

COMPANIES ACT, 2008
MEMORANDUM OF INCORPORATION
CLICKS GROUP LIMITED
("Company")
REGISTRATION NUMBER:
1996/000645/06

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MEMORANDUM OF INCORPORATION

1. INTRODUCTION

- 1.1 The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Act shall not apply to the Company.
- 1.2 The Company is incorporated as a public company in terms of the Act and, accordingly:
 - 1.2.1 the Company is not prohibited from offering its shares to the public; and
 - 1.2.2 the transfer of the Company's shares is unrestricted, save as set out in this Memorandum.
- 1.3 This Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Act and does not contain any requirement for the amendment of any particular provision of this Memorandum, in addition to the requirements of the Act.
- 1.4 References in this Memorandum to the Listings Requirements and the operation of any provision in this Memorandum requiring compliance with the Listings Requirements shall only be effective for so long as the Company is listed on the JSE.

2. INTERPRETATION

In this Memorandum, including the introduction above and the Schedule, and unless the context requires otherwise:

- 2.1 words importing any one gender shall include the other gender;
- 2.2 the singular shall include the plural and vice versa;
- 2.3 any word which is defined in the Act and is not defined in 2.6, shall bear that statutory meaning in this Memorandum;
- 2.4 the headings have been inserted for convenience only and shall not be used for or assist or affect its interpretation;
- 2.5 any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of any such statutory provision or enactment, to any enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment;
- 2.6 each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:
 - 2.6.1 **"the Act"** the Companies Act, 2008 together with the Companies Regulations, 2011, as amended or substituted from time to time;
 - 2.6.2 **"BBBEE"** broad-based black economic empowerment;
 - 2.6.3 **"BEE Act"** the Broad-Based Black Economic Empowerment Act, 2003;
 - 2.6.4 **"BEE Codes"** the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act in terms of Code 100 – the Measurement of the Ownership Element of Broad-Based Black Economic Empowerment;
 - 2.6.5 **"Business Day"** any day other than a Saturday, Sunday or statutory holiday in the Republic;
 - 2.6.6 **"chairman of the shareholders' meeting"** the chairman appointed in terms of 7.8.1, unless he/she is not present, in which event the deputy chairman of the board elected in terms of 7.8.1 read with 7.8.2, and failing such election or if no deputy chairmen are present, the person elected as chairman by the shareholders;

- 2.6.7 **"Concurrent Proxies"** as defined at 5.2.1;
- 2.6.8 **"Electronic Communication"** a communication by means of data generated, sent, received or stored by electronic means, including voice, where the voice is used in an automated transaction, and a stored record;
- 2.6.9 **"Indemnified Person"** as defined at 7.10.4;
- 2.6.10 **"JSE"** the JSE Limited, registration number 2005/022939/06, or any other successor body licensed as an exchange under the Securities Services Act, 2004, as amended or substituted from time to time;
- 2.6.11 **"Listings Requirements"** the Listings Requirements of the JSE, as amended or substituted from time to time;
- 2.6.12 **"this Memorandum"** this Memorandum of Incorporation and its Schedule, which forms part of it;
- 2.6.13 **"Prime Rate"** in respect of any period, the published prime overdraft rate of interest ruling from time to time, expressed as a rate per annum and applied as a rate of compound interest, at which the Standard Bank of South Africa Limited lends on overdraft to its customers from time to time during that period, as certified by any manager of The Standard Bank of South Africa Limited whose appointment it shall not be necessary to prove;
- 2.6.14 **"the Republic"** the Republic of South Africa; and
- 2.6.15 **"the Schedule"** the schedule to this Memorandum.

3. GENERAL

3.1 Liability of incorporators, shareholders or directors

This Memorandum does not impose any liability on any person for the liabilities or obligations of the Company solely by reason of such person being an incorporator, shareholder or director of the Company.

3.2 Powers of the Company

This Memorandum does not restrict, limit or qualify the legal powers or capacity of the Company in terms of section 19(1)(b) of the Act.

3.3 Memorandum and rules

- 3.3.1 This Memorandum does not provide any different requirements than those set out in section 16(1)(c) (i) of the Act regarding proposals for amendments to this Memorandum. Any amendment to this Memorandum required by a court order shall be effected in accordance with section 16(4) of the Act.
- 3.3.2 The board shall not have the power to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum, in accordance with the provisions of sections 15(3) to 15(5) of the Act.
- 3.3.3 If the board, or any individual authorised by the board, alters this Memorandum in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum, the board must publish a notice of such alteration on the Company's website, and must file a notice of alteration in the manner prescribed by the Act.

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3.4 Financial assistance to related persons

Subject to the requirements of the Act, this Memorandum does not limit, restrict or qualify the authority of the board to authorise the Company to provide direct or indirect financial assistance to any person contemplated in section 45 of the Act.

3.5 Solvency and liquidity test

This Memorandum does not alter the application of the solvency and liquidity test provided in section 4 of the Act.

4. SHARES OF THE COMPANY

4.1 Authorisation for shares

4.1.1 The Company is authorised to issue the shares specified in Schedule 1, provided that the Company may only issue:

4.1.1.1 unissued shares to shareholders of a particular class of shares pro rata to the shareholders' existing shareholding, unless any such shares were issued for an acquisition of assets or pursuant to 4.1.1.2;

4.1.1.2 unissued shares or options to subscribe for unissued shares, for cash, and convertible shares granted or issued for cash, as the directors in their discretion think fit, provided the directors have been authorised by the shareholders in general meeting and if such corporate action(s) have been approved by the JSE and are subject to the Listings Requirements; and

4.1.1.3 shares that are fully paid up and freely transferable, unless otherwise required by statute.

4.1.2 This Memorandum does not restrict or qualify the authority of the board to:

4.1.2.1 increase or decrease the number of authorised shares of any class of shares;

4.1.2.2 reclassify any shares that have been authorised but not issued;

4.1.2.3 classify any unclassified shares that have been authorised but not issued;

4.1.2.4 determine the preferences, rights, limitations or other terms of any class of authorised shares or amend any preferences, rights, limitations or other terms so determined,

subject to any requirements for the shareholders' approval of such actions set out in the Listings Requirements or this Memorandum.

Preferences, rights, limitations and other share terms

4.2.1 The shares within each class of shares of the Company shall rank *pari passu*, as contemplated in the Listings Requirements, in respect of all rights.

4.2.2 Every shareholder of an ordinary share shall have one vote in respect of each share that he holds and is entitled to vote at every shareholders' meeting, in person or by proxy.

4.2.3 The holders of securities other than:

4.2.3.1 ordinary shares; or

4.2.3.2 special shares created for the purposes of black economic empowerment in terms of

the BEE Act and the BEE Codes, shall not be entitled to vote on any resolution taken by the Company, unless:

4.2.3.3 the vote relates to an amendment varying any preferences, rights, limitations and other terms attaching to any other class of shares already in issue, in which case that amendment must not be implemented without a special resolution taken by the shareholders of that class of shares at a separate meeting, at which:

4.2.3.3.1 their votes shall not carry any special rights or privileges; and

4.2.3.3.2 they shall be entitled to one vote for each share that they hold, provided that their total voting rights at a shareholders' meeting may not exceed 24,99% of the total voting rights of all the shareholders at such shareholders' meeting.

4.2.4 For so long as required by the Listings Requirements, in addition to the above and for the avoidance of doubt, should any cumulative and/or non-cumulative preference shares in the capital of the Company be created, no further shares ranking in priority to, or *pari passu* with, existing preference shares, of any class, shall be created without a special resolution passed at a separate shareholders' meeting of such preference shareholders.

4.2.5 Preferences, rights, limitations or other terms of any class of shares of the Company must not be varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in section 37(6) and section 37(7) of the Act.

4.3 Financial assistance for the subscription or purchase of shares or options

4.3.1 This Memorandum limits, only in the manner contemplated in 4.3.2, the authority of the board to authorise the Company to provide financial assistance to any person for the purpose of, or in connection with, the subscription of any option, or any shares, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any shares of the Company or any related or inter-related company, in accordance with the Act.

4.3.2 The board may not authorise any financial assistance in terms of section 44 of the Act in respect of an employee share scheme that satisfies the requirements of section 97 of the Act unless it is pursuant to an approval of the majority of the shareholders.

4.4 Capitalisation shares

This Memorandum does not limit, restrict or qualify the authority of the board, in terms of section 47 of the Act, to:

4.4.1 approve the issue of any authorised shares of the Company as capitalisation shares, on a pro rata basis, to the shareholders of one or more classes of shares;

- 4.4.2 approve the issue of shares of one class as capitalisation shares in respect of shares of another class; or
- 4.4.3 permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, at a value determined by the board.

4.5 Company or subsidiary acquiring Company's shares and distributions

Any acquisition by the Company or a subsidiary company of the Company's shares and any distribution to shareholders will be subject to the provisions of the Act and the Listings Requirements, including but without limitation:

- 4.5.1 payments by the Company to securities holders shall only be made in accordance with the Listings Requirements;
- 4.5.2 distributions are payable to the shareholders registered as at a date subsequent to the date of declaration, or the date of confirmation of the distribution, whichever is the later;
- 4.5.3 the directors may from time to time declare a distribution to be paid to the shareholders in accordance with the Act, subject to the provisions of the Listings Requirements;
- 4.5.4 capital shall not be repaid to shareholders on the basis that it may be called up again; and
- 4.5.5 subject to the laws of prescription and 4.5.5.1 and 4.5.5.2, the Company shall hold all monies due to shareholders in trust indefinitely, provided that:
 - 4.5.5.1 a distribution which is retained and unclaimed beyond such period as the laws of prescription require after the payment date of the distribution shall be forfeited and revert to the Company and may be dealt with by the directors as they deem fit; and provided further that,
 - 4.5.5.2 if any distribution in respect of ordinary shares would entitle any shareholder to an aggregate distribution of R50 or less payable by cheque in respect of all the certificated shares held by such shareholder on the record date of such distribution, the directors shall have the power to direct that each such shareholder (unless he delivers a written request to the contrary to the transfer office prior to the payment date as stated in the distribution declaration) irrevocably and unconditionally forfeits the entitlement to such shareholder's distribution on the basis that an amount equal to the aggregate of such shareholder's distribution shall vest in a charity nominated from time to time by the directors.

4.6 Debt instruments

This Memorandum does not limit, restrict or qualify the authority of the board to authorise the Company to issue secured or unsecured debt instruments, provided that the board may not grant special privileges regarding the attending and voting at general meetings of the Company or the appointment of directors in respect of such debt instruments.

4.7 Registration of beneficial interests

This Memorandum does not limit or restrict the holding of the Company's issued shares by, or the registration of the

Company's issued shares in the name of, one person for the beneficial interest of another.

4.8 Joint holders of shares

- 4.8.1 Only the joint holder of a share whose name stands first in the securities register of the Company shall be entitled:
 - 4.8.1.1 to delivery of the certificate relating to that share (and any such delivery shall be a sufficient delivery to all joint holders of that share);
 - 4.8.1.2 to receive notices or payments from the Company (and any notice or payment given to that joint holder shall be deemed to be notice or payment, as the case may be, to all of the joint holders); and
 - 4.8.1.3 to vote on any matter either personally or by proxy at any meeting in respect of that share as if he were solely entitled to exercise that vote.

4.9 Commission

The Company may pay commission to any person in consideration for such person subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company or for such person procuring, or agreeing to procure, subscriptions for shares, provided that such commission shall be subject to any limitations in the Act and in the Listings Requirements.

4.10 Authority to sign transfer deeds

All authorities to sign transfer deeds granted by holders of shares for the purpose of transferring shares that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, 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.

4.11 Fully paid-up shares not subject to lien

It is recorded that fully paid-up shares shall not be subject to any lien in favour of the Company and shall be freely transferable.

5. SHAREHOLDER RIGHTS AND PROXY FORMS

5.1 Information rights of persons holding a beneficial interest in shares

This Memorandum does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and (2) of the Act.

5.2 Representation by Concurrent Proxies

- 5.2.1 This Memorandum does not limit or restrict the right of a shareholder to appoint two or more persons concurrently as proxies ("Concurrent Proxies"); provided that the instrument appointing the Concurrent Proxies clearly states the order in which the Concurrent Proxies' votes are to take precedence in the event that both or all of the Concurrent Proxies are present, and vote, at the relevant meeting.

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5.2.2 This Memorandum does not limit or restrict the right of a shareholder to appoint more than one proxy to exercise voting rights attached to different shares held by that shareholder.

5.3 Authority of proxy to delegate

This Memorandum does not limit or restrict the right of a proxy to delegate to another person that proxy's authority to act on behalf of the shareholder appointing him, subject to any restriction set out in the instrument appointing the proxy.

5.4 Requirement to deliver proxy instrument to the Company

A copy of the instrument appointing a proxy must be delivered to the registered office of the Company, or to any other person specified by the Company, not less than two Business Days (or such lesser period as the directors may determine in relation to a particular meeting) prior to the date appointed for the holding of that meeting (including an adjourned meeting) at which the person(s) named in the proxy form proposes to vote and if the instrument of proxy is not so delivered, the form of proxy shall not be treated as valid. For the avoidance of doubt, and assuming there are no intervening public holidays, if the particular meeting is on Tuesday, then a copy of the instrument must be delivered at the latest before close of business on the Thursday prior to such meeting.

5.5 Proxy without direction

This Memorandum does not limit or restrict the right of a proxy to exercise, or abstain from exercising, any voting right of the shareholder appointing him without direction, except to the extent that the instrument of proxy provides otherwise.

5.6 Record date for exercise of shareholder rights

A record date for any action or event shall be determined in accordance with the Act and the Listings Requirements.

6. SHAREHOLDERS' MEETINGS

6.1 Convening of shareholders' meetings

This Memorandum does not specify any person other than the board who may call a shareholders' meeting.

6.2 Shareholders' right to call a meeting

This Memorandum does not specify a lower percentage of voting rights than the percentage specified in section 61(3) of the Act for the calling by shareholders of a shareholders' meeting, provided any such calling must be in writing and signed by all such shareholders.

6.3 Location of shareholders' meetings

This Memorandum does not limit, restrict or qualify the authority of the board to determine the location of any shareholders' meeting and any shareholders' meeting may be held in the Republic or in any foreign country.

6.4 Notice of shareholders' meetings

6.4.1 This Memorandum does not provide a different period of notice of shareholders' meetings from the period prescribed by the Act.

6.4.2 Notice of shareholders' meetings shall be delivered to each shareholder entitled to vote at such meeting and who has elected to receive such notice.

6.4.3 If the annual financial statements are to be considered at a general meeting of shareholders, a copy of the annual financial statements or an abridged version thereof, provided that these are in accordance with the Listings Requirements and

the Act, must be distributed to shareholders at least 15 Business Days before the date of the general meeting at which they will be considered. For the purposes of this 6.4.3, "distribute" shall include, without limitation, publication on the website of the Company, to the extent not prohibited under the Listings Requirements or the Act.

6.5 Electronic Communication with shareholders

6.5.1 Any documents or notices may be sent to shareholders by Electronic Communication, provided that such shareholder has furnished an appropriate address for Electronic Communication.

6.5.2 Any shareholder notifying the Company of an address for purposes of receiving Electronic Communication from the Company shall be deemed to have agreed to receive the documents and notice by Electronic Communication. Any amendment or withdrawal of any such notice from a shareholder shall only take effect if signed by the shareholder and received by the Company. As regards the signature of Electronic Communication, it shall be in such form as the directors may require to demonstrate that the document or notice is genuine.

6.5.3 Any document or notice sent by Electronic Communication by the Company shall be deemed to be received by the shareholder at 09:00 on the day following that upon which it was transmitted, provided that a notice or document sent by Electronic Communication shall not be treated as having been received if it is rejected by virtue of virus protection measures.

6.5.4 The Company may provide for any shareholders' meeting to be conducted by Electronic Communication, or for one or more shareholders, or proxies for shareholders, to participate in any shareholders' meeting by Electronic Communication.

6.6 Quorum for shareholders' meetings

6.6.1 This Memorandum does not specify a different percentage of voting rights in terms of section 64(1) for:

6.6.1.1 a shareholders' meeting to begin; and

6.6.1.2 for the consideration of any matter to be decided at any shareholders' meeting,

provided that the quorum at a general meeting must be at least three shareholders entitled to attend and vote thereat.

6.6.2 This Memorandum specifies 30 minutes (or such longer or shorter period as the chairman of the shareholders' meeting may determine), in substitution for the time period specified in sections 64(4) and 64(5), for a quorum to be established before a shareholders' meeting may be adjourned.

6.6.3 Unless the chairman of the shareholders' meeting determines otherwise, this Memorandum does not specify a different period than the period provided in section 64(4) for the adjournment of a shareholders' meeting.

6.6.4 Once a quorum for a particular meeting has been established, unless sufficient shareholders constituting that quorum are present, this Memorandum prohibits:

6.6.4.1 the continuation of that shareholders' meeting; and

6.6.4.2 the consideration of any matter to be considered at that shareholders' meeting.

6.7 Adjournment of shareholders' meetings

This Memorandum does not provide different maximum periods for the adjournment of shareholders' meetings to those periods specified in sections 64(12) of the Act.

6.8 Demand for a poll

A polled vote must be held on any particular matter to be voted on at a shareholders' meeting if a demand for such a vote is made by the chairman of the shareholders' meeting.

6.9 Shareholders' resolutions

- 6.9.1 This Memorandum does not require a higher percentage of voting rights to approve an ordinary resolution than the percentage of voting rights specified in the Act.
- 6.9.2 This Memorandum does not require a different percentage of voting rights to approve a special resolution than the percentage of voting rights specified in the Act.
- 6.9.3 A special resolution is only required for matters contemplated in section 65(11) of the Act or the Listings Requirements.
- 6.9.4 The proposal of any resolution to shareholders in terms of section 20(2) and section 20(6) of the Act is prohibited to the extent that such a resolution would lead to the ratification of an act that is contrary to the Listings Requirements, unless otherwise agreed with the JSE.
- 6.9.5 For the avoidance of doubt, it is recorded that in any vote, an "abstention" constitutes a shareholder or its representative being present for purposes of determining whether a quorum has been established (and maintained), but does not constitute a vote for or against a particular resolution and should not be taken into consideration in determining whether a resolution has achieved its required number of votes.

6.10 Shareholders' meetings in terms of the Listings Requirements

- 6.10.1 Shareholders' meetings that are called for the purpose of passing any resolution required in terms of the Listings Requirements may not be voted on in writing, as provided for in section 60 of the Act, unless permitted by the JSE or the Listings Requirements. For the avoidance of doubt, directors may be elected at a general meeting, provided that the meeting is not conducted in terms of section 60 of the Act.
- 6.10.2 For the avoidance of doubt, there shall be no prohibition or restriction on the Company from calling any meeting for the purposes of adhering to the Listings Requirements.

6.11 Notice of shareholders' meetings to the JSE

- 6.11.1 A copy of all notices of shareholders' meetings must be sent to the JSE at the same time as notices are sent to shareholders, if required in terms of the Listings Requirements.
- 6.11.2 All notices of shareholders' meetings must also be announced through the official news service of the JSE at the same time as notices are sent to shareholders, or as soon thereafter as is practicable, if required in terms of the Listings Requirements.

7. DIRECTORS AND OFFICERS

7.1 Composition of the board of directors

Subject to the requirements of the Act and the Listings Requirements, the number of directors shall not be less than four.

7.2 Election of directors

- 7.2.1 Subject to 7.5 and the Listings Requirements, the shareholders shall elect the directors, and shall be entitled to elect one or more alternate directors, in accordance with the provisions of section 68(1) of the Act.
- 7.2.2 This Memorandum does not provide for:
 - 7.2.2.1 the direct appointment or removal of any director or alternate director by any particular person; or
 - 7.2.2.2 the appointment of any person as an *ex officio* director of the Company.
- 7.2.3 Nothing in this Memorandum will detract from the right of any shareholder to nominate directors.

7.3 Rotation of directors

- 7.3.1 Subject to the Act and this Memorandum, at every annual general meeting of the Company, one third of the non-executive directors (determined in terms of the Listings Requirements) for the time being or, if their number is not a multiple of three, then the number nearest to, but not less than one-third, or if there are fewer than three, then all the non-executive directors shall retire from office. The non-executive directors (determined in terms of the Listings Requirements) so to retire at every annual general meeting shall be those who have been longest in office since last elected or re-elected. As between non-executive directors of equal seniority, the non-executive directors so to retire shall, unless they otherwise agree among themselves, be selected by lot; provided that notwithstanding anything to the contrary in this Memorandum:
 - 7.3.1.1 if at the date of any annual general meeting any non-executive director shall have held office for a period of three years since his last election or appointment (computed from his last election, appointment or date upon which he was deemed re-elected), he shall retire at such meeting either as one of the non-executive directors to retire in pursuance of the foregoing or additionally thereto;
 - 7.3.1.2 a non-executive director who intends to retire voluntarily at the meeting may be taken into account in determining the one third of the non-executive directors to retire at such meeting;
 - 7.3.1.3 the identity of the non-executive directors to retire at such annual general meeting shall be determined as at the date of the notice convening such meeting; and
 - 7.3.1.4 a director retiring at a meeting shall retain office until the close or adjournment of the meeting.
- 7.3.2 In addition to 7.3.1, each executive director shall retire on the third year anniversary after which his/

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her appointment was confirmed by shareholders if he/she was appointed, or the third year anniversary of his/her election or re-election, as the case may be.

7.3.3 All retiring directors may be re-elected, provided they are eligible. No person other than a director retiring at the meeting shall be eligible for election to the office of director at any general meeting unless recommended by the board, subject to any provision to the contrary in the Act or the Listings Requirements.

7.3.4 The term of office of directors other than the non-executive directors, as determined in accordance with the Listings Requirements, shall be determined by the Company in general meeting from time to time, provided that life directorships and directorships for an indefinite period shall not be permissible.

7.4 Eligibility and disqualification of directors

7.4.1 Subject to 7.5, this Memorandum does not stipulate any additional qualifications or eligibility requirements than those set out in the Act for a person to become or remain a director or a prescribed officer of the Company; provided that, for as long as the Listings Requirements require it, the board, through its nominations committee, should recommend eligibility of directors, taking into account past performance and contributions.

7.4.2 Without derogating from the provisions of the Act, a director shall cease to be a director one month, or, with the permission of the directors, earlier, after he has given notice in writing of his intention to resign.

7.5 Vacancies

7.5.1 For the purposes of this 7.5, a "vacancy" shall arise only when the number of directors on the board or members of a committee of the board falls below the minimum number required in terms of this Memorandum, the Act or the Listings Requirements for any reason, including without limitation any of the circumstances set out in section 70(1) of the Act, subject to any provision to the contrary in the Act or the Listings Requirements.

7.5.2 The board may appoint any person who satisfies the requirements for election as a director or for appointment as a member of a committee of the board to fill any vacancy and serve as a director on the board or as member of a committee of the board (as the case may be) on a temporary basis until the vacancy is filled by election in accordance with sections 68(2), 70(3) and/or 94(6) of the Act.

7.5.3 If the number of directors falls below the minimum provided for in this Memorandum, the Act or the Listings Requirements, the remaining directors must 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. If required by the Listings Requirements:

7.5.3.1 the appointment of a director to fill a vacancy or as an addition to the board must be confirmed by shareholders at the next annual general meeting, failing which the director shall retire; and

7.5.3.2 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 general meetings of shareholders.

7.6 Authority of the board of directors

The authority of the board to manage and direct the business and affairs of the Company, as contemplated in section 66(1), is not limited, restricted or qualified by this Memorandum.

7.7 Directors' meetings

7.7.1 This Memorandum does not restrict the directors from acting otherwise than at a meeting. The directors may adopt a decision that could have been voted on at a meeting of the board by instead adopting it with 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, as contemplated in section 74(1) of the Act.

7.7.2 This Memorandum does not specify a different percentage or number of directors upon whose request a meeting of the board must be called in terms of section 73(1) of the Act.

7.7.3 This Memorandum does not restrict the board from conducting meetings, or directors from participating in meetings, by Electronic Communication, as contemplated in section 73(3) of the Act.

7.7.4 This Memorandum does not limit, restrict or qualify the authority of the board to determine the manner and form of giving notice of its meetings.

7.7.5 This Memorandum does not limit, restrict or qualify the authority of the board to proceed with a board meeting in accordance with the requirements of section 73(5)(a) of the Act, despite a failure or defect in giving notice of the meeting.

7.7.6 The quorum requirement for a directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, as set out in section 73(5) of the Act, are not varied by this Memorandum.

7.7.7 In the case of a tied vote, the chairman shall not have a second or casting vote.

7.7.8 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 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).

7.8 Chairman

7.8.1 The directors will elect from their number a chairman and may elect from their number a deputy chairman, or two or more deputy chairmen, and decide the period for which each is to hold office. The directors may also remove any of them

from such office at any time. If at any meeting of the directors, neither the chairman nor a deputy chairman is present within ten minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

- 7.8.2 If at any time there is more than one deputy chairman, the right in the absence of the chairman to preside at a meeting of the directors or of the Company shall be determined as between the deputy chairmen present, if more than one, by seniority in length of appointment or otherwise as resolved by the directors.

7.9 Directors' compensation and financial assistance to directors

- 7.9.1 This Memorandum does not limit, restrict or qualify the ability of the Company to pay remuneration to its directors for their service as directors in accordance with section 66(9) of the Act.
- 7.9.2 This Memorandum does not limit, restrict or qualify the authority of the board to authorise the Company to provide direct or indirect financial assistance to directors or persons related to directors contemplated in section 45 of the Act.
- 7.9.3 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, and in which case, the director's appointment and remuneration in respect of such office must be determined by a disinterested quorum of directors.

7.10 Indemnification of directors, officers and employees

- 7.10.1 For the purposes of this 7.10, "director" shall have the meaning ascribed to it in section 78(1) of the Act.
- 7.10.2 This Memorandum does not limit, restrict or qualify the ability of the Company to advance expenses to a director to defend any legal proceedings arising from his service to the Company, or to indemnify a director against such expenses if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director in terms of sections 78(5) and 78(6) of the Act.
- 7.10.3 This Memorandum does not limit, restrict or qualify the ability of the Company to indemnify a director in respect of any liability arising out of the director's service to the Company to the fullest extent permitted by the Act.
- 7.10.4 Subject to the provisions of the Act and 7.10.5, every director and other officer or employee of the Company ("**Indemnified Person**") shall be indemnified and held harmless by the Company against, and it shall be the duty of the directors to cause the Company to pay, out of the funds of the Company, all costs, losses and expenses, including reasonable travelling and subsistence expenses (the "**expenses**"), which any such Indemnified Person may incur or become liable to pay by reason of any contract entered into, or any act or omission done or omitted to be done by him in the discharge of his duties or in his capacity as such Indemnified Person.
- 7.10.5 The Company shall reimburse an Indemnified Person for his expenses should the board

(excluding that Indemnified Person) resolve to do so, provided that such expenses were properly and necessarily incurred, and are not attributable to the wilful misconduct or wilful breach of trust of that Indemnified Person. If the board is subsequently made aware of facts that indicate that such expenses were not properly and necessarily incurred or were attributable to the wilful misconduct or wilful breach of trust of that Indemnified Person, then the board (excluding that Indemnified Person) shall be entitled, upon resolution, to cause the Company to recover an amount from that Indemnified Person equal to the aggregate of the amount paid to him under this 7.10.5 plus interest charged at the Prime Rate calculated from the date on which payment to that Indemnified Person was made under this 7.10.5 until the date of repayment of such amount in full by that Indemnified Person.

- 7.10.6 If any director is required to perform extra services or to reside abroad or shall be specifically occupied about the Company's business, he 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.
- 7.10.7 Subject to the provisions of the Act, no Indemnified Person shall be liable for:
- 7.10.7.1 any act or omission of any other Indemnified Person;
- 7.10.7.2 any loss or expense suffered by the Company in consequence of any absence of, or any defect in, any title to any property acquired by order of the directors for or on behalf of the Company;
- 7.10.7.3 any absence of, or defect in, any security upon which any of the monies of the Company shall be invested;
- 7.10.7.4 any loss or damage arising from the insolvency or delictual act of any person with whom any monies, shares or assets shall be deposited;
- 7.10.7.5 any loss or damage occasioned by any error of judgment or oversight on the part of such Indemnified Person; or
- 7.10.7.6 any other loss, damage or misfortune whatever which shall happen in or in relation to the execution of his office or employment, unless the same be attributable to his own wilful misconduct or wilful breach of trust.
- 7.10.8 This Memorandum does not limit, restrict or qualify the ability of the Company to purchase insurance to protect a director against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Act and this Memorandum, or to protect the Company against any contingency including, but not limited to:
- 7.10.8.1 any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a director in terms of the Act; or
- 7.10.8.2 any liability for which the Company is permitted to indemnify a director in terms of the Act.

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7.11 Committees of the board

- 7.11.1 This Memorandum does not limit, restrict or qualify the authority of the board to appoint any number of committees of directors, or to delegate to any such committee any of the authority of the board.
- 7.11.2 Except to the extent that any board resolution establishing a committee provides otherwise, the members of the committee:
 - 7.11.2.1 may include persons who are not directors of the Company but any such person:
 - 7.11.2.1.1 may not be ineligible or disqualified to be a director in terms of section 69 of the Act or this Memorandum; and
 - 7.11.2.1.2 shall not have a vote on any matter to be decided by the committee;
 - 7.11.2.2 may consult with or receive advice from any person;
 - 7.11.2.3 may be remunerated for their services as such; and
 - 7.11.2.4 provided that the committee is duly constituted, have the full authority of the board in respect of any matter referred to it.

8. RIGHTS ATTACHING TO THE "A" CLASS SHARES

- 8.1 For the purpose of this 8 unless the context clearly indicates otherwise the following terms shall have the corresponding defined meaning:
 - 8.1.1 **"Distribution"** shall mean any distribution, payment or transfer (sounding in money or other property and whether out of income, profits, capital or otherwise) to the shareholders of the Company by virtue of the shareholders' shareholding in the Company (including the monetary amount of any capitalised distribution), provided that, without limitation, the following shall be excluded:
 - 8.1.1.1 the incurrence of any debt or other obligation by the Company for the benefit of any shareholder/s in the Company or another group company, unless it is incurred in discharge of the obligation by the Company to pay the distribution;
 - 8.1.1.2 the forgiveness or waiver by the Company of a debt or other obligation owed to the Company by one or more holders of any shares of the Company or of another company in the Group;
 - 8.1.1.3 the consideration for the acquisition by the Company of any of its own shares; and
 - 8.1.1.4 the consideration for the acquisition by any company within the Group of any shares of another company within the Group;
 - 8.1.2 **"Ordinary Share Monetary Distributions"** means all Distributions to the ordinary shareholders in respect of each of their ordinary shares sounding in money, and not property, but including the monetary amount of any capitalised distribution;
- 8.2 Subject to 8.4, the "A" Class Shares, which were created for the purposes of extending equity ownership to employees

of the Company and its subsidiaries ("**the group**") in terms of an Employee Share Ownership Programme, to inter alia, advance BBBEE within the group in terms of the BEE Act and the BEE Codes, shall have the same rights and rank *pari passu* with the ordinary shares in all respects, except that:

- 8.2.1 subject to 8.5 to 8.8, each "A" Class Share shall only entitle the holder to monetary Distributions equal to 10% (ten percent) of the aggregate Ordinary Share Monetary Distributions declared or made (including interim and final distributions) in respect of an ordinary share in relation to each financial year of the Company (referred to as the "A" Class Distribution Rights', and "**A" Class Distribution'** shall have a corresponding meaning) (for example if distributions totalling R1,00 (one Rand) are declared in respect of each ordinary share in relation to a financial year, then each "A" Class Share shall receive a distribution of R0,10 (ten cents) in relation to that financial year). For the sake of clarity it is recorded that the "A" Class Distribution Rights shall apply with respect to all Ordinary Share Monetary Distributions in relation to an entire financial year, notwithstanding that any "A" Class Shares may have been issued during, or after the end of, the financial year in question;
- 8.2.2 subject to the Act, the "A" Class Distribution Rights shall be declared contemporaneously with the declaration of the final distribution (including a capital distribution in lieu of a final distribution) to the ordinary shareholders in respect of each financial year. The full declared "A" Class Distribution shall accrue to the holders of those "A" Class Shares in issue at the record date for the declared "A" Class Distribution, notwithstanding that any "A" Class Shares may have been issued during, or after the end of, the financial year in question. For example: if an "A" Class Share is issued just before or just after the end of the interim distribution period ending 28 February 2011 and the record date for the "A" Class Distribution for the financial year ending 31 August 2011 is 15 January 2012, then the holder of such "A" Class Share on 15 January 2012 will accrue the right to receive the "A" Class Distribution Right determined with reference to the aggregate Ordinary Share Monetary Distributions in respect of the entire financial year ending 31 August 2011 (i.e. assuming only interim and final monetary distributions were declared to the ordinary shareholders, then the "A" Class Distribution will be equal to 10% (ten percent) of both the interim and final distribution to the ordinary shareholder);
- 8.2.3 if the Company does not declare a final distribution in respect of any financial year but has declared or made at least one Ordinary Share Monetary Distribution to the ordinary shareholders in respect of such financial year, then the "A" Class Distribution will, subject to the Act, be declared within 6 (six) months of the relevant financial year end;
- 8.2.4 the Company may not capitalise "A" Class Distributions due in respect of the "A" Class Shares;
- 8.2.5 the Company shall not be required to offer any ordinary shares that may be issued by the Company to the "A" Class Shareholders as required in respect of Ordinary Shares in terms of 8.8;
- 8.2.6 on a winding-up of the Company the "A" Class Shareholders shall only be entitled to a payment of 1 (one) cent per "A" Class Share, which payment shall rank concurrently with the ordinary

- shareholders' rights in respect of the distribution of the residue, and, except for this payment, the "A" Class Shareholders shall on winding-up have no right to any share of the residual assets or profits of the Company; and
- 8.2.7 except as provided for in terms of 8.2.1 and 8.2.6, the "A" Class Shareholders shall not be entitled to any distribution or share of the capital, profits or assets of the Company.
- 8.3 Subject to 8.5 to 8.8, for the sake of clarity, the "A" Class Shares shall entitle the holder(s) thereof to attend and vote at general meetings of the Company and to vote on all resolutions the ordinary shareholders are entitled to vote on together with the ordinary shareholders, and the voting rights attaching to the "A" Class Shares shall be that proportion of the total votes of the Company that the aggregate amount of the nominal value of the shares held by each member bears to the aggregate amount of the nominal value of all the shares issued by the Company, and accordingly, as at the date of adoption of this article, the par value of the "A" Class Shares is the same as the par value of the ordinary shares, and each "A" Class Share shall entitle the holder to one vote on a poll on par with the ordinary shares.
- 8.4 While the "A" Class Shareholders will be entitled to vote together with the ordinary shareholders at any general meeting of the Company, in so far as is lawful, the Company shall not be required to procure the separate approval of the "A" Class Shareholders for, without limitation, any resolutions in connection with any of the following matters:
- 8.4.1 the creation of new shares (including without limitation Ordinary Shares or "A" Class Shares), whether such shares have a par value or not (including any related increase of the Company's share capital);
- 8.4.2 the issue of any shares including, without limitation, ordinary shares or "A" Class Shares;
- 8.4.3 the repurchase of any shares including, without limitation, the ordinary shares or "A" Class Shares;
- 8.4.4 the return of capital to any shareholders including, without limitation, the ordinary shareholders, by way of a payment or other distribution;
- 8.4.5 the sub-division, consolidation or reorganisation of any shares (and the related share capital) other than the "A" Class Shares, including, without limitation, the ordinary shares;
- 8.4.6 the alteration of the rights attaching to any shares (including, without limitation, the ordinary shares) other than the "A" Class Shares;
- 8.4.7 the conversion of any shares (including, without limitation, the ordinary shares), other than the "A" Class Shares, into any other class of shares (including par value or no par value shares) and any related alteration or conversion of stated capital;
- 8.4.8 the cancellation of any shares that have not been issued; and
- 8.4.9 the authorisation of any of the above matters.
- 8.5 If the ordinary shares are sub-divided and such sub-division does not include an equivalent sub-division of the "A" Class Shares, the rights attaching to the "A" Class Shares shall automatically adjust as follows:
- 8.5.1 the "A" Class Distribution Rights in 8.2.1 shall be increased by such percentage as will ensure that if a Ordinary Share Monetary Distribution was declared or made to the ordinary shareholders immediately after the sub-division of the ordinary shares, the Distribution the holders of the "A" Class Shares would receive would be the same amount as they would have received if the same aggregate Ordinary Share Monetary Distributions to all the ordinary shareholders was declared or made immediately before the sub-division, so that the "A" Class Distribution Rights will not be prejudiced (for example, if there were 1 (one) million ordinary shares and 100 000 (one hundred thousand) "A" Class Shares, then if the ordinary shares were sub-divided into 2 (two) million ordinary shares, the "A" Class Distribution Rights of each "A" Class Share will increase to 20% (twenty percent) of the aggregate Ordinary Share Monetary Distributions declared or made in respect of an ordinary share in each financial year);
- 8.5.2 the voting rights in respect of the ordinary shares and the "A" Class Shares shall be adjusted to ensure that members holding the respective classes of shares are entitled to that proportion of the total votes of the Company which the aggregate amount of the nominal value of the shares held by each member bears to the aggregate amount of the nominal value of all the shares issued by the Company.
- 8.6 If the ordinary shares are consolidated and such consolidation does not include an equivalent consolidation of the "A" Class Shares, the rights attaching to the "A" Class Shares shall automatically adjust as follows:
- 8.6.1 the "A" Class Distribution Rights shall be decreased by such percentage as will ensure that if a Ordinary Share Monetary Distribution was declared or made to the ordinary shareholders immediately after the consolidation of the ordinary shares, the Distribution the holders of the "A" Class Shares receive would be the same amount as they would have received if the same aggregate Ordinary Share Monetary Distributions to all the ordinary shareholders was declared or made immediately before the consolidation so that the "A" Class Distribution Rights would in so far as possible remain the same and not be improved or prejudiced (for example, if there were 1 (one) million ordinary shares and 100 000 (one hundred thousand) "A" Class Shares, then if the ordinary shares were consolidated into 500 000 (five hundred thousand) ordinary shares, the "A" Class Distribution Rights entitlement of each "A" Class Share will decrease to 5% (five percent) of the Ordinary Share Monetary Distributions paid to each ordinary share); and
- 8.6.2 the voting rights in respect of the ordinary shares and the "A" Class Shares shall be adjusted to ensure that members holding the respective classes of shares are entitled to that proportion of the total votes of the Company that the aggregate amount of the nominal value of the shares held by each member bears to the aggregate amount of the nominal value of all the shares issued by the Company.
- 8.7 If, other than pursuant to the issue or acquisition of shares by the Company, the ordinary shares are converted into other shares, or the rights of the ordinary shareholders to

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vote or to receive Ordinary Share Monetary Distributions are altered without an equivalent conversion or alteration of the voting or Distribution rights attaching to the "A" Class Shares, then:

- 8.7.1 the "A" Class Distribution Rights entitlement due to each "A" Class Share (as a percentage of the Ordinary Share Monetary Distribution rights of an ordinary share) in 8.2.1 shall be adjusted by such percentage as the auditors (failing which, an accounting firm nominated by the President (at the time) of the South African Institute of Chartered Accountants, or its successor body) determine to be fair and reasonable; and
 - 8.7.2 the voting rights in respect of the ordinary shares and the "A" Class Shares shall be adjusted to ensure that members holding the respective classes of shares are entitled to that proportion of the total votes of the Company that the aggregate amount of the nominal value of the shares held by each member bears to the aggregate amount of the nominal value of all the shares issued by the Company.
- 8.8 Any adjustment in terms of 8.5 to 8.7 (both inclusive) shall be determined by the auditors (failing which, an accounting firm nominated by the President (at the time) of the South African Institute of Chartered Accountants, or

its successor body) in writing, which determination shall be final and binding, in the absence of manifest error. Only the auditors (failing which, the abovementioned accounting firm) may determine whether there is a manifest error and correct any such error. The Company secretary shall certify and keep a copy of all such determinations together with the Memorandum of the Company. Such certified copy of the determination shall be open for inspection in the same manner as the Company's Memorandum.

- 8.9 For the sake of clarity, notwithstanding the provisions of 8.5 to 8.8, the issue or purchase of ordinary shares by the Company shall, in so far as is lawful, not result in any changes or adjustments to the rights attaching to the "A" Class Shares.
- 8.10 Subject to any requirements of the Act, the rights attaching to the "A" Class Shares may be varied by way of a special resolution of the shareholders of the Company in general meeting, provided such variation is also approved by a simple majority vote at a separate meeting of the holders of the "A" Class Shares, which separate meeting shall be convened and conducted in the same manner as a general meeting of the shareholders. All provisions of the Memorandum applicable to general meetings shall apply to such separate meeting, adapted appropriately (*mutatis mutandis*). For the sake of clarity, the adjustments in terms of 8.5 to 8.7 shall not be regarded as variations.

SCHEDULE 1 – AUTHORISED SHARES

Classified shares

600,000,000 ordinary par value shares of R0.01 (one cent) each, each of which shall entitle the holder, subject to any preferences, rights or other share terms of any class of shares in the Company ranking prior to the ordinary shares:

- (i) to receive any distribution in accordance with the holder's voting power;
- (ii) on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;
- (iii) to all of the preferences, rights or other terms set out in the Act or this Memorandum; and
- (iv) to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.

50,000,000 "A" par value shares of R0.01 (one cent) each, each of which shall entitle the holder to the preferences, rights and other share terms more fully set out at 8 of this Memorandum.