

THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

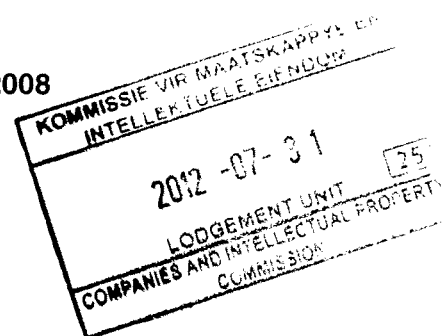
OF

YEBOYETHU LIMITED

A PUBLIC COMPANY

REGISTRATION NUMBER: 2008/014734/06

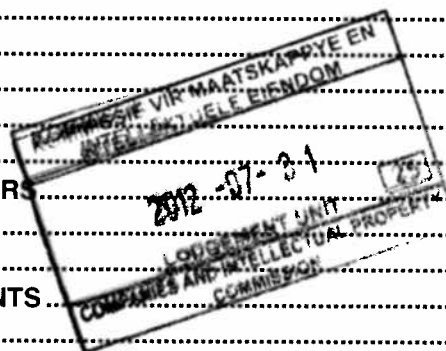
REGISTRATION DATE: 19 June 2008



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SCHEDULE

SCHEDULE 1: N SHARE TERMS

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LODGEMENT UNIT

COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION

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1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "Act" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.1.2 "BEE transaction" means the broad-based black economic empowerment transaction with an aggregate value of R7,500,000,000.00 (seven billion five hundred million rand), in terms of which *inter alia* the company acquired 3.44% (three point four four percent) of the shares in VSA;
- 1.1.3 "board" means the board of directors from time to time of the Company or if there is only one director, then that director;
- 1.1.4 "commission" means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.1.5 "company" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.6 "director" means a member of the board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.7 "electronic communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.8 "ESOP" means the trustees for the time being of the YeboYethu Employee Participation Trust, a trust created by VSA for the benefit of the ESOP participants;
- 1.1.9 "ESOP participants" means "*Participant*" as defined in the ESOP trust deed;
- 1.1.10 "ESOP trust deed" means the deed of trust for ESOP lodged with the Master of the High Court in terms of the laws of South Africa;
- 1.1.11 "IFRS" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from

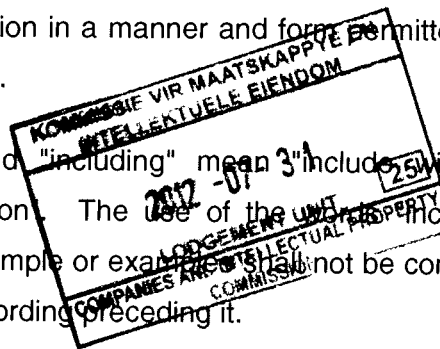
time to time by the Financial Reporting Standards Council established in terms of section 203 of the Act ;

- 1.1.12 "implementation date" means the date upon which the BEE transaction is implemented;
- 1.1.13 "lock-in period" means the "lock-in period" as defined in the Relationship Agreement;
- 1.1.14 "N shares" means compulsorily convertible class "N" shares in the share capital of the company, bearing the rights and privileges as set out in clause 6.1.1.3;
- 1.1.15 "prospectus" means the prospectus containing the offer to the black public (as defined in clause 8.1.10) and black business partners (as defined in clause 8.1.6) to subscribe for shares in the company, made by the company as contemplated in the relationship agreement;
- 1.1.16 "Regulations" means the regulations published in terms of the Act from time to time;
- 1.1.17 "relationship agreement" means the written agreement entitled "*Relationship Agreement*" concluded between Vodacom Group, VSA, Royal Bafokeng Holdings (Proprietary) Limited, Lisinfo 209 Investments (Proprietary) Limited, Thebe Investment Corporation (Proprietary) Limited, Main Street 661 (Proprietary) Limited, ESOP and the company and on or about 20 June 2008;
- 1.1.18 "Republic" means the Republic of South Africa;
- 1.1.19 "securities" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the company;
- 1.1.20 "securities register" means the register contemplated in section 50(1) of the Act and referred to in clause 6.10 hereof;
- 1.1.21 "share" means one of the units into which the proprietary interest in the company is divided, comprising the YeboYethu shares and the N shares;
- 1.1.22 "shareholder" means the holder of a share and who is entered as such in the securities register, subject to the provisions of section 57 of the Act;

- 1.1.23 "Solvency and Liquidity Test" has the meaning attributed thereto in section 4 of the Act;
- 1.1.24 "subscription agreement" means the written subscription agreement concluded between *inter alia* the company and VSA, pursuant to which the company agreed to subscribe for VSA A shares and VSA ordinary shares;
- 1.1.25 "transaction agreements" means the "*Transaction Agreements*" as defined and envisaged in the relationship agreement;
- 1.1.26 "transfer secretary" means Computer Share Investor Services (Proprietary) Limited South Africa, registration number 2004/003647/07, a private company duly incorporated in accordance with the laws of the Republic, or such other transfer secretaries appointed by the company from time to time;
- 1.1.27 "Vodacom Group" means Vodacom Group Limited, registration number 1993/005461/06, a public company duly incorporated in accordance with the laws of the Republic;
- 1.1.28 "VSA" means Vodacom (Proprietary) Limited, registration number 1993/003367/07, a private company duly incorporated in accordance with the laws of the Republic;
- 1.1.29 "VSA A shares" means "A" ordinary shares with a par value of R0.00001 (one thousandth of a cent) each in the share capital of VSA, issued and allotted to the Company in terms of the provisions of the subscription agreement;
- "VSA ordinary shares" means ordinary shares with a par value of R0.00001 (one thousandth of a cent) each in the share capital of VSA, issued and allotted to the company in terms of the provisions of the subscription agreement;
- 1.1.30 "VSA shareholders agreement" means the written agreement entitled "*Shareholders Agreement*" concluded between the shareholders of VSA *inter se*, and between the shareholders of VSA and VSA; and
- 1.1.31 "YeboYethu ordinary shares" means ordinary shares with a par value of R0.00001 (one thousandth of a cent) each in the share capital of the company.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –

- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to the Act shall include reference to the Regulations;
- 1.2.3 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.4 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.2.4.1 a provision of any Shareholders Agreement, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.4.2 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
 - 1.2.4.3 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.5 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.6 an expression which denotes -
 - 1.2.6.1 any gender includes the other genders;
 - 1.2.6.2 a natural person includes a juristic person and *vice versa*; and
 - 1.2.6.3 the singular includes the plural and *vice versa*;
- 1.2.7 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.8 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;

- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –
- 1.3.1 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law, before and after adoption of this Memorandum of Incorporation; and
- 1.3.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or example shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.



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- 1.8 Any reference herein to "this Memorandum of Incorporation" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 JURISTIC PERSONALITY

- 2.1 This Memorandum of Incorporation replaces and supersedes the memorandum and articles of association of the company applicable immediately prior to the filing hereof.
- 2.2 The company is incorporated in accordance with governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the company by this Memorandum of Incorporation in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 2.2.3 the other provisions of this Memorandum of Incorporation.

3 LIMITATION OF LIABILITY

No person shall, solely by reason of being an incorporator, shareholder or director of the company, be liable for any liabilities or obligations of the company.

4 POWERS OF THE COMPANY

- 4.1 Subject to the provisions of clause 4.2, the main object of the company is to carry on the business of (1) acquiring and holding ordinary shares and 'A' ordinary shares in Vodacom (Proprietary) Limited (registration 1993/003367/07) and (2) acquiring and holding interest in Vodacom Group Limited (registration number 19930054/06) and/or any of its subsidiaries and associated companies, for the benefit of shareholders.
- 4.2 The company has all of the legal powers and capacity contemplated in the Act, save to the extent negated, limited, or restricted in this Memorandum of Incorporation.
- 4.3 The legal powers and capacity of the company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Act.

5 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

- 5.1 The company, being a public company, will comply with -
- 5.1.1 the extended accountability provisions set out in Chapter 3 of the Act; and
- 5.1.2 the provisions of Parts B and C of Chapter 5 of the Act, and to the Takeover Regulations in terms of the Act.

6 SHARES

- 6.1 The company is authorised to issue –
- 6.1.1 40,000,000 (forty million) YeboYethu ordinary shares of R0.00001 (one thousandth of a cent) each, of the same class, each of which entitles the holder to –
- 6.1.1.1 vote on any matter to be decided by the shareholders of the company and to 1 (one) vote in the case of a vote by means of a poll;
- 6.1.1.2 participate proportionally in any distribution made by the company; and
- 6.1.1.3 receive proportionally the net assets of the company upon its liquidation; and
- 6.1.2 12,000,000 (twelve million) N shares of R0.00001 (one thousandth of a cent) each, of the same class, each of which ranks *pari passu* with all of the other N shares in all respects and each of which ranks *pari passu* with the YeboYethu ordinary shares in all respects, save as specifically provided otherwise in schedule 1.
- 6.2 The Board may, subject to clause 6.3, resolve to issue shares of the Company at any time, but only within the classes and to the extent that those shares have been authorised by or in terms of this Memorandum of Incorporation.
- 6.3 Notwithstanding the provisions of clause 6.2, any issue of shares, securities convertible into shares, or rights exercisable for shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3) of the Act, require the approval of the shareholders by special resolution if the voting power of the class of shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the shares of that class held by shareholders

immediately before that transaction or series of integrated transactions.

- 6.4 The authorisation and classification of shares, the numbers of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution of the shareholders.
- 6.5 The board shall not have the power to –
- 6.5.1 increase or decrease the number of authorised shares of any class of shares;
or
- 6.5.2 consolidate and reduce the number of the company's issued and authorised shares of any class;or
- 6.5.3 subdivide its shares of any class by increasing the number of its issued and authorised shares of that class without an increase of its capital;or
- 6.5.4 reclassify any classified shares that have been authorised but not issued; or
- 6.5.5 classify any unclassified shares that have been authorised but not issued; or
- 6.5.6 determine the preferences, rights, limitations or other terms of any shares,
and such powers shall only be capable of being exercised by the shareholders by way of special resolution of the shareholders.
- 6.6 Subject to what may be authorised by the Act or by the shareholders, any new ordinary shares which may be issued shall first be offered to existing shareholders in proportion to their shareholdings at the time.
- 6.7 Save to the extent –
- 6.7.1 that any such right is specifically included as one of the rights, preferences or other terms upon which any class of shares is issued; or
- 6.7.2 otherwise provided in this Memorandum of Incorporation,
no shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional shares issued by the company.
- 6.8 Each share issued by the company has associated with it an irrevocable right of the shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share.

- 6.9 Securities of the company are to be issued in certificated or uncertificated form, as shall be determined by the board from time to time.
- 6.10 The company must establish or cause to be established a register of its issued securities in the form prescribed by the Act and the Regulations and maintain such register in accordance with the prescribed standards.
- 6.11 As soon as practicable after issuing any securities the company must enter or cause to be entered in its securities register, in respect of every class of securities it has issued –
- 6.11.1 the total number of those securities that are held in uncertificated form;
 - 6.11.2 with respect to certificated securities –
 - 6.11.2.1 the names and addresses of the persons to whom the securities were issued or transferred;
 - 6.11.2.2 the number of securities issued or transferred to each of them;
 - 6.11.2.3 the number of, and prescribed circumstances relating to, any securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;
 - 6.11.2.4 Each shareholder shall be entitled to 1 (one) certificate for all the shares of a particular class registered in his name, or to several certificates, each for a part of such shareholding. Every share certificate shall specify the number of shares in respect of which it is issued;
 - 6.11.2.5 in the case of securities other than shares as contemplated in section 43 of the Act , the number of those securities issued and outstanding and the names and addresses of the registered owners of the securities and any holders of beneficial interests therein; and
 - 6.11.2.6 any other prescribed information.
- 6.12 The securities register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 6.13 Unless all the shares rank equally for all purposes, the shares, or each class of shares, and any other securities, must be distinguished by an appropriate numbering system.

- 6.14 A certificate evidencing any certificated securities of the company –
- 6.14.1 must state on its face –
- 6.14.1.1 the name of the company;
- 6.14.1.2 the name of the person to whom the securities were issued;
- 6.14.1.3 the number and class of shares and designation of the series, if any, evidenced by that certificate; and
- 6.14.1.4 any restriction on the transfer of the securities evidenced by that certificate;
- 6.14.2 must be signed by 2 (two) persons authorised by the board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means in such manner as the directors shall from time to time determine;
- 6.14.3 is proof that the named security holder owns the securities, in the absence of evidence to the contrary.
- 6.15 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 6.16 If, as contemplated in clause 6.13, all of the shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
- 6.16.1 each certificate issued in respect of those shares must be distinguished by a numbering system; and
- 6.16.2 if the share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the share in succession to be identified,

provided that the failure of any share certificate to satisfy the provisions of clauses 6.14 to 6.16 is not a contravention of the Act and does not invalidate that certificate.

7 TRANSFER OF SECURITIES

- 7.1 The instrument of transfer of any security shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such security until the name of the transferee is entered in the securities Register. The directors may, however, in their discretion dispense with the signature of the transferee in such cases as they deem fit.
- 7.2 Securities transfer tax and other legal costs payable in respect of any transfer of securities pursuant to this Memorandum of Incorporation will be paid by the company to the extent that the company is liable therefore in law, but shall, to that extent, be recoverable from the person acquiring such securities.
- 7.3 Subject to such restrictions as may be applicable (whether by virtue of the preferences, rights, limitations or other terms associated with the securities in question), and particularly to the provisions of this clause 7 and clauses 8 and 9, any shareholder or holder of other securities may transfer all or any of its shares or other securities by instrument in writing in any usual or common form or any other form which the directors may approve.
- 7.4 Every instrument of transfer shall be delivered to the principal place of business of the company, accompanied by –
- 7.4.1 the certificate issued in respect of the securities to be transferred; and/or
- 7.4.2 such other evidence as the company may require to prove the title of the transferor, or his or her right to transfer the securities.
- 7.5 All authorities to sign transfer deeds granted by holders of securities for the purpose of transferring securities which may be lodged, produced or exhibited with or to the company or its registered office shall, as between the company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the company as being in order before the giving and lodging of such notice.
- 7.6 All instruments of transfer, when registered, shall either be retained by the company or disposed of in such manner as the directors shall from time to time

decide. Any instrument of transfer which the directors may decline to register shall (unless the directors shall resolve otherwise) be returned on demand to the person who lodged it.

8 RESTRICTIONS ON SHARES

8.1 In this clause 8, the following terms shall bear the following meanings –

8.1.1 "associates" means -

8.1.1.1 in relation to any individual –

8.1.1.1.1 that individual's immediate family; and/or

8.1.1.1.2 the trustees, acting as such, of any trust of which the individual or any of the individual's immediate family is a beneficiary (whether vested or discretionary); and/or

8.1.1.1.3 any company in whose equity securities the individual or any person or trust as contemplated in clauses 8.1.1.1.1 and 8.1.1.1.2, taken together, are directly or indirectly beneficially interested, or have a conditional, contingent or future entitlement to become beneficially interested, or have a conditional, contingent or future entitlement to become beneficially interested, and that the individual or person or trust as contemplated in clauses 8.1.1.1.1 and 8.1.1.1.2 are, or would on the fulfilment of the condition or the occurrence of the contingency be able to –

8.1.1.1.3.1 exercise or control the exercise of 20% (twenty percent) or more of all the votes exercisable at general meetings on all, or substantially all, matters; or

8.1.1.1.3.2 appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters; and/or

8.1.1.1.4 any close corporation in which the individual and/or any member/s of the individual's immediate family, taken together, are beneficially interested in 20% (twenty percent) or more of the shareholders' interest and/or are able to exercise or control the exercise of 20% (twenty percent) or more of all the votes exercisable at shareholders' meetings on all, or substantially all, matters;

8.1.1.2 in relation to any company –

- 8.1.1.2.1 any other company that is its subsidiary, holding company or subsidiary of its holding company; and/or
- 8.1.1.2.2 any company whose directors are accustomed to act in accordance with the company's directions or instructions; and/or
- 8.1.1.2.3 any company in the capital of which such company, and any other company as contemplated in articles 8.1.1.2.1 and 8.1.1.2.2 under this component in relation to companies, taken together, is or would on the fulfilment of a condition or the occurrence of a contingency be, interested in the manner described above;

"BEE" means black economic empowerment as contemplated in the BBBEE Act and the Codes;

- 8.1.2 "BBBEE Act" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended or substituted from time to time, and any regulations promulgated thereunder;
- 8.1.3 "BEE Controlled Company" has the meaning assigned to it in the Codes from time to time;
- 8.1.4 "BEE Owned Company" has the meaning assigned to it in the Codes from time to time;
- 8.1.5 "BEE Status" means in relation to a Black Group, a Black Entity's percentage of Black ownership or Black membership or Black beneficiaries, as the case may be;
- 8.1.6 "Black Business Partners" means creditworthy Black Companies or Black Entities that form part of VSA's distribution network and that have a longstanding relationship with VSA and who have been invited by VSA, in terms of the BEE transaction, to participate in the offer for shares in the company pursuant to the prospectus, with special preference given to Black Groups who do business exclusively with VSA;
- 8.1.7 "Black Company" means a BEE Owned Company and a BEE Controlled Company;

"Black Entities" means a vesting trust which qualifies for recognition under the Codes, Broad-Based ownership scheme (as contemplated in the Codes), a close corporation, or an unincorporated entity or association, including a partnership, joint venture, syndicate or "Stokvel" as may be determined by

VSA in its sole discretion as an entity or association which may enable VSA to claim BEE scorecard points pursuant to the Codes;

- 8.1.8 "Black Groups" means Black Companies, Black Entities and Black Business Partners;
- 8.1.9 "Black People" or "Black Person" have the meaning ascribed to it under Code 000 of the Codes, being Africans, Coloureds and Indians who are natural persons and who are South African citizens by -
- 8.1.9.1 birth or descent, or
- 8.1.9.2 naturalisation occurring –
- 8.1.9.2.1 prior to 27 April 1994, being the commencement date of the Constitution of the Republic of 1993; or
- 8.1.9.2.2 after that date but who would have qualified for naturalisation prior to that date if it were not for the apartheid policies in place in the Republic,
- and "Black" shall be construed accordingly;
- 8.1.10 "Black Public" individually and collectively (as the context may dictate), Black People and Black Groups;
- 8.1.11 "Codes" means the Department of Trade and Industry's Broad-Based BEE Codes of Good Practice issued in terms of the BBBEE Act;
- 8.1.12 "dispose" means sell, dispose of, alienate, cede, transfer, part with deal with, lend, or grant any option or present or future right to acquire or otherwise alienate or dispose of or enter into any agreement, arrangement or commitment to achieve any of the aforesaid and "disposal" shall have a corresponding meaning;
- 8.1.13 "encumbrance" means any mortgage, charge, pledge, hypothecation, lien, cession or assignment by way of security, option, right to acquire, right of pre-emption, preferential right or arrangement, right of retention or agreement to confer security or any restriction or other arrangement whatsoever which has the same or a similar effect to the granting of security and "encumber" shall be construed accordingly;
- 8.1.14 "first five years" means a period commencing on the implementation date, and expiring at the earlier of the fifth anniversary of the implementation date, or the

expiry of the lock-in period;

- 8.1.15 "immediate family" means an individual's spouse and children; and
- 8.1.16 "second five years" means if the lock-in period has not yet expired, a period commencing on expiry of the first five years and expiring on expiry of the lock-in period.
- 8.2 Subject to clauses 8.3, 8.4 and 9 but notwithstanding any other contrary provisions contained in this Memorandum of Incorporation, all the Shares will be subject to the restrictions that –
- 8.2.1 during the lock-in period, all share certificates will be deposited with the transfer secretary;
- 8.2.2 only Black People, Black Groups, ESOP, ESOP Participants, RBH-Co and Thebe-Co shall be eligible to be holders thereof;
- 8.2.3 Black Groups must maintain the same or a higher BEE Status than they had at the time of their application for shares in terms of the prospectus;
- 8.2.4 no YeboYethu ordinary shares shall be disposed of during the first five years, and no N shares shall be disposed of during the facilitation period (as defined in clause 1.4 of schedule 1);
- 8.2.5 no YeboYethu ordinary shares shall be encumbered during the lock-in period, and no N shares shall be encumbered during the facilitation period (as defined in clause 1.4 of schedule 1);
- 8.2.6 during the second five years, YeboYethu ordinary shares (including N shares converted into YeboYethu ordinary shares on the ESOP conversion date (as defined in clause 1.3 of schedule 1) may only be disposed of to Black People or Black Groups having the same or a higher BEE Status as such shareholder. Any proposed disposal by a shareholder of his/her/its/their YeboYethu ordinary shares shall be –
- 8.2.6.1 considered by the share transfer committee to be established by VSA to verify the shareholder's BEE Status, if applicable; and
- 8.2.6.2 subject to the prior written approval of VSA;
- 8.2.7 no shareholder shall be entitled at any time to hold less than 100 (one hundred) YeboYethu ordinary shares; and

- 8.2.8 no shareholder may individually or together with its associate/s hold more than 1,440,000 (one million four hundred and forty thousand) YeboYethu ordinary shares (except for ESOP and RBH-Co and Thebe-Co to the extent provided for in the transaction agreements).
- 8.3 Notwithstanding any contrary provision contained in this Memorandum of Incorporation, in the event of –
- 8.3.1 the death of a shareholder who is a natural person during the lock-in period, the executor of the deceased shareholder's estate shall only be entitled to dispose of the deceased shareholder's YeboYethu ordinary shares to such shareholder's heir or legatee provided that the heir or legatee has the same or a higher BEE Status, or to a Black Person or Black Group with the same or a higher BEE Status, than the deceased shareholder;
- 8.3.2 the involuntary sequestration (whether provisional or final) of a shareholder who is a natural person during the lock-in period, the trustee of the shareholder's insolvent estate shall only be entitled to dispose of the YeboYethu ordinary shares to a Black Person or Black Group with the same or a higher BEE Status than the sequestered shareholder;
- 8.3.3 the death of a shareholder, member, participant or beneficiary of a Black Group during the lock-in period, and such death results in the Black Group having a lower BEE Status, the Black Group shall be entitled to rectify such lower BEE Status to the same or a higher BEE Status than the Black Group had prior to the death of the shareholder, member, participant or beneficiary concerned;
- 8.3.4 the liquidation of a Black Group, other than a voluntary liquidation, in terms of section 79(1)(a) of the Act, during the lock-in period, the YeboYethu ordinary shares may be disposed of to a Black Person or Black Group having the same or a higher BEE Status than the Black Group in liquidation.
- 8.4 The executor, trustee, or liquidator referred to in clauses 8.3.1, 8.3.2 or 8.3.4, as the case may be, shall be entitled to dispose of the YeboYethu ordinary shares in accordance with the provisions of clause 8.3, and the Black Group referred to in clause 8.3.3 shall be entitled to rectify its BEE Status, within 6 (six) months after the death, sequestration or liquidation order, as the case may be, failing which the YeboYethu ordinary shares shall be deemed to have been offered to the company for repurchase in accordance with the provisions of clause 9. Should the company not accept the Offer (as defined in clause 9.1.5) within the

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Offer Period (as defined in clause 9.1.9) in terms of clause 9, the executor, trustee, or liquidator, as the case may be, shall again be entitled to dispose of the YeboYethu ordinary shares in accordance with the provisions of clause 8.3.

9 DEEMED OFFER

9.1 In this clause 9, unless inconsistent with or otherwise indicated by the context, the following terms shall bear the following meanings -

- 9.1.1 "BEE Principles" means the "*BEE Principles*" applicable to the Company, as defined and set out in the relationship agreement;
- 9.1.2 "Death Event" means the occurrence of an event set out in clause 8.3.1 or 7.3.3, being the death of a shareholder who is a natural person or the death of a shareholder, member, participant or beneficiary of a Black Group;
- 9.1.3 "Insolvency Event" means the occurrence of an event set out in clause 8.3.2 or 8.3.4, being the involuntary sequestration of a shareholder who is a natural person, or the involuntary liquidation of a Black Group;
- 9.1.4 "Interim Market Value" means the valuation per YeboYethu ordinary share as determined annually by an accounting firm or merchant bank appointed by VSA;
- 9.1.5 "Offer" means the deemed offer of the Offer Shares by the Offeror to the company in terms of clause 9.2;
- 9.1.6 "Offer Date" means the day on which the relevant event contemplated in clauses 9.2.1 to 9.2.6 occurs;
- 9.1.7 "Offer Shares" means, in relation to an event contemplated in clauses 9.2.1 to 9.2.5, all the YeboYethu ordinary shares of the Offeror; and clause 9.2.6, all the YeboYethu ordinary shares held by the Offeror and his associates which are in excess of 1,440,000 (one million four hundred and forty thousand) YeboYethu ordinary shares;
- 9.1.8 "Offeror" means the relevant shareholder (or his/her/its estate) in respect of which an event contemplated in clauses 9.2.1 to 9.2.6 has occurred; and
- 9.1.9 "Offer Period" means the period commencing on the Offer Date and lapsing 60 (sixty) days after the company becomes aware that an event contemplated in clauses 9.2.1 to 9.2.6 has occurred.

9.2 If –

- 9.2.1 a Death Event occurs, and the executor of the deceased estate fails to dispose of the Offer Shares, or the Black Group fails to rectify its lower BEE Status to the same or higher BEE Status than it had prior to the Death Event concerned, within 6 (six) months after the occurrence of such Death Event in accordance with the applicable provisions of clause 8.3;
- 9.2.2 an Insolvency Event occurs, and the trustee of the insolvent estate or liquidator of the company in liquidation fails to dispose of the Offer Shares within 6 (six) months after the occurrence of such Insolvency Event in accordance with the applicable provisions of clause 8.3;
- 9.2.3 during the lock-in-period, a shareholder is in breach of a BEE Principle;
- 9.2.4 a shareholder fails to comply within this Memorandum of Incorporation;
- 9.2.5 a shareholder makes a false declaration in respect of his/her/its BEE Status in the application for shares in terms of the prospectus; or
- 9.2.6 at any time a shareholder (save for ESOP, RBH-Co and Thebe Co) individually or together with its Associate/s hold more than 1,440,000 (one million four hundred and forty thousand) YeboYethu ordinary shares in the company,

then the Offeror shall be deemed to have made an offer in respect of the Offer Shares on the day immediately preceding the Offer Date, based on the terms and conditions recorded in this clause 9.

- 9.3 If any shareholder becomes aware of the fact that an event contemplated in clause 9.2 has occurred in respect of another shareholder, such shareholder shall be obliged to bring that fact to the attention of the company.
- 9.4 The Offer shall be open for acceptance by the company for the duration of the Offer Period, and may be accepted by written notice to that effect to the Offeror.
- 9.5 In the event of the company accepting the offer within the Offer Period, a share purchase agreement shall be deemed to have been concluded, in terms of which the company purchases or repurchases from the Offeror the Offer Shares, on the following terms and conditions -
 - 9.5.1 the Offer Shares shall be acquired with effect from the Offer Date;

- 9.5.2 if an Offer arises -
- 9.5.2.1 in terms of clause 9.2.1, the purchase price per Offer Share shall be equal to 90% (ninety percent) of the Interim Market Value thereof;
- 9.5.2.2 in terms of clause 9.2.2, the purchase price per Offer Share shall be equal to the Interim Market Value thereof;
- 9.5.2.3 in terms of clauses 9.2.3 to 9.2.6, the purchase price per Offer Share shall be equal to 60% (sixty percent) of the Interim Market Value thereof;
- 9.5.3 the purchase price shall be payable against delivery of the relevant documents of title of the Offer Shares to the company; and
- 9.5.4 the Offeror shall be deemed to warrant that it –
- 9.5.4.1 is the lawful owner and holder of the Offer Shares; and
- 9.5.4.2 has not encumbered, sold, transferred or granted any right to a third party in respect of the Offer Shares.

10 TRANSMISSION OF SECURITIES

- 10.1 Subject to the provisions of this Memorandum of Incorporation dealing with restrictions on the transfer of securities, the executor of the estate of a deceased sole holder of a security shall be the only person recognised by the company as having any title to the security. In the case of a security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of any deceased shareholder shall be the only person recognised by the company as having any title to the security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased shareholder or holder of other securities ("security holder") of the company, or of a security holder whose estate has been sequestered or of a security holder who is otherwise under a disability or as the liquidator of any body corporate which is a security holder of the company, shall be entered in the securities register of the company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a security holder of the company.

- 10.2 Subject to the provisions of clause 10.1, any person becoming entitled to any security by virtue of the death of a security holder shall, upon producing such evidence that he has such title or rights as the directors think sufficient, have the right either to have such security transferred to himself or to make such other transfer of the security as such security holder could have made: provided that in respect of a transfer other than to himself –
- 10.2.1 the directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such security by such security holder before his death; and
- 10.2.2 a person becoming entitled to any security shall not, unless and until he is himself registered as a security holder in respect of such security, be entitled to exercise any voting or other right attaching to such security or any other right relating to meetings of the company.

11 DEBT INSTRUMENTS

The board shall not, save to the extent authorised by the shareholders by means of ordinary resolution –

- 11.1 authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Act; and
- 11.2 grant special privileges associated with any debt instruments to be issued by the company, as set out in section 43(3) of the Act,

provided that the board is not empowered to offer, or to authorise the company to offer, any debt instruments of the company to the public.

12 CAPITALISATION SHARES

The board shall not, save to the extent authorised by the shareholders by means of ordinary resolution, have the power or authority to –

- 12.1 approve the issuing of any authorised shares as capitalisation shares; or
- 12.2 issue shares of one class as capitalisation shares in respect of shares of another class; or
- 12.3 resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47 of the Act.

13 **BENEFICIAL INTERESTS IN SECURITIES**

The company's issued securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1) of the Act.

14 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

14.1 In accordance with and subject to the provisions of section 48 of the Act and subject to the further provisions of this clause 14 –

14.1.1 the board may determine that the company acquire a number of its own shares; and

14.1.2 the board of any subsidiary of the company may determine that such subsidiary acquire shares, but –

14.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued shares of any class may be held by, or for the benefit of, all of the subsidiaries of the company, taken together; and

14.1.2.2 no voting rights attached to those shares may be exercised while the shares are held by that subsidiary and it remains a subsidiary of the company.

14.2 Any decision by the company to acquire its own shares must satisfy the requirements of section 46 of the Act and, accordingly, the company may not acquire its own shares unless –

14.2.1 the acquisition –

14.2.1.1 is pursuant to an existing legal obligation of the company, or a court order; or

14.2.1.2 the board, by resolution, has authorised the acquisition;

14.2.2 it reasonably appears that the company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition; and

14.2.3 the board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition.

- 14.3 A decision of the board referred to in clause 14.1.1 –
- 14.3.1 must be approved by a special resolution of the shareholders if any shares are to be acquired by the company from a director or prescribed officer of the company, or a person related to a director or prescribed officer of the company; and
- 14.3.2 is subject to the requirements of sections 114 and 115 of the Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the company of more than 5% (five percent) of the issued shares of any particular class of the company's shares.
- 14.4 Notwithstanding any other provision of this Memorandum of Incorporation, the company may not acquire its own shares, and no subsidiary of the company may acquire shares of the company if, as a result of that acquisition, there would no longer be any shares of the company in issue other than –
- 14.4.1 shares held by one or more subsidiaries of the company; or
- 14.4.2 convertible or redeemable shares.

15 **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

- 15.1 The board may set a record date for the purpose of determining which shareholders are entitled to –
- 15.1.1 receive notice of a shareholders' meeting;
- 15.1.2 participate in and vote at a shareholders' meeting;
- 15.1.3 decide any matter by written consent or by electronic communication;
- 15.1.4 receive a distribution; or
- 15.1.5 be allotted or exercise other rights.
- 15.2 A record date determined by the board –
- 15.2.1 may not be earlier than the date on which the record date is determined or more than 10 (ten) business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and
- 15.2.2 must be published to the shareholders in a manner that satisfies any prescribed requirements.

15.3 If, at any time, the board fails to determine a record date for any action or event, the record date shall be –

15.3.1 in the case of a meeting, the latest date by which the company is required to give shareholders notice of that meeting; or

15.3.2 in any other case, the date of the relevant action or event.

16 SHAREHOLDERS' MEETINGS

16.1 The board, or any prescribed officer of the company authorised by the board, is entitled to call a shareholders' meeting at any time.

16.2 Subject to the provisions of section 60 of the Act dealing with the passing of resolutions of shareholders otherwise than at a meeting of shareholders, the company shall hold a shareholders' meeting –

16.2.1 at any time that the board is required by the Act or this Memorandum of Incorporation to refer a matter to shareholders for decision; or

16.2.2 whenever required in terms of the Act to fill a vacancy on the board; or

16.2.3 when required in terms of clause 16.3 or by any other provision of this Memorandum of Incorporation.

16.3 The board shall call a meeting of shareholders if 1 (one) or more written and signed demands calling for such a meeting are delivered to the company and –

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

16.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

16.4 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the company that may be convened from time to time, the company shall convene an annual general meeting of its shareholders once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, provided that any such annual general meeting shall be capable of being held by electronic communication in accordance with the further provisions of this Memorandum of Incorporation.

- 16.5 Subject to the provisions of the Act, any such annual general meeting –
- 16.5.1 shall be capable of being held by electronic communication in accordance with the further provisions of this Memorandum of Incorporation; and
- 16.5.2 shall not be capable of being held in accordance with the provisions of section 60 of the Act set out in clause 21.
- 16.6 Each annual general meeting of the company contemplated in clause 16.4 shall provide for at least the following business to be transacted –
- 16.6.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the company and an audit committee report;
- 16.6.2 the election of directors, to the extent required by the Act or by this Memorandum of Incorporation;
- 16.6.3 the appointment of an auditor and an audit committee for the following financial year;
- 16.6.4 any matters raised by the shareholders, with or without advance notice to the company.
- 16.7 Save as otherwise provided herein, the company is not required to hold any other shareholders' meetings other than those specifically required by the Act.
- 16.8 The board may determine the location of any shareholders' meeting, and the company may hold any such meeting in the Republic or in any foreign country, and the authority of the board and the company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 16.9 The minimum number of days for the company to deliver a notice of a shareholders' meeting to the shareholders as required by section 62 is as provided for in section 62(1) of the Act and, accordingly, any such notice shall be delivered to all shareholders as of the record date for the meeting at least 15 (fifteen) business days before the meeting is to begin.
- 16.10 The quorum for a shareholders meeting to begin or for a matter to be considered, shall be at least 3 (three) shareholders entitled to attend and vote and present in person. In addition –

- 16.10.1 a shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 16.10.2 a matter to be decided at a shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.
- 16.11 Save as provided to the contrary in this Memorandum of Incorporation, the time periods specified in sections 64(4) and (5) of the Act apply to the company without variation. If within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of clause 16.10 –
- 16.11.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;
- 16.11.2 for consideration of a particular matter to begin have not been satisfied –
- 16.11.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
- 16.11.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,
- provided that the person intended to chair a meeting that cannot begin due to the operation of clause 16.10 may extend the 15 (fifteen) minute limit allowed in clause 16.11 for a reasonable period on the grounds that –
- 16.11.3 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or
- 16.11.4 one or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders, together with others in attendance, would satisfy the requirements of clause 16.10.

- 16.12 The accidental omission to give notice of any meeting to any particular shareholder or shareholders shall not invalidate any resolution passed at any such meeting.
- 16.13 Where a meeting has been adjourned, the company shall, upon a date not later than 3 (three) days after the adjournment, publish in a newspaper circulating in the province where the registered office of the company is situate, or send to the shareholders by registered post, a notice stating -
- 16.13.1 the date, time and place to which the meeting has been adjourned;
- 16.13.2 the matter before the meeting when it was adjourned; and
- 16.13.3 the ground for the adjournment.
- 16.14 If at the time appointed in terms of clause 16.11 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 16.10 have not been satisfied, the shareholders present in person or by proxy will be deemed to constitute a quorum.
- 16.15 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.
- 16.16 The maximum period allowable for an adjournment of a shareholders' meeting is as set out in section 64(12) of the Act, without variation.
- 16.17 The chairman, if any, of the board, or, in his absence, the deputy chairman (if any), shall preside as chairman at every shareholder's meeting.
- 16.18 If there is no such chairman, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the directors present shall choose 1 (one) of their number to be chairman. If no director is willing to act as chairman or if no director is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairman of the meeting.
- 16.19 Voting shall only be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of shareholders.

16.20 The chairman of a shareholders' meeting may -

16.20.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;

16.20.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

16.21 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless -

16.21.1 it is brought to the attention of the chairman at the meeting; and

16.21.2 in the opinion of the chairman of the meeting, it is of sufficient magnitude to vitiate the resolution.

16.22 Any objection to the admissibility of any vote shall be raised -

16.22.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

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

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

16.23 Even if he is not a shareholder -

16.23.1 any director; or

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

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

17 SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION

- 17.1 The company may conduct a shareholders' meeting entirely by electronic communication or provide for participation in a meeting by electronic communication, as set out in section 63 of the Act, and the power of the company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly, one or more shareholders, or proxies for shareholders, may participate by electronic communication in all or part of any shareholders' meeting that is being held in person, so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 17.2 Any notice of any meeting of shareholders at which it will be possible for shareholders to participate by way of electronic communication shall inform shareholders of the ability to so participate and shall provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the shareholder or proxy concerned.
- 17.3 Notwithstanding anything to the contrary contained in this clause 17, the notice referred to in clause 17.2 may, *inter alia*, provide that those shareholders who intend to participate in a meeting by way of electronic communication shall be required to deliver their proxies in the manner, at the place and before the time, prescribed in the applicable notice.

18 VOTES OF SHAREHOLDERS

- 18.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with this Memorandum of Incorporation, at a meeting of the company –
- 18.1.1 any person who is present at the meeting, whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the securities held by that shareholder; and
- 18.1.2 on a poll any person who is present at the meeting, whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the securities held by that shareholder.

- 18.2 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of shareholders if a demand is made for such a vote by –
- 18.2.1 at least 5 (five) persons having the right to vote on that matter, either as shareholders or as proxies representing shareholders; or
- 18.2.2 a person who is, or persons who together are, entitled, as shareholders or proxies representing shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 18.2.3 the chairman of the meeting.
- 18.3 At any meeting of the company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 18.2, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 18.4 If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each shareholder is entitled.
- 18.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 18.6 A poll demanded on the election of a chairman (as contemplated in clause 16.18) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 18.7 Where there are joint registered holders of any share, any 1 (one) of such persons may exercise all of the voting rights attached to that share at any

meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the securities register in respect of such share shall alone be entitled to vote in respect thereof.

The board of any company or the controlling body of any other entity or person that holds any securities of the company may authorise any person to act as its representative at any meeting of shareholders of the company, in which event the following provisions will apply –

- 18.7.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of shares; and
- 18.7.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairman or secretary thereof, with the company before the commencement of any shareholders' meeting at which such person intends to exercise any rights of such shareholder, unless excused from doing so by the chairman of such meeting.

19 PROXIES AND REPRESENTATIVES

19.1 Any shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a shareholder, as a proxy to –

- 19.1.1 participate in, and speak and vote at, a shareholders' meeting on behalf of that shareholder; or
- 19.1.2 give or withhold written consent on behalf of that shareholder to a decision contemplated in section 60 of the Act,

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

19.2 A proxy appointment –

- 19.2.1 must be in writing, dated and signed by the shareholder; and
- 19.2.2 remains valid for –

- 19.2.2.1 1 (one) year after the date on which it was signed; or
- 19.2.2.2 any longer or shorter period expressly set out in the appointment,
unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.
- 19.3 The holder of a power of attorney or other written authority from a shareholder may, if so authorised thereby, represent such shareholder at any meeting of the company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the company at least 48 (forty eight) hours before such holder exercises any rights of the shareholder at a shareholders' meeting.
- 19.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –
- 19.4.1 a shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a) of the Act ("concurrent proxies"), provided that the instrument appointing such concurrent proxies clearly states the order in which the votes of the concurrent proxies are to take precedence in the event that both or all of the concurrent proxies are present, and vote, at the meeting concerned;
- 19.4.2 a shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b) of the Act;
- 19.4.3 a shareholder or his proxy must deliver to the company a copy of the instrument appointing a proxy not later than 48(forty eight) hours before the commencement of the meeting at which the proxy intends to exercise that shareholder's rights, provided that the chairman of the meeting may, in his discretion, accept proxies that have been delivered after the expiry of the aforementioned period up until the time of commencement of the meeting; and
- 19.4.4 unless the instrument appointing a proxy provides otherwise, a shareholder's proxy may decide, without direction from the shareholder, whether to exercise or abstain from exercising any voting right of the shareholder, as set out in section 58(7) of the Act,

and none of such rights or powers are limited, restricted or varied by this

Memorandum of Incorporation.

- 19.5 Every instrument of proxy shall be in such form as the directors may approve from time to time.

20 SHAREHOLDERS' RESOLUTIONS

- 20.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of shareholders exercised on the resolution, as provided in section 65(7) of the Act.
- 20.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9) of the Act.
- 20.3 No matters, except those matters set out in section 65(11) of the Act and any other matter required by the Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution adopted at a shareholders' meeting of the company.
- 20.4 In the event that any shareholder abstains from voting in respect of any resolution, such shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

21 SHAREHOLDERS ACTING OTHER THAN AT A MEETING

- 21.1 In accordance with the provisions of section 60, a resolution that could be voted on at a shareholders' meeting (including in respect of the election of directors) may instead be –
- 21.1.1 submitted by the board for consideration to the shareholders entitled to exercise the voting rights in relation to the resolution; and
- 21.1.2 voted on in writing by such shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.
- 21.2 A resolution contemplated in clause 21.1 –
- 21.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders' meeting; and

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

Within 10 (ten) business days after adopting a resolution, or conducting an election of directors in terms of the provisions of this clause 21, the company shall deliver a statement describing the results of the vote, consent process, or election to every shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a director, as the case may be.

22 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

- 22.1 The board must comprise at least 5 (five) directors and not more than 7 (seven) directors, provided that the shareholders shall be entitled to appoint such number of additional directors, if any, that the company must have to satisfy any requirement in terms of the Act.
- 22.2 Notwithstanding any contrary provisions contained in this Memorandum of Incorporation, Vodacom Group, shall from time to time be entitled to nominate and appoint 1 (one) director to the board by written notice to that effect to the company, and to remove any director nominated and appointed by it and to nominate and appoint a director to replace any such director who ceases for any reason to be a director, and such director shall not be taken into account in determining the directors to retire by rotation. In any election of directors, the shareholders shall vote in such a manner as to procure the appointment or removal of the aforementioned director.
- 22.3 Subject to the provisions of clause 22.2, the directors shall be elected in terms of section 68(1) of the Act by the persons entitled to exercise voting rights in such an election, being the shareholders of the company and the holders of any other securities of the company to the extent that the terms on which such securities were issued confer such rights.
- 22.4 The directors shall nominate and appoint an independent non-executive director as chairman of the company.
- 22.5 All directors shall be elected by an ordinary resolution of the shareholders at a general or annual general meeting of the company and no appointment of a director in accordance with a resolution passed in terms of section 60 of the Act shall be competent.

Every person holding office as a director, prescribed officer, company secretary or auditor of the company immediately before the effective date will,

as contemplated in item 7(1) of Schedule 5 to the Act, continue to hold that office.

22.6 In any election of directors –

22.6.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board have been filled; and

22.6.2 in each vote to fill a vacancy –

22.6.2.1 each vote entitled to be exercised may be exercised once; and

22.6.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate,

provided only that, in the event that the company only has 1 (one) shareholder, the above provisions of this clause 22.6 will not apply and the election of directors shall take place in such manner as the shareholder shall determine.

22.7 The company shall only have elected directors and there shall be no appointed or *ex officio* directors as contemplated in section 66(4) of the Act.

22.8 Apart from satisfying the qualification and eligibility requirements set out in section 69 of the Act, a person need not satisfy any further eligibility requirements or qualifications to become or remain a director or a prescribed officer of the company.

22.9 The elected directors shall rotate in accordance with the following provisions of this clause 22.9 –

22.9.1 at the general meeting of the company contemplated in clause 16.4 all the elected directors shall retire from office, and at each subsequent general meeting referred to in clause 16.4 $\frac{1}{3}$ (one third) of the elected directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to $\frac{1}{3}$ (one third), but not less than $\frac{1}{3}$ rd $\frac{1}{3}$ (one third), shall retire from office, provided that if an elected director is appointed as managing director or as an employee of the company in any other capacity, the contract under which he is appointed may provide that he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of directors;

- 22.9.2 the elected directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 22.9.3 a retiring director shall be eligible for re-election;
- 22.9.4 the company, at the general meeting at which a director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto;
- 22.9.5 if at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 16.11 to 16.13 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.
- 22.10 Subject to the provisions of clause 22.2, no person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of a director at any meeting of shareholders, unless -
- 22.10.1 at least 7 (seven) clear days before the day appointed for the meeting, there shall have been delivered at the registered office of the company an original written and signed notice or notices by at least 100 (one hundred) shareholders setting out the shareholders' intention to propose a specific person for election as director;
- 22.10.2 anyone of these shareholders may also be the proposed director duly qualified to be present and to vote at the meeting for which such notice is given; and
- 22.10.3 notice in writing by the proposed person of his willingness to be elected accompanies such notice or notices (except where one of the proposers is the same person as the proposed).
- 22.11 Notwithstanding any contrary provisions contained in the articles, a director shall vacate his office at the close of the annual general meeting of the company relating to the financial year in which the director reaches the age of 70 (seventy) years.

22.12 The board has the power to –

22.12.1 fill any vacancy on the board on a temporary basis, as set out in section 68(3) (and subject to section 70) of the Act; and

22.12.2 exercise all of the powers and perform any of the functions of the company, as set out in section 66(1) of the Act,

and the powers of the board in this regard are not limited or restricted by this Memorandum of Incorporation.

22.13 The directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the directors may from time to time think fit. Any such appointment may, if the directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the directors think fit. Any such attorneys or agents as aforesaid may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

22.14 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the directors shall from time to time determine.

22.15 All acts performed by the directors or by a committee of directors or by any person acting as a director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or member of such committee.

- 22.16 The directors in office may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum number fixed in accordance with this Memorandum of Incorporation, they may act only for the purpose of filling vacancies in their body in terms of section 68(3) of the Act or of summoning general meetings of the company, but not for any other purpose.
- 22.17 A director may hold any other office or place of profit under the company (except that of auditor) or any subsidiary of the company in conjunction with the office of director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise as a disinterested quorum of the directors may determine.
- 22.18 A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.
- 22.19 Each director and each alternate director, prescribed officer and member of any committee of the board (whether or not such latter persons are also members of the board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) has a personal financial interest in any matter to be considered by the board.

23 EMPLOYMENT AND REMOVAL OF DIRECTORS

- 23.1 Subject to the provisions of the Act, the company may by ordinary resolution remove any director before the expiration of his period of office and may by ordinary resolution elect another person in his stead. The person so elected shall hold office during such time only as the director in whose place he is elected would have held office.
- 23.2 A director may, before the expiration of his period of office, be removed from office by a resolution signed by a majority of the other directors.

24 DISQUALIFICATION OF DIRECTORS

Without derogating from the provisions of section 69 of the Act, a director shall cease to hold office as such -

- 24.1 if he becomes insolvent, or assigns his estate for the benefit of his creditors or suspends payment or files a petition for the liquidation of his affairs, or compounds with his creditors; or
- 24.2 if his employment contract with the company is terminated; or
- 24.3 if he becomes of unsound mind; or
- 24.4 if he is absent from meetings of the directors for 6 (six) consecutive months without leave of the directors and is not represented at any meetings held during such 6 (six) consecutive months by an alternate director, and the directors resolve that the office be vacated, provided that the directors shall have power to grant any director leave of absence for any or an indefinite period; or
- 24.5 if he is removed under clause 23.1 or clause 23.2, or
- 24.6 if he is given notice, signed by shareholders holding in the aggregate more than 50% (fifty percent) of the total voting rights on a poll of all the members then entitled to vote on a poll at a general meeting, of the termination of his appointment; or
- 24.7 if he resigns his office by notice in writing to the company; or
- 24.8 if he shall pursuant to the provisions of the Act be disqualified or cease to hold office or be prohibited from acting as director.

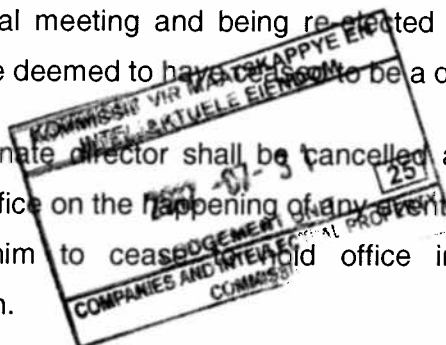
25 ROTATION OF DIRECTORS

- 25.1 At each annual general meeting referred to in clause 16.4, $\frac{1}{3}$ (one third) of the directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to one third, but not less than one third, shall retire from office.
- 25.2 The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.
- 25.3 A retiring director shall be eligible for re-election. No person other than a director retiring at the meeting shall, unless recommended by the directors for election in terms of clause 25.6, be eligible for election to the office of director at any general meeting unless, there shall have been given to the secretary notice in writing –

- 25.3.1 in respect of the annual general meeting, within the first 2 (two) months after the year end of the company; and
- 25.3.2 in respect of any other meeting, not less than 6 (six) days nor more than 14 (fourteen) days before the day appointed for the meeting,
- by one shareholder holding not less than 10% (ten percent) of the issued shares of the intention of such shareholder to propose such person for election and also notice in writing signed by the person to be proposed of his willingness to be elected, it being recorded that it is the intention that the period to be allowed before the date of the general meeting for the nomination of a new director must be such to give sufficient time, after the receipt of the notice, for nominations to reach the office from any part of the Republic.
- 25.4 The company, at the general meeting at which a director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with clause 21.
- 25.5 If at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 16.11 to 16.13 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.
- 25.6 The board shall, through its nomination committee if such committee has been constituted in terms of clause 31, provide the shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring director is proposed, as to which retiring directors are eligible for re-election, taking into account that director's past performance and contribution. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the director is to be proposed to allow nominations to reach the company's office from any part in the Republic.
- 25.7 No director shall be appointed for life or for an indefinite period.

26 ALTERNATE DIRECTORS

- 26.1 Each director shall have the power to appoint a person to act as alternate director in his place ("alternate director"), and at his discretion to remove such alternate director, and to appoint another in his stead, provided that the appointment of such alternate director shall be made in writing and approved by the directors; and on such appointment being made and approved, the alternate director shall in all respects be subject to the terms and conditions existing with reference to the other directors of the company. An alternate director shall be entitled to act at all meetings and in all proceedings in which, and on all occasions when, the director who appointed him shall not act himself.
- 26.2 An alternate director whilst acting in the place of the director who appointed him, shall exercise and discharge all the duties and functions of the director he represents. 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 in writing to the secretary that the alternate director representing him shall have ceased to do so. A director retiring at any annual general meeting and being re-elected shall not, for the purposes of this clause 26, be deemed to have ceased to be a director.
- 26.3 The appointment of an alternate director shall be cancelled and the alternate director shall cease to hold office on the happening of any event which, if he were a director, would cause him to cease to hold office in terms of this Memorandum of Incorporation.
- 26.4 In the event of the appointment of an alternate director being cancelled or upon such alternate director's resignation during the absence or inability to act of the director whom he represents, the vacancy so arising shall be filled by the Chairman of the directors who shall appoint a person to fill such vacancy subject to the approval of the board.
- 26.5 A person may be appointed as an alternate director to more than 1 (one) director and where a person is an alternate director to more than one director, or where an alternate director is a director, he shall have a separate vote, on behalf of each director he is representing, in addition to his own vote, if any.



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27 POWERS OF THE DIRECTORS

27.1 The board has the power to –

27.1.1 fill any vacancy on the board on a temporary basis, as set out in section 68(3) of the Act, provided that such appointment must be confirmed by the shareholders, in accordance with clause 22.5, at the next annual general meeting of the company, as required in terms of section 70(3)(b)(i) of the Act; and

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

27.2 The management of the business and the control of the company shall be vested in the directors who may exercise all such powers as may be exercised by the company and are not hereby or by the Act expressly directed or required to be exercised by the company in general meeting, but subject, nevertheless, to the provisions of this Memorandum of Incorporation and to any resolution not inconsistent with this Memorandum of Incorporation passed at any general meeting of the members in accordance therewith, provided that no resolution passed by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such resolution had not been passed.

27.3 The directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the directors may from time to time think fit. Any such appointment may, if the directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the directors think fit. Any such attorneys or agents as aforesaid may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

27.4 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the company, shall be signed, drawn, accepted, endorsed or

executed, as the case may be, in such manner as the directors shall from time to time determine.

- 27.5 A director may hold any other office or place of profit under the company (except that of auditor) or any subsidiary of the company in conjunction with the office of director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise as a disinterested quorum of the directors may determine. Any remuneration so paid may be in addition to the remuneration payable in terms of clause 29.1.
- 27.6 A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors.
- 27.7 Each director and each alternate director, prescribed officer and member of any committee of the board (whether or not such latter persons are also members of the board) shall, subject to the exemptions contained in section 75(2) of the Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 of the Act in the event that they (or any person who is a related person to them) has a personal financial interest in any matter to be considered by the board.
- 27.8 All acts performed by the directors or by a committee of directors or by any person acting as a director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or member of such committee.
- 27.9 propose any resolution to shareholders to permit or ratify an act of the directors that is inconsistent with any limitation or restriction imposed by this Memorandum of Incorporation (including any ratification contemplated in sections 20(2) and section 20(6) of the Act), or the authority of the directors to perform such an act on behalf of the company, is prohibited.

28 DIRECTORS' MEETINGS

- 28.1 Save as may be provided otherwise herein, the directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 28.2 The directors may elect a chairman and a deputy chairman and determine the period for which each is to hold office. The chairman of the directors' meetings shall be a non-executive director. The chairman, or in his absence the deputy chairman, shall be entitled to preside over all meetings of directors. If no chairman or deputy chairman is elected, or if at any meeting neither is present or willing to act as chairman thereof within 5 (five) minutes of the time appointed for holding the meeting, the directors present shall choose 1 (one) of their number to be chairman of such meeting.
- 28.3 In addition to the provisions of section 73(1) of the Act, any director shall at any time be entitled to call a meeting of the directors.
- 28.4 The board has the power to –
- 28.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 of the Act and, accordingly, any decision that could be voted on at a meeting of the board may instead be adopted by the written consent of a majority of the directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided;
- 28.4.2 conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act, provided that, as required by such section, the electronic communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 28.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4) of the Act, provided that –
- 28.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 (seven) days unless the decision of the directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairman of the Board, or failing the chairman for any reason, the decision of any 2 (two) directors as to whether a matter should be decided on an urgent

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

28.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each director, together with the notice referred to in clause 28.4.3.1; and

28.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5) of the Act ,

and the powers of the board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

28.5 The quorum requirement for a directors' meeting (including an adjourned meeting), 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) of the Act, subject only to clause 28.5.5, and accordingly –

28.5.1 if all of the directors of the company –

28.5.1.1 acknowledge actual receipt of the notice convening a meeting; or

28.5.1.2 are present at a meeting; or

28.5.1.3 waive notice of a meeting,

the meeting may proceed even if the company failed to give the required notice of that meeting or there was a defect in the giving of the notice;

28.5.2 a majority of the directors must be present at a meeting before a vote may be called at any meeting of the directors;

28.5.3 each director has 1 (one) vote on a matter before the board;

28.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution; and

28.5.5 in the case of a tied vote –

28.5.5.1 the chairman shall have a deciding vote in addition to any deliberative vote; and

28.5.5.2 the matter being voted on fails.

28.6 Resolutions adopted by the board –

- 28.6.1 must be dated and sequentially numbered; and
- 28.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 28.7 The company shall keep minutes of the meetings of the board, and of any of its committees, and include in the minutes –
 - 28.7.1 any disclosure made by notice or made by a director as required by section 75 of the Act, as contemplated in clause 27.7; and
 - 28.7.2 every resolution adopted by the board
- 28.8 Any minutes of a meeting, or a resolution, signed by the chairman of the meeting, or by the chairman of the next meeting of the board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 28.9 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. A decision made in the manner contemplated in this clause 28.9 is of the same effect as if it had been approved by voting at a meeting of the Board.

29 DIRECTORS' COMPENSATION

- 29.1 The company may pay remuneration to the directors for their services as directors in accordance with a special resolution approved by the company's shareholders within the previous 2 (two) years, as set out in section 66(8) and (9) of the Act, and the power of the company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 29.2 The directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with -
 - 29.2.1 the business of the company; and
 - 29.2.2 attending meetings of the directors or of committees of the directors of the company.
- 29.3 The board may, as set out in and subject to the requirements of section 45, authorise the company to provide financial assistance to a director, prescribed



officer or other person referred to in section 45(2) of the Act, and the power of the board in this regard is not limited or restricted by this Memorandum of Incorporation.

- 29.4 Prior to the holding of any meeting of shareholders at which the remuneration of the directors shall be determined, the company shall appoint an accounting firm or merchant bank to make a recommendation on the remuneration of the directors, which recommendation shall be presented at the meeting at which such remuneration will be determined.

30 EXECUTIVE DIRECTORS

- 30.1 The directors may from time to time appoint managing and other executive directors (with or without specific designation) of the company ("executive director"), which conditions of employment shall be subject to the usual standard terms of employment for company employees which notice period shall not exceed 6 (six) months and whose remuneration may be determined from time to time by a quorum of the directors.
- 30.2 Any director appointed in terms hereof shall nevertheless be subject to retirement by rotation and be taken into account in determining the rotation of retirement of directors, and he shall be subject to the same provisions as to removal as the other directors. If he ceases to hold office as a director, his appointment to such position shall *ipso facto* terminate without prejudice to any claims for damages which may accrue to him as a result of such termination.
- 30.3 A director in terms of the provisions of this clause 30 to the office of executive director of the company, or to any other executive office in the company, may be paid in addition to the fees or remuneration payable in terms of any other clause in this Memorandum of Incorporation, such remuneration not exceeding a reasonable maximum in each year, in respect of such office as may be determined by a quorum of the directors.
- 30.4 The directors may from time to time entrust and confer upon an executive director for the time being such of the powers and authorities vested in them as they think fit and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient. The directors may from time to time in their discretion revoke, withdraw or vary such powers as they deem fit.

31 INDEMNIFICATION OF DIRECTORS

31.1 The company may –

31.1.1 advance expenses to a director or directly or indirectly indemnify a director in respect of the defence of legal proceedings,

31.1.2 as set out in section 78(4) of the Act;

31.1.3 indemnify a director in respect of liability as set out in section 78(5) of the Act; and/or

31.1.4 purchase insurance to protect the company or a director as set out in section 78(7) of the Act,

and the power of the company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

31.2 The provisions of clause 31.1 shall apply *mutatis mutandis* in respect of any former director, prescribed officer or member of any committee of the board, including the audit committee.

32 COMMITTEES OF THE BOARD

32.1 The board may –

32.1.1 appoint committees of directors and delegate to any such committee any of the authority of the board as set out in section 72(1) of the Act; and/or

32.1.2 include in any such committee persons who are not directors, as set out in section 72(2)(a) of the Act,

and the power of the board in this regard is not limited or restricted by this Memorandum of Incorporation.

32.2 The authority of a committee appointed by the board as set out in section 72(2)(b) and (c) of the Act is not limited or restricted by this Memorandum of Incorporation.

32.3 If and for as long as it is required to do so in terms of the Act or the Regulations and unless the company is exempted from doing so by the Tribunal in terms of section 72(5) of the Act, or any other applicable law, the board must appoint any and all such committees having the powers and functions prescribed in terms of section 72 of the Act and the Regulations, including the following committees –

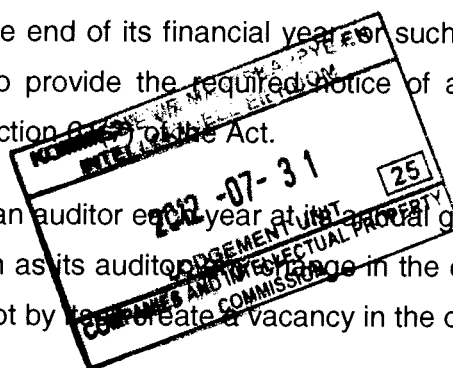
- 32.3.1 an audit committee; and
- 32.3.2 a social and ethics committee.
- 32.4 The meetings and proceedings of any such committee, consisting of 2 (two) or more directors, shall be governed by the provisions herein contained for regulating the meetings and proceedings of the directors so far as the same are applicable thereto.
- 32.5 All acts done at any meeting of the directors or of any executive or other committee of the directors, or by any person acting as a director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that they or any of them were disqualified or had vacated office or were not qualified to vote be as valid as if every such person had been duly appointed and was qualified to be and to act and vote as a director.

33 **RESERVED MATTERS**

- 33.1 If VSA proposes any resolution which adversely affects the rights attaching to the VSA A shares and VSA ordinary shares held by the company, and to the extent that the company is required to approve such resolution, the company shall only be entitled to act as directed by the shareholders in general meeting.
- 33.2 The company shall not be entitled to –
 - 33.2.1 exercise the subscription option contained in clause 13 of the VSA shareholders agreement;
 - 33.2.2 procure financing for the payment of the subscription price of the VSA ordinary shares to be issued to the company upon exercise of the subscription option contemplated in clause 33.2.1; or
 - 33.2.3 cede or otherwise encumber the VSA ordinary shares as security for the financing of the subscription price as contemplated in clause 33.2.2,without the prior approval of the shareholders.

34 ANNUAL FINANCIAL STATEMENTS

- 34.1 Notwithstanding the provisions of clause 5.1 –
- 34.1.1 the company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the company to satisfy its obligations in terms of –
- 34.1.1.1 the Act;
- 34.1.1.2 any other law with respect to the preparation of financial statements to which the company may be subject;
- 34.1.1.3 the Regulations; and
- 34.1.1.4 this Memorandum of Incorporation; and
- 34.1.2 the company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 9 of the Act.
- 34.2 The company shall appoint an auditor each year at its annual general meeting. If the company appoints a firm as its auditor, the change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 34.3 The annual financial statements of the company must be prepared and audited in accordance with the provisions of section 30 of the Act.
- 34.4 A copy of the annual financial statements must be sent to shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the company at which such annual financial statements will be considered.
- 34.5 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
- 34.5.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 34.5.2 subject to and in accordance with IFRS –
- 34.5.2.1 present fairly the state of affairs and business of the company and explain the transactions and financial position of the business of the company;
- 34.5.2.2 show the company's assets, liabilities and equity, as well as its income and expenses;



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- 34.5.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 34.5.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.
- 34.6 All annual financial statements when audited and laid before an annual general meeting shall be deemed conclusively correct, and shall not be re-opened.

35 COMPANY SECRETARY

- 35.1 The company must, as required by section 86(1) of the Act, appoint a company secretary and such company secretary may be a juristic person or partnership as contemplated in section 87 of the Act.
- 35.2 The company secretary must, as required by section 86(2) of the Act, have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.
- 35.3 The board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the directors consider to have the requisite knowledge and experience.
- 35.4 The company secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit and any company secretary so appointed may be removed by the directors.

36 DISTRIBUTIONS

- 36.1 Subject to the provisions of the Act, and particularly section 46 of the Act, the company may make a proposed distribution if such distribution –
- 36.1.1 is pursuant to an existing legal obligation of the company, or a court order; or
- 36.1.2 is authorised by resolution of the board.
- 36.2 No distribution shall bear interest against the company, except as otherwise provided under the conditions of issue of the shares in respect of which such distribution is payable.
- 36.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the company may be chargeable.



- 36.4 The directors may from time to time declare and pay to the shareholders such interim distributions as the directors consider to be appropriate.
- 36.5 All unclaimed distributions may be invested or otherwise made use of by the directors for the benefit of the company until claimed, provided that distributions unclaimed for a period of 3 (three) years from the date on which they were declared may be declared forfeited by the directors for the benefit of the company. The directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.
- 36.6 Any distribution, interest or other sum payable in cash to a shareholder may be paid by electronic transfer for credit to an account nominated in writing by the shareholder.
- 36.7 The making of such electronic transfer, to whomsoever effected, shall be a good discharge to the company.
- 36.8 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other monies paid in respect of a share held by such holder or joint holders.
- 36.9 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a share held by such holder or joint holders.
- 36.10 A distribution may also be paid in any other way determined by the directors, and if the directives of the directors in that regard are complied with, the company shall not be liable for any loss or damage which a shareholder may suffer as a result thereof.
- 36.11 Without detracting from the ability of the company to issue capitalisation shares, any distribution may be paid wholly or in part -
- 36.11.1 by the distribution of specific assets; or
- 36.11.2 by the issue of shares, debentures or securities of the company or of any other company; or
- 36.11.3 in cash; or
- 36.11.4 in any other way which the directors may at the time of declaring the distribution determine.



36.12 Where any difficulty arises in regard to such distribution, the directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.

36.13 The directors may -

36.13.1 determine that cash payments shall be made to any shareholder on the basis of the value so fixed in order to secure equality of distribution; and

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

37 PAYMENT OF COMMISSION

37.1 The company may pay a commission at a rate not exceeding 10% (ten percent) of the issue price of a share to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any shares.

37.2 Such commission shall be paid in cash.

37.3 The company may, on any issue of shares, pay such brokerage as may be lawful.

38 ACCESS TO COMPANY RECORDS

38.1 Each person who holds or has a beneficial interest in any securities issued by the company is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the company referred to in section 26(1) of the Act, being –

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

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

38.1.3 all –

38.1.3.1 reports presented at an annual general meeting of the company for a period of 7 (seven) years after the date of any such meeting, provided that

- no such inspection right shall exist if and to the extent that the company is not required to, and does not, in fact, hold an annual general meeting; and
- 38.1.3.2 annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;
- 38.1.4 notice and minutes of all shareholders' meetings, including –
- 38.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
- 38.1.4.2 any document that was made available by the company to the holders of securities in relation to each such resolution;
- 38.1.5 any written communications sent generally by the company to all holders of any class of the company's securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and
- 38.1.6 the securities register of the company.
- 38.2 A person not contemplated in clause 38.1 has a right to inspect the securities register and the register of directors of the company upon payment of the prescribed maximum fee for any such inspection.

39 AUTHENTICATION OF DOCUMENTS

- 39.1 Any director or the company secretary or any person appointed by the directors for the purpose shall have power to authenticate -
- 39.1.1 the Memorandum of Incorporation;
- 39.1.2 any resolutions passed by the company or the directors;
- 39.1.3 any books, records, documents and accounts relating to the business of the company,
- and to certify copies thereof or extracts there from as true copies or extracts.
- 39.2 Where any books, records, documents or accounts are elsewhere than at the office, the local manager or other officer of the company or other person having the custody thereof shall be deemed to be a person duly appointed by the directors for the abovementioned purpose.

40 NOTICES

- 40.1 All notices intended or required to be given by the company to any shareholder of the company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.
- 40.2 Each shareholder of the company –
- 40.2.1 shall notify in writing to the company an address, which address shall be his registered address for the purposes of receiving written notices from the company by post; and
- 40.2.2 may notify in writing to the company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of electronic communication.
- 40.3 Any shareholder whose address in the securities register is an address not within the Republic, and who shall from time to time furnish the company with an address within the Republic at which notices can be served upon him, shall be entitled to have notices served upon him at such address.
- 40.4 Save as determined in this Memorandum of Incorporation or in the Act, no shareholder other than a registered shareholder whose address appears in the securities register as being in the Republic, shall be entitled to receive any notice from the company.
- 40.5 In the case of joint holders of a share, all notices shall, unless such holders otherwise in writing request and the directors agree, be given to that shareholder whose name appears first in the securities register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 40.6 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 40.7 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any share, shall be bound by every notice in respect of that share which, previously to his name and address being entered in the securities register, was given to the person from whom he derives his title to such share.
- 40.8 Any notice or document delivered or sent by post to or left at the registered address of any shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such shareholder was then deceased, and whether or



not the company has notice of his death, be deemed to have been duly served in respect of any shares, whether held solely or jointly with other persons by such shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

41 WINDING-UP

41.1 If the company is wound-up, whether voluntarily or otherwise, the liquidator may, with the sanction of a special resolution of the members, divide among the members *in specie* or kind the whole or any part of the assets of the company and may for such purpose -

41.1.1 set a value which he deems fair upon any asset; and

41.1.2 determine how the division shall be carried out as between the members or different classes of members.

41.2 The liquidator may, with the sanction of a special resolution of the members, vest the whole or any part of the assets in trustees upon trusts for the benefit of the members or any of them.

41.3 Any such resolution may provide for and sanction a distribution of specific assets amongst different classes of members contrary to their existing rights, but each member shall in that event have a right of dissent and other ancillary rights in the same manner as if such resolution were a special resolution passed pursuant to the provisions of the Act.

42 AMENDMENT OF MEMORANDUM OF INCORPORATION

42.1 Save for the amendments contemplated in clause 42.2, this Memorandum of Incorporation may only be altered or amended in the manner set out in sections 16 (other than 16(1)(b)), 17 or 152(6)(b) of the Act .

42.2 The board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

42.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each shareholder by ordinary mail; and



- 42.2.2 filing a notice of the alteration.
- 42.3 An amendment of this Memorandum of Incorporation will take effect from the later of –
- 42.3.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7) of the Act; and
- 42.3.2 the date, if any, set out in the said notice of amendment,

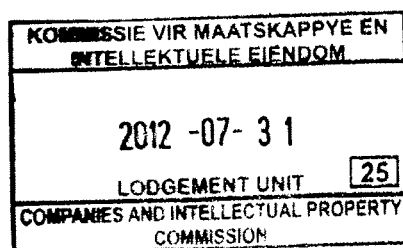
save in the case of an amendment that changes the name of the company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

43 **COMPANY RULES**

The board is not authorised 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 in this Memorandum of Incorporation.

ADOPTION

This Memorandum of Incorporation was adopted by special resolution of the shareholders on 30 July 2012.



N SHARE TERMS

- 1 In this schedule, unless inconsistent with or otherwise indicated by the context, the following terms shall bear the following meanings –
 - 1.1 **"ESOP A shares"** means 75,000,000 (seventy five million rand) VSA A shares;
 - 1.2 **"ESOP Call Option"** means the call option available to VSA to purchase or repurchase a formula determined number of ESOP A shares at par value at the end of the Facilitation Period, as provided for in the Memorandum of Incorporation of VSA;
 - 1.3 **"ESOP Conversion Date"** means the earlier of the date upon which the Notional Outstandings in respect of the ESOP A shares equal nil and the date upon which VSA has exercised the ESOP Call Option;
 - 1.4 **"Facilitation Period"** means a period of 7 (seven) years from the date of issue of the ESOP A shares to the company; and
 - 1.5 **"Notional Outstandings"** means the notional outstanding in respect of the VSA A shares, as defined and envisaged in the Memorandum of Incorporation of VSA.
- 2 Notwithstanding any contrary provisions contained in the Memorandum of Incorporation or this schedule, the following rights shall apply to the N shares –
 - 2.1 the N Shares shall not entitle ESOP to any dividends declared by the company before the ESOP Conversion Date;
 - 2.2 until the ESOP Conversion Date, the voting rights attaching to each N share shall rank *pari passu* with each YeboYethu ordinary share;
 - 2.3 on the ESOP Conversion Date –
 - 2.3.1 each N share shall automatically converts into one YeboYethu ordinary share;



- 2.3.2 and simultaneous with the conversion of each N share into one YeboYethu ordinary share, the company shall repurchase at par value such number of YeboYethu ordinary shares from ESOP as is calculated in terms of the following formula –

$$R = \frac{12,000,000 - EA}{6.25}$$

where –

R = the number of YeboYethu ordinary shares to be repurchased by the company, rounded to the nearest integer; and

EA = the number of ESOP A shares retained by the company after the transfer of the ESOP A shares to VSA pursuant to the exercise of the ESOP Call Option by VSA;

The initial subscribers for YeboYethu ordinary shares (i.e. the shareholders on the date of incorporation of the company) passed a special resolution on 25 August 2008 authorising the repurchase of the YeboYethu ordinary shares in terms of this clause 2.3.2, provided that (a) the repurchase of the YeboYethu ordinary shares subject to the provisions of the Act, and (b) the filing, registration or implementation of such special resolution as contemplated above (for any reason whatsoever), the shareholders shall, after the ESOP Conversion Date, vote in favour of a special resolution on the terms set out in this clause 2.3.2;

- 2.4 after and subject to the conversion of the N shares and the repurchase of the YeboYethu ordinary shares by YeboYethu (as contemplated in clause 2.3.1 and 2.3.2), ESOP shall distribute its remaining YeboYethu ordinary shares to the ESOP Participants in their respective participation ratios as at the ESOP Conversion Date, whereafter ESOP shall be terminated and the ESOP Participants shall hold the relevant YeboYethu ordinary shares directly.
- 3 Save as set out in this schedule, the N shares and the YeboYethu ordinary shares shall rank *parri passu* in all respects.