

THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

MASSMART HOLDINGS LIMITED

A PUBLIC COMPANY

REGISTRATION NUMBER: 1940/014066/06

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1 INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to such Act;

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

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

1.1.4 "**Central Securities Depository**" has the meaning set out in section 1 of the Financial Markets Act;

1.1.5 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;

1.1.6 "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;

1.1.7 "**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;

1.1.8 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

1.1.9 "**Financial Markets Act**" means the Financial Markets Act, No 19 of 2012, including any amendment, consolidation or re-enactment thereof;

1.1.10 "**IFRS**" means the International Financial Reporting Standards formulated by the International Accounting Standards Board, or its successor;

- 1.1.11 "**JSE**" means a public company duly registered and incorporated with limited liability under the company laws of the Republic under registration number 2005/022939/06, licensed as an exchange under the Financial Markets Act;
- 1.1.12 "**JSE Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;
- 1.1.13 "**Participant**" has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.14 "**Regulations**" means the regulations published in terms of the Act from time to time;
- 1.1.15 "**Republic**" means the Republic of South Africa;
- 1.1.16 "**Securities**" means -
- 1.1.16.1 any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or
- 1.1.16.2 anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act;
- 1.1.17 "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of sections 50(1) and referred to in clause 8 hereof;
- 1.1.18 "**SENS**" means the Securities Exchange News Service of the JSE;
- 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 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 agreements in force from time to time between all or some of the Shareholders and the Company in terms of which the rights and

obligations of the Shareholders amongst themselves (in their capacities as Shareholders) are regulated and in terms of which the relationship between each Shareholder and the Company is regulated;

- 1.1.22 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;
- 1.1.23 **"Sub-register"** means the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Act;
- 1.1.24 **"Uncertificated Securities"** has the meaning set out in section 1 of the Financial Markets Act; and
- 1.1.25 **"Uncertificated Securities Register"** means the record of uncertificated securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
 - 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
 - 1.2.2 a reference to the Act shall include reference to the Regulations;
 - 1.2.3 a reference to a section by number refers to the corresponding section of the Act;
 - 1.2.4 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
 - 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.2.5.1 a provision of any Shareholders Agreement, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;

- 1.2.5.2 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.5.3 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;
- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes -
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.8 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.9 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.10 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –

- 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "**law**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and
- 1.3.3 "**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, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

- 1.8 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 **JURISTIC PERSONALITY**

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

3 **REGULATORY FRAMEWORK**

The Company is governed by –

- 3.1 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;
- 3.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 3.3 the other provisions of this Memorandum of Incorporation.

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 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 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 (c) or prohibit the amendment of any particular provision hereof as contemplated in section 15(2)(c).

7 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 7.1 The Company is authorised to issue –

7.1.1 500,000,000 (five hundred million) ordinary Shares with a par value of R0,01 (1 cent each), of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to –

7.1.1.1 vote on any matter to be decided by the Shareholders of the Company and to 1 (one) vote in the case of a vote by means of a poll;

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

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

7.1.2 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.

- 7.2 The Board shall not have the power to –

7.2.1 create any class of Shares;

7.2.2 increase or decrease the number of authorised Shares of any class of the Company's Shares; or

- 7.2.3 consolidate and reduce the number of the Company's issued and authorised Shares of any class; or
- 7.2.4 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital; or
- 7.2.5 convert one class of Shares into one or more other classes of Shares; or
- 7.2.6 reclassify any classified Shares that have been authorised but not issued; or
- 7.2.7 classify any unclassified Shares that have been authorised but not issued; or
- 7.2.8 determine the preferences, rights, limitations or other terms of any Shares; or
- 7.2.9 change the name of the Company,

and such powers shall only be capable of being exercised by the Shareholders by way of a special resolution of the Shareholders.

- 7.3 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 as contemplated in clause 24.2.
- 7.4 Without prejudice to, the provisions of clause 7.2, 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 holders of ordinary Shares and in accordance with the JSE Listings Requirements, and if any amendment relates to the variation of any preference, rights, limitations and other terms attaching to any other class of Shares already in issue such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting.

- 7.5 Preferences, rights, limitations or any other terms of any class of Shares may not be varied and no resolution may be proposed to Shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7).
- 7.6 The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 7.7 The Board may, subject to clause 7.11 and the further provisions of this clause 7.7, resolve to issue Shares of the Company at any time, but only –
- 7.7.1 within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and
- 7.7.2 to the extent that such issue has been approved by the Shareholders in general meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any general meeting of the Shareholders prior to such annual general meeting.
- 7.8 All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be in accordance with the JSE Listings Requirements.
- 7.9 All Securities of the Company for which a listing is sought on the JSE and all Securities of the same class as Securities of the Company which are listed on the JSE must, notwithstanding the provisions of section 40(5), but unless otherwise required by the Act, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.
- 7.10 Subject to what may be authorised by the Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with clause 7.12, and subject to clause 7.11, the Board may only issue unissued

ordinary Shares if such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such Shares are issued for the acquisition of assets by the Company.

- 7.11 Notwithstanding the provisions of clauses 7.2, 7.10 and 7.12, 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% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.
- 7.12 Notwithstanding the provisions of clause 7.10, the Shareholders may at a general meeting authorise the Directors to issue Shares of the Company at any time and/or grant options to subscribe for Shares as the Directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements.
- 7.13 Except to the extent 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 as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

8 CERTIFICATED AND UNCERTIFICATED SECURITIES

- 8.1 Pursuant to section 33(2) of the Financial Markets Act, the Company may only issue further listed Securities in uncertificated form. Except to the extent otherwise provided in the Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any

Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.

- 8.2 Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities.
- 8.3 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities, who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.
- 8.4 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –
- 8.4.1 immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and
- 8.4.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.
- 8.5 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

9 SECURITIES REGISTER

- 9.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 9.2 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 –
- 9.2.1 the total number of Uncertificated Securities;
 - 9.2.2 with respect to Certificated Securities –
 - 9.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued or transferred;
 - 9.2.2.2 the number of Certificated Securities issued or transferred to each of them;
 - 9.2.2.3 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding and the names and addresses of the registered owners of the Securities and any holders of beneficial interests therein; and
 - 9.2.2.4 any other prescribed information.
- 9.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 8.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –
- 9.3.1 forms part of the Securities Register; and
 - 9.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 9, any details referred to in clause 9.2.2, read with the

changes required by the context or as determined by the rules of the Central Securities Depository.

- 9.4 The Securities Register or Uncertificated Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 9.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 9.6 A certificate evidencing any Certificated Securities of the Company –
- 9.6.1 must state on its face –
- 9.6.1.1 the name of the Company;
- 9.6.1.2 the name of the person to whom the Securities were issued or transferred; and
- 9.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
- 9.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 9.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 9.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 9.8 If, as contemplated in clause 9.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 9.8.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and

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

provided that the failure of any Share certificate to satisfy the provisions of clauses 9.6 to 9.8 is not a contravention of the Act and does not invalidate that certificate.

- 9.9 Each Shareholder shall be entitled to 1 (one) certificate for all the Shares of a particular class registered in his name, or to several certificates, each for a part of such Shares.

- 9.10 A certificate for Shares registered in the names of 2 (two) or more persons shall be delivered to the person first named in the register as a holder thereof and delivery of a certificate for a Share to that person shall be a sufficient delivery to all joint holders of that Share.

- 9.11 In the case of any Share registered in the names of 2 (two) or more persons as joint holders, the person first named in the register shall, save as may otherwise be provided in this Memorandum of Incorporation, be the only person recognised by the Company as having any title to such Share.

- 9.12 If any certificate is worn out or defaced, then, upon production thereof to the Company the same may be cancelled and a new certificate in lieu thereof issued, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the Directors and on such indemnity being given and after such advertisement (if any) of the loss or destruction as the Directors deem adequate at the expense of the party claiming the new certificate, a new certificate in lieu thereof may be given to the party entitled to such lost or destroyed certificate. In case of loss or destruction the Shareholder to whom the new certificate is given shall repay to the Company all expenses incidental to the investigation by the Company of the evidence of such destruction or loss and to such indemnity.

10 TRANSFER OF SECURITIES

- 10.1 The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to

remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.

- 10.2 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.
- 10.3 Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by –
- 10.3.1 the certificate issued in respect of the Certificated Securities to be transferred; and/or
- 10.3.2 such other evidence as the Company may require to prove the title of the transferor, or his or her right to transfer the Certificated Securities.
- 10.4 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's transfer 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.
- 10.5 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide.

- 10.6 The Directors may, in their discretion, decline to register any transfer to a minor or to a person of unsound mind or to any trustee, curator, executor, administrator or other person in any representative capacity of any Shares.
- 10.7 The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a duly certificated copy of such agent's authority is produced and filed with the Company.
- 10.8 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.
- 10.9 The transfer of Uncertificated Securities may be effected only –
- 10.9.1 by a Participant or Central Securities Depository;
- 10.9.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and
- 10.9.3 in accordance with section 53 and the rules of the Central Securities Depository.
- 10.10 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 10.11 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 NO LIEN

It is recorded for the avoidance of doubt that fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

12 TRANSMISSION OF SECURITIES

- 12.1 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 such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholder, as determined by the Board, 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 sequestered or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.
- 12.2 Subject to the provisions of clause 12.1, 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 –
- 12.2.1 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
- 12.2.2 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.

13 PAYMENT OF COMMISSION

- 13.1 The Company may pay a commission at a rate not exceeding 10% (ten percent) of the issue price of a Share to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Shares of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Shares of the Company.
- 13.2 Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 13.3 Such commission may be paid in cash or, if authorised by the Company in general meeting, by the allotment of fully or partly paid-up Shares, or partly in one way and partly in the other.
- 13.4 The Company may, on any issue of Shares, pay such brokerage as may be lawful.

14 SHARE WARRANTS

- 14.1 Subject to the provisions of the Act, the Listings Requirements of the JSE and any other provisions of this Memorandum of Incorporation, the Company may issue Share warrants.
- 14.2 For the purpose referred to in clause 14.1, the Directors may –
- 14.2.1 issue warrants in respect of fully paid-up Shares, stating that the bearer is entitled to the Shares therein specified; and
- 14.2.2 provide for the payment, by coupons or otherwise, of future dividends on the Shares included in such warrants.
- 14.3 The Directors may determine and from time to time vary –
- 14.3.1 the form, terms and conditions upon which the warrants shall be issued; and
- 14.3.2 the conditions upon which -

- 14.3.2.1 the bearer of a warrant shall be entitled to attend and vote at general meetings; and/or
 - 14.3.2.2 a warrant may be surrendered; and/or
 - 14.3.2.3 the name of the holder may be entered in the Securities Register in respect of the Shares specified therein.
- 14.4 Subject to the provisions of this Memorandum of Incorporation, the bearer of a warrant shall be a full Shareholder of the Company.
- 14.5 The holder of a warrant shall be subject to the provisions from time to time in force relating thereto, whether made before or after the issue of such warrant.
- 14.6 The Directors may, on such terms and conditions as they think fit, authorise the issue of a new warrant or coupon in substitution for one proved to their satisfaction to have been destroyed, but not otherwise.

15 DEBT INSTRUMENTS

The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2), but no special privileges associated with any such debt instruments as contemplated in section 43(3) may be granted, and the authority of the Board in such regard is accordingly limited by this Memorandum of Incorporation.

16 CAPITALISATION SHARES

- 16.1 Save to the extent authorised by the Shareholders by means of ordinary resolution, and unless such transaction(s) has/have been approved by the JSE (and the JSE Listings Requirements have been complied with), the Board shall not have the power or authority to –
- 16.1.1 approve the issuing of any authorised Shares as capitalisation Shares; or
 - 16.1.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or

- 16.1.3 subject to clause 16.2, resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share.
- 16.2 The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in clause 16.1.3, unless the Board –
- 16.2.1 has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and
- 16.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

17 **BENEFICIAL INTERESTS IN SECURITIES**

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

18 **FINANCIAL ASSISTANCE**

The Board may authorise the Company –

- 18.1 as contemplated in section 44, 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 of the Company or a related or inter-related company; and/or
- 18.2 as contemplated in section 45, to provide direct or indirect financial assistance to a Director or prescribed officer of the Company or of a related or inter-related company, or to a related or inter-related company or corporation, or to a member of a related or inter-related corporation, or to a person related to any such company, corporation, director, prescribed officer or member,

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

19 ACQUISITION BY THE COMPANY OF ITS OWN SHARES

- 19.1 Subject to the JSE Listings Requirements, the provisions of section 48 and the further provisions of this clause 19 –
- 19.1.1 the Board may determine that the Company acquire a number of its own Shares; and
- 19.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but –
- 19.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and
- 19.1.2.2 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.
- 19.2 Any decision by the Company to acquire its own Shares must satisfy the JSE Listings Requirements and the requirements of section 46 and, accordingly, the Company may not acquire its own Shares unless –
- 19.2.1 for as long as it is required in terms of the JSE Listings Requirements, the acquisition has been approved by a special resolution of the Shareholders, whether in respect of a particular repurchase or generally approved by Shareholders and unless such acquisition otherwise complies with the JSE Listings Requirements (or such other sections as may be applicable from time to time);
- 19.2.2 the acquisition –
- 19.2.2.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 19.2.2.2 the Board, by resolution, has authorised the acquisition;

- 19.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and
- 19.2.4 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 proposed acquisition.
- 19.3 A decision of the Board referred to in clause 19.1.1 –
- 19.3.1 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
- 19.3.2 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% (five percent) of the issued Shares of any particular class of the Company's Shares.
- 19.4 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 –
- 19.4.1 Shares held by one or more subsidiaries of the Company; or
- 19.4.2 convertible or redeemable Shares.

20 ODD-LOT OFFERS

- 20.1 If, upon the implementation of any odd-lot offer made by the Company, or pursuant to or following any odd-lot offer made by the Company which is unconditional, in accordance with the JSE Listings Requirements, there are Shareholders holding less than 100 (one hundred) ordinary Shares or Shareholders holding less than 100 (one hundred) ordinary Shares on

behalf of a person who owns the beneficial interest in such Shares ("**Odd-Lot Holdings**"), then, unless such Shareholders have elected to –

20.1.1 retain their Odd-Lot Holdings; or

20.1.2 sell their Odd-Lot Holdings;

the Directors shall, with the approval of an ordinary resolution passed at a general meeting, be entitled to cause the Odd-Lot Holdings to be sold on such basis as the Directors may determine and the Company shall account to such Shareholders for the proceeds attributable to them pursuant to the sale of such Odd-Lot Holdings.

21 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

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

21.1.1 receive notice of a Shareholders' meeting;

21.1.2 participate in and vote at a Shareholders' meeting;

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

21.1.4 receive a distribution; or

21.1.5 be allotted or exercise other rights,

shall be determined by the Board, provided that, for as long as the JSE Listings Requirements apply to the Company and prescribe a record date, such record date shall be the record date so prescribed.

21.2 Such record date must be published to the Shareholders in a manner that satisfies the JSE Listings Requirements and any other prescribed requirements.

22 SHAREHOLDERS' MEETINGS

Calling of Meetings

- 22.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.
- 22.2 The Company shall hold a Shareholders' meeting –
- 22.2.1 at any time that the Board is required by the Act, the JSE Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or
- 22.2.2 whenever required in terms of the Act to fill a vacancy on the Board; or
- 22.2.3 when required in terms of clause 22.3 or by any other provision of this Memorandum of Incorporation.
- 22.3 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –
- 22.3.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 22.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

Annual General Meetings

- 22.4 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 once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting.
- 22.5 The Company shall deliver notices of meetings to each Shareholder entitled to vote at such meeting who has elected to receive such documents.

- 22.6 Subject to the provisions of the JSE Listings Requirements, 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.
- 22.7 Each annual general meeting of the Company contemplated in clause 22.4 shall provide for at least the following business to be transacted –
- 22.7.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 22.7.2 the election of Directors, to the extent required by the Act and by clause 28.7 of this Memorandum of Incorporation;
- 22.7.3 the appointment of an auditor for the following financial year and an audit committee; and
- 22.7.4 any matters raised by the Shareholders, with or without advance notice to the Company.
- 22.8 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act and the JSE Listings Requirements.

Location and Notice of Meetings

- 22.9 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting anywhere in the Republic, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 22.10 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice.

Quorum and Adjournment of Meetings

- 22.11 The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and present in person. In addition –
- 22.11.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 22.11.2 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% (twenty five percent) 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.
- 22.12 The time periods specified in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 22.11 –
- 22.12.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;
- 22.12.2 for consideration of a particular matter to begin have not been satisfied –
- 22.12.2.1 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
- 22.12.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,
- provided that the person intended to chair a meeting that cannot begin due to the operation of clause 22.11 may extend the 1 (one) hour limit allowed in clause 22.12 for a reasonable period on the grounds that –
- 22.12.3 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

- 22.12.4 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 22.11.
- 22.13 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.
- 22.14 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 22.12 unless the location for the meeting is different from –
- 22.14.1 the location of the postponed or adjourned meeting; or
- 22.14.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 22.15 Notwithstanding the provisions of clause 22.14, for so long as the Company's Securities are listed on the JSE, the Company shall release notice on SENS of any postponed or adjourned meeting (whether postponed or adjourned in terms of clause 22.12 or otherwise).
- 22.16 If at the time appointed in terms of clause 22.12 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 22.11 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 22.17 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.
- 22.18 The chairperson of a meeting may with the consent of a meeting at which a quorum is present (and must if the meeting resolves thus) adjourn the meeting from time to time and from place to place, but an adjourned

meeting may only deal with matters which could legally be dealt with at the meeting on which the adjournment took place.

- 22.19 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.

Conduct of Meetings

- 22.20 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 22.21 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall by way of poll appoint one of their number to be chairperson of the meeting.
- 22.22 The chairperson of a Shareholders' meeting may –
- 22.22.1 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; and
- 22.22.2 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.
- 22.23 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 -
- 22.23.1 it is brought to the attention of the chairperson at the meeting; and
- 22.23.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

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

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

22.24.2 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.

22.25 Even if he is not a Shareholder -

22.25.1 any Director; or

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

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

23 SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION

23.1 Subject to the provisions of the JSE Listings Requirements, 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 –

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

23.1.2 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.

- 23.2 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.

24 VOTES OF SHAREHOLDERS

- 24.1 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 –
- 24.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
- 24.1.2 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; and
- 24.1.3 the holders of Securities other than ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 24.2.
- 24.2 If any resolution is proposed as contemplated in clause 7.4 the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders as contemplated in clause 24.1, provided that –
- 24.2.1 the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and

- each Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held; and
- 24.2.2 the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 24.3 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 –
- 24.3.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 24.3.2 a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 24.3.3 the chairperson of the meeting.
- 24.4 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 24.3, 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.
- 24.5 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.

- 24.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 24.7 A poll demanded on the election of a chairperson (as contemplated in clause 22.21) 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.
- 24.8 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.
- 24.9 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 –
- 24.9.1 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
- 24.9.2 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 or the Company's transfer secretary 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 in his sole discretion.

- 24.10 No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 24.11 All results of voting by the Shareholders on resolutions submitted to them shall be announced and disclosed by the Company as required by the JSE Listings Requirements. The announcement shall include the following -
- 24.11.1 the resolutions proposed at the meeting;
- 24.11.2 the Shares voted in person or by proxy disclosed as a number and a percentage (in relation to the total issued Share capital of that class of the Company);
- 24.11.3 the Shares abstained disclosed as a percentage (in relation to the total issued Share capital of that class of the Company);
- 24.11.4 the votes carried (i) for and (ii) against each resolution, disclosed as a percentage (in relation to the total number of Shares voted at the meeting in respect of clause 24.11.2); and
- 24.11.5 to the extent that the number of Shares in clauses 24.11.2 and 24.11.3 differ for each resolution, details must be provided per resolution.

25 PROXIES AND REPRESENTATIVES

- 25.1 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 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder, provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.

- 25.2 A proxy appointment –
- 25.2.1 must be in writing, dated and signed by the Shareholder; and
- 25.2.2 remains valid for –
- 25.2.2.1 1 (one) year after the date on which it was signed; or
- 25.2.2.2 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.
- 25.3 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 or the Company's transfer secretary before such holder exercises any rights of the Shareholder at a Shareholders' meeting. A Shareholder so represented at a meeting of the Company shall be deemed for purposes of this Memorandum of Incorporation to be a Shareholder who is present at the meeting.
- 25.4 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 –
- 25.4.1 a Shareholder has the right to appoint 2 (two) 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;
- 25.4.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);
- 25.4.3 a Shareholder or his proxy must deliver to the Company or the Company's transfer secretary a copy of the instrument appointing a

proxy not later than 48 (forty eight) hours before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights, provided that the chairperson of the meeting may, in his discretion, accept proxies that have been delivered after the expiry of the aforementioned period up until the time of commencement of the meeting; and

25.4.4 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.

25.5 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 _____ of _____ (address)

being a holder of _____ shares in _____ Limited do hereby appoint

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to attend, speak and 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
<u>Abstain</u>		
Special Resolution 1
Ordinary Resolution 1

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

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/her stead, and such proxy need not be a shareholder of the Company)."

26 SHAREHOLDERS' RESOLUTIONS

- 26.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7). Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, to the extent that the JSE Listings Requirements require a higher percentage in respect of any particular ordinary resolution, the Company shall not implement such ordinary resolution unless the Company has obtained the support of the applicable percentage prescribed in terms of the JSE Listings Requirements.
- 26.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9).
- 26.3 No matters, except -
- 26.3.1 those matters set out in section 65(11);
- 26.3.2 any matter required by the Act to be resolved by means of a special resolution; and
- 26.3.3 for so long as the Company's securities are listed on the JSE, any matter required by the JSE Listings Requirements to be resolved by means of a special resolution,
- require a special resolution adopted at a Shareholders' meeting of the Company.

- 26.4 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.

27 **RESTRICTION ON SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

Despite section 60, only the following resolutions of Shareholders may be proposed as written resolutions in accordance with section 60 of the Act, as per the JSE Listings Requirements -

- 27.1 a change of name of the Company;
- 27.2 resolutions in respect of odd-lot offers as contemplated in clause 20;
- 27.3 an increase in the number of authorised Shares; and
- 27.4 approval of any amendment to this Memorandum of Incorporation,

and apart from the above, all resolutions of Shareholders may only be passed at general meetings.

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

Numbers

- 28.1 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 an audit committee and a social and ethics committee, the Board must comprise at least 4 (four) Directors 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.
- 28.2 Subject to the provisions of clause 28.9.1, all Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company.

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

Election

28.4 In any election of Directors –

28.4.1 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

28.4.2 in each vote to fill a vacancy –

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

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

28.5 There shall be no appointed or *ex officio* Directors as contemplated in section 66(4) (a) (ii).

Eligibility, Resignation and Rotation

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

28.7 No Director shall be appointed for life or for an indefinite period and the Directors shall rotate in accordance with the following provisions of this clause 28.7 –

28.7.1 at each annual general meeting referred to in clause 22.4, 1/3 (one third) of the Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 1/3rd (one third), but not less than 1/3rd (one third), shall retire from office, provided that if a Director is

appointed as managing Director or as an employee of the Company in any other capacity, he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of Directors;

- 28.7.2 the Directors to retire in every year shall be, firstly, those who have been appointed during the applicable year and, secondly, those have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 28.7.3 a retiring Director shall be eligible for re-election;
- 28.7.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with clause 27;
- 28.7.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, those Directors shall continue in office until the dissolution of the next meeting of Shareholders in the next year, and so on from year to year until their places are filled, unless it is determined at such meeting that any particular vacancy shall not be filled.

Powers

- 28.8 The Board has the power to –
- 28.8.1 appoint Directors to fill a casual vacancy or as an addition to the Board (as contemplated in section 66(4)(a)(i)), provided that such appointment must be confirmed by the Shareholders, in accordance with clause 28.2, at the next annual general meeting; and
- 28.8.2 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 only limited and restricted as contemplated in this clause 28.

- 28.9 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.
- 28.10 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Board shall from time to time determine.
- 28.11 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, 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, 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.
- 28.12 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number falls below such minimum, fill the

vacancy/ies in accordance with clause 28.8.1 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the board of Directors or invalidate anything done by the board of Directors while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation.

- 28.13 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 (three) month period contemplated in clause 28.12, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

Directors' Interests

- 28.14 A Director may be employed in any other capacity in the Company or as a Director or employee of the Company controlled by, or itself a major subsidiary of, the Company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.
- 28.15 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 to their knowledge any person who is a related person to them) has a personal financial interest in any matter to be considered by the Board.
- 28.16 Save where the Directors have obtained the prior approval of the JSE to so propose such a resolution, the proposal of any resolution to Shareholders to permit or ratify an act of the Directors that is inconsistent with any limitation or restriction imposed by this Memorandum of Incorporation, the

JSE Listings Requirements or the authority of the Directors to perform such an act on behalf of the Company, is prohibited.

Removal of Directors

- 28.17 A Director may be removed by an ordinary resolution adopted at a meeting of the holders of ordinary Shares by the persons entitled to exercise voting rights in an election of that Director, subject to the provisions of section 71 and any other applicable provisions of the Act.

Alternate Directors

- 28.18 Any Director shall have the power to nominate another person approved by the Board to act as alternate Director in his place during his absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors. A person may be appointed as alternative to more than one Director. Where a person is alternate to more than one Director or where an alternate Director is a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 28.19 The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms of this Memorandum of Incorporation or if the Director who appointed him ceases to be a Director, or gives notice to the company secretary that the alternate Director representing him shall have ceased to do so. An alternate Director shall look to the Director who appointed him for his remuneration.

29 DIRECTORS' MEETINGS

- 29.1 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.

- 29.2 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 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairperson of such meeting.
- 29.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 29.4 A Director authorised by the Board -
- 29.4.1 may call a meeting of the Board at any time; and
- 29.4.2 must call such a meeting if required to do so by at least-
- 29.4.2.1 25% (twenty five percent) of the Directors, in the case of a Board that has at least 12 (twelve) members; or
- 29.4.2.2 2 (two) Directors, in any other case.
- 29.5 The Board has the power to –
- 29.5.1 consider any matter and/or adopt any resolution other than at a meeting contemplated 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. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the Director who signed it last in time (unless a statement to the contrary is made in that resolution);
- 29.5.2 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;

29.5.3 determine the manner and form of providing notice of its meetings contemplated in section 73(4); and

29.5.4 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.

29.6 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 follows, subject only to clause 29.6.5 –

29.6.1 if all of the Directors of the Company –

29.6.1.1 acknowledge actual receipt of the notice convening a meeting; or

29.6.1.2 are present at a meeting; or

29.6.1.3 waive notice of a meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;

29.6.2 2 (two) Directors must be present at a meeting before a vote may be called at any meeting of the Directors;

29.6.3 each Director has 1 (one) vote on a matter before the Board;

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

- 29.6.5 in the case of a tied vote –
 - 29.6.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; and
 - 29.6.5.2 the matter being voted on fails.
- 29.7 Resolutions adopted by the Board –
 - 29.7.1 must be dated and sequentially numbered;
 - 29.7.2 are effective as of the date of the resolution, unless any resolution states otherwise; and
 - 29.7.3 may be signed in counterparts.
- 29.8 Any minutes of a meeting, or a resolution, or extracts thereof signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board or by the company secretary, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 29.9 A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person, or by Electronic Communication. A decision made in the manner contemplated in this clause 29.9 is of the same effect as if it had been approved by voting at a meeting.

30 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 30.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a special resolution approved by the Shareholders within the previous 2 (two) years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 30.2 Any Director who -
 - 30.2.1 serves on any executive or other committee; or
 - 30.2.2 devotes special attention to the business of the Company; or

30.2.3 goes or resides outside the Republic for the purpose of the Company; or

30.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.

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

30.3.1 the business of the Company; and

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

31 EXECUTIVE DIRECTORS

31.1 The Directors may from time to time appoint 1 (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, provided that the period of office of an executive Director appointed in terms of an agreement shall be for a maximum period of 5 (five) years at any one time. An executive 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.

31.2 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.

31.3 The Directors may from time to time entrust to and confer upon an executive Director 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, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

32 INDEMNIFICATION OF DIRECTORS

32.1 The Company may –

32.1.1 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);

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

32.1.3 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.

32.2 The provisions of clause 32.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee.

33 BORROWING POWERS

33.1 Subject to the provisions of clause 33.2, clause 11 and all other provisions of this Memorandum of Incorporation, the Directors may from time to time -

33.1.1 borrow for the purposes of the Company such sums as they think fit; and

33.1.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company.

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

33.2.1 the Company; and

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

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

34 COMMITTEES OF THE BOARD

34.1 The Board may –

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

34.1.2 include in any such committee persons who are not Directors, as contemplated in section 72(2)(a),

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

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

- 34.3 If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal in terms of section 72(5), the Board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 and the Regulations.
- 34.4 If and for as long as any of the Company's Securities are listed on the JSE, the Board shall appoint such Board committees as are required by the JSE Listings Requirements, having such functions and powers as are prescribed by or in terms of the JSE Listings Requirements.
- 34.5 The Company must further appoint an audit committee in the manner and for the purposes set out in Part D of Chapter 3 of the Act.

35 ANNUAL FINANCIAL STATEMENTS

- 35.1 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 –
- 35.1.1 the Act;
- 35.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 35.1.3 this Memorandum of Incorporation.
- 35.2 The Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 35.3 The Company shall appoint an auditor 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.
- 35.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Act.

- 35.5 A copy of the annual financial statements, or any summary thereof permitted in terms of the Act, must be sent to Shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.
- 35.6 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 –
- 35.6.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 35.6.2 subject to and in accordance with IFRS –
- 35.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 35.6.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;
- 35.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 35.6.2.4 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.

36 COMPANY SECRETARY

- 36.1 The Company must appoint a company secretary.
- 36.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.
- 36.3 The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

37 DISTRIBUTIONS

- 37.1 The Directors may declare dividends in accordance with the Act.
- 37.2 Subject to the provisions of the Act, and particularly section 46, the Company may not make a proposed distribution unless –
- 37.2.1 the distribution –
- 37.2.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 37.2.1.2 is authorised by resolution of the Board, in compliance with the JSE Listings Requirements;
- 37.2.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed distribution; and
- 37.2.3 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 proposed distribution.
- 37.3 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.
- 37.4 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 37.5 The Directors may from time to time declare and pay to the Shareholders such interim distributions as the Directors consider to be appropriate.
- 37.6 Unclaimed distributions comprising dividends shall be held by the Company for the benefit of the applicable Shareholder for a period of three years after the date on which the applicable Shareholder became entitled to such distribution, provided that all other distributions shall be held by the

Company indefinitely for the benefit of Shareholders. Any unclaimed monies in respect of which the claims of the relevant Securities holders have prescribed shall be forfeited by resolution of the Directors for the benefit of the Company and may be dealt with by the Directors or their assigns as they deem fit.

- 37.7 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by cheque or warrant sent by post and addressed to -
- 37.7.1 the holder at his registered address; or
- 37.7.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the share, at his registered address; or
- 37.7.3 such person and at such address as the holder or joint holders may in writing direct.
- 37.8 Every such cheque or warrant shall -
- 37.8.1 be made payable to the order of the person to whom it is addressed; and
- 37.8.2 be sent at the risk of the holder or joint holders.
- 37.9 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.
- 37.10 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 37.11 When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 37.12 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.

- 37.13 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
- 37.13.1 by the distribution of specific assets; or
- 37.13.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
- 37.13.3 in cash; or
- 37.13.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 37.14 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.
- 37.15 The Directors may -
- 37.15.1 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
- 37.15.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.
- 37.16 Any distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.
- 37.17 Payments to holders of Securities must be provided for in accordance with the JSE Listings Requirements and may not provide that capital shall be repaid upon the basis that it may be called up again by the Company.

38 NOTICES

- 38.1 All notices shall be given by the Company to each Shareholder of the Company and simultaneously to the Issuer Services Division of the JSE, and shall be given in writing (which shall include any form of Electronic Communication) in any manner authorised by the JSE Listings Requirements and the Act. All notices shall, in addition to the above, be

released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Act.

- 38.2 Each Shareholder of the Company –
- 38.2.1 shall notify in writing to the Company or the Company's transfer secretary an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 38.2.2 may notify in writing to the Company or the Company's transfer secretary an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 38.3 Any Shareholder whose address in the Securities Register is an address not within the Republic, shall be entitled to have notices served upon him at such address.
- 38.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 38.5 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 38.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 38.7 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of

Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

39 **WINDING UP**

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

40 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

40.1 Subject to the provisions of clauses 7.4 and 40.3, this Memorandum of Incorporation may only be altered or amended by way of a special resolution of the ordinary Shareholders in accordance with section 16(1)(c), except if such amendment is in compliance with a Court order as contemplated in section 16(1)(a).

40.2 An amendment of this Memorandum of Incorporation will take effect from the later of –

40.2.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and

40.2.2 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.

40.3 The Board may, as contemplated in section 17(1), 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 -

40.3.1 publishing a notice of the alteration, in any manner required or permitted by the Memorandum of Incorporation; and

40.3.2 filing a notice of the alteration.

41 **COMPANY RULES**

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

ADOPTION

This Memorandum of Incorporation was adopted by special resolution of the Shareholders on 21 November 2012.

ADDITIONAL CLASSES OF SHARES

In addition to the Shares contemplated in clause 7.1.1 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 –

- 1 20,000,000 (twenty million) non-redeemable, cumulative, non-participating preference shares with a par value of R0.01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 2;
- 2 18,000,000 (eighteen million) convertible, redeemable, non-cumulative, participating "A" preference shares with a par value of R0,01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 3; and
- 3 4,000,000 (four million) convertible, redeemable, non-cumulative, participating "B" preference shares with a par value of R0,01 (one cent) each in the share capital of the Company, subject to the preferences, rights, limitations and other terms associated with such class set out in Schedule 4.

**NON-REDEEMABLE, CUMULATIVE, NON-PARTICIPATING
PREFERENCE SHARES**

This Schedule 2 sets out the preferences, rights, limitations and other terms associated with the 20,000,000 (twenty million) non-redeemable cumulative non-participating preference shares with a par value of R0.01 (one cent) each in the share capital of the Company.

- 1 For purposes of this Schedule 2 -
 - 1.1 "**Arrear Preference Dividend**" means any and all Preference Dividends (or part only thereof), which were, for any reason whatsoever, not declared prior to or on, or were, if declared, not paid in full, 120 (one hundred and twenty) days after the Calculation Date for the applicable Preference Dividend Period, calculated in accordance with clause 2.5 of this Schedule;
 - 1.2 "**Average Prime Rate**" means, in respect of any Preference Dividend Period, the average of the Prime Rate which prevailed on each day during the period;
 - 1.3 "**Calculation Date**" means, in relation to a Preference Dividend, 30 June and 31 December in each year;
 - 1.4 "**Deemed Value**" means the Deemed Value of each Preference Share for purposes of calculation of the Preference Dividend, being an amount determined by the Directors at the time of allotment and issue of the first Preference Share's, notwithstanding the Issue Price of each Preference Share which may vary because of a difference in the premium at which the Preference Shares may be issued from time to time;
 - 1.5 "**Income Tax Act**" means the Income Tax Act No. 58 of 1962, as amended from time to time;
 - 1.6 "**Issue Date**" means, in relation to a Preference Share, the date on which that Preference Share was issued and allotted pursuant to a resolution of the Directors;

- 1.7 **"Issue Price"** means the actual issue price of each Preference Share, being the par value of a Preference Share plus the premium at which a Preference Share is allotted and issued;
- 1.8 **"Preference Dividend"** means a cumulative non-participating preference cash dividend calculated in accordance with clause 2.4 of this Schedule, plus any Arrear Preference Dividend calculated in accordance with clause 2.5 of this Schedule;
- 1.9 **"Preference Dividend Payment Date"** means, in relation to a Preference Dividend, the date of payment of such Preference Dividend, as determined by a resolution of the Directors, and in any event, a date not later than 120 (one hundred and twenty) days after the relevant Calculation Date;
- 1.10 **"Preference Dividend Period"** means the 6 (six) month period from the date following a Calculation Date until and including the Calculation Date immediately following, provided that the first Preference Dividend Period, in respect of the first tranche of Preference Shares issued, shall be calculated from the Issue Date up to and including the first Calculation Date after the Issue Date;
- 1.11 **"Preference Dividend Rate"** means, in relation to a Preference Share, subject to clause 2.7 of this Schedule, a rate that will not exceed a percentage of the Average Prime Rate, determined by the directors at the time of allotment and issue of such Preference Share;
- 1.12 **"Preference Shareholders"** means the registered holders of Preference Shares from time to time;
- 1.13 **"Preference Shares"** means the 20,000,000 (twenty million) non-redeemable, cumulative, non-participating preference shares with a par value of ZAR0.01 (one cent) each in the share capital of the Company; and
- 1.14 **"Prime Rate"** means the publicly quoted nominal rate of interest expressed as a percentage per annum, compounded monthly in arrear and calculated daily on an actual 365 (three hundred and sixty five) day count fraction from time to time quoted by The Standard Bank of South Africa Limited ("**SBSA**") as being its prime overdraft rate as certified by any manager of SBSA,

whose appointment and/or designation need not be proved. A certificate from any manager of SBSA as to the Prime Rate at any time shall constitute *prima facie* proof thereof.

2 The following are the preferences, rights, limitations and other terms associated with the Preference Shares -

2.1 Each Preference Share shall rank as regards to dividends, and a repayment of capital on the winding-up of the Company, prior to the ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Preference Shares.

2.2 Each Preference Share shall confer on the Preference Shareholder the right of a return of capital on the winding-up of the Company, in an amount equal to the aggregate of the par value and premium in respect of the Preference Shares divided by the number of Preference Shares then in issue, together with all Arrear Preference Dividends calculated to the date of repayment of capital, in priority to any payment in respect of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Preference Share.

2.3 Each Preference Share will confer on the Preference Shareholder the right to receive out of the profits of the Company, which it shall determine to distribute in priority to any payment of dividends to the holder of any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Preference Shares, the Preference Dividend calculated in terms of clause 2.4 of this Schedule.

2.4 The Preference Dividend shall be calculated in accordance with the following formula -

$$A = B \times C \times D/365$$

Where -

A = the Preference Dividend per Preference Share;

B = the Deemed Value per Preference Share, as defined in clause 1.4 of this Schedule;

C = the Preference Dividend Rate, as defined in clause 1.11 of this Schedule, in respect of the relevant Preference Dividend Period; and

D = the number of days in the relevant Preference Dividend Period.

2.5 Any Arrear Preference Dividend shall be calculated in accordance with the following formula -

$$E = F + (F \times G \times H/365)$$

Where -

E = the amount of the Arrear Preference Dividend;

F = the Preference Dividend, or portion of the Preference Dividend, which has not been declared and/or paid;

G = the Preference Dividend Rate, as defined in clause 1.11 of this Schedule, in respect of the period in H below, such rate to be compounded monthly;

H = the number of days from the date 120 (one hundred and twenty) days after the Calculation Date for the applicable Preference Dividend Period, up to the day on which such Arrear Preference Dividend is paid;

which amount will be added to the Preference Dividend to be calculated in respect of the next Preference Dividend Period.

2.6 If at any time any Arrear Preference Dividends remain outstanding -

2.6.1 no dividend may be declared or paid on any ordinary Share;

2.6.2 neither the Company nor any subsidiary of the Company may repurchase any of its ordinary Shares;

2.6.3 the Company shall not undertake an issue of any Shares *in lieu* of a distribution or payment out of its reserves; and

- 2.6.4 the Company may not make any other distribution of any nature to its Shareholders.
- 2.7 If there is any amendment or amendments to the Income Tax Act that results in the Preference Dividends becoming a deductible expense for the Company, provided such amendment is uniformly applicable to all corporate taxpayers and not only because of the particular circumstances of the Company, the Preference Dividend Rate will be increased by the Company. Such increase will be limited to the extent that the Company incurs less after tax cost in servicing the Preference Shares, which cost savings it would not have obtained but for such amendments to the Income Tax Act. If such amendments to the Income Tax Act do not result in the Company incurring lesser after tax costs in servicing the Preference Shares, then, notwithstanding that such amendment may result in a decrease in the after-tax returns of any Preference Shareholder on its holding of Preference Shares, no change shall be made to the Preference Dividend Rate. No changes to the Preference Dividend Rate shall be made as a result of any changes to (including the removal of) the rate of secondary tax on companies (or similar levy applied) which may be applicable to the Company from time to time. The Company shall appoint its auditors to verify whether it is obliged to increase the Preference Dividend Rate in accordance with this clause 2.7 of this Schedule. The auditors, in deciding whether such increase is required in terms of this clause 2.7, shall act as experts and not as arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Company and all Preference Shareholders. The costs of such auditors shall be borne and paid by the Company. Any adjustment to the Preference Dividend Rate pursuant to this clause 2.7 shall be effective from the first day of the Preference Dividend Period following such amendment.
- 2.8 Save as set out in clauses 2.1 to 2.7 of this Schedule, the Preference Shares shall not be entitled to any participation in the profits or assets of the Company, or on a winding-up in any of the surplus assets of the Company.

- 2.9 The holders of the Preference Shares shall be entitled to receive notice of any meeting of the Company and to attend such meetings. However, the holders of the Preference Shares shall not be entitled to vote either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the Preference Shares, unless either or both of the following circumstances prevail at the date upon which notice convening the meeting in question is posted to Shareholders –
- 2.9.1 the Preference Dividend, or any part thereof, remains in arrear and unpaid as determined in accordance with clause 1.1 of this Schedule after 6 (six) months from the relevant Calculation Date; and/or
- 2.9.2 a resolution of the Company is proposed which resolution directly affects the rights attached to the Preference Shares or the interests of the Preference Shareholders, including but not limited to a resolution for the winding-up of the Company or for the reduction of its capital (other than a resolution for the reduction of any capital in lieu of a normal cash dividend to the holders of ordinary Shares), in which event the Preference Shareholders shall be entitled to vote only on such resolution.
- 2.10 At every general meeting of the Company at which holders of the Preference Shares as well as other classes of shares are present and entitled to vote, a Preference Shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the par value of the Preference Shares held by him bears to the aggregate amount of the par value of all Shares issued by the Company.
- 2.11 At every meeting of the Preference Shareholders, the provisions of these clauses relating to general meetings of ordinary Shareholders shall apply, *mutatis mutandis*, except that a quorum at any such meeting shall be any person or persons holding or representing by proxy at least 25% (twenty five percent) of the Preference Shares then in issue, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of these clauses relating to adjourned general meetings shall apply, *mutatis mutandis*.

- 2.12 No Shares in the capital of the company ranking, as regards rights to dividends or, on a winding-up as regards return of capital, in priority to the Preference Shares, shall be created or issued, without the prior sanction of a resolution passed at a separate class meeting of the Preference Shareholders in the same manner *mutatis mutandis* as a special resolution, provided that the company shall be entitled to -
- 2.12.1 create and/or allot and issue further preference shares (whether of the same class as the Preference Shares or not), ranking *pari passu* with the Preference Shares without former reference to existing Preference Shareholders; and
- 2.12.2 issue the Preference Shares in tranches, without former reference to the existing Preference Shareholders.

**CONVERTIBLE, REDEEMABLE, NON-CUMULATIVE, PARTICIPATING "A"
PREFERENCE SHARES**

This Schedule 3 sets out the preferences, rights, limitations and other terms associated with the 18,000,000 (eighteen million) convertible, redeemable, non-cumulative, participating preference shares with a par value of R0,01 (one cent) each in the share capital of the Company.

- 1 For the purposes of this Schedule 3 -
 - 1.1 **"A" Preference Dividend** means a dividend calculated in accordance with clause 2.3 of this Schedule;
 - 1.2 **"A" Preference Shares** means the 18,000,000 (eighteen million) convertible, redeemable, non-cumulative, participating preference shares with a par value of R0,01 (one cent) each in the share capital of the company;
 - 1.3 **"A" Preference Shareholders** means the registered holders of the "A" Preference Shares from time to time;
 - 1.4 **"B" Preference Shares** means the 4,000,000 (four million) convertible redeemable participating preference shares with a par value of R0,01 (one cent) each in the share capital of the Company, having the preferences, rights, limitations and other terms associated therewith set out in Schedule 4;
 - 1.5 **"BEE Legislation"** means the Broad-Based Black Economic Empowerment Act, No 53 of 2003, as amended or superseded from time to time, and the codes published in terms of section 9 thereof from time to time;
 - 1.6 **"Employee Beneficiary"** means a beneficiary of the Thuthukani Trust appointed as such in terms of clause 15 of the Thuthukani Trust deed;
 - 1.7 **"Preference Shares"** means the existing 20,000,000 (twenty million) non-redeemable cumulative non-participating preference shares with a par value of R0,01 (one cent) each, having the preferences, rights, limitations and other terms associated therewith set out in Schedule 2; and

- 1.8 **"Thuthukani Trust"** means the trustees for the time being of the Massmart Thuthukani Empowerment Trust entered into between the Company, as founder, and Winston Pitse, Mathulwane Mpshe, Pearl Maphoshe, John Hawksley, Yvonne Kgoedi and Brian Leroni as first trustees on 14 June 2006 on the terms and conditions of the trust deed as amended from time to time, for the purpose of implementing a broad-based black economic empowerment scheme.
- 2 The following are the preferences, rights, limitations and other terms associated with the "A" Preference Shares -
- 2.1 Each "A" Preference Share shall rank as regards a repayment of capital on the winding-up of the Company, after the Preference Shares, but prior to the ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the "A" Preference Shares.
- 2.2 For the purpose of clause 2.1 of this Schedule, each "A" Preference Share shall confer on the "A" Preference Shareholder the right to a return of capital on the winding-up of the Company, in an amount equal to the par value per "A" Preference Share held. After the payment to all holders of Shares in the Company which have a preference over the ordinary Shares (including the "A" Preference Shares) of all amounts due to them at the relevant time, the "A" Preference Shares shall participate equally with the ordinary Shares and such of the other preference shares as have a right to participate, in the remaining profits and assets of the Company as if each "A" Preference Share were an ordinary Share.
- 2.3 Each "A" Preference Share shall carry the right to a non-cumulative dividend determined as follows -
- 2.3.1 if and to the extent that any dividend or any other distribution in terms of the Act and/or the Company's Memorandum of Incorporation, is declared and paid by the Company in respect of an ordinary Share in the *first year* after the "A" Preference Share has been issued, the "A" Preference Share shall be entitled to 25% (twenty-five per cent) of such dividend or such other distribution declared and paid in respect of each ordinary Share;

- 2.3.2 if and to the extent that any dividend or any other distribution in terms of the Act and/or the Company's Memorandum of Incorporation, is declared and paid by the Company in respect of an ordinary Share in the *second year* after the "A" Preference Share has been issued, the "A" Preference Share shall be entitled to 50% (fifty per cent) of such dividend or such other distribution declared and paid in respect of each ordinary Share;
- 2.3.3 if and to the extent that any dividend or any other distribution in terms of the Act and/or the Company's Memorandum of Incorporation, is declared and paid by the Company in respect of an ordinary Share in the *third year* after the "A" Preference Share has been issued, the "A" Preference Share shall be entitled to 75% (seventy-five per cent) of such dividend or such other distribution declared and paid in inspect of each ordinary Share;
- 2.3.4 if and to the extent that any dividend or any other distribution in terms of the Act and/or the Company's Memorandum of Incorporation, is declared and paid by the Company in respect of an ordinary Share in the *fourth and any subsequent year* after the "A" Preference Share has been issued, the "A" Preference Share shall be entitled to 100% (one hundred per cent) of such dividend or such other distribution declared and paid in respect of each ordinary Share.
- 2.4 Save as set out in clauses 2.1 to 2.3 of this Schedule and clause 2.13.2 of this Schedule, the "A" Preference Shares shall rank *pari passu* in all other respects with the ordinary Shares.
- 2.5 The "A" Preference Shareholders shall be entitled to receive notice of all meetings of the Company and to attend such meetings and to vote on a show of hands (if the holder is present, in person or represented by proxy) or on a poll (whether present in person or represented by proxy).
- 2.6 At every general meeting of the Company at which "A" Preference Shareholders are present and entitled to vote, an "A" Preference Shareholder shall on a poll be entitled to that proportion of the total votes in the Company which the aggregate amount of the par value of the "A" Preference Shares held by him bears to the aggregate amount of the par

value of all ordinary and the "A" and "B" Preference Shares issued by the Company.

- 2.7 At every meeting of the "A" Preference Shareholders, the provisions of those clauses relating to general meetings of ordinary Shareholders shall apply, *mutatis mutandis*, except that a quorum at any such meeting shall be any person or persons holding at least 25% (twenty-five per cent) of the "A" Preference Shares then in issue, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of those clauses relating to adjourned general meetings shall apply, *mutatis mutandis*.
- 2.8 No Shares in the capital of the Company ranking in priority to the "A" Preference Shares as regards a return of capital on the winding-up of the Company, shall be created or issued, without the prior sanction of a resolution passed at a separate class meeting of the "A" Preference Shareholders in the same manner *mutatis mutandis* as a special resolution, provided that the Company shall be entitled to -
- 2.8.1 create and/or allot and issue further Preference Shares (whether of the same class as the "A" Preference Shares or not), ranking *pari passu* with the "A" Preference Shares without the prior approval of the "A" Preference Shareholders; and
- 2.8.2 issue the "A" Preference Shares in tranches, without the prior approval of the "A" Preference Shareholders.
- 2.9 In order to achieve the objectives of the Thuthukani Trust, each "A" Preference Share beneficial ownership of which is validly transferred by the Trustees of the Thuthukani Trust to an Employee Beneficiary thereof in accordance with the terms and conditions of the Thuthakani Trust deed, shall, 7 (seven) days after such transfer to such Employee Beneficiary, automatically convert into 1 (one) ordinary share with a par value of R0,01 (one cent) in the share capital of the Company, and such converted "A" Preference Share shall thereafter rank *pari passu* with all other ordinary Shares in all respects.

- 2.10 If not converted as contemplated in clause 2.9 of this Schedule, an "A" Preference Share shall be subject to the other terms and conditions as appear in this Schedule (save for the provisions relating to conversion) and shall be redeemed in accordance with the provisions of clause 2.12 of this Schedule.
- 2.11 The Company shall take all necessary steps to apply for a listing on the JSE of the ordinary Shares arising from a conversion of the "A" Preference Shares in terms of clause 2.9 of this Schedule.
- 2.12 An "A" Preference Share shall, unless it is converted into an ordinary Share in the Company pursuant to the provisions of clause 2.9 of this Schedule before 30 September 2013 be automatically redeemed at an amount equal to its par value, together with all dividends and other distributions declared but unpaid thereon as at the date of redemption, which date shall be 30 September 2013.
- 2.13 The "A" Preference Shares will constitute a separate class of shares and save as set out in this Schedule rank *pari passu* in all respects with the ordinary shares. For clarity and without limiting the generality of the foregoing -
- 2.13.1 the "A" Preference Shareholders will be entitled to participate in rights issues as if they were ordinary Shareholders in that they will be entitled to take up that number of ordinary Shares which they would have been eligible to receive if the "A" Preference Share were ordinary Shares; and
- 2.13.2 if any capitalisation or bonus issue is implemented by the Company the holders of the "A" Preference Share will be entitled to an award from the Company of that number of ordinary Shares which they would have been eligible to receive if the "A" Preference Share were ordinary Shares, in the proportions, *mutatis mutandis* as are set out in clause 2.3 of this Schedule.
- 2.14 The "A" Preference Shares will, where applicable, be subject to the provisions of the JSE Listings Requirements (even though they will not be

listed on the JSE prior to their conversion into ordinary Shares in terms of clause 2.9 of this Schedule), save that -

- 2.14.1 the "A" Preference Shares will not be taken into account by the Company in categorising future transactions contemplated in Section C of the JSE Listings Requirements but the votes attaching to such "A" Preference Shares may be cast at a meeting of the Company convened to consider such transactions; and
- 2.14.2 if at any time the majority in number of the beneficiaries under the Thuthukani Trust are not black people as contemplated in the BEE Legislation (which shall be determined in the event of a dispute by the auditors of the Company at the time acting as experts and not as arbitrators), the "A" Preference Shareholders shall no longer be entitled to vote in respect of any transactions which fall within the ambit of the JSE Listings Requirements; and
- 2.14.3 no additional "A" Preference Shares in excess of 18,000,000 (eighteen million), shall be issued without the approvals of the ordinary Shareholders and the JSE.

**CONVERTIBLE, REDEEMABLE, NON-CUMULATIVE, PARTICIPATING "B"
PREFERENCE SHARES**

This Schedule 4 sets out the preferences, rights, limitations and other terms associated with the 4,000,000 (four million) convertible redeemable non-cumulative participating preference shares with a par value of R0,01 (one cent) each in the share capital of the Company.

1 For the purposes of this Schedule 4 -

- 1.1 **"A Preference Shares"** means the 18,000,000 (eighteen million) convertible, redeemable, non-cumulative, participating preference shares with a par value of R0,01 (one cent) each in the share capital of the Company, having the preferences, rights, limitations and other terms associated therewith set out in Schedule -3;
- 1.2 **"B Preference Shares"** means the 4,000,000 (four million) convertible redeemable participating preference shares with a par value of R0,01 (one-cent) each in the share capital of the Company;
- 1.3 **"B Preference Shareholders"** means the registered holders of the "B" Preference Shares from time to time;
- 1.4 **"BSS Beneficiary"** means a beneficiary of the Management Trust, appointed as such under the relevant provisions of the Management Trust deed;
- 1.5 **"BEE Legislation"** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended or superseded from time to time, and the codes published in terms of section 9 thereof from time to time;
- 1.6 **"BSS Trust"** means the trustees for the time being of the Massmart Black Scarce Skills Trust entered into between the company, as founder, and Nkululeko Swana, John Hawksley and Winston Pitse as first trustees on 14 June 2006 on the terms and conditions of the trust deed as amended from time to time, for the purpose of implementing a broad-based black economic empowerment scheme;
- 1.7 **"Preference Shares"** means the existing 20,000,000 (twenty million) non-redeemable, cumulative, non-participating preference shares with a par value of R0.01 (one cent) having the preferences, rights, limitations and other terms associated therewith set out in Schedule 2.

- 2 The following are the preferences, rights, limitations and other terms associated with the "B" Preference Shares -
- 2.1 Each "B" Preference Share shall rank as regards a repayment of capital on the winding-up of the Company, after the Preference Shares but prior to the ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the "B" Preference Shares.
- 2.2 For the purpose of clause 2.1 of this Schedule, each "B" Preference Share shall confer on the "B" Preference Shareholder the right to a return of capital on the winding-up of the Company, in an amount equal to the par value per "B" Preference Share held. After the payment to all holders of Shares in the Company which have a preference over the ordinary Shares (including the "B" Preference Shares) of all amounts due to them at the relevant time, the "B" Preference Shares shall participate equally with the ordinary shares and such of the other Preference Shares as have a right to participate, in the remaining profits and assets of the Company as if each "B" Preference Share were an ordinary Share.
- 2.3 "B" Preference Shares shall not carry the right to a dividend or any other distribution in terms of the Act.
- 2.4 Save as set out in clauses 2.1 to 2.3 of this Schedule the "B" Preference Shares shall rank *pari passu* in all other respects with the ordinary Shares.
- 2.5 The "B" Preference Shareholders shall be entitled to receive notice of all meetings of the Company and to attend such meetings and to vote on a show of hands (if the holder is present in person or represented by proxy) or on a poll (whether present in person or represented by proxy).
- 2.6 At every general meeting of the Company at which "B" Preference Shareholders are present and entitled to vote, a "B" Preference Shareholder shall on a poll be entitled to that proportion of the total votes in the Company which the aggregate amount of the par value of the "B" Preference Shares held by him bears to the aggregate amount of the par value of all ordinary Shares and the "A" and "B" Preference Shares issued by the Company.
- 2.7 At every meeting of the "B" Preference Shareholders, the provisions of those clauses relating to general meetings of ordinary Shareholders shall apply, *mutatis mutandis*, except that a quorum at any such meeting shall be any person or persons holding at least 25% (twenty-five per cent) of the "B" Preference Shares

then in issue, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of those clauses relating to adjourned general meetings shall apply, *mutatis mutandis*.

- 2.8 No Shares in the capital of the Company ranking in priority to the "B" Preference Shares as regards a return of capital on the winding-up of the Company shall be created or issued, without the prior sanction of a resolution passed at a separate class meeting of the "B" Preference Shareholders in the same manner *mutatis mutandis* as a special resolution, provided that the Company shall be entitled to -
- 2.8.1 create and/or allot and issue further preference shares (whether of the same class as the "B" Preference Shares or not), ranking *pari passu* with the "B" Preference Share without the prior approval of the "B" Preference Shareholders; and
- 2.8.2 issue the "B" Preference Shares in tranches, without the prior approval of the "B" Preference Shareholders.
- 2.9 In order to achieve the objectives of the BSS Trust, each "B" Preference Share, beneficial ownership of which is validly transferred by the Trustees of the BSS Trust to a BSS Beneficiary thereof in accordance with the terms and conditions of the BSS Trust deed, shall 7 (seven) days after such transfer to such BSS Beneficiary, be deemed to have automatically converted into 1 (one) ordinary Share with a par value of R0.01 (one cent) in the share capital of the Company and such converted "B" Preference Share shall thereafter rank *pari passu* with an ordinary Share in all respects.
- 2.10 if not converted as contemplated in clause 2.9, a "B" Preference Share shall be subject to the other terms and conditions as appear in this clause (save for the provisions relating to conversion) and shall be redeemed in accordance with the provisions of clause 2.12 of this Schedule.
- 2.11 The company shall take all necessary steps to apply for a listing on the JSE of the ordinary Shares arising in terms of a conversion of the "B" Preference Shares.
- 2.12 A "B" Preference Share shall, unless it is converted into an ordinary Share in the Company pursuant to the provisions of clause 2.9, be automatically redeemed at an amount equal to its par value on the date that is the 7th (seventh) anniversary of the date on which that "B" Preference Share was allocated to a BSS Beneficiary in terms of the BSS Trust, or if that "B" Preference Share has not

been allocated in terms of the BSS Trust, on 30 September 2016 or such later date as the board of directors of the Company may determine.

- 2.13 The "B" Preference Shares will where applicable constitute a separate class of Shares and save as set out in this clause, shall rank *pari passu* in all respects with the ordinary Shares. For clarity and without limiting the generality of the foregoing -
- 2.13.1 the "B" Preference Shareholders will be entitled to participate in rights issues as if they were ordinary Shareholders in that they will be entitled to take up that number of ordinary Shares which they would have been eligible to receive if the "B" Preference Shares were ordinary Shares; and
- 2.13.2 if any capitalisation or bonus issue is implemented by the Company the holders of the "B" Preference Share will be entitled to an award from the Company of that number of ordinary Shares which they would have been eligible to receive if the "B" Preference Share were ordinary Shares.
- 2.14 The "B" Preference Shares will be subject to the provisions of the JSE Listings Requirements (even though they will not be listed on the JSE prior to their conversion into ordinary Shares in terms of article 2.9), save that -
- 2.14.1 the "B" Preference Shares will not be taken into account by the Company in categorising future transactions contemplated in Section 9 of the JSE Listings Requirements but the votes attaching to such "B" Preference Shares may be cast at a meeting of the Company convened to consider such transactions;
- 2.14.2 if at any time the majority of beneficiaries under the BSS Trust are not black people as contemplated in the BEE Legislation (which shall be determined in the event of a dispute by the auditors of the Company at the time sitting as experts and not as arbitrators), the Preference Shareholders shall no longer be entitled to vote in respect of any transactions which fall within the ambit of the JSE Listings Requirements; and
- 2.14.3 no additional "B" Preference Shares in excess of 4,000,000 (four million) shall be issued without the approvals of the ordinary Shareholders and the JSE.