

**REPUBLIC OF SOUTH AFRICA COMPANIES ACT, 2008**  
**MEMORANDUM OF INCORPORATION**  
**OF A PUBLIC COMPANY**  
**NAME OF COMPANY: BELL EQUIPMENT LIMITED.**  
**REGISTRATION NUMBER: 1968/013656/06**





## **DEFINITIONS AND INTERPRETATION**

In this Memorandum of Incorporation unless the context otherwise requires:

- (a) **"the Act"** means the Companies Act, No 71 of 2008, as amended from time to time. Reference to the Act shall, if the Act is replaced by any other statute, be construed as a reference to the statute or statutes from time to time in force relating to companies. Reference to any provision of the Act shall be construed as a reference to such provision as modified or re-enacted by any statute for the time being in force;
- (b) **"the board"** means the board of directors of the company, as it may be constituted from time to time;
- (c) **"books of account"** means any documents, accounts, books, writing, records or other information that a company is required to keep in terms of the Act or any other public regulation;
- (d) **"business day"** means any day other than a Saturday, Sunday or officially designated public holiday in the Republic of South Africa;
- (e) **"the company"** means Bell Equipment Limited, registration number 1968/013656/06, the company that has adopted, and is governed by this Memorandum of Incorporation;
- (f) **"electronic address"** means in regard to electronic communication, any email address furnished to the company by a shareholder of securities;
- (g) **"holder"** means the holder of any form of securities issued by the company and who is entered as such in the certificated or uncertificated register as the case may be;
- (h) **"in writing"** or **"written"** means and includes words printed, autographed, represented or produced in any mode in a visible form and further includes a data message being information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic mail;
- (i) **"JSE"** means the JSE Limited, registration number 2005/022939/06;
- (j) **"Listings Requirement (s)"** means the JSE Listings Requirements as amended from time to time;
- (k) **"Memorandum of Incorporation"** means this document, being the Memorandum of Incorporation of the company, including any schedules annexed hereto;
- (l) **"notice"** includes circulars, abridged and full annual financial statements, quarterly and interim reports, listing particulars, dividend and interest notices and proxy forms;
- (m) **"registered address"** in relation to a shareholder means an electronic address, fax number, physical or postal address notified by a shareholder to the company in terms of Clause 3.1(1) hereof;
- (n) **"person"** includes a juristic person as defined in the Act;
- (o) words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act.

## **ADOPTION OF MEMORANDUM OF INCORPORATION**

This Memorandum of Incorporation was adopted by the company in place of its existing memorandum of incorporation by special resolution passed on \_\_\_\_\_

### **1. INCORPORATION AND NATURE OF THE COMPANY**

#### **1.1 Incorporation**

The company is a public company.

#### **1.2 Powers of the company**

- 1.2.1 Subject to Clauses 1.3.2 and 2.1.1 (c) below, the company has the powers and capacity of an individual and is not subject to any restrictive conditions or to any prohibitions regarding the amendment of the provisions of this Memorandum of Incorporation other than those contained in the Act save that the company shall not have the power to claim a lien on any of

its securities and subject to Clause 2.3(2) below. If the relevant Listings Requirement that relates to this clause 1.2.1 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

- 1.2.3 No special resolution may be put to holders to ratify any action by the company or the directors that is inconsistent with any limit, restriction or qualification regarding the purposes, powers or activities of the company, or the authority of the directors to perform an act on behalf of the company, if that action was contrary to the Listings Requirements unless otherwise agreed with the JSE.
- 1.2.4 Notwithstanding the omission from this Memorandum of Incorporation of any provision to that effect, the company may, subject to any limitation in this Memorandum of Incorporation, do anything which the Act empowers a company to do if so authorised by its Memorandum of Incorporation.

### **1.3 Memorandum of Incorporation**

- 1.3.1 Subject to the Act and Clauses 1.3.2 and 2.1.1(c) below, this Memorandum of Incorporation shall only be amended by an order of court or a special resolution of the holders of the company. For the avoidance of doubt, an amendment includes, but is not limited to, the creation of any class of shares, the variation of any preferences, rights, limitation or other share terms attaching to any class of shares, the conversion of one class of shares into one or more other classes, the increase of the number of securities, the consolidation of securities, the sub-division of securities, a change of the name of the company, and a conversion of shares from par value to no par value. The directors' power to make, amend or appeal rules as contemplated in Section 15(3) of the Act is prohibited. If the relevant Listings Requirement that relates to this clause 1.3.1 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 1.3.2 No rights, privileges or conditions for the time being attached to any class of securities of the company nor any interests of that class of securities may (unless otherwise provided by the terms of issue of the securities of that class) whether or not the company is being wound up, be varied in any manner adverse to the holders of that class of securities, nor may any variations be made to the rights, privileges or conditions of any class of securities, such that the interests of another class of securities is adversely affected, unless the consent in writing of the holders of not less than 75% of the issued securities of that adversely affected class has been obtained, or a special resolution has been passed by the holders of that adversely affected class of securities with the support of more than 75% of the voting rights exercised on the special resolution at a separate meeting of the holders of that class. The provisions of this Memorandum of Incorporation relating to shareholders meetings shall mutatis mutandis apply to any such separate meeting except that –
- (a) the necessary quorum shall be sufficient persons (and no less than three persons) present at the meeting (which includes being present in person or by proxy) to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised. If the relevant Listings Requirement that relates to this clause 1.3.2 (a) were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements;
  - (b) if at any adjourned meeting of such holders, the required quorum contemplated in clause (a) is not present, those persons entitled to vote who are present shall be a quorum.

## **2. SECURITIES OF THE COMPANY**

### **2.1 GENERAL**

- 2.1.1 The following corporate actions may be taken only in accordance with the JSE Listings Requirements:

- (a) the issue of shares for cash and options and convertible securities granted or issued for cash;
- (b) the repurchase of the company's securities; and
- (c) the alteration of share capital, authorised shares and rights attaching to any class of shares including convertible securities which might be approved to be issued.

If the relevant Listings Requirement that relates to this clause 2.1.1 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.

- 2.1.2 The company shall permit issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person.
- 2.1.3 The authority of the board to authorise the company to provide financial assistance in relation to the subscription of any option or securities of the company, or of a related or inter-related company or for the purchase of any securities of the company or a related or inter-related company, is not limited or restricted by this Memorandum of Incorporation.
- 2.1.4 The company shall not pay commission exceeding 10% of the issue price to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company. If the relevant Listings Requirement that relates to this clause 2.1.4 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 2.1.5 In implementing any odd-lot offer made by the company in accordance with the Listings Requirements, the company may, in respect of shareholders holding less than 100 (one hundred) shares in the issued share capital of the company or such higher number of shares as determined and/or agreed by the JSE as amounting to an odd-lot in the company ("**Odd-Lots**") and who did not elect to retain or sell their Odd-Lots, cause the Odd-Lots to be sold on such terms as the Board may determine and the company shall account to the shareholders concerned for the proceeds attributable to the sales, provided that the Odd-Lot offer has been approved by shareholders in a General Meeting.

## **2.2 SHARES**

- 2.2.1 The board shall not have the power to issue authorised shares without:
  - (a) the approval of the shareholders of the company passed by ordinary resolution, which approval may comprise of a special authority or a general authority for a specified period of time; and which authority may be revoked by ordinary resolution at any time; and
  - (b) the approval of the JSE (where necessary).
- 2.2.2 The board shall not have the power to increase or decrease the number of authorised shares of any class, to reclassify any shares that have been authorised but are not issued, to classify any unclassified shares that have been authorised but are not issued, nor to determine the preferences, rights, limitations or other terms of any class of shares that are not issued and which preferences, rights, limitations or other terms are not specified in this Memorandum of Incorporation,
- 2.2.3 No shares of a class which is listed may be issued other than as fully paid. If the relevant Listings Requirement that relates to this clause 2.2.3 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.
- 2.2.4 Any equity shares for the time being unissued (whether forming part of the original or any increased capital) shall, before issue, be first offered to all the existing holders of equity shares, as nearly as circumstances permit pro rata in proportion to their shareholdings, unless such shares are to be issued for the purpose of the acquisition of assets. Notwithstanding the above, the shareholders of the company by way of an ordinary resolution may authorise the board to issue unissued shares and/or to grant options to subscribe for unissued shares as the board in its discretion thinks fit, provided that any such transaction

shall be subject to the JSE Listings Requirements and approval of the JSE. If the relevant Listings Requirement that relates to this clause 2.2.4 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

No shareholder of the company shall have any other pre-emptive right to be offered, and to subscribe to, additional shares of the company.

- 2.2.5 Any capitalisation issue by the company will be subject to the fulfilment of the requirements set out in Section 47 of the Act. This Memorandum of Incorporation shall not call for any less stringent requirements.
- 2.2.6 Shares of the company are to be issued in either dematerialised or certificated form, as the board may determine.
- 2.2.7 The certificates or other evidence of title of shares of the company, the transfer of such shares and all matters concerning share transactions shall be in accordance with the requirements of the JSE, any other recognised stock exchange on which the shares of the company may be listed from time to time and/or any other regulatory authority controlling the issue and transfer of securities. The company shall have the power to conform to such requirements, including the power to settle all share transactions totally electronically or otherwise as may be so approved from time to time.
- 2.2.8 There is no restriction on the transfer of securities.
- 2.2.9 Any authority to sign a transfer deed, granted by a holder of shares for the purpose of transferring shares that may be lodged at any of the company's transfer offices shall, as between the company and the grantor of such authority, be deemed to continue and remain in full force and effect. The company may allow such authority to be acted upon until express notice in writing of the revocation of such authority is lodged at the same transfer office. Even after the lodgement of a notice of revocation of authority, the company may give effect to any instruments signed under the authority and certified by any officer of the company as being in order before the lodgement of such notice. If the relevant Listings Requirement that relates to this clause 2.2.9 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.

### **2.3 AUTHORISED SHARES**

The company is authorised to issue the following shares:

- 2.3.1 Ordinary shares
- (a) Maximum number of ordinary shares: 100 million no par value shares
  - (b) Each ordinary share is identical to every other ordinary share and ranks *pari passu* with the other ordinary shares in respect of all rights including, but not limited to, with regards to:
    - (i) voting on any matter to be decided by a vote of shareholders of the company;
    - (ii) participating in any distribution of profit to the shareholders; and
    - (iii) sharing in the distribution of the company's residual value upon the dissolution of the company;

If the relevant Listings Requirement that relates to this clause 2.3.1 (b) were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

- 2.3.2 Every holder of an ordinary share shall have one vote in respect of each share that he or she holds and shall be entitled to vote at every shareholder's meeting or annual general meeting of the company in person or by proxy.

## **2.4 DEBT INSTRUMENTS**

- 2.4.1 The authority of the board to authorise the company to issue secured or unsecured debt instruments is not limited or restricted by this Memorandum of Incorporation save as set forth in clause 2.4.2.
- 2.4.2 The granting of special privileges to holders of debt instruments, such as attending and voting at shareholders' meetings and the appointment of directors, is prohibited. If the relevant Listings Requirement that relates to this clause 2.4.2 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 2.4.3 Any debentures, debenture stock, bond or other securities may be issued at a discount, premium or otherwise subject to compliance with the requirements of the Act as to adequate consideration.

## **3. SHAREHOLDERS**

### **3.1 NOTICES**

- 3.1.1 Each holder (or his agent) shall notify the company in writing of an electronic address, a fax number, and a physical or postal address, each of which shall be deemed to be his registered address within the meaning of this Memorandum of Incorporation. The company shall not be bound to enter any person in the securities register as entitled to any securities until that person gives the company an address for entry on the securities register.
- 3.1.2 The signature to any notice given by the company may be written, printed, partly written and partly printed or may be an advanced electronic signature (as contemplated in Section 1 of the Electronic Communications and Transactions Act, No 25 of 2002, as amended)

### **3.2 PROXIES, POWERS OF ATTORNEY AND REPRESENTATIVES**

- 3.2.1 The holder of an instrument of proxy or general or special power of attorney, given by a shareholder, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any meeting or proceeding of the company, whether or not he is himself a shareholder in the company.
- 3.2.2 The right of a shareholder to appoint persons concurrently as proxies is limited, by this Memorandum of Incorporation to one proxy per shareholder.
- 3.2.3 The authority of a shareholder's proxy to delegate the proxy's powers to another person, and to decide without direction from the shareholder whether to exercise or abstain from exercising any voting right of the shareholder, is not limited or restricted by this Memorandum of Incorporation,
- 3.2.4 A shareholder (or his agent) shall deliver to the registered address of the company a copy of the instrument appointing a proxy or general or special power of attorney not less than 48 hours before the time for the holding of the meeting at which the person named in such power or instrument purports to attend or vote.
- 3.2.5 Any shareholder that is a juristic person as defined in the Act may deliver a letter of representation to the registered address of the company appointing a representative of that shareholder to attend and vote at shareholders' meetings.
- 3.2.6 A vote in accordance with the terms of an instrument of proxy, a power of attorney or a letter of representation shall be valid notwithstanding the previous death of the principal (if applicable), revocation of the proxy, power or letter of representation, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation or transfer shall have been received by the chairman of the meeting before the vote is given.
- 3.2.7 An instrument appointing a proxy shall be in any form approved by the board. The board may, in its discretion, permit the acceptance of proxies transmitted by shareholders of the company by electronic mail, according to such directions as may be issued by the board.



**3.3 RECORD DATE FOR EXERCISE OF SHAREHOLDERS' RIGHTS**

The record date for all transactions shall be as set out in the JSE Listings Requirements read with the Act. If the relevant Listings Requirement that relates to this clause 3.3 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.

**4. SHAREHOLDERS' MEETINGS**

**4.1 GENERAL**

4.1.1 The board may convene a shareholders' meeting whenever it thinks fit. If, at any time, there are insufficient directors within the Republic of South Africa capable of acting to form a quorum, any director or any two shareholders of the company may convene a shareholders' meeting in the same manner as nearly as possible as that in which meetings may be convened by the board.

4.1.2 A shareholders' meeting shall be convened on a requisition of the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, or in compliance with an order of court.

4.1.3 The date and time of any shareholders' meeting shall be determined by the board.

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

4.1.5 The chairman of the board or, in his absence, the lead independent non-executive director (if any) shall be entitled to take the chair at every shareholders' meeting. If there is no chairman of the board or lead independent non-executive director, or if at any meeting he is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the other directors may choose a chairman of the meeting and, in default of their doing so, the shareholders present shall choose one of the directors to be the chairman and, if no director present be willing to take the chair, shall choose one of their number to be the chairman.

4.1.6 Subject to compliance with Clause 4.1.7, the authority of the company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation. The board may allow persons to participate in a shareholders' meeting by conference call or otherwise, and may allow for electronic voting when the technology is in place.

4.1.7 Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all shareholders' meetings that are called for in terms of the JSE Listings Requirements shall be held in person and resolutions shall not be passed as contemplated in section 60 of the Act. If the relevant Listings Requirement that relates to this clause 4.1.7 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.

**4.2 ANNUAL GENERAL MEETING**

4.2.1 An annual general meeting shall be held once in every calendar year at such time and place as the board may determine, provided that not more than 15 months (or such extended time allowed by the Companies Tribunal, on good cause shown) shall elapse between the date of one annual general meeting of the company and that of the next.

4.2.3 At least 15 business days before the date of the annual general meeting, a summary financial statement together with a note as to how the Integrated Annual Report as well as the annual audited financial statements can be accessed shall be distributed to all shareholders. If the relevant Listings Requirement that relates to this clause 4.2.3 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

**4.3 NOTICE OF SHAREHOLDERS' MEETINGS**

4.3.1 The minimum number of days for the company to deliver a notice of a shareholders' meeting to the shareholders is 15 business days before the meeting is to begin. If the relevant Listings Requirement that relates to this clause 4.3.1 were to be removed or modified, the provision in

question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

- 4.3.2 A notice may be given or served by the company upon any shareholder by any method permitted by the Act including, but not limited to:
- (a) personal delivery;
  - (b) fax to the shareholder's fax number.
  - (c) delivery by post to the shareholder's physical or postal registered address;
  - (d) subject to any requirements of the JSE, by electronic mail, provided that such shareholder has furnished the company with his electronic address.
- 4.3.3 The accidental omission to give notice of any meeting to any shareholders shall not invalidate any resolution passed at such meeting.
- 4.3.4 Notice of each shareholder's meeting shall be sent to the JSE at the same time as notice of the meeting is sent to the shareholders of the company. Such notice shall also be announced through the official news service of the JSE. If the relevant Listings Requirement that relates to this clause 4.3.4 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 4.3.5 All notices may, with respect to any registered shares to which persons are jointly entitled, be given to whichever of such persons is named first on the register and notice so given shall be sufficient notice to all the holders of such shares.
- 4.3.6 Any notice or document given or served by the company upon 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 decease, be deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by such shareholder, until some other person is registered in his stead and such service shall, for all purposes under this Memorandum of Incorporation, be deemed a sufficient service of such notice or document on his or her heirs, executors or administrators, and all persons (if any) jointly interested with him or her in any such shares.
- 4.3.7 Every person who, by operation of law, transfer or by any other means whatsoever shall become entitled to any share, shall be bound by every notice in respect of such share which, previously to his name and address being entered in the register, shall have been given to the person from whom he derives his title to such share.

#### **4.4 QUORUM FOR SHAREHOLDERS' MEETINGS**

- 4.4.1 The quorum requirement for a shareholders' meeting to begin is sufficient persons present (and no less than three persons) at the meeting (which includes being present in person or by proxy) to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting, provided that there shall not be a quorum unless there are at least three persons so present at such meeting. If the relevant Listings Requirement that relates to this clause 4.4.1 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 4.4.2 If a resolution is proposed to meet the Listings Requirements, notwithstanding that the holders of securities not listed on the JSE shall be entitled to be counted in the quorum as a matter of law, they shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained.
- 4.4.3 Notwithstanding anything to the contrary contained in the Act, once a quorum for the meeting has been established, all the shareholders forming the quorum must be present in respect of every matter that is considered at the meeting.
- 4.4.4 A shareholder of the company which is a juristic person as defined in the Act and is present at a shareholders' meeting by an authorised representative shall be deemed to be present at that meeting.
- 4.4.5 The time periods contained in the Act regarding the postponement of a shareholders' meeting or the consideration of a particular matter at a shareholders' meeting, as a result of the quorum requirements not having been met will apply to the company without variation.



- 4.4.6 Subject to any requirements of the JSE, the quorum at any postponed meeting shall be the shareholder or shareholders present thereat or by proxy, who may transact the business for which the meeting was called.

#### **4.5 ADJOURNMENT OF SHAREHOLDERS' MEETINGS**

- 4.5.1 The chairman of a shareholders' meeting may adjourn the meeting from time to time and from place to place. Notice of any such adjournment will be announced on the Stock Exchange News Service.
- 4.5.2 A shareholders' meeting may be adjourned. Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be delivered to holders), as determined at the shareholders meeting.
- 4.5.3 Subject to any requirements of the JSE, the quorum at any adjourned meeting shall be the shareholders present thereat personally or by proxy, who may transact the business for which the meeting was called.
- 4.5.4 No business shall be transacted at any adjourned shareholders' meeting of the company other than business left unfinished at the meeting from which the adjournment took place.

#### **4.6 VOTES OF SHAREHOLDERS**

- 4.6.1 At any shareholders meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by –
- not less than 5 (five) persons having the right to vote on that matter; or
  - a person/s entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total voting rights entitled to vote on that matter; or
  - the chairperson,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the shareholders meeting or adjourned shareholders meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such shareholders meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the shareholders meeting, whose decision shall be final and conclusive.

- 4.6.2 If a poll is duly demanded it shall be taken in such manner as the chairperson directs save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 4.6.3 In the case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.
- 4.6.4 Subject to the Act and any special terms or restrictions as to voting upon which any shares may be issued, upon a poll every shareholder present or represented by proxy shall have one vote for every share held by him. The total voting rights of the holders of all securities, other than ordinary shares and any special shares created for the purposes of Black Economic Empowerment, may never be more than 24,99% (twenty four point nine per cent) of the total voting rights of all persons entitled to vote at such a meeting. If a resolution

is proposed to meet the Listings Requirements, notwithstanding that the holders of securities not listed on the JSE shall be entitled to vote thereon as a matter of law, their votes shall not be taken into account for the purposes of determining whether or not the requirements of the Listings Requirements have been attained. If the relevant Listings Requirement that relates to this clause 4.6.4 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

- 4.6.5 The parent or guardian of a minor, the curator bonis of a shareholder and any person becoming entitled to shares in consequence of the death or insolvency of a shareholder, may vote at any shareholders' meeting as if he were the registered holder of the shares, provided that at least 48 hours before the time of holding the meeting (or adjourned meeting, as the case may be) at which the person proposes to vote, he shall satisfy the board of the basis upon which he proposes to act, unless the board shall have previously admitted his right to vote at such meeting in respect thereof.
- 4.6.6 Where there are joint registered holders of any share, or several executors or administrators of a deceased shareholder in whose sole name any shares stand, anyone of such persons may vote at any meeting, either personally or by proxy, in respect of such share. If more than one of such joint holders, or executors or administrators, be present at any meeting, personally or by proxy, one of the said persons so present whose name stands first on the register in respect of such shares shall alone be entitled to vote in respect thereof.
- 4.6.7 For so long as the company is listed on the JSE, if any of the Listings Requirements require an ordinary resolution to be passed with a 75% (seventy five per cent) majority, the resolution shall instead be required to be passed by a special resolution.

#### **4.7 SHAREHOLDERS' RESOLUTIONS**

- 4.7.1 For an ordinary resolution to be adopted by the shareholders of the company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution.
- 4.7.2 The adoption of a special resolution is to be subject to the approval of at least 75% of the votes cast by the holders present in person, or represented by proxy, at the general meeting/annual general meeting convened to approve such resolution and must be subject to a minimum notice period of 15 business days. If the relevant Listings Requirement that relates to this clause 4.7.2 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 4.7.3 The proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) of the Act is prohibited in the event that such a resolution would lead to the ratification of an Act that is contrary to the Listings Requirements unless otherwise agreed with the JSE. If the relevant Listings Requirement that relates to this clause 4.7.3 were to be removed or modified, the provision in question shall no longer apply if the Listing Requirement has been removed or shall apply as modified by the Listings Requirements.

### **5. DIRECTORS AND OFFICERS**

#### **5.1 COMPOSITION OF THE BOARD**

- 5.1.1 The company shall have not less than eight directors, of which at least two shall be executive directors. The shareholders of the company may from time to time by ordinary resolution, increase or decrease such minimum number of directors. The board must appoint a chief executive officer and an executive financial director. The board may from time to time appoint one or more of the directors to the office of managing director or chief executive officer or manager (provided always that the number of directors so appointed as managing director or joint managing directors and/or the holders of any other executive office including a chairperson who holds an executive office, shall at all times be less than  $\frac{1}{2}$  (one half) of the number of directors in office) for such period (not exceeding 5 (five) years) and at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms it may think fit, and it may be

- made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office.
- 5.1.2 If the number of directors falls below the minimum set out above, the remaining directors shall as soon as possible, and in any event not later than three months from the date that the number of directors falls below the minimum, fill the vacancies on a temporary basis or call a shareholders' meeting for the purpose of filling the vacancies. The failure by the company to have the minimum number of directors during such three-month period does not limit or negate the authority of the board or invalidate anything done by the board or the company. After the expiry of the three-month period, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling shareholders' meetings. If the relevant Listings Requirement that relates to this clause 5.1.2 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 5.1.3 The Company shall appoint a Chief Executive Officer and Chief Financial Officer as ex officio directors of the company. These directors would not be subject to the annual retirement of directors as contemplated in clause 5.1.10 below.
- 5.1.4 Alternate directors may be appointed in accordance with the Act. The appointment of all directors must be subject to shareholder approval at any general meeting or annual general meeting.
- 5.1.5 Subject to the provisions of the Act, holders of the company's securities who are entitled to exercise voting rights may at any time appoint any persons to the office of director and may remove from office any or all of the directors.
- 5.1.6 Directors of the company shall be elected in the manner set out in the Act, the appointment of all directors must be subject to shareholder approval at any general meeting or annual general meeting. Such elections shall take place at the annual general meeting of the company or at any other shareholders' meeting. Such resolutions may not be passed in accordance with section 60 of the Act.
- 5.1.7 The authority of the board to fill a vacancy on the board on a temporary basis is not limited or restricted by this Memorandum of Incorporation. Any appointment by the board of a director to fill a vacancy on the board, or as an addition to the board, shall be subject to approval by the shareholders at the next annual general meeting or other shareholders' meeting. Such resolutions may not be passed in accordance with section 60 of the Act. If the relevant Listings Requirement that relates to this clause 5.1.7 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 5.1.8 In order to become and remain a director of the company, a person need not satisfy any eligibility requirements or qualifications other than those set out in the Act or by the board or the Nominations Committee of the board, taking into account any past performance or contribution.
- 5.1.9 The periods of service of executive directors shall be governed by their employment contracts but may not be indefinite.
- 5.1.10 At each annual general meeting of the company on an annual basis one third of the non-executive directors for the time being or, if their number is not divisible by three, the number nearest to one third but not less than one third, shall retire from office. The non-executive directors to retire in each year shall be those who shall have been longest in office since their last election, but as between persons who were elected on the same day, those to retire shall, unless otherwise agreed amongst themselves, be determined by lot. A retiring director shall act as a director throughout the meeting at which he/she retires. The length of time a director has been in office shall be computed from the date of his/her last election. Retiring directors shall be eligible for re-election. No person other than a director retiring at the meeting shall, unless recommended by the directors for election, be eligible for election to the office of director at any annual general meeting unless, not less than 7 (seven) days nor more than 14 (fourteen) days before the day appointed for the meeting, there shall have been given to the secretary notice in writing by some shareholder duly qualified to be present and vote at the meeting for which such notice is given of the intention of such shareholder to propose such person for election and also notice in writing signed by the Person to be proposed of his/her



willingness to be elected. If the relevant Listings Requirement that relates to this clause 5.1.10 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.

- 5.1.11 Subject to the provisions of the Act, the office of a director shall ipso facto be vacated if he:
- (a) ceases to be a director by virtue of any of the provisions of the Act or becomes prohibited from being a director by reason of an order made under the Act;
  - (b) becomes insolvent, suspends payment generally or compounds with his creditors;
  - (c) becomes a lunatic or of unsound mind;
  - (d) absents himself from the meetings of the board, except on the company's business, for a period of six months without special leave of absence from the board and the board resolve that his office be vacated;
  - (e) resigns or retires from office; or
  - (f) is removed from office by an ordinary resolution of the shareholders of the company;
  - (g) is removed by resolution of the board for being negligent or derelict in performing the functions of a director, and the director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he/she shall be suspended).

## **5.2 AUTHORITY OF THE BOARD OF DIRECTORS**

- 5.2.1 Subject to Clauses 1.3(4), 2.2(2), 2.2(3), 2.2(4) and 2.2(5) above, the authority of the board to manage and direct the business and affairs of the company is not limited or restricted by this Memorandum of Incorporation.
- 5.2.2 All acts done at any meeting of the board or of a committee of the board (if any) or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such director or persons acting as aforesaid or that they or any of them were ineligible or disqualified to act as a director, be valid as if every such person had been duly appointed, eligible and qualified to be a director.

## **5.3 BOARD MEETINGS**

- 5.3.1 Subject to the Act and this Memorandum of Incorporation, the directors of the company may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think fit. Notwithstanding anything to the contrary contained in the Act, the chairman of the board or any two directors shall be entitled to requisition a meeting of the board.
- 5.3.2 The quorum requirement for a board meeting to begin is a majority of the directors.
- 5.3.3 Each director shall have one vote on any matter before the board. A majority of the votes cast on a board resolution is sufficient to pass that resolution. The chairman shall not have a casting vote.
- 5.3.4 The directors shall elect a chairman of the board and if so required a lead independent non-executive director, and may determine the period for which they are to hold office. If the chairman is not available at any board meeting, the lead independent non-executive director (if so appointed) shall assume the chair. If at any board meeting the chairman or the lead independent non-executive director (if so appointed) are not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.
- 5.3.5 The authority of the board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation. The board may allow persons to participate in a board meeting by conference call or otherwise, and may allow for electronic voting when the technology is in place.
- 5.3.6 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 or given in person, or by electronic communication, provided that each director who is able to receive notice, 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 the board. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was

signed by the last director who signed it, unless a statement to the contrary is contained in the resolution.

#### **5.4 DIRECTORS' COMPENSATION**

- 5.4.1 The authority of the company to pay directors' fees to the company's directors, in accordance with a special resolution approved by the company's shareholders within the previous two years, is not limited or restricted by this Memorandum of Incorporation. The remuneration of non-executive directors shall be determined in this manner.
- 5.4.2 The executive directors, who are remunerated for their services as employees of the company, shall not be paid directors' fees. The remuneration of the executive directors for their services as employees of the company shall be determined by a disinterested quorum of directors. A disinterested quorum of the board shall approve the terms of the contracts of employment of executive directors before such contracts are concluded with the company. If the relevant Listings Requirement that relates to this clause 5.4.2 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 5.4.3 The directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the company, and in attending meetings of the board or of committees thereof. If any director is required to perform extra services or to reside abroad, or shall be specifically occupied about the company's business, such director shall be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to, or in substitution for, any other remuneration.

#### **5.5 INDEMNIFICATION OF DIRECTORS**

- 5.5.1 For the purposes of this Clause 5.5, "director" includes any former director, alternate director, any prescribed officer of the company, and any person who is a member of any board committee or of the audit committee, irrespective of whether or not the person is also a member of the board.
- 5.5.2 The authority of the company to advance expenses to a director and to indemnify a director as set out below for expenses in respect of the defence of legal proceedings arising out of the director's service to the company is not limited, restricted or extended by this Memorandum of Incorporation.
- 5.5.3 The authority of the company to indemnify a director in respect of liability for which the company may indemnify the director is not limited or restricted by this Memorandum of Incorporation.
- 5.5.4 Subject to the provisions of the Act, every director shall be indemnified out of the funds of the company against all liability incurred by him in defending any proceedings, whether civil or criminal, arising out of his service as a director in which judgement is given in his favour, or in which he is acquitted or the proceedings are abandoned, or in connection with any proceedings against him in regard to any claim against him (actual or apprehended) based on negligence, default, breach of duty or breach of trust in which relief is granted to him by a court under the Act.
- 5.5.5 If the directors, or any of them or any other persons shall become personally liable for the payment of any sum primarily due from the company, the directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the company (subject to the relevant provisions of the Act) by way of indemnity to secure the directors or persons becoming liable as aforesaid from any loss in respect of such liability.
- 5.5.6 The authority of the company to purchase insurance to protect the company or a director is not limited, restricted or extended by this Memorandum of Incorporation.
- 5.5.7 Subject to the provisions of the Act, no director or servant of the company shall be liable for any act, or omission neither of another director or servant, nor for any loss or damage incurred by the company, unless the same happened through his own negligence, default, breach of duty or breach of trust. The Act permits a company to indemnify a director in respect of any liability arising from his service as a director other than:

- (a) in instances contemplated in section 77(3) (a) (b) and (c) of the Act; or
- (b) in instances of wilful misconduct or wilful breach of trust on the part of the director; or
- (c) where a director is forced to pay a fine upon conviction of an offence unless the conviction was based on strict liability.

The company may also advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the company and may also indemnify such director against such costs or expenses (whether the company in fact advanced such expenses to the director or not) if the proceedings are abandoned or exculpate the director or if the proceedings do not relate to liability contemplated in one of the three instances above. If a director is found liable in one of the three instances above and the company (before such finding) advanced expenses to such director to defend himself in the legal proceedings then he must refund such expenses to the company upon such finding. A company may also purchase insurance to protect a director against liability that may arise other than in any of the 3 instances above set out above. A company may also purchase insurance for instances in which it takes the decision to advance expenses to a director to defend proceedings as set out above or when the company indemnifies a director to the extent that it may indemnify a director as set out above.

## **5.7 BOARD COMMITTEES**

- 5.7.1 The authority of the board to appoint committees of directors, to delegate to any such committee any of the authority of the board, and to include in any such committee persons who are not directors, is not limited or restricted by this Memorandum of Incorporation. The company shall appoint a remuneration committee and if required, given the nature of the business and composition of the board of directors, a risk and sustainability committee and a nomination committee. If the relevant Listings Requirement that relates to this clause 5.7.1 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 5.7.2 The board may from time to time remove any board committee formed and/or revoke any powers delegated to any such committee.
- 5.7.3 Any board committee formed shall conform to any regulations that may from time to time be imposed upon it by the board, provided that the meetings and proceedings of any board committee consisting of two or more members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the meetings and proceedings of the board, so far as the same are applicable thereto, and are not superseded by any regulation made by the board.
- 5.7.4 The audit committee is not a board committee and shall be appointed by the shareholders of the company in accordance with the Act. A member of the audit committee shall cease to hold office as such immediately he becomes ineligible or disqualified in terms of the Act, and / or ceases to be a director.
- 5.7.5 The board must appoint an individual to fill any vacancy on the audit committee within 40 (forty) business days after the vacancy arises.

## **5.8 OTHER OFFICES OF DIRECTORS AND PERSONAL FINANCIAL INTERESTS**

A director may be or become employed in any other capacity in the company, or as a director or employee of a company controlled by, or a subsidiary of, or other company promoted by, the company or in which it may be interested as vendor, shareholder or otherwise, other than that of auditor. Any such appointment and the terms as to remuneration, tenure of office and otherwise, shall be determined by a disinterested quorum of directors in compliance with the Act and any requirement of the JSE. No such director shall be accountable to the company for any remuneration or other benefits received by him as a director, shareholder or member of such company or representative of this company in such management or in any employment or retention of his services by the company.

## **6. FINANCES**

### **6.1 RESERVES**

- 6.1.1 The board may, before declaring or confirming any dividends, set aside out of the profits of the company such sums as it thinks proper as a reserve or reserves.



- 6.1.2 The reserve or reserves shall, at the discretion of the board, be applicable for meeting contingencies or for paying or equalising dividends, or for any other purpose whatsoever to which the profits of the company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the board may from time to time think fit.

## **6.2 DISTRIBUTIONS**

- 6.2.1 Subject to the provisions of the Act and any JSE requirements, the board shall be entitled to declare dividends after applying the solvency and liquidity test set out in the Act and having reasonably concluded that the company will satisfy such test immediately after paying the proposed dividend.
- 6.2.2 Each dividend shall be declared payable to shareholders registered as such on a date subsequent to the date of declaration of the dividend or the date of confirmation of the dividend, whichever is the later. This date shall be known as the dividend date. If the relevant Listings Requirement that relates to this clause 6.2.2 were to be removed or modified, the provision in question shall no longer apply if the Listings Requirement has been removed or shall apply as modified by the Listings Requirements.
- 6.2.3 No dividend shall bear interest against the company, and the company must hold all monies due to shareholders in trust but subject to the laws of prescription which may be amended from time to time. Any dividend remaining unclaimed for a period of three years from the dividend date may, provided notice of the declaration has been sent to a registered address of the person entitled thereto, be forfeited by resolution of the board for the benefit of the company. The board may at any time annul such forfeiture upon such conditions (if any) as it thinks fit.
- 6.2.4 Subject to the Listings Requirements, every dividend may be paid by cheque or by electronic funds transfer or otherwise as the board may from time to time determine and shall in the case of a cheque either be sent by post to the physical or postal registered address of the shareholder entitled thereto or be given to him personally. The company shall not be responsible for the loss in transmission, or for any consequences or losses resulting from the loss in transmission, of any cheque or other document sent through the post to the physical or postal registered address of any shareholder, whether or not it was so sent at his request. The postal authorities shall be deemed the agents of the shareholder.
- 6.2.5 If several persons are registered as joint holders of any share, any dividend payable on the share may be posted or delivered to anyone of such holders.
- 6.2.6 Subject to the Act and any requirements of the JSE, the board may resolve that any dividend be paid wholly or in part by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of the company, or paid-up shares, debentures, or debenture stock of any other company, or in any or more of such ways.
- 6.2.7 The company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed distributions, to any one of the company's bankers from time to time.

## **6.3 AUDITORS AND AUDIT COMMITTEE**

- 6.3.1 Auditors shall be appointed and their duties regulated in accordance with the Act.
- 6.3.2 There are no general qualifications prescribed by the Company for a Person to serve as a member of the audit committee in addition to the requirements of the Act.

## **6.4 COMPANY RECORDS**

- 6.4.1 The board shall cause to be kept such books of account as are prescribed by the Act.
- 6.4.2 Subject to the Act, the books of account shall be kept at, or be accessible from, the registered office of the company and at such other place or places as the board thinks fit and shall always be open to the inspection of the directors but only for the purposes of them carrying out their duties as directors .
- 6.4.3 The board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the books of account of the company or

any of them shall be open to the inspection of shareholders not being directors of the company, and no shareholder (not being a director) shall have any right of inspecting any books of account of the company except as conferred by statute.

- 6.4.4 The board shall from time to time cause to be prepared and laid before the company at a shareholders' meeting such financial statements and reports as are required by the Act to be so laid. Such financial statements and reports shall comply with the financial reporting standards prescribed by the Act.

**7. REPURCHASES OF SECURITIES**

The company is authorised to repurchase its securities subject to compliance with the Act.