

MEMORANDUM OF INCORPORATION

OF

MUSTEK LIMITED

(Registration number: 1987/070161/06)

("the Company")

- A. In this Memorandum of Incorporation –
- a) a reference to a section by number refers to the corresponding section of the Act;
 - b) words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in that Act;
 - c) the headings to the clauses of this Memorandum of Incorporation are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Memorandum of Incorporation nor any clause hereof.
- B. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- a) “**Act**” means the Companies Act, 2008, as amended, together with any regulations published in terms thereof;
 - b) “**director**” means a member of the board of the Company and the alternate directors thereof;
 - d) “**JSE**” means the JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2005/022939/06, licensed as an exchange under the SSA. “**Listings Requirements**” means the Listings Requirements of the JSE, as amended;
 - e) “**shareholder**” means the holder of a share issued by the Company and who is registered as such in the Company’s share register;
 - f) “**shares**” means one of the units into which the proprietary interests of the Company is divided as contemplated in clause 2.1;
- C. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.
- D. Unless inconsistent with the context, an expression which denotes:
- a) any gender includes the other genders;
 - b) a natural person includes an artificial person (including a trust) and *vice versa*;
 - c) the singular includes the plural and *vice versa*.
- E. The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.

- F. When, in this Memorandum of Incorporation, a particular number of business days are provided for between the happening of one event and another, the number of days must be calculated by:
- a) excluding the day on which the first such event occurs;
 - b) including the day on or by which the second event is to occur; and
 - c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.
- G. Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

1. **Clause 1 – Incorporation and Nature of the Company**

1.1 **Incorporation**

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

1.1.1.1 the unalterable provisions of the Act;

1.1.1.2 any provisions imposing on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Act;

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

1.1.1.4 the provisions of this Memorandum of Incorporation.

1.2 **Powers of the Company**

1.2.1 This Memorandum of Incorporation does not:

1.2.1.1 contain any restrictive conditions applicable to the Company as to contemplated by sections 15(2)(b) or (c) of the Act and any requirement, in addition to the requirements set out in clause 1.3, for the amendment of any such conditions; and

1.2.1.2 prohibit the amendment of any particular provision hereof.

1.2.2 The Company has all of the legal powers and capacity of an individual, which are not subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

1.3 **Memorandum of Incorporation and Company rules**

1.3.1 This Memorandum of Incorporation of the Company may be altered or amended only:

1.3.1.1 in compliance with a court order to be effected by a resolution of the Company's board; or

1.3.1.2 by a special resolution of the shareholders subject to:

1.3.1.2.1 that special resolution having been proposed by i) the board, or ii) shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution. **[LR 10.5 (d) and LR 10.5 (e)]**; and

1.3.1.2.2 a Notice of Amendment being filed with the Commission.

1.3.2 An amendment contemplated in clause 1.3.1 may take the form of:

- 1.3.2.1 a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
- 1.3.2.2 one or more alterations to the existing Memorandum of Incorporation by:
 - 1.3.2.2.1 changing the name of the Company;
 - 1.3.2.2.2 deleting, altering or replacing any of its provisions;
 - 1.3.2.2.3 inserting any new provisions;
 - 1.3.2.2.4 the creation of any class of shares; **[LR 10.5(d)(i)]**
 - 1.3.2.2.5 the variation of any preferences, rights, limitation and other share terms attaching to any other class of shares; **[LR 10.5.(d)(ii)]**
 - 1.3.2.2.6 the conversion of one class of shares into one or more other classes; **[LR 10.5(d)(iii)]**
 - 1.3.2.2.7 the increase of number of securities; **[LR 10.5(d)(iv)]**
 - 1.3.2.2.8 consolidation of securities; **[LR 10.5(d)(v)]**
 - 1.3.2.2.9 sub-division of securities; **[LR 10.5(d)(vi)]**
 - 1.3.2.2.10 conversion of shares from par value to no par value; or **[LR 10.5(d)(vii)]**
 - 1.3.2.2.11 making any combination of such alterations.
- 1.3.2.3 If any amendment relates to the variation of any preferences, rights, limitations and other terms attaching to any other class of shares already in issue, that amendment must not be implemented without a special resolution, taken by the holders of shares in that class at a separate meeting. In such instances, the holders of such shares may be allowed to vote at the meeting of ordinary shareholders subject to paragraph 2.1.12 below. No

resolution of shareholders of the Company shall be proposed or passed unless a special resolution, of the holders of the shares in that class, have approved the amendment. **[LR 10.5(e)]**

1.3.2.4 Preferences, rights, limitations or other terms of any class of shares of a listed company must not be varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in Sections 36(6) and 36(7) of the Act. **[LR 10.5(g)]**

1.3.3 After amending its Memorandum of Incorporation, the Company shall file a Notice of Amendment with the Commission in accordance with the requirements contemplated in section 16(7) and (8).

1.3.4 An amendment to this Memorandum of Incorporation shall take effect:

1.3.4.1 in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or

1.3.4.2 in any other case, on the later of:

1.3.4.2.1 the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or

1.3.4.2.2 the date, if any, set out in the Notice of Amendment.

1.3.5 The board are prohibited to make, amend or appeal any rules relating to the governance of the Company in terms of section 15(3) of the Act. **[LR 10.4]**

1.4 **Alterations of Memorandum of Incorporation, translations and consolidations of Memorandum of Incorporation**

1.4.1 The Company's board, or an individual authorised by the board, may alter the Company's Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference,

grammar or similar defect on the face of the document, by filing a notice of the alteration with the Commission.

1.4.2 At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations thereof, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation, as so translated.

1.4.3 At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of 1.4.3 must be accompanied by:

1.4.3.1 a sworn statement by a director; or

1.4.3.2 a statement by an attorney or notary public,

1.4.3.3 stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as so altered or amended.

1.4.4 To the extent necessary to implement an adopted business rescue plan and provided that the business rescue plan was approved by the shareholders, as contemplated in section 152(3)(c), the Practitioner may amend this Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of this Memorandum of Incorporation or of sections 16, 36 or 37, to the contrary, in accordance with section 152(6)(b).

1.5 **Public company provisions**

- 1.5.1 The Company is a public company and accordingly:
 - 1.5.1.1 there is no restriction on the transferability of any securities of the Company; and
 - 1.5.1.2 it is not prohibited from offering any securities of the Company to the public. **[LR 10.2(a)]**

2. **Clause 2 – Securities of the Company**

2.1 **Shares**

- 2.1.1 The Company's authorised share capital is set out in **Schedule 1** attached to and forming part of this Memorandum of Incorporation.
- 2.1.2 Shares for which listing on the JSE is sought must be fully paid up and freely transferable. **[LR 10.2 (a)]**
- 2.1.3 Each share entitles the holder to the rights attaching to the particular class of share set out in this clause 2.
 - 2.1.3.1 Each ordinary share shall rank *pari passu* and *entitles* the holder to:
 - 2.1.3.1.1 vote on any matter to be decided by a vote of the ordinary shareholders on the basis contemplated in clause 3.3.1;
 - 2.1.3.1.2 participate in any distribution to the ordinary shareholders; and
 - 2.1.3.1.3 participate in the distribution of the residual value of the Company upon its dissolution. **[LR 10.5 (a)]**
- 2.1.4 Subject always to the prior approval of the shareholders by ordinary resolution at a shareholders meeting and the JSE, the Company's board is authorised to issue shares or grant options in accordance with the Listings Requirements at any time, but only within the classes, and only to the extent that the shares have been authorised by or in terms of this Memorandum of Incorporation. Any such approval may be in the

form of a general authority to the directors, whether conditional or unconditional, to allot or issue any shares or grant options in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of shares or grant of options. If any such approval is given in the form of a general authority to the directors, it shall be valid only until the next annual general meeting but it may be varied or revoked by shareholders at any shareholders meeting of the Company prior to the holding of the next annual general meeting. **[LR 10.1 and LR 10.9 (a)]**

- 2.1.5 Notwithstanding clause 2.1.4 any issue of shares or securities convertible into shares, or grant of options contemplated in terms of section 42, or a grant of any other rights exercisable for securities, must be approved by a special resolution of the shareholders, if the shares, securities, options or rights are issued to a:
 - 2.1.5.1.1 director, future director, prescribed officer, or future prescribed officer of the Company;
 - 2.1.5.1.2 person related or inter-related to the Company, or to a director or prescribed officer of the Company; or
 - 2.1.5.1.3 nominee of a person contemplated in clauses 2.1.5.1.1 and 2.1.5.1.2.
- 2.1.6 Subject to clause 1.3.1.2 the Company's board is authorised to, in accordance with the Listings Requirements, increase or decrease the number of authorised shares of any class, to reclassify any classified shares that have been authorised but not issued, to classify any unclassified shares that have been authorised but not issued, or to determine the preferences, rights, limitations or other terms of any class of shares. **[LR 10.9 (c)]**
- 2.1.7 Subject always to the prior approval of the shareholders by ordinary resolution at a shareholders meeting and the JSE, the Company's board is authorised to offer shares to existing shareholders at any time, but such offer shall be pro rata to their existing shareholding, and on

the same terms and conditions as have been offered to all shareholders of the Company or to all shareholders of the class or classes of shares being issued, unless issued for the acquisition of assets. **[LR 10.1]**

2.1.8 The authority of the board to authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise to any person in relation to the purchase of any securities or the subscription of any option or security of the Company or a related or inter-related company, subject to the provisions of section 44 (3), is not restricted or varied by this Memorandum of Incorporation.

2.1.9 Subject to clause 2.1.4 and the provisions of section 47, the board may approve the issuing of any authorised shares of the Company as capitalisation shares or the issuing of shares of one class as capitalisation shares in respect of shares of another class and may permit shareholders to elect to receive a cash payment in lieu of a capitalisation share. **[LR 10.6]**

2.1.10 Subject to the provisions of sections 46 and 48 of the Act and the Listings Requirements, the board may determine that the Company will acquire a number of its own shares provided that such resolution by the board:

2.1.10.1.1 is approved by a special resolution of the shareholders, if any shares are to be acquired by the Company from a director or prescribed officer of the Company, or a person related to a director or prescribed officer of the Company; and

2.1.10.1.2 is subject to the requirements of sections 114 and 115 if, considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued shares of any particular class of the Company's shares. **[LR 10.9 (b)]**

- 2.1.11 Subject to the provisions of sections 46 and 48 the Company may determine that it will acquire shares in its holding company provided that:
- 2.1.11.1.1.1 not more than 10%, in aggregate, of the number of issued shares of any class of shares of the holding company may be held by, or for the benefit of, all of the subsidiaries of the holding company, taken together; and
- 2.1.11.1.1.2 no voting rights attached to those shares may be exercised while the shares are held by the Company, and it remains a subsidiary of the holding company whose shares it holds. **[LR 10.9(b)]**
- 2.1.12 The holders of Securities, other than ordinary shares and any special shares created for the purposes of black economic empowerment in terms of the BEE Act and BEE Codes, shall not be entitled to vote on any resolution taken by the Company, save for as permitted by the Listings Requirements. In instances that such Shareholders are permitted to vote at General Meeting, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each Share that they hold, provided that their total voting right at such a General Meeting may not exceed 24,99% of the total voting rights of all Shareholders at such General Meeting. **[LR 10.5(c)]**
- 2.1.13 Securities of the Company are to be issued in either certificated or uncertificated form.
- 2.1.14 The Company may not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing, whether absolutely or conditionally, for any shares of the Company. **[LR 10.14]**
- 2.1.15 A certificate evidencing any certificated securities of the Company:
- 2.1.15.1 must state on its face:

- 2.1.15.1.1 the name of the Company;
- 2.1.15.1.2 the name of the person to whom the securities were issued;
- 2.1.15.1.3 the number and class of shares and the designation of the series, if any, evidenced by that certificate;
- 2.1.15.1.4 a number distinctive for each certificate; and
- 2.1.15.1.5 any restriction on the transfer of the securities evidenced by that certificate,

provided that any share certificate issued by a pre-existing company shall not be invalidated solely by reason of it failing to comply with the aforesaid specifications;
- 2.1.15.2 must be signed by two persons authorised by the board; and
- 2.1.15.3 is proof that the named security holder owns the securities, in the absence of evidence to the contrary.
- 2.1.16 A signature contemplated in clause 2.1.15.2 may be affixed to or placed on the certificate by autographic, mechanical or electronic means.
- 2.1.17 If a securities certificate is defaced, lost or destroyed, it may be replaced on payment of any duty payable on the new certificate and on such terms (if any) as to evidence, indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same, as the board may think fit and, in the case of defacement, on delivery of the old certificate to the Company.
- 2.1.18 A securities certificate in the names of two or more persons shall be delivered to the person first named in the register in respect thereof, or to his authorised agent, and in case of the legal incapacity of any one or more of the joint registered holders of any security, the survivor then first named in the register shall be the only person recognised by the Company as being entitled to such certificate, or any new certificate

which may be issued in its place. The Company shall not be bound to register more than two persons as the holders of any security.

- 2.1.19 Subject to clause 2.1.20, the Company must enter in its securities register every transfer of certificated securities, including in the entry:
 - 2.1.19.1 the name and address of the transferee;
 - 2.1.19.2 the description of the securities or interest transferred;
 - 2.1.19.3 the date of the transfer; and
 - 2.1.19.4 the value of any consideration still to be received by the Company on each security or interest, in the case of a transfer of securities contemplated in section 40(5) and (6).
- 2.1.20 The Company may make an entry contemplated in clause 2.1.19 only if the transfer:
 - 2.1.20.1 is evidenced by an instrument of transfer in a form and substance satisfactory to the board that has been delivered to the Company; or
 - 2.1.20.2 was effected by operation of law.
- 2.1.21 The provisions of the Act shall apply in respect of the issuance or transfer of uncertificated securities.
- 2.1.22 All authorities to sign transfer deeds granted by shareholders for the purpose of transferring securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any

officer of the Company, as being in order before the giving and lodging of such notice. **[LR 10.2(b)]**

2.1.23 Securities registered in the name of a deceased or insolvent holder shall not be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the Directors to do so. **[LR 10.13]**

2.1.24 Under no circumstances shall the Company be entitled to claim a lien on any securities issued by the Company. **[LR 10.12]**

2.2 **Debt Instruments**

2.2.1 The authority of the Company's board to authorise the Company to issue secured or unsecured debt instruments at any time, is not restricted or varied by this Memorandum of Incorporation.

2.2.2 The board may not grant special privileges associated with any debt instruments to be issued by the Company. **[LR 10.10]**

2.3 **Registration of Beneficial Interests**

The authority of the Company's board to allow the Company's issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person, is not restricted or varied by this Memorandum of Incorporation. **[LR 10.18]**

3. **Clause 3 – Shareholders**

3.1 **Shareholders' right to information**

Other than the rights to access information set out in section 26, a shareholder has no further rights to information pertaining to the Company.

3.2 **Shareholders' authority to act**

All shareholder meetings convened in terms of the Listings Requirements must be held "in person" and shareholders' resolutions may not be voted on

in writing by shareholders entitled to exercise voting rights as contemplated in section 60 of the Act. **[LR 10.11(c)]**

3.3 **Votes of shareholders**

3.3.1 Subject to the Act and subject to any special terms as to voting upon which any share may be issued or may for the time being be held, if voting on a particular matter is:

3.3.1.1 by a show of hands, any person present and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and

3.3.1.2 by polling, any person who is present at the meeting, whether in person or by proxy and is entitled to exercise voting rights, has one vote per ordinary share. **[LR 10.5(b)]**

3.3.2 A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:

3.3.2.1 at least five persons having the right to vote on that matter, either as a shareholder or a proxy; or

3.3.2.2 a person who is, or persons who together are, entitled, as a shareholder or proxy, to exercise at least 10% of the voting rights entitled to be voted on that matter; or

3.3.2.3 the chairman of the meeting.

3.3.3 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 3.3.2, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the

votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

3.3.4 In the case of joint holders of a share, only the vote of the senior holder shall be accepted, whether in person or by proxy. For the purpose of this clause, seniority shall be determined by the order in which the names appear in the register or, in the case of persons entitled to a share by transmission, the order in which their names were given in the notice to the Company of that transmission.

3.3.5 Any entity holding shares conferring the right to vote may, by resolution of the directors or other governing body of that entity, authorise one person to act as its representative at any shareholders meeting. The representative shall be entitled to exercise the same powers as that entity could exercise if it were an individual shareholder. The board may, but shall not be obliged to, require proof to their satisfaction of the appointment or authority of a representative to act.

3.4 **Proxies and voting under power of attorney**

3.4.1 A shareholder may, at any time, appoint any individual, including an individual who is not a shareholder, as a proxy to participate in, and speak and vote at, a shareholders meeting on behalf of the shareholder.

3.4.2 The instrument that appoints a proxy shall:

3.4.2.1 be in writing, dated and signed by the shareholder;

3.4.2.2 be given by the person appointing such proxy or his attorney duly authorised in writing or, if the appointer be a corporation, given by an officer or attorney so authorised.

3.4.3 The holder of a power of attorney from a shareholder may, if so authorised by the power of attorney, vote for and represent such shareholder at any meeting of the Company.

3.4.4

Every instrument of proxy, whether for a specified meeting or otherwise, shall comply with section 58 of the Act and subject thereto be in following format, or in such other form as the Company's board may approve, and the board may, if they think fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting:

"I/We

.....
...

of

.....
...

being a shareholder/shareholders of the abovenamed Company do hereby appoint

.....of or
failing himof
..... or failing him the chairman of the
Company or failing him the chairman of the meeting as my / our
proxy to:

[participate in, and speak and vote for me / us at a shareholders
meeting of the Company to be held at
..... on 20..... at
(time appointed) and at any adjournment thereof.] /

[give or withhold written consent on my / our behalf to the written
resolutions to which this form of proxy is attached, as
contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any
shareholders meeting held by the Company, or give or withhold
written consent on my / our behalf in respect of any decision

contemplated in section 60 of the Act, between the date of this proxy instrument and 20.....]*

Dated this day of 20.....

Name (in full)

Address

.....

signature

** Delete as applicable*

I / We desire to vote as follows:

	For	Against	Abstain
Resolution No. 1			
Resolution No. 2			

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block.”

3.4.5 Unless otherwise directed, the proxy will vote or abstain as he thinks fit in respect of the shareholder’s total holding.

3.5 **Representation by concurrent proxies**

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

3.6 **Authority of proxy to delegate**

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

3.7 **Requirement to deliver proxy instrument to the Company**

The instrument of proxy or power of attorney appointing a proxy for any particular meeting shall be delivered to the Company at its registered address or to the Company's transfer secretary not less than twenty four hours (or such lesser period as the directors may determine in relation to any particular meeting) before such meeting is due to take place, failing which the instrument of proxy or power of attorney shall not be treated as valid.

3.8 **Deliberative authority of proxy**

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

3.9 **Validity of appointment**

3.9.1 The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company or to the Company's transfer secretary.

3.9.2 The appointment of a proxy is suspended at any time and to the extent that the shareholder chooses to act directly and in person in the exercise of any rights as a shareholder.

3.9.3 A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the

previous legal incapacity of the shareholder or revocation of the instrument or power of attorney or of the transfer of the securities in respect of which the vote is given, unless notice in writing of such legal incapacity, revocation or transfer shall have been received by or on behalf of the Company not less than forty-eight hours (or such lesser period as the board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

3.10 **Record date for exercise of shareholder rights**

Subject to the Listings Requirements, if, at any time, the Company's board fails to determine a record date for any action or event, the record date for the relevant matter is:

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

3.10.2 in any other case, the date of the action or event. **[LR 10.15]**

4. **Clause 4 – Shareholders Meetings**

4.1 **Requirement to hold meetings**

The Company is not required to hold any shareholders meetings other than those specifically required by section 61 and this clause 4, but may do so.

4.2 **Boards right to call a meeting**

The board of the Company may call a shareholders meeting at any time.

4.3 **Shareholders' right to requisition a meeting**

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

4.3.2 In addition, any general meeting may be called by two or more shareholders holding not less than 10% of the Company's issued shares.

4.3.3 There is no restriction on the Company to call a general meeting for the purposes of adhering to the JSE Listing Requirements. **[LR 10.11(d)]**

4.4 **Location of shareholders meetings**

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

4.5 **Calling a shareholders meeting**

If the Company is unable to convene a shareholders meeting because it has no directors or because all of its directors are incapacitated, any shareholder may convene a meeting.

4.6 **Notice of shareholders meetings**

4.6.1 The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders who are entitled to vote is: **[LR 10.11(e)]**

4.6.1.1 15 business days before the meeting is to begin if it is proposed that a special or ordinary resolution be passed at such meeting; and **[LR 10.11(a)]**

4.6.1.2 15 business days before the meeting is to begin if it is proposed that an ordinary resolution be passed at such meeting. **[LR 10.11(b) and LR 10.16 (h)]**

4.6.2 A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3).

4.6.3 A notice of meeting must be sent to the JSE at the same time that it is sent to the shareholders and must also be announced through the Securities Exchange News Service of the JSE. **[LR 10.11(f)]**

4.7 **Electronic participation in shareholders meeting**

The authority of the Company to conduct a shareholders meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.

4.8 **Quorum for shareholders meetings**

4.8.1 Subject to the provisions of clause 4.8.2 to clause 4.8.6 (both inclusive), the quorum requirement for:

4.8.1.1 a shareholders meeting to begin is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights, in person and by proxy, that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda. **[LR 10.11(h)]**

4.8.2 Notwithstanding clause 4.8.1, a meeting may not begin, or a matter begin to be considered, unless at least three shareholders are present at the meeting and the requirements of clause 4.8.1 are satisfied. **[LR 10.11(h)]**

4.8.3 If, within thirty minutes after the appointed time for a meeting to begin, the requirements of clause 4.8.1, or 4.8.2 if applicable:

- 4.8.3.1 for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
- 4.8.3.2 for consideration of a particular matter to begin have not been satisfied:
 - 4.8.3.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - 4.8.3.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- 4.8.4 The person intended to preside at a meeting, where the quorum requirements in clause 4.8.1, or clause 4.8.2 if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:
 - 4.8.4.1 exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of shareholders to be present at the meeting; or
 - 4.8.4.2 one or more delayed shareholders have communicated an intention to attend the meeting, and those shareholders, together with others in attendance, would satisfy the quorum requirements; or
 - 4.8.4.3 any other reason such person considers appropriate.
- 4.8.5 After a quorum has been established for a meeting, the shareholders constituting the quorum must remain present at the meeting for all matters that must be considered at the meeting. **[LR 10.11(h)]**
- 4.8.6 If the quorum requirements in clause 4.8.1, or clause 4.8.2 if applicable, have not been satisfied at the time appointed for a postponed meeting

to begin, or for an adjourned meeting to resume, the shareholders present in person or by proxy shall be deemed to constitute a quorum.

4.9 **Adjournment of shareholders meetings**

4.9.1 Subject to clauses 4.8 and 4.9.2, a shareholders meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.

4.9.2 An adjournment of a meeting, or the consideration of a matter at the meeting, in terms clause 4.9.1, may be either to a fixed time and place or until further notice, as agreed at the meeting.

4.10 **Shareholders resolutions**

4.10.1 For an ordinary resolution to be approved by shareholders, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.

4.10.2 For a special resolution to be approved by shareholders, it must be supported by the holders of at least 75% of the voting rights exercised on that resolution. **[LR 10.11(a)]**

4.10.3 The proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) of the Act must be prohibited in the event that such a resolution would lead to the ratification of an Act that is contrary to the Listings Requirements, unless otherwise agreed with the JSE. **[LR 10.3]**

4.11 **Annual General Meeting**

4.11.1 The Company shall be required to hold an annual general meeting:

- 4.11.1.1 initially, no more than 18 months after its date of incorporation;
and
- 4.11.1.2 thereafter, once in every calendar year, but no more than 15
months after the date of the previous annual general meeting.
- 4.11.2 In addition to the requirements of clause 4.6, the notice calling an
annual general meeting shall include:
 - 4.11.2.1 the financial statements to be presented, or a summarised form
thereof; and
 - 4.11.2.2 directions for obtaining a copy of the complete annual financial
statements for the preceding financial year.
- 4.11.3 The agenda at an annual general meeting shall include but shall not be
limited to:
 - 4.11.3.1 presentation of the directors' report audited financial statements
for the immediately preceding financial year, and, if required, an
audit committee report;
 - 4.11.3.2 election of directors, to the extent required by the Act or this
Memorandum of Incorporation;
 - 4.11.3.3 appointment of an auditor for the ensuing financial year;
 - 4.11.3.4 if required, fill vacancies on the audit committee; and
 - 4.11.3.5 any matters raised by shareholders, with or without advance
notice to the Company.

5. Clause 5 – Directors and Officers

5.1 Composition of the board

- 5.1.1 The Company's board shall comprise not less than four directors, to be
elected by the shareholders, in addition to the minimum number of
directors that the Company must have to satisfy any requirement,
whether in terms of the Act or this Memorandum of Incorporation, to

appoint an audit committee and a social and ethics committee as contemplated in section 72 (4). **[LR 10.16(a)]** Subject to clause 5.1.4, each director, other than the first directors and any directors appointed in this Memorandum of Incorporation, must be elected by the persons entitled to exercise voting rights in such an election to serve for 3 years, but will remain eligible for re-appointment, provided that no director may be appointed for life or for an indefinite period. **[LR 10.16(k)]**

- 5.1.2 In any election of directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.
- 5.1.3 In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised are in support of the candidate. There are no *ex officio* directors in addition to any directors appointed in terms of this Memorandum of Incorporation and the elected directors.
- 5.1.4 The appointment of a director, whether to fill a casual vacancy or as an addition to the board (or otherwise) or a nomination by a shareholder, must be confirmed by shareholders at the annual general meeting following such appointment. **[LR 10.16 (b) and LR 10.16 (c)]**
- 5.1.5 Should the number of directors fall below the minimum number prescribed in clause 5.1.1 the remaining directors must as soon as possible and in any event not more than 3 months from the date that the number falls below the minimum number prescribed in clause 5.1.1:
 - 5.1.5.1 convene a general meeting for purposes of appointing a director in terms of clauses 5.1.1, 5.1.2 and 5.1.3; or
 - 5.1.5.2 appoint a director in terms of clause 5.1.6. **[LR 10.16 (d)]**
- 5.1.6 The authority of the board to fill any vacancy on the board on a temporary basis, is not restricted or varied by this Memorandum of Incorporation. A director appointed on a temporary basis has all the powers, functions and duties, and is subject to all the liabilities, of any other director.

- 5.1.7 Any failure by the Company to fill a vacancy on the board in terms of clause 5.1.5 shall not limit the authority of the board nor shall it invalidate any acts of the board or the Company prior to the expiry of the 3 month period referred to in clause 5.1.5. Notwithstanding the afore going, upon the expiry of the 3 month period the remaining directors shall only be entitled to act for purposes of filling vacancies or calling general meetings of shareholders. **[LR 10.16 (d)]**
- 5.1.8 At least one third of the non-executive directors of the Company must retire at the Company's annual general meetings or other general meetings on an annual basis. The retiring members of the board may be re-elected provided that they are eligible. The board of directors, assisted where appropriate by a nomination committee, should recommend eligibility, taking into account past performance and contribution. Shareholders shall be entitled to propose nominations for to the Company for the appointment of any such director at a general meeting or annual general meeting. **[LR10.16(g) & (h)]**
- 5.1.9 The directors so to retire shall be those who have been longest in office since their last election, but in the case of persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 5.1.10 To become or to continue to act as a director or a prescribed officer of the Company, a person must not be:
- 5.1.10.1 a juristic person;
- 5.1.10.2 an unemancipated minor, or a person under a similar legal disability;
- 5.1.10.3 a person who has been declared a delinquent or placed under probation by a court in terms of section 47 of the Close Corporations Act, 1984 or section 162, except to the extent permitted by the order of probation;

- 5.1.10.4 an rehabilitated insolvent;
- 5.1.10.5 prohibited in terms of any public regulation to be a director;
- 5.1.10.6 removed from an office of trust, on the grounds of misconduct involving dishonesty;
- 5.1.10.7 a person who has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or any offence:
 - 5.1.10.7.1 involving fraud, misrepresentation or dishonesty;
 - 5.1.10.7.2 in connection with the promotion, formation or management of a company, or having been appointed or elected as a director or acting as a director, or having been placed under probation by a court; or
 - 5.1.10.7.3 under the Act, the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, 1998, the Financial Intelligence Centre Act, 2001, the Securities Services Act, 2004, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.
- 5.1.11 A person need not satisfy any further eligibility requirements or qualifications.

5.2 **Alternate directors**

- 5.2.1 Each director may, subject to shareholder approval in accordance with the Act, appoint and remove any person, including another director, to act as an alternate director in such director's place and during their absence, provided that such person has been approved for that purpose by a resolution of the Company's board. Any appointment or removal of an alternate director shall be effected by a written notice to the Company signed by the person appointing or removing that alternate. **[LR 10.16(b)]**

5.2.2 An alternate director shall, except as regards the power to appoint an alternate and to receive remuneration, be subject in all respects to the terms and conditions applicable to the other directors, and each alternate director shall be entitled:

5.2.2.1 to receive notice of all meetings of the directors or of any committee of the directors of which the alternate's appointor is a member;

5.2.2.2 to attend and vote at any such meetings at which the alternate's appointor is not personally present;

5.2.2.3 to furnish written consent to adopt a decision which could be voted on at a board meeting;

5.2.2.4 to be appointed as an alternate to more than one director and shall have a vote for each director for whom such alternate acts, if any; and

5.2.2.5 generally, to exercise and discharge all the functions, powers and duties of the alternate's appointor in such appointor's absence as if such alternate were a director.

5.2.3 An alternate director shall cease to be an alternate director if the alternate's appointor ceases for any reason to be a director, provided that if any director retires but is re-elected at the same meeting, any appointment made by such director shall remain in force as though the director had not retired.

5.3 **Authority of the board**

5.3.1 The authority of the Company's board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.

5.3.2 If, at any time, the Company has only one director, the authority of that director to act without notice or compliance with any other internal

formalities, is not restricted or varied by this Memorandum of Incorporation.

5.4 **Directors' meetings and committees**

5.4.1 A director authorised by the board of the Company:

5.4.1.1 may call a meeting of the board at any time; and

5.4.1.2 must call such a meeting if required to do so by at least:

5.4.1.2.1 25% of the directors, in the case of a board that has at least 12 members; or

5.4.1.2.2 two directors, in any other case.

5.4.2 Notwithstanding clause 5.4.1, any director may call a meeting of directors if such director considers there is good reason to do so.

5.4.3 The authority of the board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.

5.4.4 The authority of the board to adopt a resolution, which could be voted on at a board meeting, by way of 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, is not restricted or varied by this Memorandum of Incorporation. Any resolution adopted in the manner contemplated in this clause 5.4.4:

5.4.4.1 shall be valid and effective as if it had been approved by voting at a meeting of directors; **[LR 10.16(i)]**

5.4.4.2 shall be inserted into the minute book of the Company **[LR 10.16(i) and LR 10.16(j)]**; and

5.4.4.3 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 otherwise stated in the resolution).

[LR 10.16(i)]

5.4.5 The board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation, provided that no meeting of the board shall be convened without notice to the directors' entire subject, however, to the provisions of clause 5.4.6.

5.4.6 The authority of the board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.

5.4.7 The quorum requirement for a meeting is a majority of directors. Each director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.

5.4.8 The board shall be entitled to elect a chairman, deputy chairman or vice-chairman from one of its number and may determine the period for which such persons shall hold office. In the case of a tied vote the chairman or vice-chairman shall not have a deciding vote and the resolution shall not pass. **[LR 10.16 (i)]**

5.5 **Directors' power to affect borrowing**

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

5.6 **Directors' compensation and financial assistance**

- 5.6.1 The authority of the Company to pay remuneration to the directors, in accordance with a special resolution approved by the shareholders within the previous two years, is not restricted or varied by this Memorandum of Incorporation.
- 5.6.2 The directors may be paid all their travelling and other expenses, properly and necessarily incurred by them in an 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, to reside abroad or be specifically occupied about the Company's business, he may be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable. **[LR10.16(f)]**
- 5.6.3 A director may be employed in any other capacity in the Company or as a director or employee of a Company controlled by, or itself a major subsidiary of, the Company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors. **[LR 10.16(e)]**
- 5.6.4 The authority of the Company's board to authorise the Company to provide financial assistance to a director or prescribed officer of the Company or a related or inter-related company, or to a related or inter-related company or corporation or to a member of a related or inter-related company or corporation, or to a person related to any such person or entity, subject to the provisions of section 45 (3), is not restricted or varied by this Memorandum of Incorporation.
- 5.7 **Indemnification of Directors**
- 5.7.1 For purposes of this clause 5.7, "director" includes a former director, an alternate director, a prescribed officer or a person who is a member of a committee of a board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the board.

5.7.2 The authority of the Company to advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the Company and to directly or indirectly indemnify a director in respect of such expenses if those proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director, is not restricted or varied by this Memorandum of Incorporation.

5.7.3 The authority of the Company to indemnify a director in respect of any liability for which the Company may indemnify a director, is not restricted or varied by this Memorandum of Incorporation.

5.7.4 The authority of the Company to purchase insurance to protect:

5.7.4.1 a director against any expenses or liability for which the Company may indemnify a director as contemplated in clause 5.7.2 or clause 5.7.3; or

5.7.4.2 the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a director as contemplated in clause 5.7.2 or any liability for which the Company is permitted to indemnify a director as contemplated in clause 5.7.3,

is not restricted or varied by this Memorandum of Incorporation.

5.7.5 The Company shall be entitled to claim restitution from a director or a related Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this clause 5.7 or the Act.

5.8 **Committees of the board**

5.8.1 The authority of the Company's board to appoint any number of committees for managing any of the affairs of the Company and to appoint any persons to be members of such committees and to

delegate to any such committee any authority of the board, is not restricted or varied by this Memorandum of Incorporation

5.8.2 Subject to the powers and authorities granted by the board to any such committee, the authority of any such committee to:

5.8.2.1 include persons who are not directors, provided that such persons are not ineligible or disqualified from being a director as contemplated in clause 5.1.10 and that no such person shall vote on a matter to be decided by the committee;

5.8.2.2 consult with or receive advice from any other person; and

5.8.2.3 exercise the full authority of the board in respect of a matter referred to it,

is not restricted or varied by this Memorandum of Incorporation.

5.9 **Authentication of documents**

5.9.1 Any director or the company secretary or any person appointed by the directors for this purpose shall have power to authenticate any resolutions passed by the shareholders or the directors, and any books, records, documents and accounts relating to 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 registered office, the local manager or other officer of the Company having the custody at such other place shall be deemed to be the person appointed by the directors aforesaid.

5.9.2 A document purporting to be a copy of a resolution of the directors or an extract from the minutes of a meeting of the directors which is certified as such in accordance with the provisions of clause 5.9.1 shall be conclusive evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the directors.

5.10 **Audit Committee**

5.10.1 The Company must, at each annual general meeting of the Company, elect an audit committee comprising at least three members, each of which member must:

5.10.1.1 be a director of the Company, who satisfies any applicable requirements prescribed in terms of section 94(5) of the Act;

5.10.1.2 not be:

5.10.1.2.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;

5.10.1.2.2 a prescribed officer, or full-time employee, of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or

5.10.1.2.3 a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and

5.10.1.3 not be related to any person who falls within any of the criteria set out in clause 5.10.1.2.

5.10.2 The audit committee shall be appointed in accordance with, and its duties regulated by, section 94.

5.11 **Social and Ethics Committee**

The Company must elect a social and ethics committee comprising at least three directors or prescribed officers of the Company, at least one of whom must be a director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous three financial years. The social and ethics committee shall be

appointed in accordance with, and its duties regulated by, regulation 43 to the Act.

5.12 **Company Secretary**

5.12.1 The Board shall appoint a company secretary in accordance with sections 86 and 87 of the Act.

5.12.2 Should any vacancy arise in the office of company secretary, the board shall, within 60 (sixty) business days after a vacancy arises, fill such vacancy.

5.13 **Registration of Auditors and Company Secretary**

5.13.1 The Company shall, in accordance with section 85, maintain a record of all its company secretaries and auditors, including, in respect of each person appointed as company secretary or auditor of the company:

5.13.1.1 the name, including any former name, of each such person; and

5.13.1.2 the date of every such appointment.

5.13.2 If a firm or juristic person is appointed, the Company shall maintain a record of:

5.13.2.1 the name, registration number and registered office address of that firm or juristic person; and

5.13.2.2 the name of any individual contemplated in section 90(3).

5.13.3 Any changes in the particulars referred to in clause 5.13 shall be recorded in those records as they occur, with the date and nature of each such change.

5.13.4 The Company shall, within ten days of appointment of the auditors and/or a company secretary, or after the termination of service of such an appointment, file a notice of the appointment or termination with the Commission.

6. **Clause 6 – General Provisions**

6.1 Dividends and Reserves

- 6.1.1 Dividends are declared by the directors in accordance with the Act. **[LR 10.17(a)]**
- 6.1.2 Dividends are payable to shareholders that are registered as at a date subsequent to the date of declaration of the dividend or the date of confirmation of the dividend, whichever date is later. **[LR 10.17(b)]**
- 6.1.3 A dividend may be declared out of the profits or reserves of the Company, whether realised or unrealised, whether of a revenue or a capital nature and whether designated distributions or not, and no dividend shall carry interest as against the Company, except as otherwise provided under the conditions of issue of the shares in respect of which such dividend is payable. Dividends 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.
- 6.1.4 Subject to the provisions of section 46, the shareholders may (if authorised by the board), or the board may from time to time pay to the shareholders such interim dividends as appear to the board to be justified by the position of the Company. The board may also pay the fixed dividend payable on any preference share half-yearly or otherwise on fixed dates whenever such position in the opinion of the board justifies that course.
- 6.1.5 All unclaimed dividends may be invested by the Company in trust for the benefit of the Company until claimed, and dividends that remain unclaimed for a period of 3 (three) years from the date on which they were declared may be declared by the directors to be forfeited for the benefit of the Company. The directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. In addition, all unclaimed monies, other than dividends, that are due to shareholder/s shall be held by the Company in trust for an indefinite period, but subject to the laws of subscription, until lawfully claimed by such shareholder/s. **[LR10.17(c)]**

- 6.1.6 Any dividend may be paid and satisfied, either wholly or in part, by the distribution of specific assets, or in shares or debt instruments of the Company or of any other company, or in cash, or in any one or more of such ways as the directors or the Company in general meeting may at the time of declaring the dividend determine and direct. **[LR 10.7]**
- 6.1.7 The board may before recommending any dividend whether preferential or otherwise, set aside out of the profits of the Company whether realised or unrealised and whether of a revenue or of a capital nature such sum as they think proper as reserves which shall, at the discretion of the board be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the board may from time to time think fit. The board may also without placing the same to reserve, carry forward any profits which they may think prudent not to declare as a dividend.
- 6.1.8 Subject to the provisions of section 47, the shareholders may (if authorised by the board) and the board may, at any time and from time to time resolve that it is desirable to capitalise all or any part of the amount for the time being standing to the credit of any of the Company's reserves or of any capital redemption reserve fund or to the credit of the income statement or otherwise available for distribution and not required for the payment of the fixed dividends on any preference shares of the Company, and accordingly that such amount be set free for distribution among the shareholders or any class of shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions on the footing that the same be not paid in cash but either be applied in paying up unissued shares of the Company to be issued to such shareholders as fully paid capitalisation shares. **[LR 10.6][LR S10.2(a)]**

6.2 **Distributions to shareholders**

- 6.2.1 Notwithstanding the provisions of clause 6.1 insofar as they relate to payments of dividends to shareholders, the board may from time to

time, subject to the provisions of section 46 and the Listings Requirements, make distributions to shareholders, provided that capital shall not be repaid on the basis that it might be called up again. **[LR 10.8]**

6.2.2 Without derogating from the provisions of clause 6.1 and subject to any requirements which may be imposed by the Act, the shareholders may, upon the recommendation of the directors, resolve to distribute or deal with, in any way authorised by the Act, 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 of the Company.

6.2.3 The Company shall hold monies other than dividends due to shareholders in trust indefinitely until lawfully claimed by the shareholders. **[LR 10.17 (c)]**

6.3 **Accounts**

6.3.1 The Company's board shall keep such accounting records and books of account as are prescribed by the Act.

6.3.2 The accounting records shall be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other place as the board think fit, and shall at all times be open to inspection by the board. Except as provided by the Act, or by the authority of the board, no shareholder (other than a shareholder who happens to be a Director) shall have any right to inspect any accounting record book, account or document of the Company.

6.3.3 The Directors shall, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting such annual financial statements, directors reports and group annual financial statements and group reports, if any, as are referred to in those sections.

6.3.4 Each Shareholder and Director shall notify the Company in writing of a postal address, which address shall be his registered address (which

address may be in the Republic of South Africa or any other country) for the purposes of receiving written notices from the Company by post and, if he has not named such an address, he shall be deemed to have waived his right to be so served with notices. **[LR 10.18]**

- 6.3.5 Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 6.3.3 shall be delivered or sent by post to the registered address of each share holder and debt instrument holder at least 15 business days before the annual general meeting. Alternatively, a shareholder or debt instrument holder may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered to that shareholder or debt instrument holder at that address. This clause 6.3.4 shall not require a copy of such documents to be delivered or sent to any person who is not entitled to receive notice of general meetings of the Company or of whose address the Company is not aware, or to more than one of the joint holders of any securities. **[LR 10.19]**

6.4 **Auditors**

Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Act.

6.5 **Winding-up**

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

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation together with Schedule 1 attached to and forming part of this Memorandum of Incorporation was adopted by special resolution at a shareholders meeting held on _____.

SCHEDULE 1: AUTHORISED SHARE CAPITAL OF WESISWE PLATINUM LIMITED

The Company's authorised share capital is as follows

No.	Class
250,000,000 (two hundred and fifty million)	Ordinary no par value shares