

This is the new Memorandum of Incorporation of the Company
adopted by special resolution on 26 April 2022.

Chairperson

THE COMPANIES ACT, NO. 71 OF 2008

(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

ADAPT IT HOLDINGS PROPRIETARY LIMITED

A PRIVATE COMPANY

REGISTRATION NUMBER: 1998/017276/07

REGISTRATION DATE: 01/09/1998

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1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.1.2 "**Board**" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;
- 1.1.3 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.4 "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.5 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.6 "**Disposal**" or "**disposal**" means, in the context of a disposal of a Share –
- 1.1.6.1 the transfer of all or any rights making up such Share to any other person for his benefit and/or for the benefit of others, whether such transfer is effected pursuant to a sale, exchange, donation, distribution *in specie* or otherwise; or
- 1.1.6.2 any other transaction or event whereby such Share becomes beneficially owned by someone other than the person who was the beneficial holder thereof immediately prior to such transaction or event taking place; or
- 1.1.6.3 granting, creating or allowing the Encumbrance of such Share,
- and "**dispose**" means to bring about a disposal within the meaning of this definition;
- 1.1.7 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.1.8 "**Encumbrance**" means any right of first refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest;
- 1.1.9 "**Equity**" means, in relation to any Shareholder, the Shares held by such Shareholder plus the Loan Claims (if any) of such Shareholder; and if a Shareholder does not have

any Loan Claims, each reference in this Memorandum of Incorporation to the Equity of such Shareholder shall mean the Shares held by such Shareholder;

- 1.1.10 "IFRS" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.11 "IFRS for SMEs" means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.12 "Independent Attorney" means such independent senior commercial attorney as may be agreed between the relevant Shareholders, or failing agreement within 10 business days from the date of a request by any Shareholder for such agreement, appointed by the Chairperson for the time being of the Cape Bar Council from one of the 5 largest (based on number of partners or directors) independent firms of attorneys in South Africa at the time;
- 1.1.13 "Loan Claims" means any claims which a Shareholder has against the Company for the payment of any amount in respect of any monies lent to the Company by that Shareholder in its capacity as a Shareholder, including any accrued interest thereon or in respect thereof;
- 1.1.14 "Regulations" means the regulations published in terms of the Act from time to time;
- 1.1.15 "Republic" or "South Africa" means the Republic of South Africa;
- 1.1.16 "Rules" means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and clause 42 hereof;
- 1.1.17 "Securities" means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.18 "Securities Register" means the register contemplated in section 50(1) of the Act and referred to in clause 10 hereof;
- 1.1.19 "Share" means one of the units into which the proprietary interest in the Company is divided;
- 1.1.20 "Shareholder" means the holder of a Share and who is entered as such in the Securities Register, subject to the provisions of section 57(1);

- 1.1.21 **"Shareholders Agreement"** means any signed written agreement or signed written agreements in force from time to time between all the Shareholders and the Company in terms of which the rights and obligations of the Shareholders amongst themselves (in their capacities as Shareholders) are regulated and in terms of which the relationship between each Shareholder and the Company is regulated;
- 1.1.22 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4; and
- 1.1.23 **"Volaris"** means Volaris Group Inc, corporation number 002277095, a corporation incorporated under the laws of the Province of Ontario, Canada, or any holding company of Volaris Group Inc, or any subsidiary of any such holding company, wherever such companies may have been incorporated.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
 - 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
 - 1.2.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which this Memorandum of Incorporation is lodged with the Commission for filing;
 - 1.2.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.2.3.1 a provision of any Shareholders Agreement, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.3.2 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
 - 1.2.3.3 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.4 clause headings are for convenience only and are not to be used in its interpretation;
 - 1.2.5 an expression which denotes —
 - 1.2.5.1 any gender includes the other genders;
 - 1.2.5.2 a natural person includes a juristic person and *vice versa*; and

- 1.2.5.3 the singular includes the plural and *vice versa*;
- 1.2.6 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.7 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.8 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses; and
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –
- 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time; and
- 1.3.3 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.

- 1.6 Where a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.7 Any reference herein to "**this Memorandum of Incorporation**" or to any other agreement or document shall be construed as a reference to this Memorandum of Incorporation or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.8 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Memorandum of Incorporation, then –
- 1.8.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.8.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.8.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.8.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.8.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

2 JURISTIC PERSONALITY

- 2.1 The Company is incorporated as a private company, as defined in the Act, and has juristic personality from the date and time that the incorporation of the Company is registered, as stated in its registration certificate and as contemplated in section 19(1).
- 2.2 The Company is incorporated in accordance with and governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this Memorandum of Incorporation in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- 2.2.3 the other provisions of this Memorandum of Incorporation; and

2.2.4 its Rules, if any.

3 PRIVATE COMPANY PROVISIONS

The Company is a private company, and accordingly –

3.1 the transferability of the Securities of the Company is restricted as provided in this Memorandum of Incorporation; and

3.2 any offer to the public to subscribe for any Securities of the Company is prohibited.

4 LIMITATION OF LIABILITY

No person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

5 POWERS OF THE COMPANY

5.1 Subject to the provisions of clause 6 (to the extent applicable), the Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

5.2 Except to the extent that clause 6 provides otherwise, the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

6 RESTRICTIVE CONDITIONS

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

7 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

7.1 The Company does not elect, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.

7.2 The Company, being a private company, does not elect in terms of section 118(1)(c)(ii) to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and to the Takeover Regulations provided for in the Act.

8 SHARES

8.1 The Company is authorised to issue –

8.1.1 300,000,000 ordinary Shares of the same class, each of which entitles the holder to –

- 8.1.1.1 vote on any matter to be decided by the Shareholders of the Company and to one vote in the case of a vote by means of a poll;
- 8.1.1.2 participate proportionally in any distribution made by the Company; and
- 8.1.1.3 receive proportionally the net assets of the Company upon its liquidation; and
- 8.1.2 such number of each of such further classes of Shares, if any, as are set out in Schedule 1 hereto subject to the preferences, rights, limitations and other terms associated with each such class set out therein.
- 8.2 The Board may, subject to clause 8.3, resolve to issue Shares of the Company at any time, but only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 8.3 Notwithstanding the provisions of clause 8.2, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.
- 8.4 The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the Shareholders.
- 8.5 The Board shall not have the power to –
 - 8.5.1 increase or decrease the number of authorised Shares of any class of the Company's Shares; or
 - 8.5.2 reclassify any classified Shares that have been authorised but not issued; or
 - 8.5.3 classify any unclassified Shares that have been authorised but not issued; or
 - 8.5.4 determine the preferences, rights, limitations or other terms of any Shares,

and such powers shall only be capable of being exercised by the Shareholders by way of special resolution of the Shareholders.
- 8.6 Save to the extent –

8.6.1 that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued; or

8.6.2 otherwise provided in this Memorandum of Incorporation,

no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

8.7 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share.

8.8 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time.

9 ODD LOT OFFER

9.1 The Company shall be entitled to implement odd lot offers in accordance with the provisions of this clause 9, if approved by the Board.

9.2 If, upon implementation of any odd lot offer made by the Company, there are holders of Shares holding in aggregate less than 1,000 Shares ("**Odd Lots**") ("**Odd Lot Holders**"), then the Company shall, save in respect of Odd Lot Holders who have elected to increase their Odd Lots to holdings of 1,000 Shares on the basis determined by the Board, –

9.2.1 cause the Odd Lots to be sold or repurchased in such manner as the Board may direct; and

9.2.2 procure that the proceeds of such sales or repurchases are paid to such Odd Lot Holders.

9.3 All unclaimed proceeds of such sales or repurchases shall be dealt with in *mutatis mutandis* the same manner as unclaimed distributions are dealt with in terms of clause 38.5.

10 SECURITIES REGISTER

10.1 The Company must establish or cause to be established a register of its issued Securities in the form prescribed by the Act and the Regulations and maintain such register in accordance with the prescribed standards.

10.2 As soon as practicable after the issue or transfer of any Securities, as the case may be, the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued or which have been transferred –

10.2.1 the total number of those Securities that are held in uncertificated form;

10.2.2 with respect to certificated Securities –

- 10.2.2.1 the names and addresses of the persons to whom the Securities were issued or transferred;
- 10.2.2.2 the number of Securities issued or transferred to each of them;
- 10.2.2.3 the number of, and prescribed circumstances relating to, any Securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;
- 10.2.2.4 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding, or the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and
- 10.2.2.5 any other prescribed information.
- 10.3 The Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 10.4 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 10.5 A certificate evidencing any certificated Securities of the Company –
 - 10.5.1 must state on its face –
 - 10.5.1.1 the name of the Company;
 - 10.5.1.2 the name of the person to whom the Securities were issued or transferred;
 - 10.5.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate; and
 - 10.5.1.4 any restriction on the transfer of the Securities evidenced by that certificate;
 - 10.5.2 must be signed by 2 persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
 - 10.5.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 10.6 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 10.7 If, as contemplated in clause 10.4, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

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

10.7.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified,

provided that in terms of Schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of clauses 10.5 to 10.7 is not a contravention of the Act and does not invalidate that certificate.

11 TRANSFER OF SECURITIES

11.1 The instrument of transfer of any Security shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Security until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion dispense with the signature of the transferee in such cases as they deem fit.

11.2 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

11.3 Subject to such restrictions as may be applicable (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), and particularly to the provisions of this clause 11 and clauses 12 and 13, any Shareholder or holder of other Securities may transfer all or any of its Shares or other Securities by instrument in writing in any usual or common form or any other form which the Directors may approve, subject to compliance with all the requirements in terms of the Financial Intelligence Centre Act, No 38 of 2001.

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

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

11.4.2 such other evidence as the Company may require to prove the title of the transferor, or his right to transfer the Securities.

11.5 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 or its registered office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the

revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.

- 11.6 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide. Any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who lodged it.

12 RESTRICTIONS ON THE DISPOSAL OF SHARES

- 12.1 Save for any disposal of Shares pursuant to the exercise by any Shareholder of an appraisal right in terms of section 164, a Shareholder may dispose of its Shares only if, in one and the same transaction and to the same acquirer, it disposes of that portion of its Loan Claims which bears the same proportion to the whole of its Loan Claims as the Shares disposed of bear to the whole of its shareholding in the Company. Likewise, a Shareholder may dispose of its Loan Claims only if, in one and the same transaction and to the same acquirer, it disposes of so many of its Shares as bear the same proportion to all of its Shares as the Loan Claims disposed of bear to all of its Loan Claims against the Company
- 12.2 Shares may only be disposed of in accordance with the provisions of this Memorandum of Incorporation or the Shareholders Agreement, if any, and no disposal of any Shares which conflicts with any provision hereof (or the Shareholders Agreement, as the case may be) shall be approved nor be permitted to be registered.
- 12.3 The provisions of clause 13 shall not apply to any Disposal of Shares or Loan Claims to Volaris, agreed to between Volaris and the disposing Shareholder.
- 12.4 Subject to any other express provisions of this Memorandum of Incorporation or the Shareholders Agreement, if any, to the contrary –
- 12.4.1 the Directors shall not register the transfer of a Share unless they are satisfied that the provisions of clause 13 (or the Shareholders Agreement, as the case may be) have been complied with (to the extent that they are applicable), nor shall they register the transfer of a Share where it is disposed of contrary to the provisions of clauses 12.1 and/or 12.2 and/or any relevant provisions of the Shareholders Agreement; and
- 12.4.2 if the Directors refuse to register the transfer of a Share they shall give notice of that refusal to the proposed transferor and transferee within 14 days immediately following the date on which the relevant transfer form is lodged at the Company's principal place of business.

- 12.5 No beneficial holder of any Share that is registered in the Securities Register in the name of a nominee (such nominee therefore being a Shareholder in respect of such Share) shall dispose of such Share unless such nominee, in relation to the disposal or intended disposal in question, complies with all of the provisions of this Memorandum of Incorporation (or the Shareholders Agreement, as the case may be) as fully and effectually as if the Share in question was owned by the nominee Shareholder in question.

13 VOLUNTARY DISPOSAL OF EQUITY AND RIGHTS OF PRE-EMPTION

- 13.1 Save for any disposal in accordance with the provisions of any Shareholders Agreement or of any other provision contained in this Memorandum of Incorporation including clause 12.3, a Shareholder who wishes to dispose of all or part of its Equity shall not be entitled to do so unless –
- 13.1.1 such disposal is pursuant to a sale in terms of which the entire purchase price is expressed to be, and is payable, in the currency of South Africa against transfer of the Equity in question; and
- 13.1.2 such sale is permitted in terms of the following provisions of this clause 13 (as read with clause 15).
- 13.2 Subject to the provisions of clause 12.3, any Shareholder, other than Volaris, who wishes to sell all or part of its Equity or who receives an offer from a *bona fide* third party for the purchase of its Equity and wishes to accept same ("**Transferor**"), shall give notice ("**Transfer Notice**") to the Board that it wishes to transfer such Equity. The Transfer Notice shall specify —
- 13.2.1 the Equity which the Transferor proposes to sell;
- 13.2.2 the intended selling price thereof, distinguishing between the selling price of Shares and the selling price of Loan Claims ("**Equity Consideration**");
- 13.2.3 where the Transferor has received an offer for the purchase of its Equity ("**Third Party Offer**"), the identity of the *bona fide* third party purchaser ("**Third Party Purchaser**") (such identification to be made with sufficient particularity to enable the other Shareholders to establish, if applicable, who is/are the ultimate beneficial owners of the shares or other economic or voting interests in the Third Party Purchaser), and shall be accompanied by a true copy of the offer from the Third Party Purchaser, to the extent that the offer is in writing; and
- 13.2.4 all the terms and conditions of the Third Party Offer to the extent that such terms and conditions are not in writing.

- 13.3 The Transfer Notice shall not be revocable except with the written consent of the Board and shall be deemed to have designated the Board the agent of the Transferor for the sale and transfer of the Equity at the Equity Consideration.
- 13.4 The Company shall procure that, within 7 days of the Board receiving the Transfer Notice, notice ("**First Board Notice**") shall be given to Volaris of the Equity which the Transferor proposes to sell, the name of the Third Party Purchaser (to the extent applicable), the Equity Consideration and the terms of payment required, together with the terms and conditions of the Third Party Offer, if any, (to the extent that such terms and conditions are not in writing) and, to the extent that such terms and conditions are in writing, a copy of such writing.
- 13.5 The First Board Notice shall call on Volaris to inform the Board by way of notice by a date stated by the Board ("**First Closing Date**") (which stated date shall not be less than 10 days and not more than 15 days after the giving of the First Board Notice to Volaris) if Volaris is willing to purchase all such Equity. Any such notification given to the Board by Volaris shall be deemed to be an offer by Volaris, irrevocable until the lapse of 7 days after the First Closing Date, to purchase (subject to clause 15) the Equity specified in the Transfer Notice, at the Equity Consideration.
- 13.6 After the First Closing Date, or after the receipt of a reply to the First Board Notice from Volaris, whichever is the earlier, but before the lapse of 7 days following the First Closing Date, the Board shall, provided that Volaris is willing to purchase all (and not only some of) the Equity which is the subject matter of the Transfer Notice, sell the Equity in question to Volaris at the Equity Consideration.
- 13.7 If the Equity which is the subject matter of the Transfer Notice is not sold to Volaris in terms of the provisions of clause 13.6, the Company shall determine, by the 10th day following the First Closing Date ("**Second Closing Date**"), if the Company is willing to purchase all the Equity, in accordance with the provisions of clause 21.
- 13.8 After the Second Closing Date, but before the lapse of 45 days following the Second Closing Date, the Company shall, provided that the Company is willing to repurchase all (and not only some of) the Equity which is the subject matter of the Transfer Notice, acquire the Equity in question at the Equity Consideration (subject to complying with the provisions of the Act in relation to the acquisition by a company of its own Shares). In this instance, each Shareholder hereby irrevocably authorises all the other Shareholders (acting individually and not necessarily together with any other Shareholder) to vote all the Shares held by such authorising Shareholder in favour of all resolutions, including any special resolutions, which are required to be passed for the purpose of authorising the Company to make such purchase.

- 13.9 If the Equity which is the subject matter of the Transfer Notice is not sold to Volaris nor acquired by the Company in terms of the provisions of clauses 13.6 and 13.8, respectively, the Company shall procure that, within 14 days following the Second Closing Date, notice ("**Second Board Notice**") shall be given to all other Shareholders (including Volaris) of the Equity which the Transferor proposes to sell, the name of the Third Party Purchaser (to the extent applicable), the Equity Consideration and the terms of payment required, together with the terms and conditions of the Third Party Offer, if any, (to the extent that such terms and conditions are not in writing) and, to the extent that such terms and conditions are in writing, a copy of such writing.
- 13.10 The Second Board Notice shall call on each Shareholder (including Volaris) to inform the Board by way of notice by a date stated by the Board ("**Third Closing Date**") (which stated date shall not be less than 30 days and not more than 40 days after the giving of the Second Board Notice to the Shareholder which receives such notice last) of the amount of Equity, if any, which such Shareholder is willing to purchase. Any such notification given to the Board by any Shareholder shall, provided it is accompanied by reasonable proof of such Shareholder's ability to pay timeously for the Equity referred to in the notification, be deemed to be an offer by such Shareholder, irrevocable until the lapse of 7 days after the Third Closing Date, to purchase (subject to clause 15) the amount of Equity specified in such notification, or such lesser amount of Equity as the Board shall apportion to such Shareholder in terms of clause 13.11, at the Equity Consideration (pro rated appropriately where such Equity is less than the Equity referred to in the Transfer Notice).
- 13.11 After the Third Closing Date, or after the receipt of replies to the Second Board Notice from all the Shareholders, whichever is the earlier, but before the lapse of 7 days following the Third Closing Date, the Board shall, provided all (and not only some) of the Equity which is the subject matter of the Transfer Notice will be sold in terms of clauses 13.11.1 and/or 13.11.2 and/or 13.11.3, apportion and sell the Equity in question amongst and to the Shareholders (who give the requisite notification timeously to the Board in terms of clause 13.10) at the Equity Consideration subject to and in accordance with the following –
- 13.11.1 such Equity shall be apportioned amongst and sold to the Shareholders who are willing to take up the Equity as nearly as possible in proportion to their respective Shareholdings in the Company, provided always that the full Equity which Volaris has offered to purchase shall be apportioned and sold to Volaris, provided further that no such Shareholder shall have apportioned and sold to it a greater amount of Equity than it is deemed, in terms of the foregoing, to have offered to purchase and provided further that the Equity Consideration payable by such Shareholder is pro rated appropriately where such Equity is less than the Equity referred to in the Transfer Notice;
- 13.11.2 such Equity as cannot be disposed in terms of clause 13.11.1 shall be apportioned amongst and sold to the Shareholders, if any, who have offered to purchase Equity in

excess of their respective Shareholdings in the Company, as nearly as possible in proportion to the excesses which they have respectively offered to purchase, provided that no such Shareholder shall have apportioned and sold to it a greater amount of Equity than the excess it is deemed, in terms of the foregoing, to have offered to purchase and provided further that the Equity Consideration payable by such Shareholder is pro rated appropriately where such Equity is less than the Equity referred to in the Transfer Notice; and

- 13.11.3 such Equity as is not disposed of in terms of clauses 13.11.1 and 13.11.2 may be sold by the Board at the Equity Consideration (pro rated appropriately where such Equity is less than the Equity referred to in the Transfer Notice) in question to any one or more *bona fide* third parties selected by the Board, including the Company itself (subject to complying with the provisions of the Act in relation to the acquisition by a company of its own Shares). The Board shall be entitled, at any time following the receipt of a Transfer Notice, to take such steps as it in its sole discretion considers necessary to find a purchaser or purchasers for the Equity in anticipation of the possibility that not all of such Equity will be sold in terms of clauses 13.11.1 and 13.11.2. If the Board selects the Company to purchase any such Equity, each Shareholder hereby irrevocably authorises all the other Shareholders (acting individually and not necessarily together with any other Shareholder) to vote all the Shares held by such authorising Shareholder in favour of all resolutions, including any special resolutions, which are required to be passed for the purpose of authorising the Company to make such purchase.
- 13.12 It shall be a term of the sale of any Equity that the purchaser thereof, or the purchasers thereof *pro rata* to their then Shareholdings (after taking into account the Shares purchased in terms of such sale), shall use its or their respective reasonable endeavours to procure the release of the Transferor from all guarantees and suretyships which the Transferor may have given for the liabilities and obligations of the Company and, pending such release, the purchaser indemnifies or the purchasers indemnify proportionately (in proportion to such Shareholdings), as the case may be, the Transferor against all liability under any such guarantees or suretyships.
- 13.13 If, within a period of 90 days after receipt of the Transfer Notice or such longer period as may be agreed to in writing between the Board and the Transferor, the Board sells all (and not only some) of the Equity which is the subject matter of the Transfer Notice and gives notice of such sale to the Transferor, the Transferor shall be obliged, on payment to it of the Equity Consideration, to transfer such Equity to the purchaser thereof.
- 13.14 If the Transferor fails to transfer such Equity, the Board may in its name transfer the Equity to the purchaser and may give a good receipt to the purchaser for the purchase price and issue to the purchaser, where appropriate, certificates for the Equity in question and in such event the Board shall hold the purchase price, free of interest, until such time as the

Transferor shall have delivered up its Share certificates and any other documents evidencing the Equity in question, when such purchase price shall be paid in full. For purposes of this clause 13.14, the Shareholders irrevocably appoint any one of the Directors as their attorney and agent to sign all documents and to do all such things that may be necessary to register the transfer of such Equity on their behalf.

- 13.15 If the Board fails to notify the Transferor, within the 90 day period prescribed in clause 13.13, that it has sold all (and not only some) of the Equity which is the subject matter of the Transfer Notice, the Transferor shall, at any time within 90 days thereafter, but not thereafter without again offering the Equity in terms of clauses 13.2 to 13.14 (inclusive), be at liberty to transfer such Equity to the Third Party Purchaser or (in the absence of a Third Party Offer contemplated in clause 13.2) to any third party at a price and on terms not more favourable to the Third Party Purchaser or such person than the price at, and the terms on which the same was made available to the Shareholders in terms of the foregoing, provided that –
- 13.15.1 the Board consents in writing to the introduction of the Third Party Purchaser or other third party, as the case may be, as a Shareholder of the Company, which consent shall not be unreasonably withheld;
- 13.15.2 the Third Party Purchaser or other third party, as the case may be, agrees in writing to be bound by the provisions of the Shareholders Agreement, if any, on terms approved of by the Board, and selects in writing a physical and email address and a *domicilium citandi et executandi* for the purposes of such agreement; and
- 13.15.3 the sale may incorporate such warranties and indemnities to be given by the Transferor in respect of the Equity, and covenants not to compete, as are required by the Third Party Purchaser or other third party, as the case may be, and agreed to by the Transferor.
- 13.16 If all the Shareholders who would have been entitled to a Second Board Notice in terms of clause 13 consent in writing signed by them to the transfer of any Equity to any person (whether a Shareholder or not), such Equity may be transferred to such person without the provisions of clauses 13.2 to 13.15 (inclusive) having to be observed.

14 **BINDING A PERSON TO THE SHAREHOLDERS AGREEMENT**

Wherever this Memorandum of Incorporation makes provision for a person to be bound to the provisions of any Shareholders Agreement on terms approved of by the Board, the Board shall not act unreasonably in withholding such approval, provided that —

- 14.1 if there is a dispute in this regard, such dispute shall be resolved by the decision of a practising commercial attorney of at least 15 years' experience as such, acting as an expert and not as an arbitrator, agreed to in writing by the Shareholders or, failing such agreement

within 7 days of any Shareholder in writing calling for agreement, by an Independent Attorney; and

- 14.2 no transfer, or allotment and issue, of the Shares which are the subject matter of such dispute shall be effected until such dispute is so resolved.

15 REGULATORY APPROVAL

In the event that the lawful implementation of the sale of any Equity ("**Affected Equity**") in terms of this Memorandum of Incorporation to any Shareholder requires the approval of any regulator or regulatory authority (such approvals being referred to herein as "**Regulatory Approval**"), then notwithstanding anything to the contrary contained or implied herein –

- 15.1 the entire sale in respect of the Affected Equity, or in the event that the sale of Affected Equity arises pursuant to the provisions of clauses 13.2 to 13.15 (inclusive), each of the sales concluded pursuant to the provisions of clauses 13.2 to 13.15 (inclusive) ("**Sales**"), shall be subject in their entirety to the fulfilment of the suspensive condition that the requisite Regulatory Approval is granted, either unconditionally, or on terms and conditions acceptable to the seller and purchaser of the Affected Equity, which suspensive condition must be fulfilled within such period as may be agreed between all the parties to the Sales;
- 15.2 the relevant time periods recorded in this Memorandum of Incorporation for the implementation of the Sales shall be extended by such period as may be agreed in writing between all the parties to the Sales in order to accommodate the preparation and lodging of the requisite applications for Regulatory Approval and the consideration thereof and the adjudication thereon by the applicable authorities; and
- 15.3 if all the parties to the Sales do not in writing agree on the periods contemplated in clauses 15.1 and 15.2 within 7 days of any of such parties calling for agreement, or if there is any dispute as to whether or not a party has acted reasonably or otherwise in regard to the acceptance or otherwise of the terms and conditions referred to in clause 15.1, then such period(s) or such dispute, as the case may be, shall be determined by an Independent Attorney.

16 TRANSMISSION OF SECURITIES

- 16.1 Subject to the provisions of this Memorandum of Incorporation dealing with restrictions on the Disposal of Securities, the executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to the Security. In the case of a Security registered in the names of 2 or more holders, the survivor or survivors, or the executor of any deceased Shareholder shall be the only person recognised by the Company as having any title to the Security. 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 of the Company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security Holder of the Company.

16.2 Subject to the provisions of clause 16.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made: provided that in respect of a transfer other than to himself –

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

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

17 DEBT INSTRUMENTS

The Board may, if so authorised by way of special resolution of the Shareholders –

17.1 authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2); and

17.2 grant special privileges associated with any debt instruments to be issued by the Company, as set out in section 43(3),

and, save as provided in this clause 17, the authority of the Board in such regard is not limited or restricted by this Memorandum of Incorporation, provided only that the Board is not empowered to offer, or to authorise the Company to offer, or to approve the transfer of, any debt instruments of the Company to the public.

18 CAPITALISATION SHARES

The Board shall not, save to the extent authorised by the Shareholders by means of ordinary resolution, have the power or authority to –

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

18.2 to issue Shares of one class as capitalisation Shares in respect of Shares of another class;
or

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

as set out in section 47.

19 **BENEFICIAL INTERESTS IN SECURITIES**

19.1 The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1).

19.2 Notwithstanding that the Company is a private company, the provisions of section 56 shall apply to the Company and the Shareholders as if the Company is a public company.

20 **FINANCIAL ASSISTANCE**

The Board may authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities, as set out in section 44, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

21 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

21.1 In accordance with and subject to the provisions of section 48 and subject to the further provisions of this clause 21 –

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

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

21.1.2.1 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

21.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.

21.2 Any decision by the Company to acquire its own Shares must satisfy the requirements of section 46 and, accordingly, the Company may not acquire its own Shares unless –

21.2.1 the acquisition –

- 21.2.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 21.2.1.2 the Board, by resolution, has authorised the acquisition;
- 21.2.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition; and
- 21.2.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition.
- 21.3 A decision of the Board referred to in clause 21.1.1 –
 - 21.3.1 must be 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
 - 21.3.2 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,

if required in terms of the Act.
- 21.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than –
 - 21.4.1 Shares held by one or more subsidiaries of the Company; or
 - 21.4.2 convertible or redeemable Shares.

22 SINGLE SHAREHOLDER'S AUTHORITY TO ACT

- 22.1 If, at any time, as contemplated in section 57(2), the Company has only one Shareholder –
 - 22.1.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this Memorandum of Incorporation; and
 - 22.1.2 the provisions of clauses 23 (Record Date for Exercise of Shareholder Rights), 24 (Shareholders' Meetings), 25 (Shareholders' Meetings by Electronic Communication), 26 (Votes of Shareholders), 28 (Shareholders' Resolutions) and 29 (Shareholders Acting Other Than at a Meeting) shall not apply to the Company.

22.2 If at any time every Shareholder is also a Director —

22.2.1 any matter that is required to be referred by the Board to the Shareholders for decision may be decided by the Shareholders at any time after being referred by the Board, without notice or compliance with any other internal formalities, provided that —

22.2.1.1 every such person was present at the Board meeting when the matter was referred to them in their capacity as Shareholders;

22.2.1.2 sufficient persons are present in their capacity as Shareholders to satisfy the quorum requirements set out in clause 24.4.1;

22.2.1.3 a resolution adopted by those persons in their capacity as Shareholders has at least the support that would have been required for it to be adopted as an ordinary resolution or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and

22.2.2 when acting in their capacity as Shareholders, those persons are not subject to the provisions of sections 73 to 78 relating to the duties, obligations, liabilities and indemnification of Directors.

23 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

23.1 The Board may set a record date for the purpose of determining which Shareholders are entitled to —

23.1.1 receive notice of a Shareholders' meeting;

23.1.2 participate in and vote at a Shareholders' meeting;

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

23.1.4 receive a distribution; or

23.1.5 be allotted or exercise other rights.

23.2 A record date determined by the Board —

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

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

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

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

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

24 SHAREHOLDERS' MEETINGS

24.1 Calling of Shareholders' Meetings

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

24.1.2 Subject to clause 22.1 and to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –

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

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

24.1.2.3 when required in terms of clause 24.1.3 or by any other provision of this Memorandum of Incorporation.

24.1.3 The Board shall call a meeting of Shareholders if one or more written and signed demands calling for such a meeting are delivered to the Company and –

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

24.1.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

24.2 Annual General Meetings

24.2.1 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders –

24.2.1.1 initially, no more than 18 months after the date of its incorporation;

24.2.1.2 thereafter, once in each calendar year, but no more than 15 months after the date of the previous annual general meeting,

provided that any such annual general meeting shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation.

24.2.2 Each annual general meeting of the Company contemplated in clause 24.2.1 shall provide for at least the following business to be transacted –

24.2.2.1 the presentation of the financial statements for the immediately preceding financial year of the Company;

24.2.2.2 the election of Directors, to the extent required by the Act or by this Memorandum of Incorporation;

24.2.2.3 the appointment of an auditor for the following financial year, to the extent that the annual financial statements of the Company are required to be audited in terms of the Act or by this Memorandum of Incorporation; and

24.2.2.4 any matters raised by the Shareholders, with or without advance notice to the Company.

24.2.3 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act.

24.3 Location and Notices of Meetings

24.3.1 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

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

24.4 Quorum and Adjournment of Meetings

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

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

24.4.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at

least 25% of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda,

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

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

24.4.1.4 the requirements of clauses 24.4.1.1 and 24.4.1.2 are satisfied.

24.4.2 The time periods allowed in section 64(4) and (5) apply to the Company without variation and, accordingly, if within one hour after the appointed time for a meeting to begin, the requirements of clause 24.4.1 –

24.4.2.1 for that meeting to begin have not been satisfied, the meeting is postponed, without any motion, vote or further notice, for one week;

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

24.4.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

24.4.2.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned, without any motion or vote, for one week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 24.4.1 may extend the one hour limit allowed in clause 24.4.2 for a reasonable period on the grounds that –

24.4.2.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or

24.4.2.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 24.4.1.

24.4.3 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders, or an immaterial defect in the manner or form of giving notice of any such meeting, shall not invalidate any resolution passed at any such meeting.

24.4.4 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 24.4.2 unless the location for the meeting is different from –

- 24.4.4.1 the location of the postponed or adjourned meeting; or
- 24.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 24.4.5 If at the time appointed in terms of clause 24.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 24.4.1 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 24.4.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.
- 24.4.7 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.

24.5 **Conduct of Meetings**

- 24.5.1 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 24.5.2 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 Directors present shall choose one of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 24.5.3 The chairperson of a Shareholders' meeting may —
 - 24.5.3.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
 - 24.5.3.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 24.5.4 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless —
 - 24.5.4.1 it is brought to the attention of the chairperson at the meeting; and

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

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

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

24.5.5.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

24.5.6 Even if he is not a Shareholder —

24.5.6.1 any Director; or

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

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

25 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

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

25.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or

25.1.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

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

25.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

26 VOTES OF SHAREHOLDERS

- 26.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –
- 26.1.1 every person present and entitled to exercise voting rights shall be entitled to one vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and
- 26.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder.
- 26.2 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote by –
- 26.2.1 at least 5 persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 26.2.2 a person who is, or persons who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% of the voting rights entitled to be voted on that matter; or
- 26.2.3 the chairperson of the meeting.
- 26.3 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 26.2, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 26.4 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 26.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 26.6 A poll demanded on the election of a chairperson (as contemplated in clause 24.5.2) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question

shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

- 26.7 Where there are joint registered holders of any Share, any one of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.
- 26.8 The board of any company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –
 - 26.8.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Shares; and
 - 26.8.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

27 PROXIES AND REPRESENTATIVES

- 27.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –
 - 27.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or
 - 27.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60,

provided that a Shareholder may appoint more than one proxy to exercise voting rights attached to different Securities held by the Shareholder.
- 27.2 A proxy appointment –
 - 27.2.1 must be in writing, dated and signed by the Shareholder; and
 - 27.2.2 remains valid for –

27.2.2.1 one year after the date on which it was signed; or

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

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

27.3 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting.

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

27.4.1 a Shareholder has the right to appoint 2 or more persons concurrently as proxies as set out in section 58(3)(a) ("**Concurrent Proxies**"), provided that the instrument appointing such Concurrent Proxies clearly states the order in which the votes of the Concurrent Proxies are to take precedence in the event that both or all of the Concurrent Proxies are present, and vote, at the meeting concerned;

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

27.4.3 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights; and

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

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

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

"I/We _____

being a shareholder of _____ Proprietary Limited do hereby appoint

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at _____ on _____ and at any adjournment thereof as follows:—

	In favour of	Against	Abstain
Special Resolution 1
Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he thinks fit.

SIGNED this _____ day of _____ in the year of _____.

SHAREHOLDER'S SIGNATURE

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

28 SHAREHOLDERS' RESOLUTIONS

- 28.1 For an ordinary resolution to be approved it must be supported by more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).
- 28.2 For a special resolution to be approved it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9).
- 28.3 No matters, except those matters set out in section 65(11) and any other matter required by the Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution of the Company.
- 28.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

29 **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 29.1 In accordance with the provisions of section 60, a resolution that could be voted on at a Shareholders' meeting (including in respect of the election of Directors) may instead be –
- 29.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 29.1.2 voted on in writing by such Shareholders within a period of 20 business days after the resolution was submitted to them.
- 29.2 A resolution contemplated in clause 29.1 –
- 29.2.1 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
- 29.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 29.3 Within 10 business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause 29, 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, or vote on the election of a Director, as the case may be.

30 **COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

30.1 **Number of Directors**

- 30.1.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint a social and ethics committee, the Board must comprise at least one Director and the Shareholders shall be entitled by ordinary resolution to determine such maximum number of Directors as they from time to time shall consider appropriate.
- 30.1.2 The Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such an election, being the Shareholders of the Company and the holders of any other Securities of the Company to the extent that the terms on which such Securities were issued confer such rights.

30.2 **Election of Directors**

- 30.2.1 In any election of Directors –

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

30.2.1.2 in each vote to fill a vacancy –

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

30.2.1.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate, provided only that, in the event that the Company only has one Shareholder, the above provisions of this clause 30.2.1 will not apply and the election of Directors shall take place in such manner as the Shareholder shall determine.

30.2.2 The Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in section 66(4).

30.3 **Eligibility and Term of Office**

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

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

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

30.3.2.2 the Shareholders resolving to increase the number of elected Directors; and/or

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

30.4 **Certain Powers of the Directors**

30.4.1 The Board has the power to –

30.4.1.1 fill any vacancy on the Board on a temporary basis, as set out in section 68(3) (and subject to section 70); and

30.4.1.2 exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1),

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

- 30.4.2 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them. Any reference to a power of attorney herein shall include any other form of delegation including the right to sub-delegate.
- 30.4.3 Save as otherwise expressly provided herein, all promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 30.4.4 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 30.4.5 The Directors in office may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum number fixed in accordance with this Memorandum of Incorporation, they may act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.
- 30.5 **Directors' Interests**
- 30.5.1 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 30.5.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may

be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.

- 30.5.3 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) has a personal financial interest in any matter to be considered by the Board.

31 SINGLE DIRECTOR'S AUTHORITY TO ACT

If at any time the Company has only one Director, as contemplated in section 57(3), that Director may, subject to any restrictions or limitations imposed in terms of section 66(1), exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities, and the provisions of sections 71(3) to (7), 73 and 74 shall not apply in respect of the governance of the Company.

32 DIRECTORS' MEETINGS

- 32.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 32.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 minutes of the time appointed for holding the meeting, the Directors present shall choose one of their number to be chairperson of such meeting.
- 32.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 32.4 The Board has the power to –
- 32.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 32.4.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily

enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;

32.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4), provided that –

32.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any 2 Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors;

32.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 32.4.3.1;

32.4.3.3 no meeting may be held if notice thereof and the agenda therefor is not given in accordance with clauses 32.4.3.1 and 32.4.3.2; and

32.4.3.4 no matter may be discussed at a meeting unless the particular matter has been expressly included in the agenda given in terms of clause 32.4.3.2; and

32.4.4 subject to clause 32.5.1, proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5),

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

32.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clauses 32.5.1 and 32.5.5, and accordingly –

32.5.1 if the Company has failed to give the required notice for the convening of any meeting of the Board or there is any other defect in the giving of such notice the meeting may, subject to any quorum requirements, proceed provided that each Director (whether or not in attendance at the meeting) in writing acknowledges actual receipt of the notice and in writing waives any rights he might otherwise have enjoyed as a result of such short or defective notice;

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

32.5.3 each Director has one vote on a matter before the Board;

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

32.5.5 in the case of a tied vote –

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

32.5.5.2 the matter being voted on fails.

32.6 Resolutions adopted by the Board –

32.6.1 must be dated and sequentially numbered; and

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

32.7 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

33 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

33.1 The Company may pay remuneration to the Directors for their services as directors in accordance with a special resolution approved by the Company's Shareholders within the previous 2 years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

33.2 The Directors may also be paid all their travelling and other expenses properly and necessarily incurred by them in connection with —

33.2.1 the business of the Company; and

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

33.3 The Board may, as set out in and subject to the requirements of section 45, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

34 EXECUTIVE DIRECTORS

34.1 The Directors may from time to time appoint one or more of their body to the office of executive Director for such term and at such remuneration as they may think fit (subject only to the requirements of section 66(8) and (9)), and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A Director so appointed shall be subject to retirement in the same manner as the other Directors except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.

34.2 Subject to the provisions of any contract between himself and the Company, an executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

34.3 The Directors may from time to time entrust to and confer upon an executive Director for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

35 INDEMNIFICATION OF DIRECTORS

35.1 The Company may –

35.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

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

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

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

35.2 The provisions of clause 35.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee.

36 COMMITTEES OF THE BOARD

36.1 The Board may –

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

36.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a),

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

36.2 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

37 ANNUAL FINANCIAL STATEMENTS

37.1 Notwithstanding the provisions of clause 7.1 –

37.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –

37.1.1.1 the Act;

37.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

37.1.1.3 the Regulations; and

37.1.1.4 this Memorandum of Incorporation; and

37.1.2 the Company shall each year prepare annual financial statements within 6 months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting contemplated in clause 24.2.

37.2 The Company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

37.3 For purposes of the affairs of the Company, with regard to and/or relating to the auditor of the Company, the provisions of sections 90(1), 90(1A), 90(2)(a) and (b), 90(3), 90(5), 90(6)(a)(i) to (iii), 90(6)(b) and (c), 91(1), 91(2), and 93(1) are incorporated, *mutatis mutandis*, into this Memorandum of Incorporation.

37.4 In the event that the annual financial statements of the Company –

37.4.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and

37.4.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.

37.5 Subject to clause 37.4, and notwithstanding any contrary provision in the Act, the annual financial statements shall be audited as set out in clause 37.6.

- 37.6 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 37.5, the annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
- 37.6.1 satisfy, as to form and content, the financial reporting standards of IFRS for SMEs, provided that the Board, or the Shareholders by ordinary resolution, may require, either in respect of a particular financial year of the Company or for any other fixed or indefinite period, that the annual financial statements shall be prepared in accordance with IFRS; and
- 37.6.2 subject to and in accordance with IFRS for SMEs or IFRS, as the case may be –
- 37.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 37.6.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses and any other prescribed information;
- 37.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 37.6.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

38 DISTRIBUTIONS

- 38.1 Subject to the provisions of the Act, and particularly section 46, the Company may make a proposed distribution if such distribution –
- 38.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 38.1.2 is authorised by resolution of the Board.
- 38.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.
- 38.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 38.4 The Directors may from time to time pay to the Shareholders such interim distributions as the Directors consider to be appropriate.
- 38.5 All unclaimed distributions may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that distributions unclaimed for a period of 3 years from the date on which they were declared may be declared forfeited by the

Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.

- 38.6 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by electronic funds transfer, free of set-off, in the currency of South Africa to the bank account nominated by such Shareholder, in writing, and verified by means of copy of a bank statement with an original bank stamp or by such other means as may be acceptable to the Directors and, in the case of joint holders, to the bank account so nominated and verified of the holder whose name appears first in the Securities Register.
- 38.7 A distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 38.8 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 38.9 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part —
 - 38.9.1 by the distribution of specific assets; or
 - 38.9.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
 - 38.9.3 in cash; or
 - 38.9.4 in any other way which the Directors may at the time of declaring the distribution determine.
- 38.10 Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 38.11 The Directors may —
 - 38.11.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and
 - 38.11.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

39 ACCESS TO COMPANY RECORDS

- 39.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
- 39.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof, and any Rules of the Company;
 - 39.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
 - 39.1.3 all –
 - 39.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact, hold an annual general meeting; and
 - 39.1.3.2 annual financial statements required by the Act for a period of 7 years after the date on which each such particular statements were issued;
 - 39.1.4 notice and minutes of all Shareholders' meetings, including –
 - 39.1.4.1 all resolutions adopted by them, for 7 years after the date each such resolution was adopted; and
 - 39.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
 - 39.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 years after the date on which each of such communications was issued; and
 - 39.1.6 the Securities Register of the Company.
- 39.2 A person not contemplated in clause 39.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

40 NOTICES

- 40.1 All notices intended or required to be given by the Company to any Shareholder of the Company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.
- 40.2 Each Shareholder of the Company –
- 40.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 40.2.2 may notify in writing to the Company an email address, which address shall be his address for the purposes of receiving notices by way of Electronic Communication (and by doing so the Shareholder concerned shall be deemed to have confirmed that notices sent to such address can conveniently be printed by that Shareholder within a reasonable time and at a reasonable cost as contemplated in section 6(10)).
- 40.3 Any Shareholder whose address in the Securities Register is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.
- 40.4 Save as determined in this Memorandum of Incorporation or in the Act, no Shareholder other than a registered Shareholder whose address appears in the Securities Register, shall be entitled to receive any notice from the Company.
- 40.5 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 40.6 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 40.7 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 40.8 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this

Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

41 AMENDMENT OF MEMORANDUM OF INCORPORATION

- 41.1 Save for the amendments contemplated in clause 41.2, this Memorandum of Incorporation may only be altered or amended in the manner set out in sections 16 (other than 16(1)(b)), 17 or 152(6)(b).
- 41.2 The Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 41.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail or email; and
- 41.2.2 filing a notice of the alteration.
- 41.3 An amendment of this Memorandum of Incorporation will take effect from the later of –
- 41.3.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and
- 41.3.2 the date, if any, set out in the said notice of amendment,

save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

42 COMPANY RULES

- 42.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation by –
- 42.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each Shareholder by ordinary mail or email; and
- 42.1.2 filing a copy of those Rules.
- 42.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).

- 42.3 The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 42.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail or email; and
- 42.3.2 filing a notice of the alteration.

SCHEDULE 1

Additional Classes of Shares

In addition to the Shares contemplated in clause 8.1.1 of the Memorandum of Incorporation to which this schedule is Schedule 1, the Company is authorised to issue no more than the following further Shares –

Nil