



STS Association

STS1900-1-3

**Edition 1
March 2014**

MEMORANDUM OF INCORPORATION

**COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION
REPUBLIC OF SOUTH AFRICA**

In accordance with s 16(1)(c) of the Companies Act, 2008

THE STANDARD TRANSFER SPECIFICATION ASSOCIATION NPC

**STS1900-1-3
MEMORANDUM OF INCORPORATION**

The Company is a Non-Profit Company with members and with the following object:

To promote the recognition and use of the Standard Transfer Specification (“STS”) amongst industry both nationally and internationally

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the Company, in accordance with section 16(1)(c) of the Companies Act, 2008 (the “Act”).

MEMORANDUM OF INCORPORATION

THE STANDARD TRANSFER SPECIFICATION ASSOCIATION NPC

(the "Company")

1. DEFINITIONS

Act - Company's Act, 2008, of the Republic of South Africa

In this Memorandum of Incorporation:

- a) A reference to a section by number refers to the corresponding section of the Act; and
- b) Words that are defined in the Act bear the same meaning in this Memorandum as in the Act.

2. INCORPORATION AND GOVERNING LEGISLATION

2.1 The Company was incorporated as an Association not for gain, under section 21 of the Companies Act, 1978, but is now a Non-Profit Company, as defined in the Act.

2.2 The Company is governed by:

2.2.1 the unalterable provisions of the Act that are applicable to Non-Profit companies;

2.2.2 the alterable provisions of the Act that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

2.2.3 the provisions of this Memorandum of Incorporation.

3. OBJECTS AND POWERS OF THE COMPANY

3.1 The Company is subject to the special conditions contained in this clause (2), as contemplated in sections 15 (2)(b) and (c).

- 3.2 The objects of the Company are as set out on the cover sheet and the Company shall have all the legal powers and capacity of an individual, except to the extent necessarily implied by the stated objects, except to the extent that a juristic person is incapable of exercising such a power or having such a capacity, and subject to the following restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii):
- 3.2.1 substantially the whole of the funding of the company shall be derived from its annual or other long-term members
- 3.2.2 all of the powers may only be executed in accordance with the main object of the Company;
- 3.2.3 the Company shall not:
- 3.2.3.1 amalgamate or merge with, or convert to, a profit Company; or
- 3.2.3.2 dispose of any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposal of an asset occurs in the ordinary course of the activities of the non-profit Company;
- 3.2.4 the Company's powers shall be limited insofar as may be required by the special conditions set out in clause 2.2; and
- 3.2.5 the income and property of the Company, however derived, shall be applied solely towards the promotion of its main object or invested and no funds will be distributed to any person other than in the course of undertaking its objects and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever, to the members or Directors of the Company; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company, for any services rendered to the Company.
- 3.3 Upon its winding up, de-registration or dissolution the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the Directors of the Company at or before the time of its dissolution, or failing such determination, by the court and which have objects similar to its main object.

4. MEMORANDUM OF INCORPORATION AND COMPANY RULES

- 4.1 This Memorandum of Incorporation of the Company may be altered or amended in the manner set out in sections 17, 60, 152 (6)(b) or 16 (by special resolution proposed by the board or members holding not less than 10% of the voting rights, and adopted by 75% of those present and voting), subject to the following:
- 4.1.1 this Memorandum of Incorporation shall not be varied or amended save with the unanimous consent of the Founder Members;
 - 4.1.2 if the Company is exempted from payment of normal tax a copy of any such amendment shall be sent to the Commissioner for the South African Revenue Service or his authorised representative within 30 days of the registration of such amendment;
 - 4.1.3 if the Company is registered as a Non-Profit Organisation then a copy of any amendments shall be sent to the Directorate of Non-Profit Organisations.
- 4.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) is limited or restricted to the extent that the powers of the Company are limited by clause 2 of this Memorandum.
- 4.3 The Board shall publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each Director by ordinary mail, or by electronic communication, provided that the Directors concerned have consented to the delivery of such communication by electronic mail.
- 4.4 The Company shall publish a notice of any alteration of the Memorandum of Incorporation or the rules, made in terms of section 17 (1) by delivering a copy of those rules to each Director by ordinary mail or electronic mail provided that the Directors concerned have consented to the delivery of such communication by electronic mail.

5. OPTIONAL PROVISIONS OF THE ACT

- 5.1 The Company elects, in terms of section 34 (2), to comply voluntarily with some of the provisions of Chapter 3 of the

Companies Act, 2008, in that the Company:

- 5.1.1 will be required to appoint a Company secretary, and will comply with sections 86 to 89, and
- 5.1.2 will appoint an auditor, in terms of sections 90 to 93.

6. MEMBERS OF THE COMPANY

- 6.1 The members of the Company are persons that are admitted to membership of the Company by the Management Board.
- 6.2 Membership of the Company may be held by juristic persons, including profit companies.
- 6.3 There shall be two classes of members, namely voting members, and non-voting members.
- 6.4 The Founder Members of the Company are Eskom Limited, Itron Measurements & Systems (Pty) Ltd, Landis + Gyr (Pty) Ltd and Conlog (Pty) Ltd, their assigns or successors in title. Any reference to a "Founder Member" in this Memorandum of Incorporation shall be to the Founder Members listed in this clause (5.4).
- 6.5 The Management Board shall, from time to time, determine a membership policy that sets out:
 - 6.5.1 classes and categories of membership; and
 - 6.5.2 the qualifications for membership; the process for applying for membership; the initial and periodic cost of membership in any class or category; the rights and obligations, if any, of membership in any class or category; and the grounds on which membership may be suspended or lost.
- 6.6 An application for membership, specifying the class and category of membership shall be made to the Management Board in writing in the manner and accompanied by the joining fee prescribed by the Company from time to time.
- 6.7 Any member who is a juristic person, partnership, association or body corporate must nominate a person authorised to represent that member.
- 6.8 Membership of the Company shall not be transferable or assignable.

- 6.9 A member of the Company shall cease to be a member:
- 6.9.1 if such member resigns in writing addressed to the Chairman of the Company or to its Secretary at its registered office;
 - 6.9.2 upon the date set out in a notice issued by the Company to the effect that the Management Board has agreed unanimously to terminate the membership of the member concerned;
 - 6.9.3 in the event of non-compliance with any obligation attaching to membership, breach of any of the rules of the Company, or breach of any of the terms of the licence or membership agreements entered into between the Company and the member; provided that a period of 1 month written notice shall have been previously given by the Company to the member concerned, requiring the member to remedy the default and provided further that the member shall have failed to remedy the default;
 - 6.9.4 if such member's nomination by the body which such member represents is revoked in writing addressed to the Chairman of the Company or its Secretary at its registered office;
 - 6.9.5 if such member dies or is declared insolvent or insane or is convicted of a criminal offence in respect of which a sentence of imprisonment without the option of a fine is imposed; or
 - 6.9.6 if such member, being a juristic person, is wound up or placed under judicial management, in any such case provisionally or finally.

7. SUBSCRIPTIONS AND JOINING FEES

- 7.1 Members shall pay an annual subscription at such time and of such amount and in such manner as shall be determined by the Management Board.
- 7.2 A schedule of the joining fees and subscriptions determined by the Management Board shall be kept at the Company's registered office and copies will be made available to members and prospective members on request. The schedule shall be updated as soon as possible after any variation in the amount of joining fees and subscriptions has been determined by the Management

Board.

8. RIGHTS OF MEMBERS

- 8.1 Members of the Company will have such rights of use and access to the STS as determined by the terms of the licence or membership agreements entered into between the Company and the member.
- 8.2 If, at any time, every member of the Company is also a Director of the Company, as contemplated in section 57(4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.
- 8.3 The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a) is not limited, restricted or varied by this Memorandum of Incorporation.
- 8.4 The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) is not limited or restricted by this Memorandum of Incorporation.
- 8.5 The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58 (3)(c) is not varied by this Memorandum of Incorporation.
- 8.6 If, at any time, the Company's Board of Directors fails to determine a record date (being the date upon which it is determined which persons are recorded as members of the Company), as contemplated in section 59, the record date for the relevant matter is:
- 8.6.1 in the case of a meeting, the latest date by which the Company is required to give members notice of that meeting; or
- 8.6.2 the date of the action or event, in any other case.

9. MEMBERS MEETINGS – CONVENING

- 9.1 The Company shall convene an annual general meeting of its

members once in every calendar year.

9.2 members meeting shall also be called:

9.2.1 at any time that the board is required by the Act or this Memorandum of Incorporation to refer a matter to members for decision and the Board determines that it is not appropriate to hold the matter over till the following annual general meeting; or

9.2.2 on requisition by members, in terms of clause 8.3, at any time.

9.3 The right of members to requisition a meeting, as set out in section 61(3), may be exercised by at least 25% of the voting members, as provided for in that section.

9.4 The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic of South Africa or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

9.5 The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 (1), shall be 15 business days before the meeting date.

9.6 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

10. MEMBERS MEETINGS – QUORUM AND VOTING

10.1 A representative of each of the Founder Members present at a members meeting will constitute a quorum to permit the meeting to begin validly or for a matter to be validly considered and decided at the meeting, provided each such Founder Member is a member in good standing at the time of the meeting.

10.2 If, within half an hour after the appointed time for a meeting to begin, the quorum requirements for that meeting to begin have not been satisfied, the meeting shall be automatically postponed

for one week without considering any business or item of the agenda, subject to the proviso in clause 9.4.

10.3 If the quorum requirements for consideration of a particular matter to begin have not been satisfied and:

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

10.3.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned for one week, without motion or vote,

10.4 The rules determined by clauses 9.2 and 9.3 shall be subject to the proviso that the person intended to preside at a meeting that cannot begin may extend the half-hour limit for a reasonable period on the grounds that exceptional circumstances including weather, transportation or electronic communication have generally impeded or are generally impeding the ability of one or more members to be present at the meeting, which delayed members have communicated an intention to attend the meeting and which members, together with those in attendance, would satisfy the quorum requirements.

10.5 The maximum period allowable for an adjournment of a members meeting is 60 days from the date of the adjourned meeting or part-meeting.

10.6 Each voting member shall be entitled to one vote on each matter submitted to the vote.

10.7 At any general meeting of voting members a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll has (before or on the declaration of the result of the show of hands) been demanded by not less than two-thirds of the voting members present at the meeting. The effect of such poll shall be to rescind the resolution decided on a show of hands.

10.8 If a poll is demanded, it shall be taken in such manner as the chairman may direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

10.9 In the case of an equality of votes, the chairman of the meeting shall be entitled to a second or casting vote

10.10 For an ordinary resolution to be adopted at a members meeting, it

must be supported by at least 50% of the voting members who voted on the resolution, as provided in section 65 (7).

- 10.11 For an ordinary resolution to be adopted by written vote of members it must be supported by at least 50% of the total number of voting members, which votes shall be those received within 20 days of the resolution's being submitted to them.
- 10.12 For a special resolution to be adopted at a members meeting, it must be supported by at least 75 % of the voting members who voted on the resolution, as provided in section 65 (7), and it must also be supported by all of the Founding members.
- 10.13 For a special resolution to be adopted by written vote of voting members it must be supported by at least 75% of the total number of voting members and by all of the Founding members, which votes shall be those received within 20 days of the resolution being submitted to them.
- 10.14 A special resolution is only required for those matters set out in section 65 (11), being the amending of the Memorandum of incorporation, approving the voluntary winding up of the Company, disposing of all or a greater part of the assets of the Company, or amalgamation with another Company.

11. COMPOSITION AND ELECTION OF THE MANAGEMENT BOARD

- 11.1 The management and control of the Company shall be vested in the Directors of the Company, who shall be called the Management Board.
- 11.2 The number of Directors shall be a minimum of one person appointed by each of the Founder Members (none of whom are 'connected persons' (as defined in the Income Tax Act) in relation to one another). No single person shall, directly or indirectly, control the decision-making powers of the Company.
- 11.3 Each of the Founder Members shall have the right to appoint one Director. It will not be necessary for the directors so appointed to be re-appointed annually by the Founder Members.
- 11.4 The Directors will be entitled, by unanimous consent, to co-opt persons to serve as Directors on the Management Board of the Company, provided that no more than 4 Directors will be co-opted in this manner.

- 11.5 In addition to the Directors appointed by the Founder Members in terms of clause 11.4 and co-opted to the Management Board in terms of clause 11.5, each category of voting members shall have the right to elect and appoint 1 Director to the Management Board.
- 11.6 Elected Directors will be elected by secret ballot, by voting members present in person or by proxy at a duly constituted Annual General Meeting or a special general meeting called for this purpose by the Management Board.
- 11.7 The Directors co-opted in terms of clause 11.4 and the Directors elected in terms of clause 11.5 shall serve terms of 1 year each, after which they will be eligible for confirmation of co-option or re-election.
- 11.8 Only voting members shall have the right to submit nominations for election to the Management Board and any such nomination must be submitted to the Secretary at least 1 month prior to the meeting to elect Directors.
- 11.9 If insufficient nominations for the Management Board are received, nominations may be made from the floor on the day of the meeting.
- 11.10 Nominations for election to the Management Board must comply with the following, failing which the nomination will be invalid and the nominee will not be permitted to stand for election. The nomination must specify:
- 11.10.1 the name of the nominating member;
- 11.10.2 the full name of the nominee; and
- 11.10.3 the nomination must be supported by a written consent from the nominee to stand for election to the position nominated and the written agreement of the nominee to perform the duties attendant upon the position should the nominee be elected.
- 11.11 It shall not be necessary for a Director to be a member of the Company in order to qualify him to act as such.
- 11.12 In addition to the appointed and elected Directors there are no *ex officio* Directors of the Company, as contemplated in section 66(4).
- 11.13 When the term of a Director co-opted in terms of clause 11.4

comes to an end, the Directors may fill the office of that Director by co-opting an eligible person thereto. If they do not do so, the retiring Director shall, if available, be deemed automatically to have been co-opted for a further term, unless the Directors resolve not to fill such vacated office or resolve that the retiring Director should not be co-opted.

- 11.14 When the term of a Director elected in terms of clause 11.5 comes to an end, the members may fill the office of that Director by electing an eligible person thereto. If they do not do so, the retiring Director shall, if available, be deemed automatically to have been elected for a further term, unless the members resolve not to fill such vacated office or resolve that the retiring Director should not be re-elected.

12. ALTERNATE DIRECTORS

- 12.1 Each Director shall have the power to nominate any other person to act as alternate Director in his place during his absence or inability to act as such and provided that the appointment of an alternate Director shall be approved of by the Management Board and such appointment being made, the alternate Director shall in all respects be subject to the terms and conditions applicable to the other Directors of the Company.
- 12.2 The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent.
- 12.3 The appointment of an alternate Director shall be cancelled, and the alternate Director shall cease to hold office whenever the Director who appointed him shall cease to be a Director, or shall give notice to the Secretary of the Company that the alternate Director representing him shall have ceased to do so.
- 12.4 In the case of the disqualification or resignation of any alternate Director during the absence or inability to act of the Director whom he represents, the vacancy so arising shall be filled by the Management Board in accordance with the written directions of the Director who is represented by the disqualified or resigned alternate Director.

13. REMOVAL OF DIRECTORS

- 13.1 The office of a Director shall *ipso facto* be vacated:
- 13.1.1 if by one month's written notice to the Company, the Director resigns from office;
 - 13.1.2 if the Director ceases to be a Director by virtue of the Act;
 - 13.1.3 if the Director is removed from office by resolution signed by not less than two thirds of the members;
 - 13.1.4 if the Director fails to attend meetings of Directors for more than 6 months, without being excused therefrom by the remaining Directors, and the remaining Directors resolve to exclude him/her from office;
 - 13.1.5 if the Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
 - 13.1.6 if the Director is removed from office by the Founder Member who appointed him; or
 - 13.1.7 if the Director is removed from office by unanimous decision of the Management Board, in which event the term "unanimous" means a decision of all Directors on the Management Board other than the Director sought to be removed.
- 13.2 In the event that a Director who is removed or disqualified was originally appointed by a Founder Member, then only that Founder Member will be entitled to appoint a Director to replace the Director who is removed or disqualified.
- 13.3 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Memorandum as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of convening a general meeting of the Company, but for no other purpose.

14. AUTHORITY OF THE MANAGEMENT BOARD

- 14.1 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section

66(1) is limited or restricted to the extent that the powers of the Company are limited in clause 2.

- 14.2 The Directors shall exercise all the powers of the Company that are not specifically reserved, by the Act or by this Memorandum, for the Company in general meeting.
- 14.3 The Directors shall exercise the powers of the Company subject to this Memorandum, to the provisions of the Act and to such regulations as may be prescribed by the Company in general meeting, provided that no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would not have been invalid if such regulation had not been made.
- 14.4 The Directors shall exercise the powers of the Company subject to the then current policies of the Company
- 14.5 The Directors may exercise all the powers of the Company to borrow money and to mortgage or bind its undertakings and property or any part thereof.
- 14.6 The Directors may delegate any of their powers to committees made up as they think fit and the committees so formed shall, in the exercise of the powers so delegated, conform to the policies of the Company then current.
- 14.7 All acts done by any meeting of the Directors or of a committee of Directors, or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or persons or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

15. MANAGEMENT BOARD MEETINGS

- 15.1 The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation, and the Directors may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the majority of Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision so made shall have the same effect as if it had been

approved at a meeting.

- 15.2 The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by a Director at any time and the Secretary shall upon the requisition of at least two Directors, convene a meeting of the Directors.
- 15.3 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 15.4 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Memorandum of Incorporation.
- 15.5 The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting as set out in section 73(5) is not limited or restricted by this Memorandum of Incorporation, if all of the Directors of the Company:
- 15.5.1 acknowledge actual receipt of the notice;
 - 15.5.2 are present at a meeting; or
 - 15.5.3 waive notice of the meeting,
- 15.6 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, are as set out in section 73(5) except as amended in this clause and are as follows:
- 15.6.1 The Directors shall meet together for the dispatch of business and may adjourn and otherwise regulate their meetings as they think fit.
 - 15.6.2 The quorum necessary for the transacting of business of the board shall be a Director appointed by each of the Founder Members, with the exception of 13.3.
 - 15.6.3 Each Director shall have one vote on a matter before the

- board provided that co-opted Directors shall not have a vote.
- 15.6.4 Except as otherwise provided in this Memorandum of Incorporation, a majority of the votes cast on a resolution will be sufficient to approve that resolution.
- 15.6.5 In the case of a tied vote the chairman may cast a deciding vote, in addition to his deliberative vote.
- 15.6.6 Directors shall not be entitled to vote on any matter in which they or any person to whom they are a 'connected person' (as defined in the Income Tax Act), has an interest.
- 15.7 The Company shall keep minutes of the meetings of the board, and any of its committees, and include in the minutes:
- 15.7.1 any declaration given by notice or made by a Director as required by section 75 with reference to the personal financial interests of the Director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter;
- 15.7.2 record of all appointments of officers;
- 15.7.3 record of the names of the Directors present at each meeting of the Company and of the Directors and of any committee of the Directors; and
- 15.7.4 every resolution adopted by the board.
- 15.7.5 Such Minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.
- 15.8 Every Director present at any meeting of Directors or committee of Directors shall sign his name in a book to be kept for that purpose
- 15.9 Copies of the minutes of every meeting shall be dispatched by the person appointed by the board from time to time, to all Directors within 30 days of the holding of the meeting.
- 15.10 The Directors shall elect or appoint a chairman from their number, who shall preside over all meetings of the board and perform the tasks set out in this Memorandum of Incorporation and all the other normal functions of a chairperson of the Company.

16. ACCOUNTING RECORDS

- 16.1 The Directors shall cause such accounting records as are prescribed by Section 28 of the Act to be kept.
- 16.2 The accounting records shall be kept in the registered office of the Company or at such other place or places as the Directors think fit and shall always be open to inspection by the Directors.

17. EXPENDITURE

- 17.1 No expenditure shall be incurred by or on behalf of the Company except on authority of the board or of the person or persons to whom the board has generally or specifically delegated the power to authorise expenditure.
- 17.2 The financial transactions of the Company shall be administered via one or more bank accounts which shall be opened in the name of the Company.

18. ANNUAL FINANCIAL STATEMENTS

- 18.1 The Directors shall from time to time, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the board such annual financial statements as are referred to in those sections.
- 18.2 A copy of the annual financial statement shall, at least 21 days prior to the relevant board meeting, be sent to every Director of the Company.
- 18.3 The financial year of the Company shall end on 31 December each year.

19. INDEMNIFICATION OF DIRECTORS

- 19.1 Every member, Director, and officer of the Company, every member of any committee of the Company, and any person employed by the Company as auditor, shall be indemnified by the Company against all liability incurred by him as such Director, officer or auditor, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in respect of any proceedings which are abandoned

or in connection with any application under Section 77(9) of the Act in which relief is granted to him by the Court.

- 19.2 Unless arising through his own negligence, default, breach of duty or willful misconduct or willful breach of trust, no Director, officer or employee of the Company shall be liable for
- 19.2.1 loss or expense incurred by the Company through the insufficiency or deficiency of any security in or upon which any of the moneys of the Company are invested;
- 19.2.2 the acts, receipts, neglects or defaults of any other Director, or officer or servant of the Company or for joining in any receipt or other act of conformity;
- 19.2.3 any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom money, securities or effects shall be deposited;
- 19.2.4 any loss or damage occasioned by any error of judgment or oversight on his part; or
- 19.2.5 any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office, or in relation thereto.
- 19.3 The authority of the Company's Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, to indemnify a Director in respect of liability and to purchase insurance to protect the Company or a Director, as set out in sections 78(3), 78(5) and 78(6), is not limited or restricted by this Memorandum of Incorporation.

20. POLICY STEERING COMMITTEE

- 20.1 The Directors representing the Founder Members on the Management Board shall constitute the Policy Steering Committee.
- 20.2 Notwithstanding anything contained in this Memorandum, the Policy Steering Committee shall be entitled, but not obliged, to bar the adoption or implementation of any directive or policy in respect of the governance and business of the Company adopted or sought to be adopted by the Management Board, provided the Policy Steering Committee does so within 3 months of the adoption or proposed adoption of such policy or directive and no policy or directive developed by or for the Company shall be of any effect if

so barred.

- 20.3 The chairman of the Policy Steering Committee shall be elected by the Policy Steering Committee members from amongst their number. The Policy Steering Committee shall determine the period for which the Policy Steering Committee chairman is to hold office.
- 20.4 The Policy Steering Committee may meet for the dispatch of business and may adjourn and otherwise regulate its meetings as the committee members deem fit.
- 20.5 The quorum of committee members of the Policy Steering Committee is 1 person appointed by each of the Founder Members.
- 20.6 A Policy Steering Committee member may at any time convene a meeting of the Policy Steering Committee and the Secretary shall upon the requisition of any one Policy Steering Committee member, convene a meeting of the Policy Steering Committee.
- 20.7 Questions arising at any meeting of the Policy Steering Committee shall be decided by a simple majority of votes. In the case of an equality of votes the chairman of the Policy Steering Committee shall have a second or casting vote.

21. OFFICERS AND COMMITTEES

- 21.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 21.2 The authority of the Company's Board of Directors to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), or to include in any such committee persons who are not Directors, as set out in section 73 (2)(a) is not limited or restricted by this Memorandum of Incorporation.
- 21.3 The authority of a committee appointed by the Company's Board, as set out in section 72 (2)(b) and (c) is limited and restricted to the extent that the powers of the Company are limited by clause 2.

22. DISPUTES

- 22.1 Should any dispute arise between the members of the Company or between a member and the Company in connection with the

interpretation or application of the provisions of this Memorandum or the validity of any documents furnished by the parties pursuant to the provisions of this Memorandum, or any thing or cause related to the Company or the activities of the Company, they will be compelled to resolve the dispute in terms of this clause 21.

22.2 The parties to the dispute shall try to resolve the dispute by negotiation as follows:

22.2.1 One of the parties to the dispute will be entitled to invite the other party or parties in writing to a meeting to be held within 14 days of the date of the invitation, which meeting shall be mediated by a mediator appointed by the Company or the Arbitration Foundation of South Africa (AFSA), as the parties to the dispute may agree.

22.2.2 If the Company is not a party to the dispute, the parties to the dispute shall notify the Company of the meeting.

22.2.3 If this meeting fails to resolve the dispute, the Company or any one of the parties to the dispute will be entitled to call a further meeting aimed at resolving the dispute, which meeting shall be held as soon as possible after the first meeting. The most senior executive officer of each party to the dispute shall attend the further meeting, which meeting shall be mediated by a mediator appointed by the Company or the Arbitration Foundation of Southern Africa, as the parties to the dispute may agree.

22.3 If the dispute is not resolved by such negotiation, the dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation, provided that:

22.3.1 the arbitration proceedings will be held in Johannesburg, South Africa with only the arbitrator and the legal and other representatives of the parties present;

22.3.2 the proceedings will be held in an informal and summary manner in accordance with the formalities and procedures settled by the arbitrator and on the basis that it will not be necessary to observe or carry out the usual formalities of court litigation including procedures, pleadings and discovery or strict rules of evidence, it being the intention that the proceedings will be held and completed as soon as possible; and

22.3.3 the arbitrator will be entitled to determine the dispute on the basis of justice and equity and the decision of the arbitrator will be final and binding on the parties.
