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REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION OF A PUBLIC COMPANY

Name of company: **GRINDROD LIMITED**

Registration no.: **1966/009846/06**

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DEFINITIONS AND INTERPRETATION

In this Memorandum of Incorporation, including Annexure “A” hereto, unless the context otherwise requires:

- (a) “the Act” means the Companies Act, No 71 of 2008, as amended from time to time. Reference to the Act shall, if the Act is replaced by any other statute, be construed as a reference to the statute or statutes from time to time in force relating to companies. Reference to any provision of the Act shall be construed as a reference to such provision as modified or re-enacted by any statute for the time being in force;
- (b) “advertisement” means any method of advertising or publishing information to the shareholders of the Company or to the public that is acceptable to the JSE;
- (c) “the Board” means the board of directors of the Company, as it may be constituted from time to time;
- (d) “books of account” means any documents, accounts, books, writing, records or other information that a company is required to keep in terms of the Act or any other public regulation;
- (e) “Business Day” means any day other than a Saturday, Sunday or officially designated public holiday in the Republic of South Africa;
- (f) “the Company” means Grindrod Limited, Registration no. 1966/009846/06, the company that has adopted and is governed by, this Memorandum of Incorporation;
- (g) “in writing” or “written” means and includes words printed, auto-graphed, represented or produced in any mode in a visible form and further includes a data message being information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic mail;
- (h) “JSE” means the JSE Limited, Registration no. 2005/022939/06;
- (i) “Memorandum of Incorporation” means this document, being the Memorandum of Incorporation of the Company, including the Schedules annexed hereto;
- (j) “notice” includes circulars, abridged and full annual financial statements, quarterly and interim reports, listing particulars, dividend and interest notices and proxy forms;
- (k) “person” includes a juristic person as defined in the Act;
- (l) “prescribed officer” means anyone who exercised general executive control over and management of the whole, or significant portion, of the business and activities of the Company; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or significant portion, of the business and activities of the Company;
- (m) “registered address” in relation to a shareholder means an electronic mail address, fax number, physical or postal address notified by a shareholder to the Company in terms of Article 3.1(1) hereof;
- (n) “Remuneration/Nomination Committee” means the remuneration/nomination committee of the Board, appointed in accordance with the Act;
- (o) “Rules” means any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum of Incorporation;

- (p) words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act;
- (q) words importing one gender shall include the other gender; and
- (r) the provisions contained in the schedule annexed hereto marked "A" form part of this Memorandum of Incorporation.

ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the Company on 30 May 2012. The former Memorandum of Incorporation of the Company (being its "Memorandum of Association" and "Articles of Association" adopted in terms of the Companies Act 61 of 1973, as amended) was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation, in accordance with the Act, by special resolution of the shareholders of the Company.

ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

1.1 Incorporation [s8 and 15 of the Act]

- (1) The Company is incorporated as a public company in the Republic of South Africa.
- (2) The Company is incorporated in accordance with and governed by:
 - (a) the unalterable provisions of the Act; and
 - (b) the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
 - (c) the provisions of this Memorandum of Incorporation.

1.2 Powers of the Company [s15 and 19 of the Act]

- (1) Subject to Articles 1.3(2) and 2.1(2)(c) below and item 2.2.2.13 of Annexure "A" to this Memorandum of Incorporation, the Company is not subject to any restrictive conditions nor to any prohibitions regarding the amendment of the provisions of this Memorandum of Incorporation other than those contained in the Act.
- (2) The purposes and powers of the Company are not subject to any restrictions, limitations or qualifications other than those contained in the Act, save that the Company shall not have the power to claim a lien on any of its securities and subject to Article 2.3(1) below. [JSE Sch 10: 10.12]

1.3 Memorandum of Incorporation and Rules [s15, 16 and 17 of the Act]

- (1) Subject to the Act, Articles 1.3(2) and 2.1(2)(c) below and item 2.2.2.13 of Annexure "A" hereto, this Memorandum of Incorporation shall only be amended by an order of court or a special resolution of the shareholders of the Company. For the avoidance of doubt, amendment includes, but is not limited to, the creation of any class of shares; the variation of any preferences, rights, limitations or other share terms attaching to any class of shares; the conversion of one class of shares into one or more other classes; the increase of number of securities; the consolidation of securities; the sub-division of securities; a change of the name of the Company; and a conversion of shares from par value to no par value. [JSE Sch 10: 10.5(d)]

- (2) If a proposed amendment to this Memorandum of Incorporation relates to the variation of any preferences, rights, limitations or other terms attaching to the preference shares (including, but not limited to, the creation of further securities ranking in priority to, or *pari passu* with, the preference shares), such amendment shall not be implemented without the sanction of a special resolution of the holders of such preference shares passed at a separate meeting of such holders or passed by such shareholders in writing. [JSE Sch 10: 10.5(e) and (f)]
- (3) The Company shall publish a notice of any alteration of this Memorandum of Incorporation by delivering a copy of the alteration to a registered address of each shareholder.
- (4) The Board shall not have the authority to make Rules for the Company. [JSE Sch 10: 10.4]

ARTICLE 2 – SECURITIES OF THE COMPANY

2.1 General

- (1) Notwithstanding section 40(5) of the Act, securities of the Company for which listing on the JSE is sought shall be fully paid up and freely transferable, unless otherwise required by statute. [JSE Sch 10: 10.2(a)]
- (2) The following corporate actions may be taken only in accordance with the JSE Listing Requirements:
 - (a) the issue of shares for cash and options and convertible securities granted or issued for cash;
 - (b) the repurchase of the Company's securities; and
 - (c) the alteration of share capital, authorised shares and rights attaching to any class of shares. [JSE Sch 10: 10.9]
- (3) The Company shall not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the Company. [JSE Sch 10: 10.14]

2.2 Shares [s36, 49, 51, 52 and 53 of the Act]

- (1) The Company is authorised to issue no more than the maximum number of ordinary shares and preference shares set out in Annexure "A" to this Memorandum of Incorporation, subject to the preferences, rights, limitations and other terms associated with each class as set out in such annexure.
- (2) Notwithstanding sections 37(6) and 37(7) of the Act, the preferences, rights, limitations or other terms associated with any class of shares of the Company shall not vary in response to any objectively ascertainable external fact or facts. A proposal to shareholders of any resolution which would authorise such a variation is prohibited. [JSE Sch 10: 10.5(g)]
- (3) The authority of the Board to increase or decrease the number of authorised shares of any class; to reclassify any shares that have been authorised but are not issued; to classify any unclassified shares that have been authorised but are not issued; and to determine the preferences, rights, limitations or other terms of any class of shares that are not issued and which preferences, rights, limitations or other terms are not specified in this Memorandum of Incorporation, is subject to Articles 1.3(1), 1.3(2) and 2.1(2)(c) above and item 2.2.2.13 of Annexure "A" hereto.
- (4) Any equity shares for the time being unissued (whether forming part of the original or any increased capital) shall, before issue, be first offered to all the existing holders of equity

shares, as nearly as circumstances permit pro rata in proportion to their shareholdings, unless such shares are issued for the purpose of the acquisition of assets. Notwithstanding the above, the shareholders of the Company may authorise the Board to issue unissued shares and/or to grant options to subscribe for unissued shares as the Board in its discretion thinks fit, provided that any such transaction shall be subject to the JSE Listing Requirements and approval of the JSE. No shareholder of the Company shall have any other pre-emptive right to be offered, and to subscribe to, additional shares of the Company. *[JSE Sch 10: 10.1]*

- (5) Shares of the Company are to be issued in either dematerialised or certificated form, as the Board may determine.
- (6) The certificates or other evidence of title of shares of the Company, the transfer of such shares and all matters concerning share transactions shall be in accordance with the requirements of the JSE, any other recognized stock exchange on which the shares of the Company may be listed from time to time and/or any other regulatory authority controlling the issue and transfer of securities. The Company shall have the power to conform with such requirements, including the power to settle all share transactions totally electronically or otherwise as may be so approved from time to time.
- (7) Any authority to sign a transfer deed, granted by a holder of shares for the purpose of transferring shares that may be lodged at any of the Company's transfer offices shall, as between the Company and the grantor of such authority, be deemed to continue and remain in full force and effect. The Company may allow such authority to be acted upon until express notice in writing of the revocation of such authority is lodged at the same transfer office. Even after the lodgement of a notice of revocation of authority, the Company may give effect to any instruments signed under the authority and certified by any officer of the Company as being in order before the lodgement of such notice. *[JSE Sch 10: 10.2(b)]*

2.3 Debt instruments *[s43 of the Act]*

- (1) The granting of special privileges to holders of debt instruments, such as attending and voting at shareholders meetings and the appointment of directors, is prohibited. *[JSE Sch 10: 10.10]*
- (2) Secured or unsecured debentures, debenture stock, bonds or other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued. Any debentures, debenture stock, bond or other securities may be issued at a discount, premium or otherwise.

ARTICLE 3 – SHAREHOLDERS

3.1 Notices

- (1) Each holder of registered shares (or his agent) shall notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be his registered address within the meaning of this Memorandum of Incorporation, and he shall be deemed to have waived his right to be served with any notice from the Company until he provides the Company with at least one of the above. *[JSE Sch 10: 10.18]*
- (2) The signature to any notice given by the Company may be written, printed, partly written and partly printed or may be an advanced electronic signature (as contemplated in section 1 of the Electronic Communications and Transactions Act 25 of 2002, as amended).
- (3) Subject to the provisions of the Act and the JSE Listings Requirements, any notice required to be given by the Company to shareholders, or any of them, and not expressly provided for in this Memorandum of Incorporation, shall be sufficiently given if given by advertisement.

Any notice given by advertisement shall be deemed to have been served on the first day that such advertisement is published.

3.2 Proxies, powers of attorney and representatives [s58 of the Act]

- (1) The holder of a letter of representation in terms of which such holder is appointed by a shareholder that is a juristic person to be the representative of such juristic person, shall be entitled to vote if duly authorised under that letter of representation to attend and take part in any meeting or proceeding of the Company, whether or not he is himself a shareholder in the Company.
- (2) A shareholder (or his agent) shall deliver to the Company a copy of the instrument appointing a proxy, general or special power of attorney, or a letter of representation before the person named therein may exercise the shareholder's rights at a shareholders meeting. Any instrument appointing a proxy (and the power of attorney, if any, under which it is signed, or a notarially certified copy thereof), general or special power of attorney, or letter of representation, shall be delivered to the registered address of the Company not less than 48 hours before the time for the holding of the meeting at which the person named in such instrument, power or letter purports to attend or vote, failing which the instrument, power or letter shall be treated as invalid for the purpose of attending or voting at that meeting.
- (3) A vote in accordance with the terms of an instrument of proxy, a power of attorney or a letter of representation shall be valid notwithstanding the previous death of the principal (if applicable); revocation of the proxy, power or letter of representation; or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation or transfer shall have been received at the registered address of the Company or by the chairman of the meeting before the vote is given.
- (4) An instrument appointing a proxy, general or special power of attorney, or letter of representation shall be in any form approved by the Board. The Board may, in its discretion, permit the acceptance of such instruments, powers or letters transmitted by shareholders of the Company by electronic mail, according to such directions as may be issued by the Board.

3.3 Record date for exercise of shareholder rights [s59 of the Act]

The record date for all transactions shall be as set out in the JSE Listing Requirements. [JSE Sch 10: 10.15]

ARTICLE 4 – SHAREHOLDERS MEETINGS

4.1 General [s60 and 61 of the Act]

- (1) The date and time of any shareholders meeting shall be determined by the Board.
- (2) The chairman of the Board or, in his absence, the lead independent non-executive director (if any) shall be entitled to take the chair at every shareholders meeting. If there is no chairman of the Board or lead independent nonexecutive director, or if at any meeting he is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the other directors may choose a chairman of the meeting and, in default of their doing so, the shareholders present shall choose one of the directors to be the chairman and, if no director present be willing to take the chair, shall choose one of their number to be the chairman.
- (3) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all shareholder meetings that are called for in terms of the JSE Listings Requirements shall be held in person and shall not be held by means of a written resolution. [JSE Sch 10: 10.11(c)]

4.2 Notice of shareholders meetings *[s62 of the Act; and Regulation 7]*

- (1) Notice of each shareholders meeting shall be delivered to each person entitled to vote at such meeting who has elected to receive such documents. *[JSE Sch 10: 10.11(e)]*
- (2) A notice shall be given or served by the Company upon any shareholder by any method permitted by the Act including, but not limited to –
 - (a) fax to the shareholder's fax number registered address;
 - (b) delivery by registered post to the shareholder's physical or postal registered address;
 - (c) subject to any requirements of the JSE, by electronic mail; provided that such shareholder has consented thereto in writing and has specified an electronic mail registered address; and
 - (d) subject to any requirements of the JSE, by posting the notice on the Company's website; provided the shareholder has consented thereto in writing and that, simultaneously with or as soon as possible after such posting of the notice, the Company notifies the shareholder at his electronic mail registered address that the Company has posted the notice on its website.
- (3) The accidental omission to give notice of any meeting to any shareholder shall not invalidate any resolution passed at such meeting.
- (4) Notice of each shareholders meeting shall be sent to the Manager (Issuer Regulations) of the JSE at the same time as notice of the meeting is sent to the shareholders of the Company. Such notice shall also be announced through the official news service of the JSE. *[JSE Sch 10: 10.11(f)]*
- (5) All notices may, with respect to any registered shares to which persons are jointly entitled, be given to whichever of such persons is named first on the register and notice so given shall be sufficient notice to all the holders of such shares.
- (6) Any notice or document given or served by the Company upon any shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such shareholder was then deceased, and whether or not the Company has notice of his decease, be deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by such shareholder, until some other person is registered in his stead as the joint holder thereof and such service shall, for all purposes under this Memorandum of Incorporation, be deemed a sufficient service of such notice or document on his or her heirs, executors or administrators, and all persons (if any) jointly interested with him or her in any such shares.
- (7) Every person who, by operation of law, transfer or other means whatsoever shall become entitled to any share, shall be bound by every notice in respect of such share which, previously to his name and address being entered in the register, shall have been given to the person from whom he derives his title to such share.

4.3 Quorum for shareholders meetings *[s61 and 64 of the Act]*

- (1) The quorum requirement for a shareholders meeting to begin, and for any matter to be decided at that meeting, is sufficient persons present at the meeting (in person or by proxy) to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting or the matter at hand,

as the case may be; provided that there shall not be a quorum unless there are at least three shareholders so present at such meeting. [JSE Sch 10: 10.11(h)]

- (2) Notwithstanding anything to the contrary contained in the Act, once a quorum for the meeting has been established, all the shareholders forming the quorum must be present at every matter that is considered at the meeting.
- (3) A shareholder of the Company which is a juristic person as defined in the Act and is present at a shareholders meeting by an authorised representative shall be deemed to be present at that meeting.

4.4 Adjournment of shareholders meetings [s64 of the Act]

- (1) The chairman of a shareholders meeting may, with the consent of the meeting and if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (2) No business shall be transacted at any adjourned shareholders meeting of the Company other than business left unfinished at the meeting from which the adjournment took place.

4.5 Votes of shareholders

- (1) A resolution put to the vote of any shareholders meeting shall be decided on poll taken in such manner as the chairman of the meeting directs. The result of the poll shall be deemed to be a resolution of the meeting.
- (2) Subject to the Act and any special terms or restrictions as to voting upon which any shares may be issued (in this regard, refer to Annexure "A" hereto), upon a poll every shareholder present or represented by proxy shall have one vote for every share held by him.
- (3) The parent or guardian of a minor, the *curator bonis* of a shareholder and any person becoming entitled to shares in consequence of the death or insolvency of a shareholder, may vote at any shareholders meeting as if he were the registered holder of the shares, provided that at least 48 hours before the time of holding the meeting (or adjourned meeting, as the case may be) at which the person proposes to vote, he shall satisfy the Board of the character in respect of which he proposes to act, unless the Board shall have previously admitted his right to vote at such meeting in respect thereof.
- (4) Where there are joint registered holders of any share, or several executors or administrators of a deceased shareholder in whose sole name any shares stand, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share. If more than one of such joint holders, or executors or administrators, be present at any meeting, personally or by proxy, that one of the said persons so present whose name stands first on the register in respect of such shares shall alone be entitled to vote in respect thereof.

4.6 Shareholders resolutions [s20, 65 and 164 of the Act]

- (1) For an ordinary resolution to be adopted by the shareholders of the Company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution.
- (2) For a special resolution to be adopted by the shareholders of the Company, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution. [JSE Sch 10: 10.11(a)]
- (3) A special resolution adopted by the shareholders of the Company is not required for a matter to be determined by the Company, save for:
 - (a) those matters set out in the Act; and

- (b) if the Company shall be wound up, whether voluntarily or otherwise, the liquidators may, with the sanction of a special resolution, divide among the shareholders in specie any part of the assets of the Company and may, with the like sanction, vest any part of the assets of the Company in trustees upon such trusts for the benefit of the shareholders as the liquidators, with the like sanction, shall think fit and, if thought expedient, any such division may be otherwise than in accordance with the legal rights of the shareholders of the Company, and in particular, any class may be given preferential or special rights, or may be excluded altogether or in part; but in case any division otherwise than in accordance with the legal rights of the shareholders shall be decided on, the provisions of the Act governing dissenting shareholders appraisal rights shall apply.
- (4) The proposal to shareholders of any resolution in terms of sections 20(2) and 20(6) of the Act is prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the JSE Listings Requirements, unless otherwise agreed with the JSE. *[JSE Sch 10: 10.3]*

ARTICLE 5 – DIRECTORS AND OFFICERS OF THE COMPANY

5.1 Composition of the Board *[s66, 68, 70 and 71 of the Act]*

- (1) The Company shall have not less than eight directors. Subject to the Act and the JSE Listing Requirements, the shareholders of the Company may from time to time increase or decrease such minimum number of directors. *[JSE Sch 10: 10.16(a)]*
- (2) If the number of directors falls below the minimum set out above, the remaining directors shall as soon as possible, and in any event not later than three months from the date that the number of directors falls below the minimum, fill the vacancies on a temporary basis or call a shareholders meeting for the purpose of filling the vacancies. The failure by the Company to have the minimum number of directors during such three month period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company. After the expiry of the three month period, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling shareholders meetings. *[JSE Sch 10: 10.16(d)]*
- (3) Subject to the provisions of the Act, holders of the Company's securities who are entitled to exercise voting rights may at any time appoint any persons to the office of director and may remove from office any or all of the directors.
- (4) The election of directors of the Company shall take place at the annual general meeting of the Company or at any other shareholders meeting, but shall not be done by written resolution. The Board or the Remuneration/Nomination Committee of the Board shall recommend the eligibility of directors or potential directors, taking into account any past performance and contribution. *[JSE Sch 10: 10.16(b) and (g)]*
- (5) Any appointment by the Board of a director to fill a vacancy on the Board, or as an addition to the Board, shall be subject to confirmation by the shareholders at the next annual general meeting or other shareholders meeting, which approval shall not be given by written resolution. *[JSE Sch 10: 10.16(b) and (c)]*
- (6) Each director shall have the power to appoint another person to act as an alternate director in his place, and at his discretion to remove such alternate and appoint another in his place, provided that the appointment of such alternate director shall be approved of by the Board, and provided further that any such appointment shall be confirmed at the next following annual general meeting, which approval shall not be given by written resolution. An alternate director whilst acting in the place of the director appointing him, shall exercise and discharge

all the duties and functions of the director he represents as if he were a director and not as agent of the director appointing him. An alternate director shall look for his remuneration (if any) to the director appointing him and not to the Company unless the Company be instructed in writing by the director to pay any portion of his remuneration to such alternate director. The appointment of an alternate director shall be cancelled, and the alternate shall cease to hold office whenever the director who appointed him shall cease to be a director, or shall give notice in writing to the Company secretary that the alternate director representing him shall have ceased to do so. If a director retires at a general meeting of the Company and is re-elected at the same meeting he shall not, for the purpose of this Article, be deemed to have ceased to be a director. *[JSE Sch 10: 10.16(b)]*

- (7) The periods of service of executive directors shall be governed by their employment contracts; provided that no life directorships shall be permitted.
- (8) At each annual general meeting of the Company or other shareholders meeting on an annual basis (and not by written resolution), one third of the non-executive directors for the time being or, if their number is not divisible by three, the number nearest to one third but not less than one third, shall retire from office. The non-executive directors to retire in each year shall be those who shall have been longest in office since their last election, but as between persons who were elected on the same day, those to retire shall, unless otherwise agreed amongst themselves, be determined by lot. *[JSE Sch 10: 10.16(g)]*
- (9) In the event that the charter of the Board requires it, non-executive directors shall retire earlier than the date determined in accordance with Article 5.1(8) above, provided that such requirement shall apply equally to all non-executive directors.
- (10) A retiring non-executive director may be re-elected to the office of director. No person not being a retiring non-executive director may be elected to the office of director at any shareholders meeting unless he or a shareholder intending to propose him has, at least 35 business days before the meeting, left at the registered office of the Company a notice in writing, duly signed, signifying his candidature for office or the intention of such shareholder to propose him. *[JSE Sch 10: 10.16(h)]*
- (11) If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned until the same day in the next week, at the same time and place, or if that day is a public holiday, then the next succeeding day which is not a public holiday, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at such adjourned meeting.
- (12) Subject to the provisions of the Act, the office of a director shall ipso facto be vacated if he:
 - (a) ceases to be a director by virtue of any of the provisions of the Act or becomes prohibited from being a director by reason of an order made under the Act;
 - (b) becomes insolvent, suspends payment generally or compounds with his creditors;
 - (c) becomes lunatic or of unsound mind;
 - (d) absents himself from three consecutive meetings of the Board, except on the Company's business, without special leave of absence from the Board and is not represented at any such meetings by an alternate director, and the Board resolves that his office be vacated;
 - (e) resigns or retires from office; or

(f) is removed from office by an ordinary resolution of the ordinary shareholders.

5.2 Authority of the Board [s66 of the Act]

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

5.3 Board Meetings [s73 and 74 of the Act]

- (1) The directors shall elect a chairman of the Board and a lead independent non-executive director, annually, at the first Board meeting following the annual general meeting of the Company. If the chairman is not available at any Board meeting, the lead independent non-executive director shall assume the chair. If at any Board meeting neither of them is present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting. The chairman of the meeting shall have a casting vote, save that if, at any time, the quorum of directors is two and only two directors are present at a meeting, then the chairman shall not have a casting vote. *[JSE Sch 10: 10.16(i)]*
- (2) A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director shall have received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it, unless a statement to the contrary is contained in the resolution. *[JSE Sch 10: 10.16(j)]*

5.4 Directors' Compensation [s66 of the Act]

- (1) Unless the Company by special resolution determines otherwise, the executive directors, who are remunerated for their services as employees of the Company, shall not be paid directors fees. The remuneration of the executive directors for their services as employees of the Company shall be determined by the Board upon the recommendation of its Remuneration/Nomination Committee. Such Committee shall approve the terms of the contracts of employment of executive directors before such contracts are concluded with the Company.
- (2) A director may be employed in any other capacity in the Company; or as a director or employee of a company controlled by, or itself a subsidiary of, the Company. Any such appointment and remuneration shall be determined by a disinterested quorum of directors. *[JSE Sch 10: 10.16(e)]*
- (3) The directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Board or of committees thereof. If any director is required to perform extra services or to reside abroad, or shall be specifically occupied about the Company's business, such director shall be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to, or in substitution for, any other remuneration. *[JSE Sch 10: 10.16(f)]*

ARTICLE 6 – DIVIDENDS AND PAYMENTS TO SHAREHOLDERS [s46 of the Act]

- (1) Subject to the provisions of the Act and any JSE requirements, the Board or the shareholders of the Company shall be entitled to declare dividends after the Board has applied the solvency and liquidity test set out in the Act and has reasonably concluded that the Company will satisfy such test immediately after paying the proposed dividend; provided that no larger dividend shall be declared by the shareholders of the Company than is recommended by the Board, but a smaller dividend may be so declared. [JSE Sch 10: 10.11(g) and 10.17(a)]
- (2) Each dividend shall be declared payable to shareholders registered as such on a date subsequent to the date of declaration of the dividend or the date of confirmation of the dividend, whichever is the later. This date shall be known as the dividend date. [JSE Sch 10: 10.17(b)]
- (3) The Board may deduct from the dividends payable to any shareholder all such claims or sums of money which may be due from time to time to the Company on account of any debt.
- (4) The Board may from time to time determine that dividends owing to the shareholders amounting to less than such amount as is determined by the Board will not be paid, unless otherwise requested in writing by the shareholder, but will be suppressed and retained in the Company's unclaimed dividend account. Once any shareholder's accumulated suppressed dividends exceeds the amount so determined, such dividends will be paid to the shareholder.
- (5) No dividend shall bear interest against the Company.
- (6) All monies due to shareholders shall be held in trust by the Company indefinitely until it is lawfully claimed by the relevant shareholders, subject to the laws of prescription. [JSE Sch 10: 10.17(c)]
- (7) All payments to securities holders shall be made in accordance with the JSE Listings Requirements. [JSE Sch 10: 10.8]

ARTICLE 7 – CHANGE OF LAWS

The provisions of this Memorandum of Incorporation have been drafted and adopted with the intention of complying with the Act and the requirements of the JSE. In the event that, at any time, the Act or the JSE requirements impose a less onerous obligation on the Company than provided for herein, such less onerous obligation shall be applicable to the Company notwithstanding the relevant provision of this Memorandum of Incorporation; provided that, at all times, the Company shall comply with both the Act and the requirements of the JSE.

AUTHORISED SHARES

The Company is authorised to issue the following shares:

1. "ordinary shares"

- 1.1 Maximum number of ordinary shares: 2 750 000 000 (two billion seven hundred and fifty million).
- 1.2 The following terms shall attach to the ordinary shares of 0.002 cent each in the share capital of the Company:
 - 1.2.1 Each ordinary share is identical to every other ordinary share and ranks *pari passu* with the other ordinary shares in respect of all rights including, but not limited to, with regards to:
 - 1.2.1.1 voting on any matter to be decided by a vote of shareholders of the Company;
 - 1.2.1.2 participating in any distribution of profit to the shareholders; and
 - 1.2.1.3 sharing in the distribution of the Company's residual value upon the dissolution of the Company;
 - 1.2.2 Every holder of an ordinary share shall have one vote in respect of each share that he or she holds and shall be entitled to vote at every shareholders meeting or annual general meeting of the Company in person or by proxy. *[JSE Sch 10: 10.5(a) and (b)]*

2. "preference shares"

- 2.1 Maximum number of preference shares: 20 000 000 (twenty million).
- 2.2 The following terms shall attach to the cumulative, non-redeemable, non-participating, non-convertible preference shares of 0.031 cent each in the share capital of the Company:
 - 2.2.1 For purposes of this item 2.2:
 - 2.2.1.1 "issue price" means the actual issue price of each preference share, being the par value of the preference share plus the premium at which the preference share is allotted and issued;
 - 2.2.1.2 "deemed value" means the deemed value of each preference share for purposes of calculation of the preference dividend during each dividend period, being the sum of:
 - 2.2.1.2.1 an amount of R100.00 (one hundred Rand), notwithstanding the actual issue price of the preference share which may vary because of a difference in the premium at which the preference shares may be issued from time to time; plus
 - 2.2.1.2.2 for any portion of that dividend period during which any arrear dividends remain unpaid in respect of that preference share, the amount of such arrear dividends;
 - 2.2.1.3 "arrear dividend" means any preference dividend (or any portion thereof) payable in respect of a dividend period which, for any reason whatsoever, including the fact that the full amount thereof may not have been declared pursuant to item 2.2.2.15 below, is not paid by the expiry of the 120th day after the expiry of such dividend period, and remains unpaid;
 - 2.2.1.4 "dividend period" means the period from the day following a preference dividend date until and including the next preference dividend date; provided that the first dividend period in respect of each tranche of preference shares issued, shall mean the period from the preference dividend date immediately preceding the winding-up of the

Company up to and the date of return to the preference shareholder of the issue price and all arrear dividends in accordance with item 2.2.2.2 below;

- 2.2.1.5 “Income Tax Act” means the Income Tax Act, No. 58 of 1962, as amended;
- 2.2.1.6 “prime rate” means the publicly quoted basic rate of interest (per cent, per annum) compounded monthly in arrears, calculated on a 365 (three hundred and sixty five) day year (irrespective of whether or not the year is a leap year) from time to time quoted by FirstRand Bank Limited (or its successor) as being its prime overdraft rate, as certified by any manager of FirstRand Bank Limited (or its successor) whose appointment, authority and/or designation need not be proved, which certificate shall be prima facie proof of the contents thereof;
- 2.2.1.7 “preference dividend” means a cumulative, nonparticipating preference dividend calculated in accordance with this item 2.2.;
- 2.2.1.8 “preference dividend date” means 31 December and 30 June of each year;
- 2.2.1.9 “preference dividend payment date” means the date upon which any preference dividend payable will, if declared, be payable; provided that this item 2.2.1.9 shall not detract from the rights of the preference shareholders in terms of item 2.2.2.2 below to receive all preference dividends and arrear dividends prior to any payment of dividends to holders of any other class of shares not ranking prior to or *pari passu* with the preference shares;
- 2.2.1.10 “preference dividend rate” means the rate referred to in item 2.2.2.4 below; and
- 2.2.1.11 “preference shares” means the cumulative, nonredeemable, non-participating, non-convertible preference shares of 0.031 cent each in the share capital of the Company.
- 2.2.2 The following are the rights, privileges, restrictions and conditions, which attach to the preference shares and shall apply, notwithstanding anything to the contrary contained elsewhere in this Memorandum of Incorporation:
- 2.2.2.1 The issue price for each tranche of preference shares to be issued will be determined by the directors prior to the allotment thereof.
- 2.2.2.2 Each preference share is identical to every other preference share and ranks *pari passu* with the other preference shares in respect of all rights including, but not limited to, with regard to dividends and repayment of capital on the winding-up of the Company, and shall rank prior to the ordinary shares and any other class of shares of the Company that do not rank prior to or *pari passu* with the preference shares. Each preference share shall confer upon its holder the right of a return of capital on the winding-up of the Company of an amount equal to the sum of: (i) all arrear dividends in respect of that preference share, plus (ii) the preference dividend payable in respect of the last dividend period, plus (iii) an amount equal to the aggregate of the nominal value and premiums received by the Company in respect of all preference shares issued, divided by the number of preference shares issued.
- 2.2.2.3 Each preference share shall confer upon the holder thereof the right to receive out of the profits of the Company which it determines to distribute, the preference dividend calculated in terms of item 2.2.2.5 below, in priority to any payment of dividends or other distribution to the holders of any other class of shares in the share capital of the Company not ranking prior to or *pari passu* with the preference shares.
- 2.2.2.4 In respect of each tranche of preference shares issued, the preference dividend rate will be equal to a percentage of the prime rate determined by the directors at the time the Company offers to issue the preference shares concerned; provided that, notwithstanding any such determination, while there are any arrear dividends that remain unpaid, the preference dividend rate in respect of all preference shares will increase to 100% of the prime rate until there are no arrear dividends that remain unpaid.

- 2.2.2.5 The preference dividend payable per preference share in respect of each dividend period shall be calculated by:
- 2.2.2.5.1 multiplying the deemed value of that preference share by the preference dividend rate (determined on a 365-day year, irrespective of whether the year is a leap year or not), which shall be applied on a daily basis in arrear, for that dividend period;
 - 2.2.2.5.2 aggregating all of the amounts calculated by such multiplication for each day of the dividend period; and
 - 2.2.2.5.3 multiplying the aggregate amount referred to in item 2.2.2.5.2 above by 110% (one hundred and ten percent). Because the preference dividend rate is a percentage of the prime rate, the preference dividend rate applicable during any dividend period shall vary in accordance with any variations in the prime rate during that dividend period.
- 2.2.2.6 The preference dividends shall:
- 2.2.2.6.1 if declared, accrue on the date on which they are declared;
 - 2.2.2.6.2 if declared, be payable by no later than the preference dividend payment date.
- 2.2.2.7 Any arrear dividend shall accumulate until the date of payment thereof and be paid by the Company in preference to payments to any other class of shares in the share capital of the Company not ranking prior to or *pari passu* with the preference shares.
- 2.2.2.8 Save as set out in items 2.2.2.2, 2.2.2.3 and 2.2.2.7 above, the preference shares shall not be entitled to any further participation in the profits or assets of the Company nor, on a winding-up, to any surplus assets of the Company.
- 2.2.2.9 The holders of the preference shares shall be entitled to receive notice of, and to be present, either in person or by proxy, at any meeting of the shareholders of the Company, but they shall not be entitled to vote at any such meeting, by virtue of or in respect of the preference shares, unless either or both of the following circumstances prevail at the date of the meeting:
- 2.2.2.9.1 any preference dividend or any part thereof has become an arrear dividend; or
 - 2.2.2.9.2 a resolution of the Company is proposed which resolution directly affects the rights attached to the preference shares or the interests of the holders thereof, including, but not limited to, a resolution for the winding-up of the Company or for the reduction of its capital. [JSE Sch 10: 10.5(e) and (h)]
- 2.2.2.10 In the circumstances set out in 2.2.2.9 above, a preference shareholder shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the preference shares held by him bears to the aggregate amount of the nominal value of all shares issued by the Company; provided that if at a shareholders meeting the aggregate votes exercisable by all the preference shareholders present or represented at the meeting exceed 25% less one vote of the total votes exercisable by all shareholders present or represented at that meeting, a preference shareholder shall be entitled to the aforesaid proportion of the total votes at that meeting in respect of one-quarter only of his preference shares and, in respect of the other three-quarters, such lower proportion as will result in the total number of votes exercisable by all the preference shareholders being reduced to 25% less one vote of the aggregate votes exercisable at the meeting concerned. [JSE Sch 10: 10.5(c)]

- 2.2.2.11 At a meeting of the holders of the preference shares, the provisions of this Memorandum of Incorporation relating to meetings of ordinary shareholders shall apply, *mutatis mutandis*, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of this Memorandum of Incorporation relating to adjourned shareholders meetings shall apply, *mutatis mutandis*.
- 2.2.2.12 If there is an amendment or amendments to the Income Tax Act which results in the preference dividends being taxable in the hands of the preference shareholders and which results in payment of the preference dividends becoming a deductible expense for the Company, provided such amendment is uniformly applicable to all corporate tax payers and not only because of the particular circumstances of the Company or any preference shareholder, the percentage of the prime rate referred to in item 2.2.2.4 above will be increased by the Company. Such increase will be limited to the extent that the Company incurs a reduced cost in servicing the preference shares, which cost savings it would not have obtained but for such amendments to the Income Tax Act. If such amendments to the Income Tax Act do not result in the Company incurring reduced costs in servicing the preference shares, then, notwithstanding that such amendment may result in a decrease in the after-tax returns of any preference shareholder on its holding of preference shares, no amendment shall be made to the percentage of prime rate contemplated in item 2.2.2.4 above. The Company shall require its auditors to verify whether it is obliged to increase the preference dividend in accordance with this item 2.2.2.12 and, if so, the amount of the increase. The auditors in deciding on such increase shall act as experts and not as arbitrators or quasi-arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Company and all preference shareholders. The costs of such auditors shall be borne and paid by the Company.
- 2.2.2.13 The prior consent of the holders of at least three-quarter of the preference shares represented either in person or by proxy at a meeting of the preference shareholders shall be required to alter the provisions of this item 2.2 and Article 1.3(2) of this Memorandum of Incorporation.
- 2.2.2.14 Any question relating to the termination of the listing of the preference shares on any stock exchange shall be deemed to constitute a modification of rights of the preference shares to which the provisions of Articles 1.3(1), 1.3(2) and 2.1(2)(c) shall apply.
- 2.2.2.15 Notwithstanding anything to the contrary contained in this item 2.2, the Company shall not be obliged to declare any preference dividend, but any failure by the Company to pay the preference dividend (whether declared or not) by the expiry of the 120th day after the expiry of the dividend period in respect of which it is calculated in terms of item 2.2.2.5 above, will result in the application of item 2.2.1.2.2, item 2.2.1.3 and the proviso to item 2.2.2.4.