the office of company secretary, the board shall, within 60 business days after a vacancy arises, fill such vacancy.

7 General Provisions

7.1 **Distributions [s 46]**

- (1) Subject to the provisions of the Listings Requirements and the Act, and particularly section 46 of the Act, the Company may from time to time make a proposed distribution if that distribution is:
 - (a) pursuant to an existing legal obligation of the Company, or a court order; or
 - (b) authorised by a resolution of the Company's board,and the solvency and liquidity test is complied with in the manner contemplated in the Act. **[LR 10.8; LR 10.17(a)]**
- (2) Distributions that are dividends must be paid to the Shareholders according to their respective rights and interest in proportion to the number of Shares held by them in each class in respect of which the dividend is payable. If any Share is issued on terms providing that it shall rank for dividends as from a particular date or for all dividends declared after a particular date, such Share shall rank for dividends accordingly.
- (3) No distribution carries interest as against the Company, except as may otherwise be specifically provided.
- (4) Distributions are payable to Shareholders that are registered as at a date subsequent to the date of declaration of the distribution or the date of confirmation of the distribution, whichever is the later. **[LR 10.17(b)]**
- (5) Distributions may be made either free of or subject to the deduction of income tax and any other tax or duty for which the Company may be charged or which the Company may be required by Law to withhold.
- (6) Unclaimed distributions (including dividends) due to a Shareholder shall be settled by the Company upon trustees to be held in trust until that Shareholder's claim to it has prescribed, after which that distribution will revert to the Company. **[LR 10.17(c)]**
- (7) The right of election to receive either scrip dividends or cash dividends (as contemplated in the Listings Requirements) is not prohibited in any way. **[LR 10.7]**
- (8) A resolution regarding the repayment of capital to Shareholders may not provide that, and the payment may not be made on the basis that, it may be called up again. **[LR 10.8]**

7.2 **Accounts [s 25; s 28; s 30; s 31]**

- (1) The Company's board must keep accurate and complete accounting records required or prescribed by the Act.

- (2) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other location within South Africa as the board think fit, and shall at all times be accessible and open to inspection by the board. Except as provided by the Act or the authority of the board, no Shareholder (other than a Shareholder who happens to be a Director) has any right to inspect any accounting record or document of the Company.
- (3) The board must, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting those annual financial statements and reports and group annual financial statements and reports, if any.
- (4) Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 7.2(3) must be delivered or sent by post to the registered address of each Shareholder and debt instrument holder at least 15 business days before the annual general meeting. A Shareholder or debt instrument holder may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered electronically to that Shareholder or debt instrument holder at that address. This clause 7.2(4) does not require the Company to send or deliver a copy of such documents to any person who is not entitled to receive notice of general meetings of the Company or whose address the Company is not aware of, or to more than any one of the joint holders of any Securities. **[LR 10.19]**

7.3 Auditors [s 90; s 91; s 92; s 93]

If required by the Act, auditors must be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Act.

7.4 Winding-up

If the Company is wound-up the liquidator may, with the sanction of a special resolution of the Shareholders, distribute among the Shareholders in specie the whole or any part of the assets of the Company and the liquidator may for such purpose set a value that the liquidator deems fair upon any asset and may determine how the distribution will be carried out as between the Shareholders or different classes of Shareholders. The liquidator may, after discharging all liabilities and with like sanction, vest the whole or any part of such assets upon trustees to be held in trust for the benefit of the Shareholders or any of them as the liquidator deems fit.

7.5 Seal

If so decided by the Directors, the Company may be provided with a common seal on which its name shall be engraved in legible characters. The common seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Directors or of a committee of Directors, and one Director and the Group Company Secretary or such other person as the Directors may appoint for the purpose, shall sign every instrument to which the seal of the Company is so affixed. Save as provided for in clause 3.1(15) all signatures on such instrument shall be in accordance with the expression "sign" or "signature". Every instrument to which the seal of the Company is so affixed and which is so signed shall be binding on the Company.

7.6 Loss of documents

The Company will not be responsible for the loss in transmission of any cheque, certificate or (without any limitation eiusdem generis) other document sent through the post either to the registered address of any Shareholder or to any other address requested by him or her.

Adoption of Memorandum of Incorporation [s 13(1)]

This Memorandum of Incorporation was adopted by special resolution at the annual general meeting of the Company held on **[insert]**