

**THE COMPANIES ACT, 71 OF 2008**  
(AS AMENDED)

**MEMORANDUM OF INCORPORATION**

of

**AFRICAN PHOENIX INVESTMENTS LIMITED**  
("the Company")

**A PUBLIC COMPANY DULY REGISTERED AND INCORPORATED WITH LIMITED  
LIABILITY UNDER THE COMPANY LAWS OF THE REPUBLIC OF SOUTH AFRICA**

**REGISTRATION NUMBER: 1946/021193/06**

**REGISTRATION DATE: 30 March 1946**

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## 1. INTERPRETATION

In this Memorandum of Incorporation, unless the context otherwise requires.

- 1.1           “**Board**” means the board of Directors from time to time of the Company or if there is only one Director, then that Director;
- 1.2           “**Companies Act**” means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Companies Regulations;
- 1.3           “**Companies Regulation**” means the regulations published in terms of the Companies Act from time to time;
- 1.4           “**Director**” means a member of the Board as contemplated in section 66 of the Companies Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.5           “**Electronic Communication**” has the meaning set out in the Electronic Communications and Transactions Act;
- 1.6           “**Electronic Communications and Transactions Act**” means the Electronic Communications and Transactions Act, No 25 of 2002, as amended, consolidated or re-enacted from time to time;
- 1.7           “**General Partner**” means the general partner of the Partnership, initially being API Capital Proprietary Limited, registration number 2018/455832/07, a private company incorporated in accordance with the laws of South Africa, or such other general partner as may be appointed from time to time in accordance with the Partnership Agreement;
- 1.8           “**JSE**” means the exchange, licensed under the Securities Services Act, operated by the JSE Limited, registration number 2005/022939/06, a public

company duly incorporated in the Republic and includes any successor-in-title thereto;

- 1.9           “**JSE Listings Requirements**” means the Listings Requirements of the JSE applicable from time to time, including any dispensations granted by the JSE from time to time;
- 1.10          “**Office**” means the registered office of the Company;
- 1.11          “**Partnership**” means the API Capital Fund, an *en commandite* partnership established in South Africa and governed by the Partnership Agreement;
- 1.12          “**Partnership Agreement**” means the partnership agreement concluded by the Company and the General Partner, on or about the Investment Date, establishing and governing the Partnership, as amended from time to time;
- 1.13          “**Profits**” includes revenue and capital profits both realised and unrealised;
- 1.14          “**the Republic**” means The Republic of South Africa;
- 1.15          “**Securities**” means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.16          “**Securities Register**” means the register of issued Securities of the Company required to be established in terms of the Companies Act;
- 1.17          “**SENS**” means the Stock Exchange News Service established and operated by the Listings Division of the JSE;
- 1.18          “**Share**” means one of the units into which the proprietary interest in the Company is divided;
- 1.19          “**Shareholder**” means the holder of a Share and who is entered as such in the Securities Register;

- 1.20            **“Shareholders’ meeting”** or **“meeting of Shareholders”** or any other derivation thereof (howsoever termed) with respect to any particular matter concerning the Company, means a meeting of those holders of the Company's issued Securities who are entitled to exercise voting rights in relation to that matter;
- 1.21            **“Solvency and Liquidity Test”** has the meaning attributed thereto in the Companies Act;
- 1.22            **“the Statutes”** means the Companies Act, the JSE Listings Requirements and any and every other statute or ordinance from time to time in force concerning companies and affecting the Company;
- 1.23            **“Transfer Office”** means in respect of certificated Securities, the Office and any office maintained for the purpose of receiving for registration any transfer of Shares or other Securities;
- 1.24            **“Tribunal”** means the Companies Tribunal established in terms of the Companies Act;
- 1.25            references to Shareholders represented by proxy shall include Shareholders represented by an agent appointed under a general or special power of attorney and references to Shareholders present or acting in person shall include corporations represented or acting in the manner prescribed in the Statutes;
- 1.26            references to a decision or determination or proposal to or resolution of the Shareholders (or any other derivation thereof (howsoever termed)), shall be restricted to refer only to a decision, determination or proposal to or resolution of those holders of the Company's issued Securities who are entitled to exercise voting rights in relation to that matter;
- 1.27            words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;

- 1.28 a reference to a section by number refers to the corresponding section of the Companies Act notwithstanding the renumbering of such section after the date on which reference to such section is included in this Memorandum of Incorporation;
- 1.29 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.30 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and:
- 1.30.1 an alterable or elective provision of the Companies Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.30.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict, provided that the Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which case the Company would need to ensure compliance with the more onerous requirement;
- 1.31 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include females, and words importing persons shall include created entities (corporate or not);
- 1.32 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.33 any reference to an enactment or regulation thereto is to that enactment or regulation as amended or re-enacted from time to time;
- 1.34 reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;

1.35 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 meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that such term has not been defined in this interpretation clause.

## 2. JURISTIC PERSONALITY, RESTRICTIONS AND POWERS

2.1 The Company is a pre-existing company as defined in the Companies Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in item 2 of Schedule 5 to the Companies Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association or alternatively the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof.

2.2 The Company is incorporated in accordance with and governed by:

2.2.1 the unalterable provisions of the Companies Act, provided that if this Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, the Company would need to ensure compliance with the more onerous requirement set out in this Memorandum of Incorporation; and

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

2.2.3 the other provisions of this Memorandum of Incorporation.

2.3 Save where any alterable provision of the Companies Act is expressly limited, restricted, varied or substituted in this Memorandum of Incorporation, such



alterable provision of the Companies Act shall apply without any limitation, restriction, variation or substitution.

2.4 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) of the Companies Act. Subject to the foregoing, no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

2.5 Without derogating from the provisions of clause 2.4, the main business which the Company is to carry on, is that of a controlling company, and to carry on the business of holding investments.

2.6 If the provisions of this Memorandum of Incorporation are in any way inconsistent with the provisions of:

2.6.1 any unalterable provisions of the Companies Act (provided that if the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, such shall not be a conflict and the Company would need to ensure compliance with the more onerous requirement);

2.6.2 the JSE Listings Requirements; and/or

2.6.3 any other law,

then the unalterable provisions of the Companies Act, the JSE Listings Requirements or other laws shall prevail, and this Memorandum of Incorporation shall be read in all respects subject to such enactment, requirements or other laws subject to, in the instance of the JSE Listings Requirements, any dispensations granted by the JSE from time to time.

2.7 No resolution may be proposed to Shareholders in terms of sections 20(2) and 20(6) of the Companies Act in the event that such resolution would lead

to a ratification of an act that is contrary to the JSE Listings Requirements, unless otherwise agreed with the JSE.

### 3. REPRESENTATION

The Company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed shall be signed by any person or persons authorised so to do by resolution of the Directors.

### 4. COMPANY RULES

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

### 5. ISSUE OF SHARES AND VARIATION OF RIGHTS

5.1 The Company is authorised to issue -

5.1.1 2 000 000 000 A ordinary par value Shares of R0,025 each, of the same class, each of which ranks *pari passu* in respect of all rights and the holder shall be entitled:

5.1.1.1 in respect of each A ordinary Share to have the voting rights contemplated in clause 18.1.1; and

5.1.1.2 participate proportionally in any distribution made by the Company; and

5.1.1.3 receive proportionally the net assets of the Company upon its liquidation;

5.1.2 1 400 000 000 unlisted B ordinary no par value Shares with the rights and privileges attaching thereto are set out in Schedule 1 herein; and

- 5.1.3                    20 000 000 non-redeemable, non-cumulative, non-participating preference par value Shares of a par value of R0,01, of one or more classes of non-redeemable, non-cumulative, non-participating preference Shares. The Shares in each such class of non-redeemable, non-cumulative, non-participating preference Shares shall rank *pari passu* with the other non-redeemable, non-cumulative, non-participating preference Shares of such class in respect of all rights and be subject to the preferences, rights, limitations and other terms associated with each such class as contemplated in this Memorandum of Incorporation.
- 5.2                    The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation. All Securities for which a listing is sought on the JSE and all Securities of the same class as Securities which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Companies Act, but unless otherwise required by statute, only be issued after the Company has received the full consideration approved by the Board for the issuance of such Securities.
- 5.3                    Subject to any relevant provisions of this Memorandum of Incorporation and the Statutes and without prejudice to any special rights previously conferred on the holders of any existing Shares or class of Shares in the Company, any Shares whether in the initial or in any increased capital may be issued with such preferred, deferred, or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time determine.
- 5.4                    Subject to clause 5.5, preference Shares may be issued and existing Shares may be converted into preference Shares on the basis that they are, or at the option of the Company are liable, to be redeemed on such terms and in such manner as shall be prescribed in this Memorandum of Incorporation or the resolution authorising or effecting such issue or conversion.
- 5.5                    Save in relation to the conversion of the unlisted B ordinary Shares as contemplated in Schedule 1 herein, no Shares may be authorised in respect

of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act.

5.6 Subject to the conversion of the unlisted B ordinary Shares as contemplated in Schedule 1 herein, unissued A ordinary Shares shall be offered to existing A ordinary Shareholders *pro rata* to their shareholding (on such terms and in accordance with such procedures as the Board may determine), unless such A ordinary Shares are to be issued for the acquisition of assets (or in terms of clause 5.7 below).

5.7 However,

5.7.1 the Shareholders may at a general meeting authorise the Directors to issue A ordinary Shares of the Company at any time and/or grant options to subscribe for A ordinary Shares as the Directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements. In this regard, all issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must be in accordance with the JSE Listings Requirements; and

5.7.2 the Directors shall have the power to issue such Shares as is otherwise permissible in terms of the Companies Act and the JSE Listings Requirements and subject to compliance therewith.

5.8 Except to the extent that any right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

5.9 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.

5.10 Except where there is provision to the contrary contained in clauses 40 and 41 in respect of the preference Shares, or Schedule 1 in respect of the unlisted B ordinary Shares, all or any of the rights, privileges or conditions for the time being attached to any class of Shares forming part of the capital of the Company may (unless otherwise provided by the terms of issue of the Shares of that class) whether or not the Company is being wound up, be varied in any manner with the consent in writing of the holders of not less than three-fourths of the issued Shares of that class, or with the sanction of a resolution passed in the same manner as a special resolution of the Company but at a separate meeting of the holders of the Shares of that class. At every meeting of Shareholders of Shares of that class, the provisions of this Memorandum of Incorporation relating to general meetings of Shareholders shall apply, *mutatis mutandis*, including the quorum and meeting adjournment provisions.

5.11 If any resolution as contemplated in clause 5.10 is proposed at any general meeting of the Company, the holders of the Shares of such class shall be entitled to vote in respect of such resolution' at such general meeting of the Company, provided that, the voting provisions contained in clause 18.2 shall be of application.

## 6. ALTERATION OR MEMORANDUM OF INCORPORATION

6.1 Subject to the provisions of clause 5.10, section 17(1) of the Companies Act and Schedule 1, 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 Companies Act, except if such amendment is in compliance with a court order as contemplated in section 16(1)(a) of the Companies Act.

6.2 Save as envisaged in Schedule 1 in respect of the unlisted B ordinary Shares, amendments, for the avoidance of doubt, shall include, but shall not be limited to:

6.2.1 the creation of any class of Shares;

- 6.2.2 the variation of any preferences, rights, limitations and other terms attaching to any class of Shares;
  - 6.2.3 the conversion of one class of Shares into one or more other classes;
  - 6.2.4 an increase in the number of authorised Shares of a class;
  - 6.2.5 a consolidation of Securities;
  - 6.2.6 a sub-division of Securities; and/or
  - 6.2.7 the change of the name of the Company.
- 6.3 All alterations of Share capital, authorised Shares and rights attaching to a class or classes of Shares must, in addition, be in accordance with the JSE Listings Requirements.

## **7. COMMISSION AND NO LIEN**

- 7.1 Subject to the Statutes, the Company may pay commission not exceeding 10% to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or of his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities of the Company.
- 7.2 Securities shall not be subject to any lien in favour of the Company.

## **8. CERTIFICATED AND UNCERTIFICATED SECURITIES**

- 8.1 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 Companies 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.

8.2 Any certificated Securities may cease to be evidenced by certificates, and thereafter become uncertificated Securities, if so determined by the Board.

8.3 The provisions of the Companies Act dealing with:

8.3.1 Securities as evidenced by a certificate or uncertificated;

8.3.2 Securities Register and numbering;

8.3.3 registration and transfer of certificated Securities;

8.3.4 registration of uncertificated Securities;

8.3.5 transfer of uncertificated Securities; and

8.3.6 substitution of certificated or uncertificated Securities,

being unalterable provisions of the Companies Act, shall be of full application to the Company and any transfer or transmission of Securities shall further be subject to clause 10.

8.4 However, as the Company is a pre-existing company (as defined in the Companies Act), and having regard to the provisions of item 6(4) of Schedule 5 to the Companies Act, the failure of any Share certificate to satisfy the provisions of section 51(1) to 51(4) of the Companies Act is not a contravention of that section (nor this Memorandum of Incorporation) and does not invalidate that Share certificate.

8.5 Each Shareholder shall be entitled to one Share certificate for all the Shares of any one class registered in his name, or to several Share certificates, each for a part of such Shares. Every Share certificate shall specify the number of Shares in respect of which it is issued.

- 8.6 A Share certificate for Shares registered in the names of two or more persons shall be delivered to the person first named in the certificated Securities Register as a holder thereof and delivery of a Share certificate for a Share to such person first named shall be a sufficient delivery to all joint holders of that Share.
- 8.7 In the case of any Share registered in the names of two or more persons as joint holders, the person first named in the certificated Securities Register shall, save as may otherwise be provided for herein, be the only person recognised by the Company as having any title to such Share and to the Share certificate therefor.
- 8.8 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Share, the sole remaining joint holder or the first named of two or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such Share.
- 8.9 Should any Share certificate be worn out or defaced then upon production thereof to the Company the same may be cancelled and a new Share certificate in lieu thereof be issued, and if any Share certificate be lost or destroyed then upon proof thereof to the satisfaction of the Directors and on such indemnity being given and after such advertisement (if any) of the loss or destruction as the Directors deem adequate at the expense of the party claiming the new Share certificate, a new Share certificate in lieu thereof may be given to the party entitled to such lost or destroyed Share certificate. in case of loss or destruction of a Share certificate, the Shareholder to whom the new Share certificate is given shall repay to the Company all expenses incidental to the investigation by the Company of the evidence of such destruction or loss and to such indemnity and issuing such new Share certificate.

9. **BRANCH REGISTER**



The Company, or the Directors on behalf of the Company, may cause to be kept in any foreign country a branch register or registers of Securities holders resident in such foreign country and the Directors may, subject to the provisions of the Companies Act, make and vary such regulations as they may think fit with regard to the keeping of any such register.

## 10. **TRANSFER AND TRANSMISSION OF SECURITIES**

10.1 Transfer Offices shall be maintained at such place or places whether in the Republic or elsewhere, as the Directors may from time to time prescribe. The Directors may appoint local committees (to be designated “*Registrars*” or by such other title (if any) as the Directors may think fit) whether in the Republic or elsewhere consisting of two or more natural persons or of a corporate body to whom the Directors may delegate all or any of their powers, authorities and discretions with regard to the registration of transfer, the keeping of registers and other records required by the Companies Act to be kept at the Office or the Transfer Office and the issuing of certificates of title to Securities and may appoint a person to be a secretary to such local committee or authorise such local committee to appoint a person to be its secretary.

10.2 The transfer of any Share shall be implemented in accordance with the provisions of the Statutes.

10.3 Subject to any statutory restrictions on transfer and to the provisions of this Memorandum of incorporation, any Shareholder may transfer all or any of its certificated Shares but every transfer must be in writing in the usual common form or in such other form as the Directors may approve and must be left at the Transfer Office where the register of transfers relating to the Share comprised therein is for the time being kept or at such other place as the Directors may prescribe accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to be transferred and such other evidence (if any) as the Directors or other person in charge of such register may require to prove the title or capacity of the intending transferor or transferee or the rights of the intending transferor to transfer the certificated Shares.

- 10.4 The instrument of transfer of a certificated Share shall be signed by the transferor and the transferee, unless the signature of the transferee is not required -
- 10.4.1 by any law from time to time in force in the Republic; or
- 10.4.2 where the Directors decide at their discretion to dispense therewith in such case or cases as they may deem fit.
- 10.5 The Directors may decline to register any transfer of a certificated Share, unless -
- 10.5.1 the instrument of transfer is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it; and
- 10.5.2 the instrument of transfer is in respect of only one class of Share.
- 10.6 If the Directors refuse to register a transfer they shall within 30 days after the date on which the instrument of transfer was lodged, send to the transferee notice of the refusal.
- 10.7 The transferor shall be deemed to remain the holder of the Share transferred until the name of the transferee is entered in the Securities Register in respect thereof. 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; but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud or suspected fraud or unless the Directors shall resolve otherwise) be returned on demand to the person who deposited it.
- 10.8 The executor or administrator of a deceased Shareholder or holder of other Securities ("Security Holder" or the trustee of an insolvent Security Holder or

the curator of any insane or prodigal Security Holder or any person duly appointed by competent authority to represent or act for any Security Holder shall, subject to the provisions of clauses 8.6, 8.7 and 8.8 regarding joint holders, be the only person recognised by the Company as having any title to any Share registered in the name of such Security Holder.

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

10.10 Notwithstanding the foregoing, the Directors may decline to register any transfer of any Securities to a minor or to a person of unsound mind or to any trustee, curator, executor, administrator or other person in any representative capacity.

10.11 All authorities to sign transfer deeds granted by holders of Securities for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at any of its Transfer 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 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 shall be entitled to give effect to any instrument 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.

10.12 The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a duly certified copy of such agent's authority be produced and filed with the Company,

**11. 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 the Companies Act.

**12. RECORD DATE FOR EXERCISE OF SHAREHOLDERS RIGHTS**

Record dates for determining Shareholder rights shall be determined in accordance with the Companies Act, and further in compliance with the JSE Listings Requirements.

**13. MEETINGS OF SHAREHOLDERS**

13.1 The Company, at such times as are prescribed in the Statutes, shall hold general meetings of Shareholders to be known and described in the notices calling such meetings as annual general meetings.

13.2 The Directors may, whenever they think fit, convene a general Meeting, and a general meeting shall also be convened on a requisition made in terms of the Statutes or, in default, may be convened by the requisitionists as provided by and subject to the provisions of the Statutes. If at any time there shall not be within the Republic sufficient Directors capable of acting to form a quorum, any Director or any two ordinary Shareholders of the Company may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

13.3 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Companies Act and the JSE Listings Requirements. The Company is not restricted from calling any meeting of Shareholders for purposes of adhering to the JSE Listings Requirements.

- 13.4 Subject to the provisions of the Statutes relating to meetings, the Company must deliver notice of each Shareholders' meeting at least 15 business days before the meeting is to begin.
- 13.5 Where in terms of the JSE Listings Requirements any general meeting of the Company or of the holders of any class of Shares is required to be held to decide or determine any matter, such meeting may not be held by means of written resolution notwithstanding the provisions of section 60 of the Companies Act (which section shall otherwise be of full application).
- 13.6 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 13.7 The notice shall be given in the manner hereinafter provided to such persons as are entitled to such notice from the Company and also at the same time to the JSE. Such notice must also be announced on SENS.

14. **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

- 14.1 Business may be transacted at any meeting of Shareholders only while a quorum is present. Three Shareholders personally present (or if the Shareholder is a body corporate the body corporate must be represented) and entitled to vote shall be a quorum for a general meeting and an annual general meeting. In addition, the quorum requirements set out in section 64(1) of the Companies Act (which shall be at a level of 25%) must be met (but subject in all cases to section 64(8) of the Companies Act regarding the quorum requirements for adjourned or postponed meetings).
- 14.2 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved; in any other case (and subject to section 64(5) of the Companies Act) it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day which is not a public holiday, Saturday or Sunday.

- 14.3 The chairperson, if any, of the Board shall preside as chairperson at every meeting of Shareholders of the Company. If there is no such chairperson, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Shareholders present shall choose some Director, or if no Director be present, or if all the Directors present decline to take the chair, they shall choose some Shareholder present to be chairperson of the meeting.
- 14.4 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at, any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned in terms of any applicable provision in the Statutes, notice of the adjourned meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 14.5 If so required by the Statutes, Shareholders shall be entitled to participate by electronic communication in Shareholders' meetings (using a methodology selected by the Directors), provided that any technological or other failure (including any error or omission by the Company or its service providers) relating to such electronic participation, which affect any one or more Shareholders' ability to participate electronically in all or part of any meeting, shall not invalidate any of the proceedings at such meeting.
- 14.6 Even if he is not a Shareholder who is entitled to vote at the Shareholders' meeting-
- 14.6.1 any Director; or
- 14.6.2 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 (and is entitled to vote) or the proxy or representative of such a Shareholder.

## 15. **SHAREHOLDERS' RESOLUTIONS**

15.1 For an ordinary resolution to be approved it must be supported by more than 50% of the voting rights of Shareholders exercised on the resolution, as provided in the Companies Act. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, to the extent that the JSE Listings Requirements requires a higher percentage in respect of any particular ordinary resolution, the Company shall not implement such ordinary resolution unless the Company has obtained the support of the applicable percentage prescribed in terms of the JSE Listings Requirements.

15.2 For a special resolution to be approved it must be supported by the holders of 75% or more of the voting rights exercised by Shareholders on the resolution, as provided in the Companies Act.

15.3 No matters, except those matters set out in section 65(11) of the Companies Act and any other matter required by the Companies Act, this Memorandum of Incorporation and the JSE Listings Requirements to be resolved by means of a special resolution, require a special resolution adopted at a Shareholders' meeting of the Company.

15.4 No resolution contemplated in clause 2.7 may be proposed, unless otherwise agreed with the JSE.

15.5 Anything done in pursuance of any ordinary resolution or special resolution shall be done in a manner provided and subject to any conditions imposed by the Companies Act, so far as they shall be applicable, and so far as they shall not be applicable, in accordance with the terms of the applicable resolution authorising the same.

## 16. **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 16.1 In accordance with the provisions of section 60 of the Companies Act, but subject to clause 16.4, a resolution that could be voted on at a Shareholders' meeting (other than in respect of the election of Directors) may instead be -
- 16.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution;
- 16.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.
- 16.2 A resolution contemplated in clause 16.1 -
- 16.2.1 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
- 16.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 16.3 Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this clause 16, 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.
- 16.4 The provisions of this clause 16 shall not apply to any Shareholder meetings that are required to be held "in person" in terms of the Listings Requirements or the passing of any resolution for the election of directors or to any annual general meeting of the Company. Notwithstanding the foregoing, the following resolutions which require a shareholders meeting in terms of the Listings Requirements may, notwithstanding anything contained in this Memorandum of Incorporation to the contrary, be proposed as written resolutions in accordance with section 60 of the Companies Act, namely:
- 16.4.1 a change to the name of the Company;



- 16.4.2 odd-lot offers;
- 16.4.3 an increase in the authorised share capital of the Company; and
- 16.4.4 the approval of amendments to this Memorandum of Incorporation.

## 17. **REMOVAL OF GENERAL PARTNER WITHOUT CAUSE**

Notwithstanding anything to the contrary in this Memorandum of Incorporation, the Shareholders may, at any time and without cause, resolve to terminate the General Partner's mandate to act as general partner of the Partnership by ordinary resolution, which ordinary resolution may be passed in accordance with clause 16, and, following the adoption of such resolution, the Board shall terminate the General Partner's mandate to act as such on the terms and conditions contained in the Partnership Agreement.

## 18. **VOTES OF SHAREHOLDERS**

- 18.1 Subject to any rights or restrictions attaching to, any class or classes of Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company:
  - 18.1.1 any person present and entitled to vote, on a show of hands, as a Shareholder or as a proxy for a Shareholder at any meeting of the Company shall:
    - 18.1.1.1 on a vote by show of hands, have only one vote, irrespective of the number of Shares he holds or represents;
    - 18.1.1.2 on a vote by poll be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Shares held by him and in respect of which he is entitled to vote bears to the aggregate amount of the nominal value of all the Shares issued by the Company (and which carry

the right to vote on the matter at hand) or if the share capital is divided into Shares of no par value, shall be entitled to one vote in respect of each share he holds.

18.1.2 the holders of Shares other than A ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as specifically provided for in this Memorandum of Incorporation or the Statutes, and where such holders of such Shares are entitled to vote, their voting rights shall be limited as set out in clause 18.2.

18.2 If clause 18.1.2 applies, the holders of such other Shares (“**Affected Shareholders**”) shall be entitled to vote at the meeting of Shareholders as contemplated in clause 18.1.1.2, provided that the votes of the Shares of that class held by the Affected Shareholders (“**Affected Shares**”) shall:

18.2.1 not carry any special rights or privileges; and

18.2.2 the Affected Shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Affected Shares held by him and in respect of which he is entitled to vote bears to the aggregate amount of the nominal value of all shares issued by the Company (and which carry the right to vote on the matter at hand),

provided that the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% of the total voting rights of all Shareholders (including the votes of the Affected Shareholders) at such meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).

18.3 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.

- 18.4 At any meeting of Shareholders a resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by any person entitled to vote at the meeting 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 lost, and an entry to that effect in the minute book 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. 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 is 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.
- 18.5 If a poll is demanded as aforesaid it shall be taken in such manner and at such place and time as the chairperson of the meeting directs and either immediately or after an interval or adjournment (not exceeding seven days). Scrutineers shall be elected to count the votes and to declare the result of the poll and their declaration, which shall be announced by the chairperson of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.
- 18.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 18.7 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. The demand for a poll may be withdrawn.
- 18.8 When there are joint registered holders of any Shares any one of such persons may vote at any meeting in respect of such Shares as if he were

solely entitled thereto; but if more than one of such joint holders be present or represented at any meeting, that one of the said persons whose name stands first in the Securities Register in respect of such Shares or his proxy, as the case may be, shall alone be entitled to vote in respect thereof.

- 18.9 Any person entitled to a Share in terms of clause 10.9 may vote at any meeting in respect thereof in the same manner as if he were the registered holder of that Share: Provided that (except where the Directors have previously accepted his right to vote in respect of that Share) 24 hours at least before the time of holding the meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to exercise the right referred to in clause 10.9. Several executors of a deceased Shareholder in whose name Shares stand in the Securities Register shall, for the purposes of this clause, be deemed joint holders of those Shares.

## 19. **PROXIES AND REPRESENTATIVES**

- 19.1 A proxy need not be a Shareholder of the Company.
- 19.2 The form appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporate body, under the hand of an officer or agent authorised by that body. The holder of a general or special power of attorney given by a Shareholder shall be entitled to vote, if duly authorised under that power to attend and take part in the meetings and proceedings of the Company or companies generally, whether or not he be himself a Shareholder of the Company. The form appointing a proxy shall be deemed to confer authority to demand a poll.
- 19.3 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Company before the proxy exercises any rights of a Shareholder at a meeting of Shareholders. No form appointing a proxy shall be valid after the expiration of one year (or any longer or shorter period expressly set out in the appointment) from the date when it was signed, except at an adjourned meeting or on a poll demanded at a meeting or adjourned meeting in cases where the original meeting (which

was adjourned) was held within the validity period applicable to that proxy. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

19.4 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form.

19.5 In accordance with the provisions of Section 58 of the Companies Act, a Shareholder shall be entitled to appoint more than one proxy provided that, where more than one proxy is appointed by a Shareholder, each such proxy is appointed only in respect of a specified portion of all of the Shares held by such Shareholder in the Company and the aggregate of all such specified portion of Shares in respect of which proxies are appointed by such Shareholder do not exceed the aggregate number of Shares held by such Shareholder. Where a Shareholder has appointed more than one proxy in accordance with this clause 19.5, the provisions of clause 18.1.1.2 shall apply, *mutatis mutandis*, to each such proxy save that, on a poll, any such proxy so appointed shall only be entitled to that proportion of such Shareholder's votes in the Company which the Shares in respect of which such proxy has been appointed by such Shareholder bears to the aggregate number of Shares of such Shareholder.

## 20. **MANNER OF PROVIDING NOTICES**

20.1 Notwithstanding anything to the contrary in this Memorandum of Incorporation, any notice to be given by the Company shall be given in accordance with the provisions of the Companies Act, the JSE Listings Requirements and any applicable law, and generally the Company can give any notice or document (including a Share certificate) to a Shareholder:

- (a) personally; or
- (b) by posting it to, or leaving it at, the Shareholder's registered address;  
or
- (c) as agreed in writing by the Shareholder concerned; or
- (d) where appropriate, by sending or supplying it by electronic medium to an address notified by the relevant Shareholders to the Company for that purpose; or
- (e) where appropriate, by making it available on a website and notifying the Shareholder of its availability in accordance with this clause; or
- (f) in any other manner permitted in terms of or contemplated under the Companies Act (including any such substituted services as ordered by the Tribunal or the High Court).

20.2 Any Shareholder may notify the Company in writing of an address (either a registered address or an address to receive information by electronic medium or both such addresses) and if he has not named any such address, he shall be deemed to have waived his right to be served with notice.

20.3 All notices may, with respect to any registered Shares to which persons are jointly entitled, be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of clause 8.7, as the case may be, and notice so given shall be sufficient notice to all the holders of such Shares.

20.4 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 such Share which previously to his name and address being entered on the

Securities Register shall have been given to the person from whom he derives his title to such Share.

20.5 Any notice or document sent to any Shareholder shall, notwithstanding that such Shareholder be then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any registered Shares, whether held solely or jointly with other persons by such Shareholders, until some other person be registered in his stead as the holder or joint holder thereof, and such service shall, for all purposes hereunder, 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.

20.6 Every notice calling any general meeting of the Company shall comply with the provisions of the Statutes.

## 21. **DIRECTORS**

21.1 Until otherwise determined by a meeting of Shareholders, the number of Directors shall not be less than four nor more than 20.

21.2 The Directors shall have power at any time and from time to time to appoint any person as a Director to fill a casual vacancy but so that the total number of the Directors shall not at any time exceed the maximum number fixed. Subject to the provisions of clause 23.2, any person appointed to fill a casual vacancy shall retain office only until the next annual general meeting of the Company following the date of such appointment and shall then retire and be eligible for re-election.

21.3 The appointment of a Director shall take effect upon compliance with the requirements of the Statutes. The Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in the Companies Act.

- 21.4 The shareholding qualification for Directors and alternate Directors may be fixed, and from time to time varied, by the Company at any meeting of Shareholders and unless and until so fixed no qualification shall be required.
- 21.5 The continuing Directors may act, notwithstanding any casual vacancy in their body. Should the number of Directors fall below the minimum number of Directors provided in clause 21.1, 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 purposes of filling the vacancies. A 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. However, 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. Subject to the provisions of clause 23.2, any person appointed to fill a casual vacancy shall retain office only until the next following annual general meeting of the Company and shall then retire and be eligible for re-election.
- 21.6 Life Directorships and Directorships for an indefinite period are not permissible.
- 21.7 A Director shall cease to hold office as such:-
- 21.7.1 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
- 21.7.2 if he becomes of unsound mind; or
- 21.7.3 if (unless he is not required to hold a Share qualification) he has not duly qualified himself within two months of his appointment or if he ceases to hold the required number of Shares to qualify him for office; or



- 21.7.4 if he is absent from meetings of the Directors for six consecutive months without leave of the Directors and is not represented at any such meetings during such six consecutive months 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 for any period provided this does not exceed a period of two years; or
- 21.7.5 if he is removed under clause 21.8; or
- 21.7.6 one month or, with the permission of the Directors earlier, after he has given notice in writing of his intention to resign; or
- 21.7.7 if he shall pursuant to the provisions of the Statutes be disqualified or cease to hold office or be prohibited from acting as Director; or
- 21.7.8 if he is removed in terms of the Companies Act.
- 21.8 Subject to the provisions of the Statutes, the Company may by ordinary resolution remove any Director before the expiration of his period of office and by an ordinary resolution elect another person in his stead. The person so elected shall hold office until the next following annual general meeting of the Company and shall then retire and be eligible for re-election.
- 21.9 Without limiting the requirements of any of the Statutes, the remuneration of the Directors of the Company shall, from time to time, be determined by the Remuneration Committee of the Company, established by the Board of Directors of the Company in accordance with corporate governance principles.
- 21.10 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, and if any Director is required to perform extra services or to go or to reside abroad or otherwise is specially occupied about the Company's business, he may be entitled to receive a remuneration to be fixed by a disinterested quorum of the

Directors which may be either in addition to or in substitution for the remuneration provided for in clause 21.9.

21.11 Nothing in this clause contained shall be construed so as to prevent any Director as a Shareholder from taking part in and voting upon all questions submitted to a general meeting whether or not such Director shall be personally interested or concerned in such questions.

21.12 A Director may be employed by or hold any office or place of profit under the Company or under any subsidiary company in conjunction with the office of Director, other than that of auditor of the Company or of any subsidiary company, and upon such terms as to appointment, remuneration and otherwise as the Directors may determine, and any remuneration so paid may be in addition to the remuneration payable in terms of clause 21.9 or 21.10: Provided that the appointment of a Director in any other capacity in the Company and his remuneration must be determined by a disinterested quorum of Directors.

21.13 A Director 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.

21.14 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 Companies Act and the qualifications contained in section 75(3) of the Companies Act, comply with all of the provisions of section 75 of the Companies Act in the event that they (or to their knowledge any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.

21.15 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement or other benefit to any Director or ex-Director or other officer or ex-officer or employee or ex-employee of the Company, its holding

Company (if any) or any subsidiary of the Company or to his widow or dependants and make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance or life assurance or other benefits.

## 22. ROTATION OF DIRECTORS

22.1 At the annual general meeting held in each year one-third of the Directors, or if their number is not a multiple of three, then the whole number above the fractional number resulting from such one-third calculation, shall be the number of Directors to retire from office.

22.2 The Directors so to retire at each annual general meeting shall be firstly those Directors retiring in terms of clauses 21.2, 21.5 and 21.8 and secondly those who have been longest in office since their last election or appointment. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement amongst them, be selected from among them by lot: Provided that notwithstanding anything herein contained, if, at the date of any annual general meeting any Director will have held office for a period of three years since his last election or appointment he shall retire at such meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto.

22.3 A retiring Director shall act as a Director throughout the meeting at which he retires. The length of time a Director has been in office shall, save in respect of Directors appointed or elected in terms of the provisions of clauses 21.2, 21.5 and 21.8, be computed from the date of his last election or appointment.

22.4 Retiring Directors shall be eligible for re-election. No person other than a Director retiring at the meeting shall, unless recommended by the Directors for election, be eligible for election to the office of Director at any general meeting unless, within 30 days of the end of a particular financial year of the Company, there shall have been given to the secretary notice in writing by some Shareholder duly qualified to be present and vote at the forthcoming annual general meeting of the Company of the intention of such Shareholder to propose a person (“the nominee”) for election as a Director. Such written

notice must be accompanied by (1) sufficient information to allow the Company to include details of the nominee in its notice given in respect of the forthcoming annual general meeting; and (2) written confirmation, by the person to be proposed, of his willingness to be considered for election as a Director to the Company.

22.5 The Board shall, through its nominations committee, provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution.

22.6 Subject to clause 22.4, the Company in general meeting may fill the vacated offices by electing a like number of persons to be Directors and may fill any other vacancies. In electing Directors the provisions of the Statutes shall be complied with.

22.7 If at any general meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled (for any reason whatsoever), he shall, if willing, continue in office until the dissolution of the general meeting in the next year, and so on from year to year until his place is filled, unless it shall be determined at such meeting not to fill such vacancy.

## 23. **MANAGING DIRECTORS**

23.1 The Directors may from time to time appoint one or more of their number to be managing Director or joint managing Directors of the Company, or to be the holder of any other executive office in the Company, including the office of chairperson and may, subject to any contract between him or them and the Company and having regard to applicable law, from time to time terminate his or their appointment and appoint another or others in his or their place or places.

23.2 A managing director may be appointed by contract for a maximum period of five years at any one time and he shall be subject to retirement by rotation and be taken into account in determining the rotation of retirement of

Directors. The managing director shall be eligible for reappointment at the expiry of any period of appointment. Subject to the terms of his contract, he shall be subject to the same provisions as to removal as the other Directors and if he ceases to hold the office of Director from any cause he shall *ipso facto* cease to be a managing director.

23.3 A director appointed in terms of the provisions of clause 23.1 to the office of managing director of the company, or to any other executive office in the company, may be paid in addition to the remuneration payable in terms of clause 21.9 or 21.10, such remuneration - not exceeding a reasonable maximum in each year - in respect of such office as may be determined by a disinterested quorum of the Directors.

23.4 The Directors may from time to time entrust and confer upon a managing director or other executive officer for the time being 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 think 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 and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities. A managing director 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 shall be deemed to derive such powers directly from this clause.

## 24. **ALTERNATE DIRECTORS**

24.1 Any Director shall have the power to nominate another person approved by the Board to act as alternate Director in his place during his absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company. A person may be appointed as alternate to more than one Director. Where a person is alternate to more than one Director or where an alternate director is a

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

- 24.2 The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms of this Memorandum of Incorporation or if the Director who appointed him ceases to be a Director, or gives notice to the secretary of the Company that the alternate Director representing him shall have ceased to do so. An alternate Director shall look to the Director who appointed him for his remuneration and he shall have no claim against the Company for his remuneration.

## 25. **PROCEEDINGS OF DIRECTORS**

- 25.1 Subject to the Statutes, the Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined two Directors shall form a quorum. A Director may at any time and the secretary upon the request of a Director shall convene a meeting of the Directors. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the medium of giving such notice which may include telephone, telegram, telex, telefax or any form of Electronic Communication.
- 25.2 Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes, the chairperson shall not have a second or casting vote.
- 25.3 The Directors may elect a chairperson of their meetings and one or more deputy chairpersons to preside in the absence of the chairperson, and may determine a period, not exceeding one year, for which they are to hold office, but if no such chairperson or deputy chairperson is elected or if at any meeting neither the chairperson nor a deputy chairperson is present at the

time appointed for holding the same, the Directors shall choose one of their number to be chairperson of such meeting.

25.4 A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by the Directors generally.

25.5 Subject to the Statutes, the Board has the power to:-

25.5.1 consider any matter and/or adopt any resolution other than at a meeting and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it 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);

25.5.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in the Companies Act, provided that, 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. A resolution agreed to during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

25.6 The Directors may delegate or allocate any of their powers to an executive or other committee consisting of such member or members of their body or any other person or persons as they think fit. Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Directors.

25.7 The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulations made by the Directors under clause 25.6.

25.8 All acts done at any meeting of the Directors or of any executive or other committee of the Directors, 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 as a Director or member of such committee.

26. **POWERS OF DIRECTORS**

26.1 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in the Companies Act.

26.2 The management of the Company shall be vested in the Directors who, in addition to the powers and authorities conferred upon them hereunder and in terms of the Companies Act, 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 the Statutes expressly directed or required to be exercised or done by the Company in general meeting (including without derogating from the generality of the foregoing or from the rights of the Shareholders, the power to resolve that the Company be wound up), but subject nevertheless to such management and control not being inconsistent with the provisions of this Memorandum of Incorporation or with any resolution passed at any general meeting of the Shareholders in accordance therewith; but no resolution passed by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such resolution had not been passed. The general powers given by this clause shall not be limited or restricted by any special authority or power given to the Directors by any other clause.



26.3 The Directors may authorise the payment of any donation by the Company to such religious, educational, charitable, public or other bodies, clubs, funds or associations or persons as may seem to them advisable or desirable in the interests of the Company.

26.4 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 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 8 all signatures on such instrument shall be autographic. Every instrument to which the seal of the Company is so affixed and which is so signed shall be binding on the Company.

## 27. **BORROWING POWERS AND DEBT INSTRUMENTS**

27.1 Subject to clause 27.2, the Directors may exercise all the powers of the Company to borrow money and to mortgage or encumber its undertaking and property or any part thereof and to issue debentures or debenture stock (whether secured or unsecured) and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party.

27.2 The Board may authorise the Company to issue secured or unsecured debt instruments, but no special privileges associated with any such debt instruments (such as attending and voting at general meetings and the appointment of Directors) may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation.

27.3 For the purpose of the provisions of this clause 27.3 the borrowing powers of the Company shall be unlimited.

## 28. COMMITTEES OF THE BOARD

28.1 The Board may -

28.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board; and/or

28.1.2 include in any such committee persons who are not Directors,

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

28.2 The authority of a committee appointed by the Board as contemplated in the Companies Act, is not limited or restricted by this Memorandum of Incorporation, nor are the provisions of clauses 25.6 and 25.7 limited herein.

28.3 If and for as long as it is required to do so in terms of the Companies Act (unless the Company is exempted from doing so by the Tribunal in terms of the Companies Act), the JSE Listings Requirements or any other applicable law, the Board must appoint any and all such prescribed committees.

## 29. APPOINTMENT OF ATTORNEYS

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 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 the Companies Act) including the right of sub-delegation, 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 the members of any committee established as aforesaid or any of them or in favour of any company or 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 as the Directors may think fit.

**30. INDEMNIFICATION OF DIRECTORS**

30.1 For the purposes of this clause 30, a Director includes -

30.1.1 a former Director and an alternate Director;

30.1.2 a prescribed officer; and

30.1.3 a person who is a member of a committee of the Board,

irrespective of whether or not the person is also a member of the Board.

30.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act, -

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

30.2.2 directly or indirectly indemnify a Director for expenses contemplated in clause 30.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -

30.2.2.1 are abandoned or exculpate that Director; or

30.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of clause 30.2.3;

30.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Act;

30.2.4 purchase insurance to protect -

30.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with clause 30.2.3;

30.2.4.2 the Company against any contingency, including but not limited to those contemplated in section 78(7)(b) of the Companies Act, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

## 31. STATUTORY RECORDS

31.1 The Directors shall -

31.1.1 comply with all the requirements of the Statutes as to the keeping of statutory books;

31.1.2 keep proper minutes which shall record *inter alia* the names of all Directors present at each meeting of Directors or of any committee, all appointments of officers and all resolutions and proceedings of general meetings and of meetings of Directors and committees.

31.2 Any minutes (or extract of any minute) of any meetings of the Directors or of the Company and of resolutions in pursuance of clause 25.5, if purporting to be signed by the chairperson of such meeting, or by some person present thereat and appointed by the Directors to sign the same in his place, or by the chairperson of the next succeeding meeting of the Directors, shall be receivable as evidence of the matters stated in such minutes.

31.3 Any Director or the company secretary or any person appointed by the Directors for the purpose shall have power to authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts; and where any books, records, documents or accounts are elsewhere than at the Office the local manager or

other officer of the Company having the custody thereof shall be deemed to be the person appointed by the Directors aforesaid.

## 32. ACCOUNTS AND RECORDS

- 32.1 Not less than 15 business days before the date of any annual general meeting, a summarised form of the financial statements to be presented at such meeting and directions for obtaining a copy of the complete annual financial statements for the preceding financial year shall be sent to every Shareholder, subject to and in accordance with the provisions of the Statutes (including but not limited to the Companies Act), the JSE Listings Requirements and all other applicable law. In addition, the requisite number of copies as may be required by law shall be sent to the JSE and any other regulatory body, all of which shall be done in accordance with the provisions of applicable law.
- 32.2 Nothing in clause 30 shall detract from the right, if any, under the Statutes of any person who holds a beneficial interest in Securities issued by the Company to receive notice of the publication of any annual financial statements and, on demand, receive a copy thereof, in each case subject to the provisions of the Statutes.
- 32.3 If so required by the Statutes, the JSE Listings. Requirements or any other applicable law, and in the manner and within the time periods required thereby, the Company shall distribute interim reports to its Shareholders, after the expiration of the first period of six months of each financial year of the Company.
- 32.4 Nothing contained in this clause 32 shall impose a duty on the Directors to send copies of such documents to any person whose address is not known to the Company, or where any Shares are jointly held, to more than one of the joint holders of such Shares.
- 32.5 Shareholders' rights of inspection of the Company's records shall be as set out in the Statutes. The Directors shall from time to time determine to what extent and at what times and places and under what conditions such records

of the Company, or any of them, shall be open to the inspection of the Shareholders. No Shareholder (not being a Director) shall have the right of inspecting any account or book or document of the Company, except as conferred by Statute or authorised by the Directors.

**33. AUDIT**

33.1 Auditors shall be appointed and their duties regulated in accordance with the provisions of the Statutes.

33.2 The annual financial statements of the Company, when audited and thereafter presented to the annual general meeting, shall be deemed conclusively correct and shall not be re-opened, though if any material error (including an error that affects the financial results, cash flow or statement of financial position) is discovered therein three months next after the presentation thereof, they shall forthwith be corrected and thenceforth shall be conclusive.

**34. DIVIDENDS AND DISTRIBUTIONS TO SHAREHOLDERS\**

34.1 Dividends are declared by the Directors in accordance with the Companies Act. Subject to section 46 of the Companies Act, as amended, the Company is authorised to make payments and other distributions to its Shareholders or any class of them. The Company shall further comply with any applicable provision of the JSE Listings Requirements in respect of any such payment or distribution.

34.2 Payments to the holders of Securities must be made in accordance with the provisions of the JSE Listings Requirements and capital shall not be repaid on the basis that it may be called up again.

34.3 Without limiting the generality of clause 34.1, the Directors may from time to time declare a dividend to be paid to the Shareholders and to the holders of Share warrants (if any) in proportion to the number of Shares held by them in each class. Dividends shall be declared payable to Shareholders registered as such on a date (a record date) subsequent to the date of the declaration thereof.

- 34.4 Any dividend so declared may be paid and satisfied, either wholly or in part, by the distribution of specific assets, and in particular of paid up shares or debentures of any other company, or in cash or in any one or more of such ways as the Directors may at the time of declaring the dividend determine and direct (including, but not limited to, utilising the methodology referred to in clause 34.19), and where any difficulty arises in regard to the distribution they may settle the same as they think expedient, and in particular may fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any Shareholders upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to them.
- 34.5 Without limiting the generality of clause 34.1 and subject to the Statutes, (but otherwise notwithstanding anything to the contrary contained in this Memorandum of Incorporation) the Company shall be entitled to make any distributions to its Shareholders from time to time, whether by way of a capital distribution or by way of a distribution out of any reserves of the Company, whether such reserves arise out of the trading, the disposal of assets, the revaluation of assets or however else arising (including where permissible by applicable law, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital, stated capital or share premium account or capital redemption reserve fund of the Company) or by way of any other kind of distribution. The provisions of this clause 34.5 shall not detract from the ability of the Company to issue capitalisation Shares.
- 34.6 No such distribution to Shareholders shall carry interest as against the Company unless interest in respect thereof is specifically provided for in the resolution declaring such payment.
- 34.7 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.

- 34.8 All unclaimed monies that are due to Shareholder/s shall be held by the Company in trust for an indefinite period until lawfully claimed, subject to the laws of prescription, provided that in respect of dividends only:
- 34.8.1 dividends unclaimed for a period of not less than 12 years from the date on which such dividends became payable and not previously forfeited may be forfeited by the Directors for the benefit of the Company;
- 34.8.2 If any dividend payments are to be retained in trust in the manner contemplated in clause 34.19, this period of 12 years shall only commence in respect of such payments once the aggregate of the accumulated amounts due to the affected Shareholders exceeds the minimum amount as contemplated in clause 34.19.
- 34.9 In the event of a resolution being passed providing for the Company to be wound up voluntarily, such resolution may provide that any dividends unclaimed for a period of not less than three years from the date on which such amounts became payable and not previously forfeited may be forfeited by the Directors for the benefit of the Company.
- 34.10 The Directors may from time to time pay to the Shareholders on account of the next forthcoming dividend such interim dividend as in their judgment the position of the Company justifies.
- 34.11 In the case where several persons are registered as joint holders of any Share any one of such persons may give effectual receipts for all distributions and payments on account of distributions in respect of such Share.
- 34.12 Any distribution, interest or other sum payable in cash to a Shareholder may be paid by electronic transfer for credit to an account nominated in writing by the Shareholder, or by cheque or warrant sent by post and addressed to -
- 34.12.1 the Shareholder at his registered address; or



- 34.12.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the Share, at his registered address; or
- 34.12.3 such person and at such address as the holder or joint holders may in writing direct.
- 34.13 Every such cheque or warrant shall:
- 34.13.1 unless the holder or joint holders otherwise direct be made payable to the order of the person to whom it is addressed; and
- 34.13.2 be sent at the risk of the holder or joint holders.
- 34.14 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid or for the loss or misdirection of any electronic transfer.
- 34.15 Payment of any such cheque or warrant, or the making of such electronic transfer, to whomsoever effected, shall be a good discharge to the Company.
- 34.16 Dividends shall be declared in the currency of the Republic. The declaration of any dividend may, however, provide that all or any Shareholders whose registered addresses are outside the Republic or who have given written instructions requesting payment at addresses outside the Republic subject to any Exchange Control Regulations then in force, shall be paid in such other currency or currencies as may be stipulated in the declaration. The declaration may also stipulate the date upon which (hereinafter referred to as the “currency conversion date”) and a provisional rate of exchange at which the currency of the Republic shall be converted into such other currency or currencies, provided that the currency conversion date shall be a date not earlier than the date of the declaration of the dividend and not later than the date of its payment. If, in the opinion of the Directors, there is no material difference between the rate/s of exchange ruling on the currency conversion date and the provisional rate/s of exchange stipulated in the declaration then

the currency of the Republic shall be converted at such provisional rate/s. If, in the opinion of the Directors, there is a material difference, then the currency of the Republic shall be converted into such other currency or currencies at the rate/s of exchange ruling on the currency conversion date, or at rate/s of exchange which, in the opinion of the Directors, is/are not materially different. Any subsequent rise or fall of rate/s of exchange determined as above shall be disregarded for payment of the dividend in question.

34.17 For the purpose of clause 34.16, no notice of change of registered address or instructions as to payment being made at any other address which is received by the Company between the currency conversion date referred to in clause 34.16 and the respective date of payment of the dividend, or repayment of capital, as the case may be (both dates inclusive) and which would have the effect of changing the currency in which such payment would be made shall become effective until after such date of payment.

34.18 The Company shall be entitled at any time to delegate its obligations to Shareholder in respect of unclaimed dividends, to any one of the Company's bankers from time to time

34.19 The Directors of the Company may hold in trust (or pay to another entity to hold in trust) small cash dividends or other cash distributions, due to any Shareholders of the Company who hold the Company's Securities in certificated form, without interest if, in the discretion of the Directors, the payment of such dividends or other distributions would be uneconomical for any such Shareholders and/or for the Company. Such retained amounts shall be added to subsequent dividends payable to affected Shareholders and the accumulated amounts shall be released to an affected Shareholder where the aggregate of the accumulated amount due to such Shareholder exceeds the minimum amount of R25,00 or such other amount as proposed by the Directors and agreed to by the JSE, from time to time. Such retained amounts shall also be released to affected Shareholders who specifically request payment or where such affected Shareholders' shareholdings are transferred out of the Company's certificated Securities Register.

### 35. **LOSS OF DOCUMENTS**

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

### 36. **RESERVE FUND**

36.1 The Directors may, before declaring or recommending any dividend or other distribution, set aside out of the amount available for dividends, such sum as they think proper as a reserve fund or an addition thereto. The Directors may divide the reserve fund into such special funds as they think fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the same upon such investments (other than Shares of the Company) as they may select without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not.

36.2 The reserve fund shall, at the discretion of the Directors, be applicable for the equalisation of dividends or other distributions or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company or for any of the objects or powers of the Company, or for any other purpose to which the Profits of the Company may be properly applied, and the Directors may at any time divide among the Shareholders by way of bonus, or special dividends, any part of the reserve funds which they in their discretion may determine not to be required for the purposes aforesaid.

### 37. **CAPITALISATION**

- 37.1 Subject to section 47(2) of the Companies Act and the JSE Listings Requirements, the Directors shall be entitled to grant to the Shareholders the right to receive scrip dividends *in lieu* of cash dividends or a cash dividend *in lieu* of capitalisation or bonus Shares.
- 37.2 Subject to the JSE Listings Requirements, the Directors may at any time and from time to time pass a resolution that it is desirable to capitalise any sum standing to the credit of any of the Company's reserves or of any Share premium account or capital redemption reserve fund or to the credit of the income statement or otherwise available for distribution and accordingly that any such sum or sums be set free for distribution and be appropriated to and amongst the Shareholders or any class of Shareholders, either with or without deduction for income tax rateably, according to their rights and shareholdings in such manner as the resolution may direct. However, no such distribution shall be made by the Company unless recommended by the Directors.
- 37.3 The Directors shall, in accordance with such resolution, apply such sum or sums in paying up fully paid Shares or debentures or debenture stock of the Company and appropriate such Shares, debentures or debenture stock to or distribute the same amongst the holders of such Shares rateably according to their shareholding thereof respectively as aforesaid, or otherwise deal with such sum or sums as provided for in such resolution. Where any difficulty arises in respect of such distribution the Directors may settle the same as they think expedient (with full power to the Directors to provide that whenever fractions would be included in the holding of any Shareholder shall be dealt with in accordance with the provisions of the JSE Listings Requirements), fix the value for distribution of any fully paid Shares, debentures or debenture Stock, make cash payments to any holders of Shares on the footing of the value so fixed in order to adjust rights, and vest any Shares or assets in trustees upon such trusts for the persons entitled in the appropriation or distribution as may seem just and expedient to the Directors.
- 37.4 The Directors may also appoint any person to enter, on behalf of all Shareholders entitled to the benefit of such appropriations and applications or to participate in such distribution, into any contract requisite or convenient for

giving effect thereto, and such appointment and contract made under such appointment shall be effective and binding on all such Shareholders.

37.5 Any capitalisation issue must be in compliance with section 47 of the Companies Act. Without limiting the foregoing, the Board may not resolve to offer a cash payment in lieu of awarding a capitalisation Share without compliance with section 47(2) of the Companies Act.

## 38. ACQUISITION OF SHARES

38.1 Notwithstanding anything to the contrary herein contained and subject to compliance with the Companies Act, the JSE Listings Requirements and any other relevant authority whose approval is required in law:

38.1.1 the Board may determine that the Company acquires a number of its Shares; and

38.1.2 the board of any Subsidiary of the Company may determine that such Subsidiary acquires Shares of the Company, but:

38.1.2.1 not more than 10%, 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

38.1.2.2 no voting rights attaching to those Shares may be exercised while the Shares are held by that Subsidiary *and* it remains a Subsidiary of the Company.

38.2 Any acquisition by the Company (or any Subsidiary of the Company) of Shares in the Company must satisfy the JSE Listings Requirements and the requirements of the Companies Act.

38.3 Without limiting the generality of the foregoing, the Company is entitled to apply its Share premium account for the payment of the premium over the par

value of the Shares so acquired in terms of clause 38 and Section 48 of the Companies Act.

**39. ODD-LOT OFFERS**

39.1 If, upon the implementation of any Odd-Lot Offer made by the Company in accordance with the restrictions and procedures imposed by the JSE and subject to the approval of the JSE, there are holders of Shares holding, in aggregate, less than 100 Shares (“Odd-Lots”) in the Company (“Odd-Lot Holders”), then the Company shall, save in respect of Odd-Lot Holders who have elected to retain their Odd-Lots:

39.1.1 cause the Odd-Lots to be sold by such Odd-Lot Holders in such manner as the Directors may direct; and

39.1.2 procure that the proceeds of such sales are paid to such Odd-Lot Holders.

39.2 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 twelve 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.

**40. NON-REDEEMABLE, NON-CUMULATIVE, NON-PARTICIPATING PREFERENCE SHARES (“THE PREFERENCE SHARES”)**

The following are the rights, privileges, restrictions and conditions which attach to the preference Shares:-

40.1 Subject to clauses 40.2 and 40.3, each preference Share will rank as regards to dividends and a repayment of capital on the winding-up of the Company prior to the ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Shares.

40.2 Each preference Share shall confer on the holder of the preference Share the right to a return of capital on the winding-up of the Company, in an amount equal to the aggregate of the par value paid up thereon and a premium (calculated by dividing the total premium paid up in respect of all preference Shares issued of the same class then in issue by the total number of such preference Shares of such class then in issue) together with an amount equal to all arrear dividends in respect of such Share (as contemplated in clause 40.5.3) calculated to the date of repayment, in priority to any payment in respect of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Share.

40.3 Each preference Share will confer on the holder of the preference Share the right to receive out of the Profits of the Company a non-cumulative preference cash dividend which shall be determined in the manner set out in clause 40.4 in priority to any payment of dividends to the holder of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the preference Shares provided that such right shall be subject to the Company declaring such dividend in the manner set out in this Memorandum of Incorporation and in accordance with the Statutes.

40.4 The preference dividend shall be calculated:-

40.4.1 in accordance with the following formula:-

$$A = \frac{B \times C \times D}{365}$$

**WHERE:-**

**A =** the preference dividend per preference Share;

**B =** the preference dividend rate, as defined in clause 39.10, in respect of the relevant period for which the dividend is calculated as specified in clause 40.4.2 below;

**C =** the number of days of the relevant period for which the dividend is calculated as specified in clause 40.4.2 below; and

**D =** the deemed capital value of the preference Share as defined in clause 41.3;

40.4.2 in respect of each preference Share, each period referred to in “C” above shall:

40.4.2.1 commence on the issue date of that preference Share if there were no other preference Shares of the same class in issue on the day preceding that issue date; or

40.4.2.2 in all other cases (including in respect of an issue of a preference Share at a time when there were other preference Shares of the same class in issue on the day preceding its issue date), commence on the date following the previous preference dividend date (as defined in clause 39.9) for preference Shares of that class;

and end on (and include) the next succeeding preference dividend date for preference Shares of that class;

40.5 the preference dividends shall, if declared:-

40.5.1 accrue on the preference dividend date (being the last day of the relevant period contemplated in clause 40.4.2 in respect of which such dividend is calculated) in arrear;

40.5.2 be payable on such preference dividend date; and

40.5.3 failing payment by such relevant preference dividend date, be considered to be in arrear.

40.6 If a preference dividend is not declared by the Company in respect of the period to which such preference dividend relates, the preference dividend shall not accumulate and will accordingly never become payable by the Company whether in preference to payments to any other class of Shares in



the Company or otherwise. The Company will not declare an ordinary dividend for the period in question unless the preference dividend for such period has been declared in full.

40.7 If there is an amendment or amendments to the Income Tax Act that results in the preference dividends being taxable in the hands of the preference Shareholders and which results in payment of the preference dividends becoming a deductible expense for the Company, provided such amendment is uniformly applicable to all corporate taxpayers and not only because of the particular circumstances of the Company or any holder of the preference Shares, the percentage of the prime rate used to calculate the adjusted prime rate and accordingly the preference dividend rate will be increased by the Company. Such increase will be limited to the extent that the Company incurs less cost in paying preference dividends, which cost savings it would not have obtained but for such amendments to the Income Tax Act. If such amendments to the Income Tax Act do not result in the Company incurring lesser costs in paying preference dividends, then, notwithstanding that such amendment may result in a decrease in the after-tax returns of any preference Shareholder on its holding of preference Shares, no change shall be made to the percentage of the prime rate used to calculate the adjusted prime rate and accordingly the preference dividend rate. The Company shall be entitled to require its auditors to verify whether it is obliged to increase such percentage of the prime rate in accordance with this clause 40.7. The auditors, in deciding whether such increase is required in terms of this clause 40.7, shall act as experts and not as arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Company and all preference Shareholders. The costs of such auditors in making such determination shall be borne and paid by the Company.

40.7A Notwithstanding clause 40.7, the preference dividend per preference Share payable to preference Shareholders, after the dividend tax law change becomes effective, shall be increased (“grossed-up”), which gross-up will be equal to the taxation saving benefit, from time to time, that the Company will receive per such preference Share as a result of the dividend tax law change becoming effective (and taking into consideration any other taxes (including

income tax) and amendments to the tax legislation which diminishes any such benefit from time to time). Such adjustment shall:

- 1) only be made in respect of tranches of preference Shares issued before the dividend tax law change becomes effective or to tranches where it is agreed in respect of such issue that such adjustment shall be applicable;
- 2) only take into account such after-tax saving benefits which are attributable to dividends on the preference Share concerned and not to dividends on other Shares;
- 3) be applied uniformly in respect of each preference Share in such tranche and shall not be determined with reference to the particular circumstances of any particular holder of any of the preference Shares; and
- 4) be achieved by adjusting the preference dividend rate.

40.8 The preference Shares shall not confer on any holder thereof the right to any participation in the Profits or assets of the Company (including, but not limited to the right to participate in any of the surplus assets on the winding-up of the Company) except as set out in clauses 40.2, 40.3, 40.4, 40.5 and 40.7 (including clause 40.7A).

40.9 Notwithstanding any provisions to the contrary contained herein, at any time after the issue of any preference Shares and for so long as such preference Shares remain issued:-

40.9.1 the literal terms of the preference Shares may not be varied;

40.9.2 no Shares in the capital of the Company ranking, as regards rights to dividends or, on a winding-up as regards return of capital, in priority to the preference Shares, shall be created or issued,

without the prior sanction of a resolution passed at a separate class meeting of the holders of the preference Shares in the same manner *mutatis mutandis* as a special resolution. Nothing in clause 40.9 shall oblige the Company to obtain such sanction from the preference Shareholders should the Company wish to issue further preference Shares (whether of the same class as the preference Shares or not) ranking *pari passu* with the preference Shares. In this regard, a preference Share of a different class shall not be deemed to rank ahead of the preference Shares merely due to the rights attaching to those preference Shares differing from the rights attaching to the preference Shares (including without limiting the generality of the foregoing, rights differing as to the coupon rate applicable to the dividend, the date of payment of dividends, any adjustment in accordance with clause 40.7 (including clause 40.7A), the redemption of the preference Shares, the redemption amount payable on redemption, the conversion of the preference Shares and whether the preference Shares are cumulative or non-cumulative).

40.10 The Company shall not be entitled at any time after the date of issue of a class of preference Shares listed on the JSE to create any further Shares in its authorised Share capital (whether of the same class as such preference Shares or not) ranking *pari passu* or in priority to such preference Shares without the prior sanction of a resolution passed at a separate class meeting of the holders of the preference Shares in the same manner *mutatis mutandis* as a special resolution.

40.11 The Company shall be obliged to give the preference Shareholders notice, in terms of the Companies Act, of any meeting of preference Shareholders. At every meeting of preference Shareholders, the provisions of this Memorandum of Incorporation relating to general meetings of Shareholders shall apply, *mutatis mutandis*, except that a quorum at any such class meeting shall be three holders of preference Shares entitled to vote, personally present, or if any such preference Shareholder is a body corporate, represented at that meeting, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of this Memorandum of incorporation relating to adjourned general meetings shall apply *mutatis mutandis*.

- 40.12 The holders of the preference Shares shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the preference Shares, unless any one or more of the following circumstances prevail at the date of the meeting:-
- 40.12.1 the preference dividend, or any part thereof, remains in arrear and unpaid as determined in accordance with clause 40.5.3 after a period of seven days has elapsed from the relevant preference dividend date; and/or
- 40.12.2 a resolution of the Company is proposed which directly affects any of the rights attached to the preference Shares or the interests of the holders of the preference Shares, including, but not limited to, a resolution for the winding-up of the Company or for the reduction of its capital, in which event the preference Shareholders shall be entitled to vote only on such resolution; and/or
- 40.12.3 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole or the greater part of the assets of the Company.
- 40.13 At every general meeting of the Company at which holders of the preference shares as well as other classes of shares are present and entitled to vote, a preference shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the shares held by him bears to the aggregate amount of the nominal value of all shares issued by the Company, provided that, the restrictive voting provisions contained in clause 18.2 shall be of application.
- 40.14 Notwithstanding that the preference Shares are non-redeemable, should the Shareholders of the Company, by special resolution, resolve to vary the rights attaching to the preference Shares so as to make the preference Shares, or any of them, redeemable, the Company shall be entitled, but not obliged, to utilise all or part of the Share premium account (subject to the

Statutes) in providing for any premium payable on the redemption of such preference Shares.

#### 41. DEFINITIONS FOR CLAUSE 40

For purposes of clause 40:-

- 41.1 “average prime rate”, in respect of any period contemplated in clause 40.4.2 for which a preference dividend is to be calculated, means the daily average of the prime rate which prevailed from (and including) the first day of that period until (and including) the applicable preference dividend calculation date for that period;
- 41.2 “business day” means any other day other than a Saturday, Sunday or statutory public holiday in the Republic;
- 41.3 “deemed capital value” means the deemed value of each preference Share for the purposes of calculating the preference dividend, being an amount determined by the Directors on the first allotment date, notwithstanding the issue price of each preference Share which may vary because of a difference in the premium at which the preference Shares may be issued from time to time;
- 41.4 “the first allotment date” means the date when the first allotment and issue of the preference Share/s, which are subject to the provisions of clause 40, takes place;
- 41.5 “Income Tax Act” means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 41.6 “issue price” in respect of any of the preference Shares means the aggregate of the par value of a preference Share plus the premium at which such preference Share was allotted and issued;

41.7 “preference dividend” means a non-cumulative, non-participating, preference cash dividend, calculated in accordance with clause 40.4;

41.8 “preference dividend calculation date” means the date immediately preceding the date of the declaration of a preference dividend by the Company, if such preference dividend is declared, provided that if any such calculation date is not a business day then such calculation date shall be the immediately preceding day which is a business day;

41.9 “preference dividend date” means such dates in each year, being approximately six months apart, as may be determined by the Directors of the Company in their sole discretion, and which shall be set by the Directors irrespective of whether or not a preference dividend is or will be declared for the approximate six-month period in question;

41.10 “preference dividend rate” means, subject to clause 40.7 or 40.7A, as the case may be, a rate that will not exceed a percentage, determined by the Directors on the first allotment date, of the average prime rate;

41.11 “preference Shares” means and includes each tranche of non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each issued by the Company being:

41.11.1 the 20 000 000 non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each in the Share capital of the Company Issued by the Company on or about 23 March 2005; and

41.11.2 each other tranche of non-redeemable, non-cumulative, non-participating, variable rate, par value preference Shares of R0,01 each in the Share capital of the Company issued by the Company from time to time,

on the basis that the Company shall, when and where necessary and appropriate, classify such trenches into classes of preference Shares by appropriate references derived from the letters of the alphabet so as to

differentiate between classes of preference Share issued based on, for instance, such Shares bearing a different preference dividend rate (as defined in clause 41.10) or the dividends of such Shares being calculated with reference to a different deemed capital value per preference Share (as defined in clause 41.3) or for any other appropriate reason. The Company may classify any two or more such trenches of preference Shares by the same reference where appropriate, notwithstanding their different issue dates, and thereafter all such preference Shares bearing the same reference shall be treated as the same class of preference Shares.

41.12 “prime rate” means the publicly quoted basic rate of interest from time to time (expressed as a percentage per year) quoted by The Standard Bank of South Africa Limited (“SBSA”) as being its prime overdraft rate as certified by any manager of SBSA, whose appointment and/or designation need not be proved. A certificate from any manager of SBSA as to the prime rate at any time shall constitute prima facie proof thereof;

41.13 “dividend tax law change” means the amendment to the Income Tax Act contemplated in section 56 of the Revenue Laws Amendment Act 60 of 2008 in terms of which a new dividends tax had replaced the current secondary tax on companies and as a result of which the liability for tax on dividends has shifted from the Company (being the party liable for secondary tax on companies under the current tax regime) to the individual preference Shareholders.

## 42. **USE OF ELECTRONIC MEDIA AND ELECTRONIC COMMUNICATION**

42.1 Whenever the Memorandum of Incorporation of the Company or the applicable legislation requires:

42.1.1 information to be in writing, that requirement is met by a data message if the information contained therein is accessible in a manner usable for subsequent reference or, as otherwise stipulated by the applicable legislation (including, but not limited to, the Electronic Communications and Transactions Act);

42.1.2 information to be presented or retained in its original form, that requirement is met by a data message if it complies with the applicable provisions of the Electronic Communications and Transactions Act, from time to time;

42.1.3 a signature of a Shareholder or other person or a document to be signed by or on behalf of the Company, that requirement shall be met in relation to a data message if there is compliance with the applicable provisions of the Electronic Communications and Transactions Act, from time to time;

42.1.4 that certain documents, records or information be retained, that requirement is met by retaining data messages in compliance with the applicable provisions of the Electronic Communications and Transactions Act, from time to time.

42.2 The Shareholders, Directors and the Company agree that in any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

42.2.1 on the sole grounds that it is a data message; or

42.2.2 if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form,

42.3 Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

42.4 Nothing in this Memorandum of incorporation shall be interpreted as prohibiting the Company from establishing an electronic proxy system. Insofar as the Memorandum of Incorporation or the applicable legislation requires proxies to be submitted or otherwise filed with the Company, such



requirement shall be met if, in the sole opinion of the Board, the electronic proxy system established is capable of satisfying the requirements of this clause 42.

43. **WINDING UP**

If the Company shall be wound up, whether voluntarily or otherwise, the liquidator may with the sanction of a special resolution divide among the Shareholders *in specie* any part of the assets of the Company, and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the Shareholders as the liquidator with the like sanction shall think fit, and if thought expedient any such division so sanctioned may be otherwise than in accordance with the legal rights of the Shareholders of the Company, and in particular any class may be given preferential or special rights or may be excluded altogether or in part.

44. **FRACTIONS**

If, on any issue (including capitalisation issues as set out in clause 37), consolidation, sub-division, re-designation of securities, or for any other reason or transaction, any Shareholder would become entitled to fractions of securities, all such fractional entitlements shall be dealt with in accordance with the provisions of the JSE Listings Requirements.

## Schedule 1

### Preferences, rights, limitations and other terms attaching to the unlisted ordinary B Share

#### 1. Interpretation

In this Schedule 1, unless otherwise stated or the context indicates otherwise, the following words and expressions will bear the meanings assigned to them below (and cognate expressions shall bear corresponding meanings), and capitalised words and expressions not defined in this Schedule 1 shall have the same meanings as defined in the MOI of the Company (to which this Schedule 1 is attached) -

- 1.1 **"API Fund Investment"** means the investment by the Company in the Partnership as a limited partner;
- 1.2 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.3 **"Capital Raised"** means the net amount of equity capital raised (or notionally raised, as the case may be) by the Company pursuant to the issue of ordinary A Shares (for the avoidance of doubt, after the deduction of any equity capital raising fees and all expenses associated with such equity capital raise), whether (i) for cash pursuant to a general or specific approval given by the Shareholders at an annual general meeting (including for purposes of a Share placement); and/or (ii) in terms of a rights offer undertaken by the Company; and/or (iii) for the acquisition of assets, as a vendor consideration placing directly or indirectly related to an acquisition of assets, or for the purposes of an amalgamation or merger; and/or (iv) as consideration for any assets, corporeal or incorporeal, or for services rendered;
- 1.4 **"CAGR"** means compound annual growth rate;
- 1.5 **"Carry Vehicle"** has the meaning given thereto in paragraph 3.1 of this Schedule 1;
- 1.6 **"Cash Investments"** means investments (whether directly or indirectly) in (i) cash or cash equivalents; (ii) money market instruments, commercial paper or other short-term debt obligations; (iii) interest bearing accounts at a registered

broker-dealer; (iv) money market mutual funds, in each case in convertible currencies; and (v) instruments which bear a dividend yield or other investments of a similar nature;

- 1.7 **"Closing Invested NAV"** means the Invested NAV at close of business on the last Business Day of a Performance Period;
- 1.8 **"Closing Market Cap"** means the Market Cap at close of business on the last Business Day of a Performance Period;
- 1.9 **"Company distributions"** means all distributions paid by the Company, including distributions paid as (i) cash or *in specie* distribution in respect of the ordinary A Shares whether by way of an ordinary dividend or a return of capital or special dividend or otherwise; and/or (ii) issue or distribution of ordinary A Shares to ordinary A Shareholders by way of a bonus issue or capitalisation of any account in satisfaction of any dividend or by way of any other distribution *in specie* that ordinary A Shareholders are given in that capacity (other than ordinary course dividends from retained earnings); and/or (iii) reduction of the Company's issued share capital and/or repurchases of ordinary A Shares;
- 1.10 **"Company's Auditors"** means the Company's statutory auditors for the time being;
- 1.11 **"Conversion"** has the meaning given thereto in paragraph 9.1 of this Schedule 1, and **"Converted"** shall be construed accordingly;
- 1.12 **"Converted Number"** has the meaning given thereto in paragraph 9.1 of this Schedule 1;
- 1.13 **"Direct Investments"** means the investments held directly by the Company (or indirectly through an Investment Holding Vehicle) from time to time (excluding the API Fund Investment and underlying Portfolio Companies), including but not limited to the Company's investment in Stangen;
- 1.14 **"Dispose"** or **"Transfer"** means cede, donate, dispose of, distribute, exchange, give, make over, sell, transfer, unbundle or otherwise alienate, or any agreement, arrangement or obligation to do any of the foregoing, and **"Disposal"** and **"Transfer"** shall be construed accordingly;

1.15 **"Expert"** means the Company's Auditors; provided that if the Company's Auditors are unwilling or unable to act as the Expert in terms of any provision set out in this Schedule 1 or either the Company or the General Partner demands that the Company's Auditors do not act as Expert in terms of any provision set out in this Schedule 1, then the Expert for the purposes of that provision of this Schedule 1 shall be such independent and adequately experienced and qualified firm of chartered accountants as the Company and the General Partner may agree in writing to appoint or, if no such written agreement is concluded within seven days after either the Company or the General Partner requests it, such independent and adequately experienced and qualified firm of chartered accountants as may be appointed at the request of either the Company or the General Partner by the President for the time being of the South African Institute of Chartered Accountants (who may determine in his discretion whether such firm is independent and adequately experienced and qualified and may determine the terms of appointment of the Expert). The Expert shall be appointed on the basis that:

1.15.1 the Expert shall act as an expert and not as arbitrator, but shall call for and consider any written submissions which either the Company or the General Partner may wish to submit. Any written submissions by the Company or the General Partner shall be provided to the other of them at the same time as they are provided to the Expert. The Company or the General Partner, as the case may be, shall be entitled to reply to such submissions within three days after receiving them and the Expert shall consider any such reply;

1.15.2 the Expert shall be requested to give its decision as soon as possible and, in any event within 21 days after it is appointed, and the Expert shall give written reasons for his decision;

1.15.3 the determination of the Expert shall, save to the extent of any manifest error, be final and binding on the Company or the General Partner;

1.15.4 the Expert's costs and charges shall be borne by such party to any dispute as the Expert may, in its discretion, determine, provided such costs and charges are reasonable and duly evidenced. In the absence of any such determination, those costs and charges shall be borne by the Partnership;

1.16 **"Growth in Invested NAV"** for any Performance Period means the increase in Invested NAV determined in ZAR in accordance with the following formula:

$$\mathbf{GiIN = A + B - C - D}$$

where:

- GiIN : is the Growth in Invested NAV for that Performance Period;
- A : is the Closing Invested NAV for the Performance Period concerned /less the aggregate Operating Expenses paid during, or payable in respect of, such Performance Period;
- B : is the Receipts for that Performance Period;
- C : is the net cost of Investments (excluding any transaction fees, other transaction costs and applicable taxes on the making of those Investments) made by the Partnership during that Performance Period; and
- D : is the Opening Invested NAV for the Performance Period concerned /less the aggregate Operating Expenses paid during, or payable in respect of, the immediately preceding Performance Period;

1.17 **"Growth in Market Cap"** for any Performance Period means the increase in Market Cap determined in ZAR in accordance with the following formula:

$$\mathbf{GiMC = E + F - G - H}$$

where:

- GiMC : is the Growth in Market Cap for that Performance Period;
- E : is the Closing Market Cap for that Performance Period;
- F : is the aggregate amount of, or attributable to, any Company Distributions paid by the Company during that Performance Period;
- G : is the Capital Raised by the Company during that Performance Period; and

H : is the Opening Market Cap for that Performance Period;

1.18 **"Investment Date"** means the date on which the initial API Fund Investment is made;

1.19 **"Invested NAV"** means the value of the Portfolio Interests as at (i) the Investment Date; or (ii) the end of a Performance Period (as applicable), determined in ZAR in accordance with the valuation approach envisaged in the Partnership Agreement;

1.20 **"Invested NAV Hurdle Amount"** for any Performance Period means the amount by which the Invested NAV is required to grow in order to achieve growth at the Performance Hurdle Rate, which shall be determined in ZAR in accordance with the following formula:

$$\text{INHA} = \text{I} + \text{J} - \text{K}$$

where:

INHA : is the Invested NAV Hurdle Amount for that Performance Period;

I : is the amount by which the Opening Invested NAV for that Performance Period (*less* the aggregate Operating Expenses paid during, or payable in respect of, the immediately preceding Performance Period) would have to grow in order to grow at the Performance Hurdle Rate during that Performance Period;

J : is the amount by which the gross cost of Investments (including any transaction fees, other transaction costs and applicable taxes on the making of those Investments) made by the Partnership during that Performance Period would have to grow in order to grow at the Performance Hurdle Rate during the period from the date when those Investments were made to the end of that Performance Period, on the basis that such growth amount shall be calculated separately for each Investment and then aggregated; and

K : is the aggregate amount by which the Receipts for that Performance Period would have to grow in order to grow at the Performance Hurdle Rate during the period from the date when

those Receipts were received to the end of that Performance Period, on the basis that such growth amount shall be calculated separately for each Receipt and then aggregated;

- 1.21 **"Investment"** means an investment held, acquired or made by the Partnership, either directly or through an Investment Holding Vehicle, including but not limited to: (i) shares, debentures, warrants, options and other securities of, or relating to, any body corporate or other entity; (ii) loans (whether secured or unsecured and whether or not subordinated) made to any person or undertaking; and (iii) Cash Investments, in each case subject to the eligibility constraints contained in the investment guidelines of the Partnership set out in the Partnership Agreement;
- 1.22 **"Investment Holding Vehicle"** a body corporate, company, partnership, trust or other entity wholly or partly owned or acquired by the Partnership for the purpose of holding one or more Investments;
- 1.23 **"Market Cap"** means the aggregate market capitalisation of the Company as at any date (the **"Market Cap Reference Date"**) calculated as the number of ordinary A Shares then in issue multiplied by the VWAP, each as determined at the Market Cap Reference Date;
- 1.24 **"Market Cap Hurdle Amount"** for any Performance Period means the amount by which the Market Cap is required to grow in order to achieve growth at the Performance Hurdle Rate, which shall be determined in ZAR in accordance with the following formula:

$$\mathbf{MCHA = L + M - N}$$

where:

- MCHA : is the Market Cap Hurdle Amount for that Performance Period;
- L : is the amount by which the Opening Market Cap for that Performance Period would have to grow in order to grow at the Performance Hurdle Rate during that Performance Period;
- M : is the amount by which the sum of the Capital Raised by the Company during that Performance Period plus all equity capital raising fees and expenses associated with the raising of that Capital

Raised would have to grow in order to grow at the Performance Hurdle Rate during the period from the date when the Capital Raised was received to the end of that Performance Period, on the basis that such growth amount shall be calculated separately for each amount of Capital Raised and then aggregated; and

N : is the amount by which the Company Distributions paid by the Company during that Performance Period would have to grow in order to grow at the Performance Hurdle Rate during the period from the date when those Company Distributions were paid to the end of that Performance Period, on the basis that such growth amount shall be calculated separately for each such Company Distribution and then aggregated;

1.25 **"Opening Invested NAV"** means, in respect of the first Performance Period, the amount of ZAR0 and, in respect of the second (and any successive) Performance Period, the Invested NAV as at close of business on the last Business Day of the immediately preceding Performance Period;

1.26 **"Opening Market Cap"** means, in respect of the second (and any successive) Performance Period, the Market Cap calculated as at close of business on the last Business Day of the immediately preceding Performance Period, provided that in respect of the first Performance Period the VWAP used to calculate the Opening Market Cap will be equal to the VWAP on the Investment Date;

1.27 **"Operating Expenses"** means all ongoing expenses directly related to the Partnership's own operations or its Investments and reasonably incurred by the Partnership, including, without limitation:

1.27.1 the management fees payable by the Partnership to the General Partner in terms of the Partnership Agreement;

1.27.2 all routine administrative expenses of the Partnership incurred in the ordinary course, including the costs of preparing, printing and circulating reports and notices, legal fees, auditors' and valuers' fees, litigation costs (including the costs of any arbitration, investigation and other proceedings relating to the Partnership), company secretarial and compliance costs in



- respect of the administration of the Partnership, and the costs of preparing tax returns;
- 1.27.3 fees, costs and expenses incurred in relation to any custodian or nominee of the Investments, audit expenses, bank charges and borrowing costs;
- 1.27.4 fees, costs and expenses incurred in connection with the due diligence and negotiation of Investments (including, without limitation, the reasonable travel and accommodation costs of the General Partner and any out-of-pocket third-party fees, costs and expenses), out-of-pocket third-party fees, costs and expenses incurred in connection with the execution of Investments and holding, monitoring and disposing of Investments. These fees, costs and expenses shall include, without limitation, finder and brokerage fees and commissions, transfer taxes, costs and expenses relating to the registration or qualification for sale of any Investments, fees, costs and expenses incurred in connection with obtaining financing (including commitment or financing fees), fees and expenses of counsel and other professionals, advisors or agents, fees, costs and expenses of any due diligence investigation of any proposed Investment and fees, costs and expenses incurred in obtaining or maintaining credit support;
- 1.27.5 out-of-pocket third-party fees costs and expenses incurred in executing Investments and holding, monitoring and disposing of Investments whether or not such investments are completed or consummated. These fees, costs and expenses shall include, without limitation, finder and brokerage fees and commissions, transfer taxes, costs and expenses relating to the registration or qualification for sale of any Investments, fees, costs and expenses incurred in connection with obtaining financing (including commitment or financing fees), fees and expenses of counsel and other professionals, advisors or agents, fees, costs and expenses of any due diligence investigation of any proposed Investment and fees, costs and expenses incurred in obtaining or maintaining credit support;
- 1.27.6 interest on and fees, costs and expenses arising out of all financings entered into by the Partnership (including, but not limited to, those of lenders, investment banks and other financing sources);

- 1.27.7 costs of insurance, including (without limitation) directors' and officers' liability insurance to cover the Partnership and any indemnified person in terms of the Partnership Agreement;
- 1.27.8 fees, costs and expenses payable in connection with the dissolution and liquidation of the Partnership;
- 1.27.9 fees, costs and expenses incurred in connection with the preparation of any amendments actually made to the Partnership Agreement or the other agreements referred to herein after the Investment Date; and
- 1.27.10 any taxes, fees or other charges (including VAT) imposed on the Partnership by any governmental authority (whether within or outside South Africa) and taxes, fees or other charges (including VAT) on any of the items under sub-paragraphs 1.27.1 through 1.27.9 above;
- 1.28 **"Performance Hurdle Rate"** means 10% per cent per annum CAGR calculated over the Performance Period;
- 1.29 **"Performance Participation"** in respect of any Performance Period means the performance participation for that Performance Period, calculated in accordance with the provisions of paragraph 8 of this Schedule 1;
- 1.30 **"Performance Participation Conversion Date"** in respect of any Performance Period means the date on which the Expert determines and certifies the Converted Number for that Performance Period;
- 1.31 **"Performance Period"** means a recurring, discreet period of six financial years of the Company, provided that:
- 1.31.1 the first Performance Period shall start on the Investment Date and end on the earliest of (i) last day of the sixth complete financial year of the Company following the Investment Date; (ii) the date on which the Partnership is terminated or the General Partner is removed or replaced, or otherwise ceases to act, as the general partner of the Partnership; and (iii) the date on which Shareholders pass the requisite resolutions to wind-up or liquidate the Company or a court of competent jurisdiction orders that the Company be finally wound-up or liquidated; and

- 1.31.2 the second (and any consecutive) Performance Period shall commence on the date immediately following the preceding Performance Period and end on the earliest of (i) the last day of the sixth complete financial year of the Company following the commencement of that Performance Period; (ii) the date on which the Partnership is terminated or the General Partner is removed or replaced, or otherwise ceases to act, as the general partner of the Partnership; and (iii) the date on which Shareholders pass the requisite resolutions to wind-up or liquidate the Company or a court of competent jurisdiction orders that the Company be finally wound-up or liquidated;
- 1.31.3 where the General Partner is removed by Shareholders without cause, in terms of the Partnership Agreement, before the end of the sixth financial year period outlined above, the Performance Period shall be the period from the start of the relevant Performance Period to the last quarter immediately preceding the Without Cause Termination Date;
- 1.32 "**Portfolio Company**" means any individual, company, body corporate or other entity, partnership, trust or collective investment scheme in which the Partnership directly or indirectly owns an Investment;
- 1.33 "**Portfolio Interests**" means, the equity interests, shareholder loan claims and other instruments that the Partnership may hold from time to time, but excluding the Cash Investments;
- 1.34 "**Receipts**" for any Performance Period means the net realisable amount (after any transaction fees, other transaction costs and applicable taxes) received by the Partnership during that Performance Period pursuant to (i) any disposals by the Partnership; and (ii) any dividends or other distributions or income received by the Partnership from the Portfolio Companies or in relation to any other instruments held by the Partnership;
- 1.35 "**South Africa**" means the Republic of South Africa;
- 1.36 "**Stangen**" means The Standard General Insurance Company Limited (currently trading as Stangen) (registration number 1948/029011/06), a public company duly registered and incorporated in accordance with the laws of South Africa;
- 1.37 "**Trading Day**" means any day: (i) that is an ordinary trading day on the

Johannesburg Stock Exchange (and does not include a day on which trading on the Johannesburg Stock Exchange is scheduled to close prior to its regular weekday closing time); and (ii) on which trading in the Company's ordinary A Shares was not subject to any suspension or halt;

1.38 "VAT" means South African Value Added Tax, payable in terms of the Value Added Tax Act, 1991;

1.39 "VWAP" means at any date ("**Reference Date**") means the volume weighted average price of an ordinary A Share for 90 Trading Days immediately preceding and ending on the Reference Date ("**Reference Period**"), such volume weighted average price to be calculated and rounded to the fifth decimal place (and for this purpose the sixth decimal place will be rounded up if greater than or equal to five or rounded down if less than five); and

1.40 "**Without Cause Termination Date**" means a resolution proposed to remove the General Partner without cause in terms of the Partnership Agreement is adopted by Shareholders;

1.41 "ZAR" means Rand, the lawful currency of South Africa.

## 2. Calculation of VWAP

2.1 For purposes of this Schedule 1, the VWAP shall:

2.1.1 be calculated from, and with reference to, the relevant volume weighted daily data supplied by the JSE (or relevant third party VWAP data provider, as the case may be) to the Company from time to time;

2.1.2 if the ordinary A Shares trade 'cum dividend' for any Trading Day forming part of the Reference Period in respect of which the VWAP is determined but as at the Reference Date will exclude an entitlement to such distribution, then the VWAP will be adjusted to exclude from the VWAP calculation (by subtracting from all trading price/s for each such affected Trading Day) the face value of any cash distribution (and the fair value of any *in specie* distribution); and

2.1.3 if any share split or share consolidation occurs in respect of the ordinary A Shares during (but after the first day of) the Reference Period in respect of

which the VWAP is determined, then the VWAP will be adjusted by (i) dividing all trading price/s for each Trading Day in the Reference Period prior to the share split becoming effective by the number of ordinary A Shares which resulted from the split of a single ordinary A Share; or (ii) by multiplying all trading price/s for each Trading Day in the Reference Period prior to the share consolidation becoming effective by the number of ordinary A Shares which were consolidated into a single ordinary A Share.

2.2 If:

2.2.1 the calculation of the VWAP is not able to be performed as at the Reference Date for any reason, including (i) due to the Johannesburg Stock Exchange ceasing generally to operate or trade during the Reference Period; and/or (ii) at any time during the Reference Period, the ordinary A Shares cease to be listed on the Johannesburg Stock Exchange and/or such listing is suspended or halted; and/or

2.2.2 for any reason, the Reference Period would extend beyond a period in excess of 75 Business Days from the Reference Date; and/or

2.2.3 there is any dispute as to the calculation or adjustment of the VWAP in terms of paragraph 2.1 of this Schedule 1,

then the VWAP will be determined by the Expert, whose determination shall be final and binding on the Company and all Shareholders.

3. **Unlisted ordinary B Shares to be held by the General Partner and/or the Carry Vehicle**

3.1 It is recorded that the unlisted ordinary B Shares have been authorised and will be issued to the General Partner (and/or to a partnership, body corporate, company or trust operated for the benefit of the General Partner's shareholders, directors, officers, employees and/or their related entities ("**Carry Vehicle**") nominated by the General Partner) in order to incentivise the General Partner and/or its shareholders, directors, officers and employees to maintain and grow the value of the Investments.

3.2 The unlisted ordinary B Shares may only be held by, and registered in the name of, the General Partner and/or the Carry Vehicle, as the case may be. If the

General Partner ceases for any reason to act as the General Partner (other than pursuant to the termination and/or winding up of the Partnership), all and any unlisted ordinary B Shares then held by the General Partner and/or its nominated Carry Vehicle, as the case may be (the "**Outgoing Holder**"), shall be Transferred as soon as practicable (and for no consideration) to the replacement General Partner in accordance with the Partnership Agreement and/or to such other person as may be directed by the Company (the "**Incoming Holder**"), provided that:

- 3.2.1 such Transfer shall only be effected after Conversion has occurred in respect of the last Performance Period in which the General Partner acted as the General Partner; and
- 3.2.2 post Conversion and until such time as the unlisted ordinary B Shares have been Transferred, the Outgoing Holder unconditionally and irrevocably agrees and undertakes in favour of the Company and the Incoming Holder to (i) exercise all voting rights attaching to the unlisted ordinary B Shares then held by it strictly in accordance with the written directions of the Incoming Holder; and (ii) abstain from exercising the voting rights attaching to the unlisted ordinary B Shares then held by it in the absence of a written direction from the Incoming Holder, provided that this paragraph 3.2.2 shall not apply to any proposed resolution which will or is likely to result in a retrospective amendment of the preferences, rights, limitations and other terms of the unlisted ordinary B Shares, or otherwise prejudice any accrued rights of the Outgoing Holder.
- 3.3 Save:
  - 3.3.1 in the case of a Transfer or Disposal which is effected by operation of law and overrides the requirements of this MOI;
  - 3.3.2 Transfers between the General Partner, its shareholders, directors, officers and employees and/or the Carry Vehicle, as the case may be, of beneficial interests in the unlisted ordinary B Shares without affecting the registered holding of the unlisted ordinary B Shares by the General Partner and/or the Carry Vehicle, as applicable; or
  - 3.3.3 with the prior written consent of the Board (which consent may be withheld

in the absolute discretion of the Board),

any Disposal or Transfer, or purported Disposal or Transfer, of the registered or beneficial ownership of, or other rights in, any unlisted ordinary B Shares other than as contemplated in this paragraph 3.2, shall be null and void.

#### 4. **General**

The following preferences, rights, limitations and other terms attach to the unlisted ordinary B Shares:

- 4.1 the right to be entered in the securities register of the Company as the unlisted ordinary B Shareholder;
- 4.2 the right to receive notice of all meetings of the ordinary A Shareholders and to attend, participate in and speak (in person or by proxy) at such meetings of the ordinary A Shareholders;
- 4.3 the right to Performance Participation for each Performance Period in accordance with the provisions of paragraph 8 of this Schedule 1;
- 4.4 the right to vote in accordance with the provisions of paragraphs 6.1 and 6.3 of this Schedule 1; and
- 4.5 the right to compulsorily and automatically convert into ordinary A Shares in accordance with the provisions of paragraph 9.

#### 5. **No participation; winding-up and return of capital**

The unlisted ordinary B Shares:

- 5.1 do not confer on the unlisted ordinary B Shareholders any right to participate in the profits or in any distribution of the assets or capital of the Company; and
- 5.2 shall have no rights or priorities upon the winding-up of, or return of capital by, the Company.

#### 6. **No voting rights**

The unlisted ordinary B Shares:

- 6.1 shall have no voting rights except at a separate meeting of unlisted ordinary B Shareholders which is convened to consider a modification of the preferences, rights, limitations and other terms set out in this Schedule 1.
- 6.2 shall be entitled to receive notice of all meetings of the ordinary A Shareholders and to attend, participate in and speak (in person or by proxy) at such meetings of the ordinary A Shareholders, but shall not be entitled to vote, either in person or by proxy, at such general meetings of the Company, by virtue of or in respect of the unlisted ordinary B Shares.
- 6.3 shall carry one vote, at every separate meeting of unlisted ordinary B Shareholders and the provisions of this MOI relating to general meetings of the Company, shall otherwise apply *mutatis mutandis*, except that a quorum at any meeting of unlisted ordinary B Shareholders shall be unlisted ordinary B Shareholders holding at least 50% of the unlisted ordinary B Shares at such meeting; provided that if at any adjournment or postponement of such meeting a quorum is not present at such meeting, the provisions of this MOI relating to adjourned or postponed meetings shall, *mutatis mutandis*, apply.

**7. Modification of the preferences, rights, limitations and other terms of the unlisted ordinary B Shares**

- 7.1 Subject to the provisions of paragraphs 3.2 and 7.2, the preferences, rights, limitations and other terms of the unlisted ordinary B Shares which are set out in this Schedule 1 may only be modified by a special resolution as referred to in paragraph 15.2 of this MOI if the prior approval of the holders of at least 75% of the issued unlisted ordinary B Shares has been obtained, either by vote at a separate meeting of the unlisted ordinary B Shareholders or by their written consent.
- 7.2 Any increase in the number of authorised unlisted ordinary B Shares above the number recorded in this Schedule 1 must be approved by the holders of the unlisted ordinary B Shares (other than the unlisted ordinary B Shareholder and any related party (as such term is defined in the JSE Listings Requirements) of the unlisted ordinary B Shareholder) by means of a special resolution.



## 8. Performance Participation

8.1 A Performance Participation will be calculated in respect of each Performance Period, which Performance Participation will be used for the sole purpose of determining the number of unlisted ordinary B Shares to be Converted into ordinary A Shares in accordance with paragraph 9.

8.2 The Performance Participation in respect of each Performance Period will be calculated (as an amount in ZAR) as follows:

8.2.1 if, for the relevant Performance Period, the Growth in Invested NAV does not exceed the Invested NAV Hurdle Amount and the Growth in Market Cap does not exceed the Market Cap Hurdle Amount, then the Performance Participation will be zero;

8.2.2 if, for the relevant Performance Period, the Growth in Invested NAV exceeds the Invested NAV Hurdle Amount and/or the Growth in Market Cap exceeds the Market Cap Hurdle Amount, then the Performance Participation will be calculated in accordance with the following formula:

$$PP = ((Q \times 0.75) + (R \times 0.25)) \times S$$

where:

PP : is the Performance Participation in respect of the Performance Period concerned;

Q : is the amount by which that Growth in Invested NAV exceeds the Invested NAV Hurdle Amount;

R : is the amount by which that Growth in Market Cap exceeds the Market Cap Hurdle Amount; and

S : is 16%;

provided that in no event shall the Performance Participation be less than zero.

8.3 The Board shall procure that the Expert determines and certifies the Performance Participation in respect of each Performance Period (together with the Converted Number resulting from that Performance Participation in terms of

paragraph 9 of this Schedule 1, all calculations required for the purposes of those determinations and all other calculations required by this this Schedule 1 other than the VWAP which shall be determined in accordance with paragraph 2.2 of this Schedule 1) by no later than 40 Business Days after the end of that Performance Period. All determinations of the Expert shall, absent manifest error, be final and binding on the Company and all Shareholders.

- 8.4 The Company may not be wound-up or liquidated until and unless Conversion has occurred in respect of the last Performance Period in which either (i) the Partnership was terminated or the General Partner was removed or replaced, or otherwise ceased to act, as the general partner of the Partnership; or (ii) ordinary A Shareholders passed the requisite resolutions to wind-up or liquidate the Company or a court of competent jurisdiction ordered that the Company be finally wound-up or liquidated. It is recorded, for the avoidance of doubt that upon such Conversion the unlisted ordinary B Shareholder shall participate in all distributions or capital returns declared or payable in the winding-up or liquidation of the Company as an ordinary A Shareholder in respect of the ordinary A Shares then held.

## 9. Conversion

- 9.1 On each Performance Participation Conversion Date in respect of a Performance Period in respect of which there is a Performance Participation, a number of unlisted ordinary B Shares ("**Converted Number**") shall compulsorily and automatically convert into ordinary A Shares ("**Conversion**"), on a one-for-one basis, in accordance with the following formula:

$$\text{NoCS} = \text{PP} / (\text{T} \times 0.75) + (\text{U} \times 0.25)$$

where:

NoCS : is the number of unlisted ordinary B Shares that will convert into ordinary A Shares; provided that any fraction of a share shall be rounded down to the nearest whole number;

PP : is the Performance Participation for that Performance Period, calculated in terms of paragraph 8;

T : is the Invested NAV *plus* the aggregate face value of the Cash

Investments, the sum of which is then divided by the number of ordinary A Shares in issue, all as calculated at the end of that Performance Period; and

U : is the VWAP as at the last Business Day of the Performance Period concerned.

For the avoidance of doubt, it is recorded that if (i) there is no Performance Participation in respect of a Performance Period, then no unlisted ordinary B Shares will convert into ordinary A Shares in respect of that Performance Period and (ii) the above formula would result in the B Shares being converted into A Shares at a discount to the prevailing market price of the A Shares, calculated as the volume weighted average price of an ordinary A Share for 30 Trading Days immediately preceding and ending on the Performance Participation Conversion Date, such volume weighted average price to be calculated and rounded to the fifth decimal place (and for this purpose the sixth decimal place will be rounded up if greater than or equal to five or rounded down if less than five), the B Shares shall convert into A Shares at the volume weighted average price of an ordinary A Share for 30 Trading Days immediately preceding and ending on the Performance Participation Conversion Date, such volume weighted average price to be calculated and rounded to the fifth decimal place (and for this purpose the sixth decimal place will be rounded up if greater than or equal to five or rounded down if less than five).

9.2 In the event of a corporate restructuring or other corporate action in respect of the Company (other than a repurchase of any or all of the unlisted ordinary B Shares by the Company) which will alter the capital structure of the Company, the number of ordinary A Shares into which the unlisted ordinary B Shares shall compulsorily and automatically convert as contemplated in paragraph 9.1 above, shall be adjusted to place the unlisted ordinary B Shareholder in the same position that it would have been in had such event/s not occurred.

9.3 The Board shall not declare and/or pay any distribution or capital return in respect of the ordinary A Shares during the period between the end of a Performance Period and the Performance Participation Conversion Date in respect of that Performance Period.

9.4 If all of the unlisted ordinary B Shares which were issued or transferred (as the

case may be) to the General Partner and/or the Carry Vehicle have been Converted into ordinary A Shares (including if the number of unlisted ordinary B Shares held by the unlisted ordinary B Shareholder is or would reasonably be expected to be less than the Converted Number of unlisted ordinary B Shares to be Converted into an equivalent number of ordinary A Shares) in accordance with this paragraph 9, then the Company shall as soon as practicable (i) issue additional unlisted ordinary B Shares to the General Partner and/or the Carry Vehicle for an aggregate subscription price of R1, as the case may be (such number of unlisted ordinary B Shares to be no less than the Converted Number of unlisted ordinary B Shares to be Converted into an equivalent number of ordinary A Shares in accordance with this paragraph 9); and (ii) take all steps as may be necessary or desirable in connection with such issue, including making the necessary entries in the Company's securities register and delivering share certificates in respect of such additional unlisted ordinary B Shares to the General Partner and/or the Carry Vehicle, as the case may be.

- 9.5 The unlisted ordinary B Shareholder shall surrender the share certificate issued in respect of the Converted Number of unlisted ordinary B Shares against (i) the issue and delivery to the unlisted ordinary B Shareholder of a new share certificate in respect of the balance of the unlisted ordinary B Shares held by the unlisted ordinary B Shareholder after the Conversion; and (ii) appropriate entries being made in the Company's dematerialised securities register, reflecting that those unlisted ordinary B Shares have been Converted into ordinary A Shares which are beneficially held by the unlisted ordinary B Shareholder.

