

Republic of South Africa

Companies Act No. 71 of 2008 (as amended)

**MEMORANDUM OF INCORPORATION FOR A PUBLIC LISTED COMPANY**

Name of company: **RH BOPHELO LIMITED**

Registration No.: 2016/533398/06

Registration Date: 13 December 2016

*being a public company, classified as an Investment Entity in accordance with the Johannesburg Stock Exchange Listings Requirements*

(the "**Company**")

This Memorandum of Incorporation was adopted by Special Resolution passed on [**Drafting Note: Insert Date**], a copy of which was "**Filed**" as contemplated in the Companies Act No. 71 of 2008, as amended, together with the notice of amendment in substitution for the existing Memorandum of Incorporation.

The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Companies Act, No. 71 of 2008, as amended, shall not apply to the Company.

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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 shall bear corresponding meanings –

1.1.1. "**Accounting Period**" means the period commencing on the first day of the financial year of the Company in each calendar year and ending on the last day of such financial year of the Company in the immediately succeeding calendar year, it being agreed that:

1.1.1.1. the initial "**Accounting Period**" of the Company shall for the purposes of the formulae set out in clause 2.2.6 of Annexure A to this MOI be the period commencing on the Commencement Date and ending on the first day of the new financial year which will immediately succeed the initial Accounting Period as defined; and

1.1.1.2. the last "**Accounting Period**" of the Company shall for the purposes of the formulae set out in clause 2.2.6 of Annexure A to this MOI be the period commencing on the most recent financial year of the Company and ending on the termination date of the Management Agreement;

1.1.2. "**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;

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

1.1.4. "**B Share**" shall have the meaning ascribed to it in Annexure A and has the rights associated with it as outlined in Annexure A;

1.1.5. "**B Shareholder**" shall have the meaning ascribed to it in Annexure A and has the rights associated with it as outlined in Annexure A;

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

- 1.1.7. **"Central Securities Depository"** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.8. **"Commencement Date"** means 12 July 2017 the date upon which the Company's Shares were first admitted to listing on the JSE;

- 1.1.9. "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.10. "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.11. "**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;
- 1.1.12. "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.13. "**Financial Markets Act**" means the Financial Markets Act No 19 of 2012;
- 1.1.14. "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.15. "**JSE**" means the exchange, licensed under the Security Services Act, operated by JSE Limited (Registration number 2005/022939/06), a public company duly incorporated in South Africa;
- 1.1.16. "**JSE Listings Requirements**" means the JSE Listings Requirements as amended from time to time;
- 1.1.17. "**Main Board**" has the meaning set out in the definitions list of the JSE Listings Requirements;

- 1.1.18. **"Memorandum of Incorporation"** means this memorandum of incorporation adopted by the Company;
- 1.1.19. **"Ordinary Shares"** means the listed ordinary shares referenced in 7.1.1 in the authorised share capital of the Company with preferences, rights, limitations, and other terms set out in clauses 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13 and 7.14 ;
- 1.1.20. **"Ordinary Shareholder"** means the holders of Ordinary Shares in the issued share capital of the Company from time to time;
- 1.1.21. **"Participant"** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.22. **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.23. **"Securities"** means -
- 1.1.23.1. anything falling within the meaning of "securities" as set out in section 1 of the Act;
  - 1.1.23.2. any shares, notes, bonds, debentures, or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or
  - 1.1.23.3. anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act;
- 1.1.24. **"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 10 hereof;
- 1.1.25. **"SENS"** means the Securities Exchange News Service established and operated by the Listings Division of the JSE;
- 1.1.26. **"Share"** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.27. **"Shareholder"** means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57(1);
- 1.1.28. **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;

1.1.29. **"South Africa"** means the Republic of South Africa;

- 1.1.30. **"Uncertificated Securities"** shall bear the meaning ascribed thereto in section 1 of the Financial Markets Act;
  - 1.1.31. **"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; and
- 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. an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.5.2. 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; and
- 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 South Africa 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 (except where defined in the Act) 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 day on which the event triggering the calculation of the time period arises and including the last day of the prescribed period 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 a statutory enactment shall be construed as a reference to such enactment, as amended, varied, novated, consolidated, re-enacted, or supplemented from time to time.
- 1.9. In this Memorandum of Incorporation, the words "**clause**" or "**clauses**" refer to clauses of this Memorandum of Incorporation.
- 1.10. 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.
- 1.11. Any reference herein to "**securities that rank *pari passu***" shall mean that they – **[LR Sec 3.29]**
  - 1.11.1. are in all respects identical;
  - 1.11.2. are of the same nominal value, and that the same amount per share has been paid up;
  - 1.11.3. carry the same rights as to unrestricted transfer, attendance and voting at general meetings and in all other respects; and
  - 1.11.4. are entitled to dividends at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will be the same amount.
- 1.12. To the extent that any provision of the Act ("**Original Provision**") is repeated, or substantially repeated, in this Memorandum of Incorporation ("**Corresponding Provision**"), and the Original Provision is amended, repealed, or substituted (whether in its entirety or part thereof), then the Corresponding Provision shall, at the written election of the Board, be deemed to have been accordingly amended, repealed, or substituted (whether in its entirety or part thereof). Each of the Shareholders hereby irrevocably appoint the Board as their attorney and agent to do all such things as may be necessary to comply with the provisions of this clause 1.12.

- 1.13. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Memorandum of Incorporation.

## 2. **JURISTIC PERSONALITY**

- 2.1. The Company is an Investment Entity as contemplated in section 15 of the Listings Requirements. It is incorporated as a public company, as defined in the Act, and has had juristic personality from the date and time that the Company was incorporated, as stated in its registration certificate and as contemplated in section 19(1) of the Act.
- 2.2. For the avoidance of doubt, the Company is incorporated in accordance with and/or is governed by -
- 2.2.1. the unalterable provisions of the Act;
  - 2.2.2. the alterable provisions of the Act, subject to the extensions, limitations, substitutions, or variations set out in this Memorandum of Incorporation;
  - 2.2.3. the JSE Listings Requirements; and
  - 2.2.4. the other provisions of this Memorandum of Incorporation.

## 3. **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.

## 4. **POWERS OF THE COMPANY**

- 4.1. Save for those restrictions, limitations and/or qualifications contemplated in the JSE Listings Requirements and this Memorandum of Incorporation, 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.
- 4.2. The following corporate actions shall be undertaken in accordance with the Listings Requirements and clause 7.4 [LR Sch 10.9] –

- 4.2.1. issues of Securities (including options and convertible securities) for cash;
- 4.2.2. repurchases of Securities; and
- 4.2.3. alterations of share capital, authorised Securities and rights attaching to classes of Securities.

## 5. **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).

## 6. **LISTING OF SECURITIES ON THE JSE**

- 6.1. The JSE Listings Requirements, including the provisions of the JSE Listings Requirements in respect of Investment Entities, if applicable, apply to the Company for as long as the Securities of the Company are listed on the JSE and insofar as the JSE Listings Requirements are applicable. Notwithstanding anything else to the contrary contained in this Memorandum of Incorporation, all references to the JSE Listings Requirements in this Memorandum of Incorporation and compliance with the JSE Listings Requirements shall only apply for as long as any Securities of the Company are listed on the JSE.
- 6.2. Furthermore, the application of, and compliance with, the JSE Listings Requirements is subject to any exemptions that may be granted by the JSE. Any exemption granted will apply equally to this Memorandum of Incorporation.

## 7. **ISSUE OF SHARES AND VARIATION OF RIGHTS**

- 7.1. The Company is authorised to issue –
  - 7.1.1. 10 000 000 000 (ten billion) ordinary Shares of the same class, each of such securities which ranks *pari passu* in respect of all rights and entitles the holder to – **[LR Sch 10.5(a)]**
    - 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; **[LR Sch 10.5(b)]**

- 7.1.1.2. participate proportionally in any distribution made by the Company to the holders of its ordinary Shares; and
- 7.1.1.3. receive proportionally the net assets of the Company upon its liquidation; and
- 7.1.2. one (1) B Share as articulated in Annexure A hereto with the preference rights, limitations and terms associated with each B Share issued
- 7.1.3. such number of each of such further classes of Shares, if any, as are set out in **Annexure A** 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. increase or decrease the number of authorised Shares of any class of the Company's Shares;
  - 7.2.2. consolidate and reduce the number of the Company's issued and authorised Shares of any class;
  - 7.2.3. 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;
  - 7.2.4. reclassify any classified Shares that have been authorised but not issued;
  - 7.2.5. classify any unclassified Shares that have been authorised but not issued; or
  - 7.2.6. determine the preferences, rights, limitations, or other terms of any Shares,

and such powers shall only be capable of being exercised by the Shareholders by way of a special resolution of the Shareholders. **[LR Sch 10.5(d)]**

- 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 25.2. **[LR Sch 10.5(e)]**
- 7.4. Subject to the provisions of this Memorandum of Incorporation (including, for the avoidance of doubt, **Annexure A** hereto), the Act and, for as long as the Securities of the Company are listed on the JSE, the JSE Listings Requirements, to the extent applicable, the Company may, from time to time, in any manner as may be prescribed or permitted by law, reduce its issued share capital, stated capital, any share premium account and any capital redemption reserve fund and, in particular, without derogating from the generality of the power hereby conferred, may cancel any paid-up share capital which has been lost or is not represented by available assets or may pay off any paid-up share capital which is in excess of the requirements of the Company **[LR Sch 10.9(c)]**.
- 7.5. In addition, and without prejudice to, the provisions of clause 7.2, the number of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the Shareholders and in accordance with the JSE Listings Requirements, and such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting. The provisions of this Memorandum of Incorporation relating to Shareholders' Meetings shall *mutatis mutandis* apply to any such separate meeting except that – **[LR Sch 10.5(d), LR Sch 10.5(e) and LR Sch 10.9(c)]**
- 7.5.1. the necessary quorum to commence the meeting and consider the matter shall be sufficient Shareholders present and entitled to vote Securities of that class holding in aggregate at least 25% (twenty-five per cent) of all the voting rights that are entitled to be exercised on the matter, provided that the meeting may not begin unless, in addition, if there are more than 3 (three) Shareholders of that class, at least 3 (three) Shareholders entitled to vote **[LR Sch 10.11(g)]**;

- 7.5.2. for so long as the Securities of the Company are listed on the JSE, once a quorum has been established, all the Shareholders of that class constituting a quorum must be present to hear the matter **[LR Sch 10.11(g)]**; and
- 7.5.3. if a quorum is not present, the meeting shall be adjourned for 1 (one) week to the same day in the next week, or if that day is a public holiday, to the next succeeding day which is not a public holiday and if, at any such adjourned meeting of such Shareholders, the required quorum contemplated in clause 7.5.1 is not present, those entitled to vote who are present shall be the requisite quorum.
- 7.6. For so long as Securities of the Company are listed on the JSE, no Shares may be authorised in respect of which the preferences, rights, limitations, or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7). **[LR Sch 10.5(g)]**
- 7.7. The Company may only issue Shares which are fully paid up and freely transferable (other than the B Shares which are transferrable only in the limited circumstances specifically contemplated in **Annexure A** hereto) and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation. **[LR Sch 10.2(a)]**
- 7.8. 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. **[LR Sch 10.2(a)]**
- 7.9. The Board may, subject to clause 7.12 and the further provisions of this clause 7.8, resolve to issue Shares of the Company at any time, but only –
- 7.9.1. within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and

- 7.9.2. 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.
- 7.10. All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be completed in accordance with the JSE Listings Requirements. **[LR Sch 10.9(a)]**
- 7.11. Subject to what may be authorised by the Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with clause 7.13, and subject to clause 7.12, the Board may only issue unissued 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, provided that no fraction of a Share may be issued, and accordingly any fractional entitlement to any Share shall be dealt with in accordance with the provisions of clause 8 below. **[LR Sch 10.1]**
- 7.12. Notwithstanding the provisions of clauses 7.2, 7.11 and 7.13, 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 way of a 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.
- 7.13. Notwithstanding the provisions of clause 7.11, 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 Shareholders and that, to the extent required in terms of applicable law, the documentation supporting the transaction(s) have been approved by the JSE and comply with the JSE Listings Requirements. **[LR Sch 10.1]**

- 7.14. 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. **FRACTIONS OF SECURITIES**

In the event that –

- 8.1. pursuant to any corporate action or event (including any rights issue, capitalisation issue or otherwise), Shareholders would, but for the provisions of this clause 8 become entitled to fractions of Securities, such fractional entitlement shall be dealt with in accordance with the provisions of the JSE Listings Requirements and other requirements of the JSE from time to time;
- 8.2. if, in any other particular instance, the JSE Listings Requirements or other requirements of the JSE, do not specify the manner in which fractional entitlements are to be dealt with, the Board shall be entitled to –
- 8.2.1. round down the number of Securities to be received by the Shareholder to the nearest whole number; or
- 8.2.2. sell the Securities resulting from the aggregation of those fractional entitlements, on such terms and conditions which the Board deems fit, for the benefit of the Shareholders,

and any Director shall be empowered to sign any instrument of transfer or any other instrument necessary to give effect to the provisions of this clause 8.

## 9. CERTIFICATED AND UNCERTIFICATED SECURITIES

- 9.1. Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the 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.
- 9.2. Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.
- 9.3. Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates may be 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.
- 9.4. 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 –
- 9.4.1. 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
  - 9.4.2. within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within South Africa) 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.

- 9.5. 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.

10. **SECURITIES REGISTER**

- 10.1. 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.

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

10.2.1. the total number of Uncertificated Securities; and/or

10.2.2. with respect to Certificated Securities –

10.2.2.1. the names and addresses of the persons to whom the Certificated Securities were issued or transferred;

10.2.2.2. the number of Certificated Securities issued or transferred to each of them;

10.2.2.3. 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

10.2.2.4. any other prescribed information.

- 10.3. If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in

clause 9.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

- 10.3.1. forms part of the Securities Register; and
  - 10.3.2. must contain, with respect to all Uncertificated Securities contemplated in this clause 10, any details referred to in clause 10.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 10.4. The Securities Register or Uncertificated Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded therein, in the absence of evidence to the contrary.
- 10.5. 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.
- 10.6. A certificate evidencing any Certificated Securities of the Company –
- 10.6.1. must state on its face –
    - 10.6.1.1. the name of the Company;
    - 10.6.1.2. the name of the person to whom the Securities were issued or transferred; and
    - 10.6.1.3. the number and class of Shares and designation of the Shares, if any, evidenced by that certificate;
  - 10.6.2. must be signed by 2 (two) persons authorised by the Board, whose signatures may be affixed or placed on the certificate by autographic, mechanical, or electronic means; and
  - 10.6.3. is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 10.7. A certificate remains valid despite the subsequent departure from office of any person who signed it.

10.8. If, as contemplated in clause 10.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

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

10.8.2. 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 in terms of schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of clauses 10.6 to 10.8 is not a contravention of the Act and does not invalidate that certificate.

## 11. **TRANSFER OF SECURITIES**

11.1. The instrument of transfer of any 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.

11.2. 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.

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

11.3.1. the certificate issued in respect of the Certificated Securities to be transferred; and/or

11.3.2. 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.

- 11.4. 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 its registered office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice. **[LR Sch 10.2(b)]**
- 11.5. 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. 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.
- 11.6. The transfer of Uncertificated Securities may be effected only –
- 11.6.1. by a Participant or Central Securities Depository;
  - 11.6.2. 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
  - 11.6.3. in accordance with section 53 and the rules of the Central Securities Depository.
- 11.7. 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.
- 11.8. 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 in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

12. **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. **[LR Sch 10.12]**

13. **TRANSMISSION OF SECURITIES**

13.1. The executor of the estate of a deceased or insolvent 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 sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of anybody 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. **[LR Sch 10.13]**

13.2. Subject to the provisions of clause 13.1, 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 in their discretion deem 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 –

13.2.1. 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

- 13.2.2. 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.

#### 14. **SHARE WARRANTS**

- 14.1. Subject to the provisions of the Act, the JSE Listings Requirements 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;
    - 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 proven 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. **[LR Sch 10.10]**

## 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 Shareholders and that, to the extent required in terms of applicable law, the documentation supporting the transaction(s) have been approved by the JSE and comply with the JSE Listings Requirements, the Board shall not have the power or authority to –

16.1.1. approve the issuing of any authorised Shares as capitalisation Shares;

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

16.1.3. to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share. **[LR Sch 10.6]**

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. **[LR Sch 10.6]**

16.3. The Company at a Shareholders' meeting on recommendation of the Directors, or the Directors, may, without limitation to its powers, at any time and from time to time, subject to the fulfilment of the requirements in section 47 and the JSE Listings Requirements, pass a resolution to capitalise any amounts or funds including **[LR Sch 10.6]** –

16.3.1. any sum forming part of the undivided profits standing to the credit of the Company's reserve fund;

16.3.2. any sum in the hands of the Company and available for distribution as a dividend and not required for payment or provision of dividends on preference Shares;

16.3.3. any sum carried to reserve as a result of a sale or revaluation of the assets of the Company or part thereof; or

16.3.4. any sum received by way of premium on the issue of anyshares or debentures of the Company,

provided that the Board shall require Shareholder approval by ordinary resolution for any capitalisation issue where Shareholders are not entitled to participate in the capitalisation in proportion to their shareholding in the Company.

## 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 to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the

purchase of any such Securities, as set out in section 44, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

## 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 sections 5.67 to 5.69 of the JSE Listings Requirements (or such other sections as may be applicable from time to time); **[LR Sch 10.9(b)]**

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 implementation of any odd-lot offer made by the Company in accordance with the restrictions and procedures imposed by the JSE Listings Requirements, and subject to the approval of Shareholders and in compliance the JSE Listings Requirements, there are holders of Shares holding in aggregate less than 100 (one hundred) Shares, or such other number of shares as determined by the JSE as amounting to an odd-lot ("**Odd-Lots**") in the Company ("**Odd-Lot Holders**"), then the Company shall, save in respect of Odd-Lot holders who have elected to retain their Odd-Lots or to increase their Odd-Lots to holdings of 100 (one hundred) Shares or such other number of Shares as determined by the JSE as not amounting to an Odd-Lot, in the Company –

20.1.1. cause the Odd-Lots to be sold in such manner as the Directors may direct; and

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

20.2. All unclaimed proceeds of such sales may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that such proceeds unclaimed for a period of at least 3 (three) years from the date on which the Directors caused the Odd-Lots to be sold may be declared forfeited by the Directors for the benefit of the Company.

## 21. **INVESTMENT TRANSACTIONS**

21.1. The Company shall ensure that all investment transactions pursued and/or concluded by it are in accordance with section 15 of its JSE Listings Requirements and its investment policy as may be amended and updated from time to time by ordinary resolution. **[LR Sec 15.8]**

21.2.

The Company shall ensure that all investment transactions concluded by it, which are not in accordance with the investment policy, are in accordance with section 15 of its JSE Listings Requirements and are approved by way of ordinary resolution of the shareholders .

## 22. **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

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

- 22.1.1. receive notice of a Shareholders' meeting;
- 22.1.2. participate in and vote at a Shareholders' meeting;

- 22.1.3. decide any matter by written consent or by Electronic Communication;
- 22.1.4. receive a distribution; or
- 22.1.5. 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, the record date shall be determined in accordance with the JSE Listings Requirements. **[LR Sch 10.15]**

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

## 23. **SHAREHOLDERS' MEETINGS**

### 23.1. **Calling of Shareholders' Meetings**

- 23.1.1. The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.
- 23.1.2. Subject to the provisions of section 60 of the Act and section 10 of the JSE Listings Requirements dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –
  - 23.1.2.1. 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; **[LR Sch 10.11(d)]**
  - 23.1.2.2. whenever required in terms of the Act to fill a vacancy on the Board; or

23.1.2.3. when required in terms of clause 23.1.3 or by any other provision of this Memorandum of Incorporation.

23.1.3. 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 –

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

23.1.3.2. 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.

## 23.2. **Annual General Meetings**

23.2.1. 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.

23.2.2. The Company shall deliver notices of meetings to each Shareholder entitled to vote at such meeting who has elected to receive such documents. **[LR Sch 10.11(e)]**

23.2.3. Subject to the provisions of the JSE Listings Requirements, any such annual general meeting –

23.2.3.1. shall be held in accordance with the further provisions of this Memorandum of Incorporation and the Act; and

23.2.3.2. shall not be capable of being held in accordance with the provisions of section 60 set out in clause 28.

23.2.4. Each annual general meeting of the Company contemplated in clause 23.2.1 shall provide for at least the following business to be transacted –

23.2.4.1. the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;

23.2.4.2. the election of Directors, to the extent required by the Act and by clause 29.3.2 of this Memorandum of Incorporation;

23.2.4.3. the appointment of an auditor and an audit committee for the following financial year; and

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

23.2.5. 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.

### 23.3. **Location and Notice of Meeting**

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

23.3.2. Every Shareholder's meeting shall be reasonably accessible within South Africa for electronic participation by Shareholders, irrespective of whether the meeting is held in South Africa or elsewhere.

23.3.3. All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice. **[LR Sch 10.11(a) and LR Sch 10.11(b)]**

23.3.4. Notices of meetings must be delivered to the JSE at the same time as notices are sent to Shareholders of the Company. Furthermore, such notice must also be announced through SENS. **[LR Sch 10.11(f)]**

23.4. **Quorum and Adjournment of Meetings**

23.4.1. 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 –

23.4.1.1. 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

23.4.1.2. a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (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. **[LR Sch 10.11(g)]**

23.4.2. 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 23.4.1 –

23.4.2.1. 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; or

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

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

23.4.2.2.2. 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 23.4.1 may extend the 1 (one) hour limit allowed in clause 23.4.2 for a reasonable period on the grounds that –

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

23.4.2.2.4. one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 23.4.1.

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

- 23.4.4. The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 23.4.2 unless the location for the meeting is different from –
- 23.4.4.1. the location of the postponed or adjourned meeting; or
- 23.4.4.2. the location announced at the time of adjournment, in the case of an adjourned meeting.
- 23.4.5. Notwithstanding the provisions of clause 23.4.4, 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 23.4.2 or otherwise). **[LR Sch 10.11(f)]**
- 23.4.6. If at the time appointed in terms of clause 23.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 23.4.1 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 23.4.7. 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. **[LR Sch 10.11(g)]**
- 23.4.8. 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.
- 23.4.9. The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.

## 23.5. Conduct of Meetings

- 23.5.1. The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 23.5.2. 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 a poll appoint one of their number to be chairperson of the meeting.
- 23.5.3. The chairperson of a Shareholders' meeting may –
- 23.5.3.1. appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting; or
- 23.5.3.2. act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 23.5.4. If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless –
- 23.5.4.1. it is brought to the attention of the chairperson at the meeting; and
- 23.5.4.2. in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 23.5.5. Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised –

23.5.5.1. at the meeting or adjourned meetings at which the vote objected to was recorded; or

23.5.5.2. at the meeting or adjourned meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

23.5.6. Even if he is not a Shareholder -

23.5.6.1. any Director; or

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

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

## 24. **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

24.1. Subject to the provisions of the JSE Listings Requirements, the Company may conduct a Shareholders' meeting (other than the annual general 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 –

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

24.1.2. 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.

- 24.2. 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.

25. **VOTES OF SHAREHOLDERS**

- 25.1. 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 –

25.1.1. 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;

25.1.2. 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

25.1.3. 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 25.2. **[LR Sch 10.5 (c)]**

- 25.2. If any resolution is proposed as contemplated in clause 7.3, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders as contemplated in clause 25.1, provided that –

25.2.1. 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

- 25.2.2. 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). **[LR Sch 10.5(c) and LR Sch 10.5(e)]**
- 25.3. At a meeting of the Shareholders, voting may either be by show of hands, or by polling.
- 25.4. 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 –
- 25.4.1. at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders;
- 25.4.2. 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
- 25.4.3. the chairperson of the meeting.
- 25.5. 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 25.4, 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.
- 25.6. 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.

- 25.7. 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.
- 25.8. A poll demanded on the election of a chairperson (as contemplated in clause 23.5.2) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 25.9. 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.
- 25.10. 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 –
- 25.10.1. 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
- 25.10.2. the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from

doing so by the chairperson of such meeting in his sole discretion.

## 26. PROXIES AND REPRESENTATIVES

26.1. 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 –

26.1.1. participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or

26.1.2. give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60,

provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.

26.2. A proxy appointment –

26.2.1. must be in writing, dated and signed by the Shareholder; and

26.2.2. remains valid for –

26.2.2.1. 1 (one) year after the date on which it was signed; or

26.2.2.2. 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.

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

26.4. 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 –

26.4.1. 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;

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

26.4.3. a Shareholder or his proxy must deliver to the Company 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

26.4.4. 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.

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

"I/We \_\_\_\_\_

being a shareholder of \_\_\_\_\_ Limited do hereby appoint

\_\_\_\_\_

or failing him/her

\_\_\_\_\_

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

	In favour of	Against	Abstain
Special Resolution 1	.....	.....	.....
Ordinary Resolution 1	.....	.....	.....

\_\_\_\_\_

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

## 27. SHAREHOLDERS' RESOLUTIONS

- 27.1. 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.
- 27.2. 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). **[LR Sch 10.11(a)]**

27.3. No matters, except –

27.3.1. those matters set out in section 65(11);

27.3.2. any other matter required by the Act to be resolved by means of a special resolution; and

27.3.3. for so long as the Company's securities are listed on the JSE, any other matter required by the JSE Listings Requirements to be resolved by means of a special resolution or an ordinary resolution requiring a 75% (seventy five percent) approval threshold,

require a special resolution adopted at a Shareholders' meeting of the Company.

27.4. 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.

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

28.1. In accordance with the provisions of section 60, but subject to clause 28.5, only the resolutions set out in clause 28.3 that could be voted on at a Shareholders' meeting (other than in respect of the election of Directors) may instead be – **[LR Sch 10.11(h)]**

28.1.1. submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and

28.1.2. voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.

28.2. A resolution contemplated in clause 28.1 –

28.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as

an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and

28.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.

28.3. Subject to clauses 28.1 and 28.5, the following resolutions may be proposed as written resolutions in accordance of section 60 of the Act –

28.3.1. change of the Company's name;

28.3.2. odd lot offers;

28.3.3. increase in the Company's authorised share capital; and

28.3.4. the approval of amendments to the Memorandum of Incorporation.

28.4. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this clause 28, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution.

28.5. All Shareholders meetings convened in terms of the JSE Listings Requirements must be held "in person" and may not be held by means of a written resolution as is contemplated in section 60 of the Act. **[LR Sch 10.11(c)]**

## 29. **COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

### 29.1. **Number of Directors**

29.1.1. In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint 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. **[LR Sch 10.16(a)]**

29.1.2. All Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed in terms of section 60 shall be competent.

**[LR Sch 10.16(b)]**

29.1.3. 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.

29.2. **Election of Directors**

29.2.1. The appointment of all Directors shall be subject to shareholder approval at any general/annual general meeting. **[LR Sch 10.16(b)]**

29.2.2. In any election of Directors –

29.2.2.1. any Shareholder has the right to nominate Directors;  
**[LR Sch 10.16(b)]**

29.2.2.2. 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

29.2.2.3. in each vote to fill a vacancy –

29.2.2.3.1. each vote entitled to be exercised may be exercised once; and

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

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

29.3. **Eligibility, Resignation and Rotation of Directors**

- 29.3.1. 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.
- 29.3.2. 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 29.3.2 – **[LR Sch 10.16(k)]**
- 29.3.2.1. at each annual general meeting referred to in clause 23.2.1, 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 1/3 (one third), but not less than 1/3rd (one third), shall retire from office, provided that if any Director is appointed as managing Director or as an employee of the Company in any other capacity, he shall not, while he 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; **[LR Sch 10.16(g)]**
- 29.3.2.2. the Directors to retire in every year shall be those who 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;
- 29.3.2.3. a retiring Director shall be eligible for re-election;
- 29.3.2.4. 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 28; and **[LR Sch 10.16(g)]**

29.3.2.5. if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 23.4.2 to 23.4.5 (both inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

29.3.3. The Board shall, through its nomination committee if such committee has been constituted in terms of clause 35, provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contributions made. **[LR Sch 10.16(g)]**

#### 29.4. **Powers of the Directors**

29.4.1. The Board has the power to –

29.4.1.1. fill any vacancy on the Board on a temporary basis, as set out in section 68(3), provided that such appointment must be confirmed by the Shareholders, in accordance with clause 29.1.2, at the next annual general meeting of the Company, as required in terms of section 70(3)(b)(i); and **[LR Sch 10.16(c)]**

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

and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 29.

- 29.4.2. The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time-to-time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 29.4.3. 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 Directors shall from time to time determine.
- 29.4.4. All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

29.4.5. 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 29.4.1.1 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. **[LR Sch 10.16(d)]**

29.4.6. 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 29.4.5, 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. **[LR Sch 10.16(d)]**

29.5. **Directors' Interests**

29.5.1. A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine. **[LR Sch 10.16(e)]**

29.5.2. A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the

appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors. **[LR Sch 10.16(e)]**

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

29.5.4. 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 in terms of sections 20(2) and 20(6) to permit or ratify an act of the Directors that is inconsistent with any limitation or restriction imposed by this Memorandum of Incorporation and/or the JSE Listings Requirements, or the authority of the Directors to perform such an act on behalf of the Company, is prohibited. **[LR Sch 10.3]**

### 30. **DIRECTORS' MEETINGS**

30.1. 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.

30.2. 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. **[LR Sch 10.16(i)]**

30.3. In addition to the provisions of section 73 (1), any Director shall at any time be entitled to call a meeting of the Directors.

- 30.4. The Board has the power to –
- 30.4.1. 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 last Director who signed it (unless a statement to the contrary is made in that resolution);  
**[LR Sch 10.16(j)]**
  - 30.4.2. conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting; and **[LR Sch 10.16(j)]**
  - 30.4.3. determine the manner and form of providing notice of its meetings contemplated in section 73(4), provided that –
    - 30.4.3.1. the notice period for the convening of any meeting of the Board will be at least 7 (seven) days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any (two) directors as to whether a matter should be decided on an urgent basis, and

the period of notice to be given, shall be final and binding on the directors;

- 30.4.3.2. an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 30.4.3.1; and
- 30.4.3.3. 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.

30.5. The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clause 30.5.5, and accordingly –

- 30.5.1. if all of the Directors of the Company –
  - 30.5.1.1. acknowledge actual receipt of the notice convening a meeting;
  - 30.5.1.2. are present at a meeting; or
  - 30.5.1.3. 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;

- 30.5.2. a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;
- 30.5.3. each Director has 1 (one) vote on a matter before the Board;
- 30.5.4. a majority of the votes cast in favour of a resolution is sufficient to approve that resolution; and
- 30.5.5. in the case of a tied vote –

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

30.5.5.2. the matter being voted on fails.

30.6. Resolutions adopted by the Board –

30.6.1. must be dated and sequentially numbered; and

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

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

### 31. **DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

31.1. 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.

31.2. Any Director who -

31.2.1. serves on any executive or other committee;

31.2.2. devotes special attention to the business of the Company;

31.2.3. goes or resides outside South Africa for the purpose of the Company; and/or

31.2.4. 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.  
**[LR Sch 10.16(f)]**

- 31.3. The Directors may also be paid all their travelling and other expenses properly and necessarily incurred by them in connection with -
- 31.3.1. the business of the Company; and
- 31.3.2. attending meetings of the Directors or of committees of the Directors of the Company. **[LR Sch 10.16(f)]**
- 31.4. The Board may, as contemplated in and subject to the requirements of section 45, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

32. **MANAGING DIRECTOR**

- 32.1. The Board must appoint a chief executive officer and an executive financial Director (as such offices are contemplated in the JSE Listings Requirements, if applicable) **[LR 3.84(c) AND (g)]**. The Directors may from time to time appoint 1 (one) or more of their body to the office of managing 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 a managing Director appointed in terms of an agreement shall be for a maximum period of 5 (five) years at any one time. A Director so appointed shall be subject to retirement in the same manner as the other Directors except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.
- 32.2. Subject to the provisions of any contract between himself and the Company, a managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 32.3. The Directors may from time to time entrust to and confer upon a managing Director for the time being such of the powers exercisable in terms of this

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

### 33. **INDEMNIFICATION OF DIRECTORS**

33.1. The Company may –

- 33.1.1. 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);
- 33.1.2. indemnify a Director in respect of liability as set out in section 78(5); and/or
- 33.1.3. 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.

33.2. The provisions of clause 33.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer, or member of any committee of the Board, including the audit committee.

### 34. **BORROWING POWERS**

34.1. Subject to the provisions of clause 34.2 the other provisions of this Memorandum of Incorporation, the Directors may from time to time -

- 34.1.1. borrow for the purposes of the Company such sums as they think fit; and
- 34.1.2. 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.

34.2. 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 borrowed or raised by –

34.2.1. the Company; and

34.2.2. 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).

### 35. **COMMITTEES OF THE BOARD**

35.1. The Board may –

35.1.1. 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

35.1.2. 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.

- 35.2. 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.
- 35.3. 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 companies 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.
- 35.4. 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.
- 35.5. 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.

36. **ANNUAL FINANCIAL STATEMENTS**

- 36.1. 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 –
- 36.1.1. the Act;
- 36.1.2. any other law with respect to the preparation of financial statements to which the Company may be subject; and
- 36.1.3. this Memorandum of Incorporation.
- 36.2. The Company shall each year prepare annual financial statements within 4 (four) 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).
- 36.3. 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.

- 36.4. The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Act.
- 36.5. A copy of the annual financial statements 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.  
**[LR Sch 10.19]**
- 36.6. 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 –
- 36.6.1. satisfy, as to form and content, the financial reporting standards of IFRS; and
  - 36.6.2. subject to and in accordance with IFRS –
    - 36.6.2.1. present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
    - 36.6.2.2. show the Company's assets, liabilities, and equity, as well as its income and expenses;
    - 36.6.2.3. set out the date on which the statements were produced and the Accounting Period to which they apply; and
    - 36.6.2.4. 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.

37. **COMPANY SECRETARY**

- 37.1. The Company must appoint a company secretary.
- 37.2. The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident or citizen of South Africa.

37.3. 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.

### 38. **DISTRIBUTIONS**

38.1. Subject to the provisions of the Act, in particular section 46, the JSE Listings Requirements and **Annexure A** hereto, the Company may make a proposed distribution if such distribution **[LR Sch 10.17(a)]** –

38.1.1. is pursuant to an existing legal obligation of the Company, or a court order; or

38.1.2. is authorised by resolution of the Board.

38.2. In so far as a distribution to the B Shareholder (in the form of a B Dividend) is concerned, it is agreed to and understood that such distribution constitutes a distribution in terms of clause 38.1.1 as it emanates from the obligations set out in the Management Agreement. That being the case and as per the prescripts of the Management Agreement, the Board shall upon a determination being made as to the distribution (i.e. a B Dividend calculated in accordance with the formulae set out in clause 2.2.6 of annexure A) payable to ManCo, make an assessment as to whether there are any impediments to making a distribution to the B Shareholder in whole or in part (taking into account such maximum amount as may be available for distribution in light of clauses 2.2.7 to 2.2.10 of annexure A hereto), in respect of any relevant Accounting Period, which assessment shall include but not be limited to, a consideration of whether the Solvency and Liquidity Test as contemplated in section 46 of the Act will be satisfied upon a distribution to the B Shareholder being made by the Company.

38.3. 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.

38.4. 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.

38.5. Dividends are declared by the Directors in accordance with the Act. **[LR Sch 10.17(a)]**

38.6. The grant of the right of election as regards scrip dividends and cashdividends

shall not be prohibited, it being understood that the B Shareholder's right in this regard shall be exercised in accordance with clause 2.2.9 of Annexure A hereto **[LR Sch 10.7]**

- 38.7. No distribution of capital shall be made on the basis that such capital may be called up again by the Company. **[LR Sch 10.8]**
- 38.8. The Directors may from time to time declare and pay to the ordinary Shareholders such interim distributions as the Directors consider to be appropriate.
- 38.9. No larger distribution shall be declared by the Company in general meeting than is recommended by the Directors, but the Company in general meeting may declare a smaller distribution.
- 38.10. Unclaimed distributions must be held by the Company in trust indefinitely, but subject to the laws of prescription. Following this period, the unclaimed distributions may be invested or otherwise be made use of by the Directors for the benefit of the Company. 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. **[LR Sch10.17(c)]**
- 38.11. 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 -
- 38.11.1. the holder at his registered address;
- 38.11.2. 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
- 38.11.3. such person and at such address as the holder or joint holders may in writing direct.
- 38.12. Every such cheque or warrant shall -
- 38.12.1. be made payable to the order of the person to whom it is addressed; and
- 38.12.2. be sent at the risk of the holder or joint holders.

- 38.13. 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.
- 38.14. A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 38.15. When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 38.16. A distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 38.17. Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
- 38.17.1. by the distribution of specific assets;
  - 38.17.2. by the issue of Shares, debentures, or securities of the Company or of any other company;
  - 38.17.3. in cash; or
  - 38.17.4. in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 38.18. Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 38.19. The Directors may -
- 38.19.1. determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and

38.19.2. vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

38.20. 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. **[LR Sch 10.17(b)]**

39. **ACCESS TO COMPANY RECORDS**

39.1. Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –

39.1.1. this Memorandum of Incorporation, and any amendments or alterations thereof;

39.1.2. a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);

39.1.3. all –

39.1.3.1. reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting; and

39.1.3.2. annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;

39.1.4. notice and minutes of all Shareholders' meetings, including –

39.1.4.1. all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and

- 39.1.4.2. any document that was made available by the Company to the holders of Securities in relation to each such resolution;
  - 39.1.5. any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and
  - 39.1.6. the Securities Register.
- 39.2. A person not contemplated in clause 39.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.
- 39.3. A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26, and in accordance with the rules of the Central Securities Depository. Within 5 (five) business days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details referred to in section 50(3)(b) at the close of business on the day on which the request for inspection was made.

#### 40. **PAYMENT OF COMMISSION**

- 40.1. 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. **[LR Sch 10.14]**
- 40.2. 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.
- 40.3. 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.

40.4. The Company may, on any issue of Shares, pay such brokerage as may be lawful.

#### 41. **NOTICES**

41.1. 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 in any manner authorised by the JSE Listings Requirements and the Regulations, and particularly Table CR 3 annexed to the Regulations. 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. **[LR Sch 10.11(f)]**

41.2. Each Shareholder of the Company –

41.2.1. shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and

41.2.2. may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.

41.3. Shareholders shall be permitted to register an address in South Africa or in some other country. **[LR Sch 10.18]**

41.4. Any Shareholder whose address in the Securities Register is an address not within South Africa, shall be entitled to have notices served upon him at such address.

41.5. In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree otherwise, 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.

- 41.6. Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 41.7. Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 41.8. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person is 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.

42. **AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 42.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar, or similar defects) in the MOI, which the Board is empowered to do in terms of section 17(1) and subject to the provisions of the Listings Requirements, all other amendments of the MOI shall be effected in accordance with section 16(1) and section 16(4) and the Listings Requirements. All such other amendments shall be approved by a special resolution passed by the Shareholders, but subject to clause 7.5 **[LR Sch 10.5(d) and (e)]**.
- 42.2. Notice of any corrections made in terms of clause 42.1 must be given to Shareholders which may be done by way of notification on the Company's website, if any.

- 42.3. For the avoidance of doubt, amendments to the Memorandum of Incorporation shall include, without limitation **[LR Sch 10.5(d)(i) to (vii) and LR Sch 10.5(e)]** -
- 42.3.1. the creation of any class of Shares;
  - 42.3.2. the variation of any preferences, rights, limitations, and other terms attaching to any class of Shares;
  - 42.3.3. the conversion of one class of Shares into one or more other classes;
  - 42.3.4. an increase in the number of authorised Securities of a class;
  - 42.3.5. a consolidation of Securities;
  - 42.3.6. a sub-division of Securities; and/or
  - 42.3.7. the change of name of the Company.
- 42.4. Subject to the provisions of clause 7.4, 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). **[LR Sch 10.5(d)]**
- 42.5. An amendment of this Memorandum of Incorporation will take effect from the later of –
- 42.5.1. the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and
  - 42.5.2. 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.

43. **COMPANY RULES**

The Board is prohibited from making any rules as contemplated in section 15(3) and the Board's capacity to make such rules is hereby excluded. **[LR Sch 10.4]**

44. **REGISTER OF DISCLOSURES AND NOTIFICATION**

The Company must -

- 44.1. establish and maintain a register of the disclosures made in terms of section 56(7);
- 44.2. publish in its annual financial statements a list of the Shareholders who hold beneficial interests equal to or in excess of 5% (five percent) of the total number of Securities of that class issued by the Company, together with the extent of those beneficial interests;
- 44.3. file with the Takeover Regulation Panel a copy of a notification received in respect of -
  - 44.3.1. the acquisition of a beneficial interest in sufficient Securities of a class issued by the Company such that, as a result of the acquisition, the person holds a beneficial interest in Securities amounting to 5% (five percent), 10% (ten percent), 15% (fifteen percent), or any further whole multiple of the issued Securities of that class; or
  - 44.3.2. the disposal of a beneficial interest in sufficient Securities of a class issued by the Company such that, as a result of the disposition, the person no longer holds a beneficial interest in Securities amounting to a particular multiple of 5% (five percent) of the issued Securities of that class;
- 44.4. report the information to the Shareholders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 44.3 unless such notice relates to the disposition of less than 1% (one percent) of the class of Securities; and

44.5. where the Securities of the Company are listed on the JSE, within 48 (forty-eight) hours after receiving a notification of the type referred to in clause 44.3 publish the information provided in the notice on SENS.

45. **LISTINGS ON OTHER STOCK EXCHANGES**

The Company may seek listings on such other stock exchanges as the Directors may consider appropriate from time to time.

**Annexure A****ADDITIONAL CLASSES OF SHARES**

1. In addition to the Shares contemplated in clause 7.1.1 of the Memorandum of Incorporation to which this **Annexure A** is attached, the Company is authorised to issue no more than 1 no par value share, designated as a B Share, with the preferences, rights, limitations and other terms set out hereunder.
2. **PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ATTACHING TO THE B SHARES**
  - 2.1. Capitalised terms used in this **Annexure A** shall, unless otherwise defined, have the meanings ascribed thereto in this Memorandum of Incorporation and the following terms shall have the following meanings:
    - 2.1.1. "**B Share**" means 1 (one) transferable, unlisted no-par value shares in the share capital of the Company with limited votes and having the preferences, rights, limitations, and other terms set out in this **Annexure A**;
    - 2.1.2. "**B Shareholder**" means each holder of the B Share in the issued share capital of the Company from time to time;
    - 2.1.3. "**Invested NAV**" means the net asset value of RH Bophelo Ltd (Registration No. 2016/533398/06) from time to time (as determined by reference to "Investment" (as defined in the Management Agreement)), it being agreed that the initial "Invested NAV", being the "Invested NAV" as at the Commencement Date shall be deemed to be R500 000 000 (five hundred million Rand);
    - 2.1.4. "**Management Agreement**" means the management agreement entered into between the Company, RH Bophelo Operating Company (Pty) Ltd (Registration No. 2016/533529/07) and ManCo on or about 23 June 2017;
    - 2.1.5. "**ManCo**" means RH Bophelo Management Company (Pty) Ltd (Registration No. 2016/533552/07), a limited liability, private company incorporated in accordance with the laws of South Africa;
    - 2.1.6. "**Prime Rate**" means the prime overdraft rate charged from time to time by First National Bank (a division of FirstRand Limited) to its corporate customers in the ordinary course on an unsecured basis, calculated on the basis of a 365 (three hundred and sixty-five) day year and compounded monthly in arrears, as determined by any manager of the aforesaid bank or its delegate, whose appointment or authority it shall not be necessary to prove, ;

- 2.2. Save for such rights as are unalterable under applicable laws and regulations or as otherwise envisaged in this Memorandum of Incorporation, the B Share shall not have any rights, including voting rights, other than as outlined below. The B Share shall be issued to the holder strictly as consideration for the services rendered by the B Shareholder under the Management Agreement, and accords to the holder:
- 2.2.1. the right to be entered in the Securities Register of the Company as the registered holder of that B Share;
- 2.2.2. the right to attend, participate in, and speak at any meeting of B Shareholders which, for the avoidance of doubt, shall not entitle the B Shareholder (other than as envisaged in paragraph 2.2.4 of this **Annexure A** below) to vote at any meeting of the ordinary Shareholders; **[LR Sch 10.5(c)]**
- 2.2.3. the right on a poll to exercise one vote per B Share held by that B Shareholder on any matter to be decided upon by the ordinary Shareholders (but only as envisaged in paragraph 2.2.4 of this **Annexure A** below);
- 2.2.4. the right to receive notice of all Shareholder Meetings (including, for the avoidance of doubt, meetings of B Shareholders) and to attend and take part, but not vote at meetings of ordinary Shareholders, unless: **[LR Sch 10.5(h)]**
- 2.2.4.1. a B Dividend (as defined below) remains in arrears and unpaid for more than three months after the due date for payment thereof, provided that the right to vote conferred on the B Shareholder in terms of this paragraph 2.2.4.1 of this **Annexure A** shall cease if and when a B Dividend is thereafter declared and paid;
- 2.2.4.2. a B Dividend is not declared and paid when such B Dividend is due, within three months after such B Dividend is due, provided that the right to vote conferred on the B Shareholders in terms of this paragraph 2.2.4.2 of this **Annexure A** shall cease if and when a B Dividend is thereafter declared and paid; and
- 2.2.4.3. subject to paragraph 2.5 of this **Annexure A** below, a resolution of the Company (including, for the avoidance of doubt, a resolution to amend the Memorandum of Incorporation of the Company) is proposed which affects the rights, preferences, privileges or benefits attaching to the B Share or the rights of a B Shareholder that arise from the subscription for and/or holding of the B Share, including a resolution:

- 2.2.4.3.1. to wind-up, liquidate or dissolve the Company, or to have it placed under business rescue proceedings, or to pursue a moratorium or a composition, compromise, or similar arrangement with any of its creditors;
- 2.2.4.3.2. to repurchase, cancel or expropriate the B Share (or any rights attaching thereto);
- 2.2.4.3.3. to authorise and/or issue any Securities in the Company which rank in priority to or *pari passu* with the B Share in respect of rights to dividends or a return of capital,

in which case the B Shareholder shall be entitled to vote at such meetings in the manner contemplated in clause 25.2 of the Memorandum of Incorporation;

- 2.2.5. if, at any time, the B Shareholder would be entitled to vote its B Share under paragraph 2.2.4 of this **Annexure A** at a Shareholders Meeting of the Company, if one were to be held, the B Shareholder may, by notice to the Company, require the Company to call a Shareholders Meeting to consider any of those matters on which the B Shareholder is entitled to vote, including a resolution to declare a B Share dividend when required under, or as envisaged by, this Memorandum of Incorporation or otherwise requiring the Company to comply with its obligations to the B Shareholder. Notwithstanding any other provisions of this Memorandum of Incorporation, a resolution adopted at such meeting will be binding on and must be given effect to by the Company and the Directors;
- 2.2.6. the right to receive out of the profits of the Company which are available for Distribution, in priority to and before any repayment of any capital or interest on any Shareholder loans by the Company or any provision for, declaration or payment of any dividend or return of capital or other Distribution on another class of Securities (including ordinary Shares) in the capital of the Company, dividends declared on the B Share ("**B Dividends**") for each Accounting Period (excluding the initial Accounting Period) in an aggregate amount (for all the B Shares) calculated at the end of each Accounting Period (excluding the initial Accounting Period) in accordance with Formula 1, Formula 2, Formula 3 and Formula 4 below:

**Formula 1:**

*Used to calculate the annual B Dividend which is subject to a claw-back mechanism.*

**Annual B Dividend formulas:**

$$X = (B / C) - 1$$

If X is **greater than or equal to** 10% then the following formula applies:

$$A = (B - C) \times ((X - 10\%) / X) \times 15\%$$

If X is **less than** 10% then  $A = 0$

**Formula 2:**

*Used to calculate the claw-back B Dividend.*

**Claw-back B Dividend formulas:**

$$Y = (B / E)^{(1 / W)} - 1$$

If Y is **greater than or equal to** 10% then the following formula applies:

$$D = (B - E) \times ((Y - 10\%) / Y) \times 15\%$$

If Y is **less than** 10% then  $D = 0$

**Formula 3:**

*Used to calculate the adjustment factor to be applied to the actual B Dividend to be paid to B Shareholders.*

**Dividend adjustment formula:**

$$F = D - (Z + A)$$

**Formula 4:**

*Actual B Dividend to be paid in an Accounting Period.*

**B Dividend payable:**

$$G = A + F, \text{ however, if } G \text{ is } \textbf{less than} \textbf{ } 0 \text{ then } G = 0$$

**Where:**

A = the annual B Dividend calculated for each Accounting Period, which is subject to the claw-back as calculated in Formula 2, Formula 3, and Formula 4;

B = the Invested NAV as at the last day of the Accounting Period, after subtracting any equity capital raised from shareholders in the listed market and after adding back the management fee paid and accrued to ManCo under the Management Agreement during the Accounting Period. For the avoidance of doubt, the "equity capital raised from shareholders" includes all equity capital raises, whether in the form of an issue of shares for cash, vendor placement or shares issued as part of an acquisition and an adjustment in any given period is based on the cumulative "equity capital raised" from the date of listing of the Company, being 12 July 2017 to the respective Accounting Period. Furthermore, the "management fee paid", which is to be added back, is the cumulative management fee paid from the date of listing of the Company, being 12 July 2017 to the respective Accounting Period;

C = the Invested NAV as at the first day of the Accounting Period. For the purposes of the calculation of the 1<sup>st</sup> B Dividend payable, "C" will be based on the initial Invested NAV, being R500,000,000 (five hundred million rand), which is the NAV as at the date the Company is listed on the main board of the JSE;

D = the claw-back B Dividend calculated for each Accounting Period, which is subject to Formula 3 and Formula 4;

E = R500,000,000 (five hundred million rand), being the NAV on the date that the Company is listed on the main board of the JSE;

F = the adjustment to be applied to the B Dividend as a result of the claw-back, Annual B Dividend and previous B Dividends paid;

G = the B Dividend payable to the B Shareholders for each Accounting Period;

W = the number of accounting periods, expressed from the date the Company is listed on the main board of the JSE, being 12 July 2017, to the last day of the Accounting Period. By way of an example, below are the respective factors to be applied:

Date	Factor
12-Jul-17	0.00
28-Feb-18	0.63
28-Feb-19	1.63
28-Feb-20	2.63
28-Feb-21	3.64
28-Feb-22	4.64
28-Feb-23	5.64
29-Feb-24	6.64

X = the growth in NAV, calculated as a percentage, measured from the first day of the Accounting Period to the last day of the Accounting Period;

Y = the growth in NAV, calculated as a percentage, measured from the date that the Company is listed on the main board of the JSE, being 12 July 2017, with an initial NAV of R500,000,000 (five hundred million rand) to the last day of the Accounting Period; and

Z = the sum of all previous B Dividends paid (and accrued) to ManCo, as calculated in terms of "G" above (not "A" above), from date that the Company is listed on the main board of the JSE to the first day of the Accounting Period (i.e., all B Dividends previously paid but excluding any B Dividend which may be payable during the current Accounting Period).

*Please refer to Schedule 1 hereto for a worked example of the payment of the B Dividends*

- 2.2.7. a B Dividend shall upon being declared to be due in accordance with clause 38.2 of the MOI and in compliance with the requirements of the Act, particularly section 46 be paid in full within 60 (sixty) days of the date on which the audited annual financial statements of the Company for the relevant Accounting Period are approved by the Board.
- 2.2.8. in the event that a B Dividend is not paid within 60 (sixty) days of the date on which the audited financial statements of the Company for the relevant Accounting Period are approved by the Board (or that such B Dividend is not paid in full), for any reason whatsoever, then the B Dividend (and/or the unpaid portion thereof) shall be accumulated and accrue interest at the Prime Rate plus 2% (two percent) from the date on which such B Dividend (and/or the unpaid portion thereof) should have been paid until the date of actual payment thereof, which payment shall include an amount in *lieu of* all interest accrued as at that date. Any interest accrued in terms of this clause 2.2.8 shall only be capable of being settled in cash;
- 2.2.9. in the event that the Company is unable to pay a B Dividend which is declared due in respect of the relevant Accounting Period in full, the Company shall, (except where the B Shareholder agrees for the entire B Dividend so declared to be paid by way of shares issued for cash) and to the extent that cash is available for distribution in an amount equivalent to at least 25% of the B Dividend so declared, be obligated to ensure that at least 25% of the B Dividend so declared for the relevant Accounting Period is paid to ManCo in cash and the balance by way of ordinary shares issued for cash in accordance with the JSE Listings Requirements or in such other manner as may be agreed to between the Company and ManCo subject to any approvals as may be required from the Board and Shareholders of the Company in terms of this MOI and the Act;
- 2.2.10. should the Company not be in a position to raise cash in an amount equal to at least 25% of the B Dividend due as envisaged in 2.2.9 and should the Company and ManCo fail to agree to any other manner in which payment of the B Dividend declared may be settled by the Company, the B Dividend amount will accumulate interest as envisaged in 2.2.8; and
- 2.2.11. any other rights attaching to the B Share in terms of the Act, any other provisions of this Memorandum of Incorporation or any other applicable law,

in each case in accordance with and subject to the further provisions of the Memorandum of Incorporation applicable to such B Share. Each B Share ranks *pari passu* in all respects with every other B Share.

- 2.3. For the avoidance of doubt, it is recorded and agreed that, save in respect of the repurchase of the B Share in the manner contemplated in this **Annexure A**, no dividend or return of capital or other Distribution whatsoever (including a distribution in the form of the B Dividend) shall accrue or be payable to the B Shareholder under any circumstances whatsoever after the date of termination of the Management Agreement;
- 2.4. The B Share will not be admitted to listing and trading on any stock exchange, including the securities exchange operated by the JSE.
- 2.5. The Company shall, only after (but not prior to) the termination of the Management Agreement, be obliged to repurchase the B Share in the manner set out in Schedule 2 to this **Annexure A**.
- 2.6. Subject to paragraph 2.5 of this **Annexure A**, the transferability of the B Share is hereby restricted, and the B Share may not, once issued, be transferred in any way by the B Shareholder.

## Schedule 1

- the tables below appeared in the original MOI and were replicated in Pre-Listing Statement dated 5 July 2017;
- both tables are hypothetical and are not projected NAV calculations of RH Bophelo supported by underlying assumptions on the performance of the business;
- it was presented in the Pre-Listing Statement to demonstrate how the impact of randomly selected NAV growth rates impacts the Annual B Dividend payable;
- it is being presented to illustrate how a dividend on the "B" shares will be calculated in the two different scenarios presented below.

### Base Case:

This is the Company's original and expected Invested NAV growth over a 10-year period from the date of listing on the JSE. This is to illustrate the effects of a change in the original assumptions and expectations, it must not be deemed to be a profit forecast. The dividend calculation will change in accordance with formula as set out in Annexure A.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Invested NAV (R'm) ["B and C"]	R 500 m	R 510 m	R 600 m	R 750 m	R 890 m	R 755 m	R 715 m	R 822 m	R 946 m	R 1,087 m	R 1,251 m
Capital raise from listed equity shareholders		R 10 m	R 0 m	R 10 m	R 100 m	R 0 m	R 10 m	R 40 m	R 50 m	R 50 m	R 50 m
Annual growth in Invested NAV (R'm)		R 0 m	R 90 m	R 140 m	R 40 m	R -135 m	R -50 m	R 67 m	R 73 m	R 92 m	R 113 m
Annual growth in Invested NAV (%) ["X"]		0.0%	17.6%	23.3%	5.3%	-15.2%	-6.6%	9.4%	8.9%	9.7%	10.4%
Annual B Dividend (R'm) ["A"]		R 0.0 m	R 5.9 m	R 12.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.7 m
Cumulative growth in Invested NAV (R'm)			R 90 m	R 230 m	R 270 m	R 135 m	R 85 m	R 152 m	R 226 m	R 317 m	R 431 m
Cumulative growth in Invested NAV (%) ["Y"]		2.0%	8.6%	13.4%	11.4%	4.9%	2.7%	3.9%	4.8%	5.6%	6.4%
Claw-back B Dividend (R'm) ["D"]			R 0.0 m	R 8.8 m	R 5.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m
Adjustment (R'm) ["F"]			R -5.9 m	R -3.2 m	R -3.9 m	R -8.8 m	R -8.8 m	R -8.8 m	R -8.8 m	R -8.8 m	R -9.5 m
Annual B Dividend payable (R'm) ["G"]		R 0.0 m	R 0.0 m	R 8.8 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m	R 0.0 m

### Alternate example

Alternate example provides an alternative hypothetical scenario to the Company's original and expected Invested NAV growth over a 10-year period from the date of listing on the JSE. This is to illustrate the effects of a change in the original assumptions and expectations, it must not be deemed to be a profit forecast. The dividend calculation will change in accordance with formula as set out in Annexure A.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Invested NAV (R'm) ["B and C"]	R 500 m	R 510 m	R 620 m	R 700 m	R 890 m	R 890 m	R 990 m	R 1,190 m	R 1,290 m	R 1,490 m	R 1,690 m
Capital raise from listed equity shareholders		R 10 m	R 0 m	R 10 m	R 100 m	R 0 m	R 10 m	R 40 m	R 50 m	R 50 m	R 50 m
Annual growth in Invested NAV (R'm)		R 0 m	R 110 m	R 70 m	R 90 m	R 0 m	R 90 m	R 160 m	R 50 m	R 150 m	R 150 m
Annual growth in Invested NAV (%) ["X"]		0.0%	21.6%	11.3%	12.9%	0.0%	10.1%	16.2%	4.2%	11.6%	10.1%
Annual B Dividend (R'm) ["A"]		R 0.0 m	R 8.9 m	R 1.2 m	R 3.0 m	R 0.0 m	R 0.2 m	R 9.1 m	R 0.0 m	R 3.2 m	R 0.1 m

Cumulative growth in Invested NAV (R'm)		R 110 m	R 180 m	R 270 m	R 270 m	R 360 m	R 520 m	R 570 m	R 720 m	R 870 m
Cumulative growth in Invested NAV (%) ["Y"]	2.0%	10.5%	10.8%	11.4%	9.0%	9.5%	10.7%	10.0%	10.4%	10.6%
Claw-back B Dividend (R'm) ["D"]	<b>R 0.0 m</b>	<b>R 0.7 m</b>	<b>R 2.0 m</b>	<b>R 5.0 m</b>	<b>R 0.0 m</b>	<b>R 0.0 m</b>	<b>R 5.3 m</b>	<b>R 0.0 m</b>	<b>R 4.3 m</b>	<b>R 7.4 m</b>
Adjustment (R'm) ["F"]		<i>R -8.1 m</i>	<i>R 0.1 m</i>	<i>R -0.0 m</i>	<i>R -5.0 m</i>	<i>R -5.1 m</i>	<i>R -8.9 m</i>	<i>R -5.3 m</i>	<i>R -4.1 m</i>	<i>R 2.0 m</i>
Annual B Dividend payable (R'm) ["G"]	<b>R 0.0 m</b>	<b>R 0.7 m</b>	<b>R 1.3 m</b>	<b>R 3.0 m</b>	<b>R 0.0 m</b>	<b>R 0.0 m</b>	<b>R 0.3 m</b>	<b>R 0.0 m</b>	<b>R 0.0 m</b>	<b>R 2.2 m</b>

## Schedule 2

### OBLIGATION TO REPURCHASE THE B SHARE: TERMS AND CONDITIONS

1. The Company shall be irrevocably obliged to repurchase, in the manner contemplated in (and subject to the provisions of) section 48 of the Act, the B Share from the B Shareholder (and the B Shareholder shall similarly be irrevocably and unconditionally obliged to sell the B Share to the Company), on written notice to the B Shareholder by no later than the 5<sup>th</sup> (fifth) Business Day after the “Repurchase Date”. For the purposes of the foregoing, “**Repurchase Date**” means the date on which the Management Agreement is terminated
2. Upon the exercise of the repurchase by the Company (as contemplated in paragraph 1 above), a sale or repurchase of the B Share shall be deemed to have been concluded between the Company and the B Shareholder on the following terms and conditions:
  - 2.1. the repurchase shall be subject to the provision of section 48 of the Act (or other applicable legislation, if any);
  - 2.2. the B Share shall be acquired with effect from the date on which the notice referred to in paragraph 1 of this Schedule 2 to **Annexure A** was delivered by the Company to the B Shareholder;
  - 2.3. the purchase price for the B Share shall be an amount equal to the sum of the following amounts (sounding in South African Rands and determined as at the time of the repurchase):
    - 2.3.1. the future value of the subscription price for the B Share, as determined by an Independent Auditor/Expert;
    - 2.3.2. all and any accrued unpaid and accumulated B Dividends; and
    - 2.3.3. if (and only if) the Management Agreement was terminated by any of the Parties thereto for convenience and not for cause, the greater amount between –
      - 2.3.3.1. the present value of the Management Fees (as defined in the Management Agreement), as determined by an Independent Auditor/Expert using appropriate valuation methodology as would be

considered reasonable by the Independent Auditor/Expert and would include, as a minimum, a detailed discounted free cash-flow calculation; and

2.3.3.2. 5% (five percent) of the Average Market Capitalisation (as defined in the Management Agreement), calculated in accordance with Annexure A to the Management Agreement;

2.4. the purchase price shall be payable in cash by way of direct electronic funds transfer in immediately available funds into a South African bank account nominated by the B shareholder in writing to the Company immediately against delivery of the relevant documents of title for the B Share (including, without limitation, all necessary share certificated and transfer forms), which the B shareholder shall be obliged to deliver to the Company within 2 (two) Business Days after the aforesaid repurchase becomes unconditional;

2.5. the B share shall be repurchased *voetstoots* (i.e., on an “as is” basis) and without any warranties or representations of any nature whatsoever, save that the B Shareholder shall be deemed to warrant that –

2.5.1. he is the beneficial as well as the registered owner of the B Share and that the B Share is un-encumbered; and

2.5.2. no person has any right of whatsoever nature to acquire the B Share;

2.5.3. the securities transfer tax payable in respect of the registration of the transfer of the Shares comprising the B Share in question shall be borne by the Company.