# THE COMPANIES ACT, NO. 71 OF 2008

(AS AMENDED)

# MEMORANDUM OF INCORPORATION

OF

# YEBOYETHU (RF) LIMITED

**A PUBLIC COMPANY**

**REGISTRATION NUMBER: 2008/014734/06**

**REGISTRATION DATE: 19 JUNE 2008**

CLIFFE DEKKER HOFMEYR

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**PART 1: DEFINITIONS AND INTERPRETATION**

1 **DEFINITIONS**

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 "**B-BBEE**" means broad-based black economic empowerment as contemplated in the B-BBEE laws;

1.2 "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act, No 53 of 2003, and any regulations promulgated thereunder;

1.3 "**B-BBEE Codes**" means the Codes of Good Practice on Broad-Based Black Economic Empowerment published in the Government Notice 1019 of 2013 on 11 October 2013 in terms of section 9 of the B-BBEE Act, read together with such sector codes applicable to the VGL Group from time to time;

1.4 "**B-BBEE controlled company**" has the meaning assigned to such term in the B-BBEE Codes, the meaning of which term, as at the filing date, is: a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights that is at least 51% (fifty one percent) of the total such rights measured using the flow through principle;

1.5 "**B-BBEE laws**" means the B-BBEE Act, the B-BBEE Codes and any other charter, law or regulation by which ownership and/or control by black people is measured or a requirement relating thereto is imposed, provided such measurement or requirement is applicable to the VGL Group;

1.6 "**B-BBEE owned company**" has the meaning assigned to such term in the B-BBEE Codes, the meaning of which term, as at the filing date, is: a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to economic interest that is at least 51% (fifty one percent) of the total such rights measured using the flow through principle;

1.7 "**B-BBEE ownership certificate of compliance**" means a certificate issued by a SANAS accredited B-BBEE verification agency (or other suitable person) nominated by the company from time to time, recording any or all of the following (as may be requested by the company) –

1.7.1 the identify and composition of the effective participants in a specified juristic person, and the composition of its board of directors, trustees or analogous body;

1.7.2 whether the specified juristic person qualifies as a black entity;

1.7.3 the B-BBEE status of the specified juristic person; and/or

1.7.4 any other matter pertaining to the specified juristic person relevant to the assessment of compliance with the B-BBEE laws or particular provisions or requirements thereunder;

1.8 "**B-BBEE principles**" means the B-BBEE principles, restrictions and undertakings applicable to the relevant persons thereunder for the duration of the funding period as envisaged in **Part 7** as read with **Annexure D**;

1.9 "**B-BBEE status**" means, –

1.9.1 in relation to a black entity, –

1.9.1.1 the black entity's percentage ownership and percentage economic interest held by black people (by shareholding, membership, beneficial interest and/or other comparable interest, as the case may be, given the juristic nature of the black entity); and

1.9.1.2 the black entity's percentage representation by black people at board or trustee or similar governing body as measured by the applicable B-BBEE laws; and

1.9.2 in relation to a natural person, whether that person is a black person;

1.10 **"B-BBEE verification agency"** means a rating and/or verification agency duly accredited under the B-BBEE Codes;

1.11 "**beneficial holder**" means in relation to any uncertificated securities, the person who, from time to time, holds a beneficial interest in such securities, regardless of whether they are registered in the uncertificated securities register in the name of such person directly by way of "own name" registration or in the name of the nominee holder;

1.12 "**beneficial interest**" has the meaning given thereto in the Companies Act;

1.13 "**black entity**" means –

1.13.1 a company incorporated in accordance with the laws of South Africa, and which is both a B-BBEE owned company and a B-BBEE controlled company; or

1.13.2 (i) a vesting trust, (ii) a broad-based ownership scheme and/or (iii) a close corporation or an unincorporated entity or association, including a partnership, joint venture, syndicate or stokvel, in each case under (i) to (iii) as may be determined from time to time by the company in its sole discretion as an entity or association that qualifies under the B-BBEE laws for recognition and measurement of ownership, economic interest and control by black people such that the company may claim recognition of such ownership, economic interest and control under the B-BBEE laws as being held by a majority of black people;

1.14 "**black participants**" means black people and/or black entities, individually and collectively (as the context may require);

1.15 "**black people**" or "**black person**" have the meanings assigned to such terms in the B-BBEE Codes, the meanings of which terms, as at the filing date, are: Africans, Coloureds and Indians who are natural persons and who are South African citizens by –

1.15.1 birth or descent, or

1.15.2 naturalisation occurring –

1.15.2.1 prior to 27 April 1994, being the commencement date of the Constitution of the Republic of South Africa, 1993; or

1.15.2.2 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 South Africa,

and "**black**" and "**black women**" shall be construed accordingly;

1.16 "**board**" means the board of directors from time to time of the company, or if there is only 1 (one) director, then that director;

1.17 "**certificated securities**" means securities evidenced by a certificate, as contemplated in section 1 of the Financial Markets Act;

1.18 "**CIPC**" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

1.19 "**Companies Act**" means the Companies Act, No 71 of 2008, and includes all schedules to such Act, and the regulations;

1.20 "**company**" means the company named on the first page of this memorandum of incorporation, duly incorporated under the registration number endorsed thereon;

1.21 "**composition**" means, in relation to a person, each and all of the commercial, corporate and personal and other attributes and characteristics of such person and of its effective participants, and includes (i) the identities of its/their effective participants, (ii) the personal characteristics of its/their effective participants (including, *inter alia*, whether such effective participant is a black person, female and/or a "new entrant") and (iii) the extent of or terms relating to the direct or indirect ownership, control and economic interest of such effective participants in the person (including, *inter alia*, as governed by, any applicable trust deeds, constitutional documents, call options, shareholders and voting pool arrangements);

1.22 "**CSDP**" means central securities depository participant, being a person that holds in custody and administers securities or an interest in securities and that has been accepted, in terms of the Financial Markets Act, as a central securities depository, or a participant, authorised user or nominee in a central securities depository (as each of such terms are defined and understood in terms of the Financial Markets Act);

1.23 "**deliver**" or "**delivered**" means deliver or delivered in the manner in which the company is entitled to give notice or deliver documents in accordance with clauses 48.5 and 48.7 and the Companies Act, and shall, where permitted by the Companies Act and the JSE Listings Requirements, include delivery of an abridged document together with instructions as to how the recipient may obtain an unabridged version of such document;

1.24 "**director**" means a member of the board as contemplated in section 66 of the Companies Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;

1.25 "**dispose**" means sell, alienate, donate, exchange, distribute, transfer or in any manner whatsoever dispose of, whether voluntarily or involuntarily, or enter into any arrangement or transaction which may have the same or similar effect thereto (including, *inter alia*, any transaction or series of transactions, or the cession of any rights or the granting of any option or any similar transaction/s which would have the same or similar economic effect), or realise any value in respect of, and "**disposal**" shall be construed accordingly;

1.26 "**effective interest**" means direct or indirect ownership, economic or control interest, measured on a fully diluted basis and without any deeming rule or deeming provision being applied;

1.27 "**effective participant**" means, in relation to an entity, each and every person that has an effective interest in such entity;

1.28 "**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

1.29 "**encumbrance**" in relation to any property, includes any pledge, security cession, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over or in respect of that property or class of property (or any proceeds thereof), or any lending of that property, and the words "**encumber**" and "**encumbering**" shall have the corresponding meanings;

1.30 "**filing date**" means the date upon which this memorandum of incorporation becomes effective in accordance with the Companies Act;

1.31 "**Financial Markets Act**" means the Financial Markets Act, No 19 of 2012;

1.32 "**funding agreements**" has the meaning ascribed thereto in the implementation agreement, provided that, despite any provision to the contrary, such shall refer to those agreements in the form in which they are in as at the *"final implementation date*" (as such term is defined in the implementation agreement), or as amended, replaced or substituted from time to time (including any refinancing thereof, with the same or different parties, and whether prior to or on the date for repayment thereof), with VGL's prior written consent in terms of the relationship agreement (any amendment, replacement or substitution of such agreements without VGL's prior written consent in terms of the relationship agreement shall be disregarded for the purposes of this definition). Without derogating from the generality of the above, the term "**funders funding agreements**" shall refer to that subset of Funding Agreements to which the Funders are a party, specifically excluding those to which they are not a party;

1.33 "**funding agreements restriction period**" means the period beginning on the filing date, and lapsing at the end of the earlier of –

1.33.1 the date on which the Transaction Security, as defined in the funders funding agreements, is released and cancelled in terms of such funders funding agreements; and

1.33.2 the Final Discharge Date, as defined in the funders funding agreements;

1.34 "**funding period**" means the period beginning on the filing date, and lapsing at the end of the "*funding period*" (as such term is defined in the relationship agreement);

1.35 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the International Accounting Standards Board, 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 Companies Act;

1.36 "**implementation agreement**" means the implementation agreement entered into or to be entered into between, amongst others, the company, YY ShareCo, VGL and Vodacom SA, recording the terms and conditions agreed between the parties thereto in relation to the implementation of the transaction;

1.37 "**JSE**" means JSE Limited, registration number 2005/022939/06, a public company duly incorporated in accordance with the laws of South Africa, or the securities exchange licensed in terms of the Financial Markets Act, owned and operated by that entity, as applicable;

1.38 "**JSE Listings Requirements**" means the JSE Limited Listings Requirements;

1.39 "**memorandum of incorporation**" means the memorandum of incorporation set out in this document, together with its schedules and/or annexures (if any);

1.40 "**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 8.1.1.2 and **Annexure A**;

1.41 "**nominee**" has the meaning set out in the Financial Markets Act;

1.42 "**nominee holder**" means in relation to uncertificated securities, the person in whose name such shares are registered from time to time as a nominee;

1.43 "**Old MOI**" means the previous memorandum of incorporation of the company which will be replaced by this memorandum of incorporation upon adoption hereof;

1.44 "**ordinary resolution**" has the meaning set out in section 1 of the Companies Act and clause 29.1;

1.45 "**ordinary shares**" means ordinary shares of no par value in the share capital of the company, having the rights and privileges set out in clause 8.1.1.1, including any N-shares that have converted into ordinary shares from time to time;

1.46 "**permitted agreements**" has the meaning assigned thereto in clause 6.1.6;

1.47 "**permitted encumbrance**" means any encumbrance –

1.47.1 arising under and in accordance with the funding agreements to which the company is a party; and/or

1.47.2 created with the prior written consent of VGL in terms of the relationship agreement;

1.48 "**preference share agent**" has the meaning ascribed thereto in the funders funding agreements. For the avoidance of doubt, any reference in this memorandum of incorporation to the preference share agent's consent being required shall be qualified by the statement that such consent shall only be required for the duration of the funding agreements restricted period, failing which the requirement of the preference share agent's consent shall be read as having been deleted from this memorandum of incorporation;

1.49 "**preference shares**" means, as determined by the context, the "*Class A shares*" and/or "*Class B shares*" contemplated in clauses 8.1.1.3 and 8.1.1.4;

1.50 "**present at any meeting**" or "**present at the meeting**" means –

1.50.1 in relation to shareholders meeting, to be present in person, or able to participate in the meeting in question by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting in question by electronic communication; or

1.50.2 in relation to directors meeting, to be present in person, or able to participate in the meeting in question by electronic communication;

1.51 "**regulations**" means the regulations published in terms of the Companies Act from time to time;

1.52 "**relationship agreement**" means the relationship agreement concluded on or about 9 June 2018 between VGL, the company and YY ShareCo, regulating their relationship following implementation of the transaction;

1.53 "**securities**" means –

1.53.1 any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the company; or

1.53.2 anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act;

1.54 "**securities register**" means the register contemplated in section 50(1) of the Companies Act and referred to in clause 12 hereof, which for the avoidance of doubt includes the uncertificated securities register;

1.55 "**SENS**" means the Stock Exchange News Service established and operated by the JSE;

1.56 "**series of integrated transactions**" shall have the meaning set out in section 41(4)(b) of the Companies Act;

1.57 "**share**" means one of the units into which the proprietary interest in the company is divided, and includes the ordinary shares, N-shares and preference shares;

1.58 "**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 Companies Act;

1.59 "**shareholders agreement**" means any signed written agreement or signed written agreements in force from time to time between all or some of the shareholders and the company in terms of which the rights and obligations of the shareholders amongst themselves (in their capacities as shareholders) are regulated and in terms of which the relationship between each shareholder and the company is regulated;

1.60 "**solvency and liquidity test**" has the meaning attributed thereto in section 4 of the Companies Act;

1.61 "**South Africa**" means the Republic of South Africa;

1.62 "**special resolution**" has the meaning set out in section 1 of the Companies Act and clause 29.2;

1.63 "**transaction**" has the meaning ascribed thereto in the implementation agreement;

1.64 "**transaction agreements**" has the meaning ascribed thereto in the implementation agreement;

1.65 "**transaction steps**" has the meaning ascribed thereto in the implementation agreement;

1.66 "**transaction documents**" means, collectively –

1.66.1 this memorandum of incorporation;

1.66.2 each of the transaction agreements;

1.66.3 the memorandum of incorporation of YY ShareCo; and

1.66.4 the funding agreements;

1.67 "**transfer secretaries**" means such transfer secretaries as may be appointed to act as such by and for the company from time to time;

1.68 "**uncertificated securities**" has the meaning set out in section 1 of the Financial Markets Act;

1.69 "**uncertificated securities register**" means the record of uncertificated securities administered and maintained by a CSDP (as determined in accordance with the rules of the CSDP), and which forms part of the securities register;

1.70 "**VGL**" means Vodacom Group Limited, registration number 1993/005461/06, a public company duly incorporated in accordance with the laws of South Africa, and whose shares are listed on the JSE;

1.71 "**VGL ESOP**" means the Trustees for the time being of the Vodacom Siyanda Employee Trust (Gauteng Local Division Masters Reference Number IT001390/2018 (G)), a trust duly constituted in accordance with the laws of South Africa, and created by VGL for the benefit of employees of Vodacom Group and certain of its South African subsidiaries;

1.72 "**VGL ESOP participants**" means "*Participants*" as defined in the trust deed of the VGL ESOP;

1.73 "**VGL Group**" means VGL and its South African subsidiaries from time to time;

1.74 "**VGL service level agreement**" means the service level agreement entered into or to be entered into between VGL and the company;

1.75 "**VGL shares**" means shares in VGL which are acquired by YY ShareCo from time to time, including those to be acquired YY ShareCo in terms of and pursuant to the transaction;

1.76 "**Vodacom SA**" means Vodacom (Proprietary) Limited, registration number 1993/003367/07, a private company duly incorporated in accordance with the laws of South Africa;

1.77 "**YY ESOP**" means the Trustees for the time being of the YeboYethu Employee Participation Trust, Gauteng Local Division Masters reference number IT 2065/2008 (G), a trust duly constituted in accordance with the laws of South Africa;

1.78 "**YY ESOP participants**" means "*Participants*" as defined in the trust deed of the YY ESOP, and created by Vodacom SA for the benefit of employees of Vodacom Group and certain of its South African subsidiaries;

1.79 "**YY ShareCo**" means YeboYethu Investment Company (RF) Proprietary Limited, registration number 2018/264887/07, a private company duly incorporated in accordance with the laws of South Africa, which shall be a wholly-owned subsidiary of the company; and

1.80 "**YY ShareCo shares**" means shares in YY ShareCo which are acquired by the company from time to time, including those to be acquired the company in terms of and pursuant to the transaction.

## 2 INTERPRETATION

### 2.1 General

2.1.1 In this memorandum of incorporation, an expression which denotes –

2.1.1.1 any gender includes the other genders;

2.1.1.2 a natural person includes a juristic person and *vice versa*;

2.1.1.3 the singular includes the plural and *vice versa*;

2.1.1.4 unless expressly stated otherwise, a Party includes a reference to that Party’s permitted successors in title and assignees; and

2.1.1.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.

2.1.2 Any reference in this memorandum of incorporation to –

2.1.2.1 words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;

2.1.2.2 a reference to the Companies Act shall include reference to the regulations;

2.1.2.3 a reference to a section by number refers to the corresponding section of the Companies Act despite the renumbering of such section after the filing date;

2.1.2.4 a reference to a "**clause**" by number refers to a corresponding provision of this memorandum of incorporation; and "**paragraph**" by number refers to a corresponding paragraph of the annexures to this memorandum of incorporation;

2.1.2.5 "**person**" means any natural person, company, close corporation, trust, partnership, unincorporated association of persons, state entity or other entity whether or not having separate legal personality;

2.1.2.6 "**subsidiary**" or "**holding company**" shall have the meanings assigned to such terms in the Companies Act, provided that the term "subsidiary" shall, for the purposes of this memorandum of incorporation, not be limited to "companies", but shall include any "juristic person" (as each of those terms are defined in the Companies Act);

2.1.2.7 an "**affiliate**" means, in relation to any person, a subsidiary of that person or a holding company of that person, or any other subsidiary of that holding company;

2.1.2.8 "**signed**" shall exclude any form of electronic signature, but does not exclude producing scanned copies of documents which have been physically signed;

2.1.2.9 "**law**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law (which, for the avoidance of doubt, shall include the rules, regulations and/or the similar of any securities exchange to the extent that such are applicable); and

2.1.2.10 "**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 Companies Act and/or the regulations;

2.1.2.11 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 Companies Act and/or the regulations; and

2.1.2.12 "**tax**" means all South African taxes that may become payable by a Party concerned, including any income tax, secondary tax on companies, dividends tax, VAT, donations tax, securities transfer tax, uncertificated securities transfer tax, PAYE / employees' tax, stamp duties, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties, additional tax and interest payable in terms of such tax legislation.

2.1.3 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2.1.4 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.

2.1.5 If there is any conflict between any definitions in this memorandum of incorporation then, for purposes of interpreting any clause of this memorandum of incorporation, the definition appearing in that clause shall prevail over any other conflicting definition appearing elsewhere in this memorandum of incorporation.

2.1.6 Any substantive provision, conferring rights or imposing obligations on a person and appearing in any of the definitions in clause 1 or elsewhere in this memorandum of incorporation, shall be given effect to as if it were a substantive provision in the body of the memorandum of incorporation.

2.1.7 A reference to any law shall be construed as a reference to that law as at the filing date and as amended or substituted from time to time.

2.1.8 Any reference herein to "**this memorandum of incorporation**" or to any other document, shall be construed as a reference to this memorandum of incorporation or (as the case may be) such other agreement or document as amended, varied, novated or supplemented from time to time.

2.1.9 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.

2.1.10 The rule of construction that a contract shall be interpreted against the party responsible for drafting or preparation of the contract shall not apply to this memorandum of incorporation.

2.2 **Computation of time**

2.2.1 Any reference in this memorandum of incorporation to "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;

2.2.2 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.

2.2.3 Except to the extent that any provision of this memorandum of incorporation expressly provides otherwise, where this memorandum of incorporation makes reference to any specific calendar day, whether in the context of a right, an obligation or otherwise, if such day is not a business day, such reference shall be read as referring to the next succeeding business day.

2.3 **Memorandum of incorporation provisions**

In any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this memorandum of incorporation and –

2.3.1 a provision of any shareholders agreement, the provision of this memorandum of incorporation shall prevail to the extent of the conflict;

2.3.2 an alterable or elective provision of the Companies Act, the provision of this memorandum of incorporation shall prevail to the extent of the conflict; and

2.3.3 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies 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.

2.4 **Changes in the Companies Act and/or JSE Listings Requirements**

2.4.1 To the extent that any provisions of this memorandum of incorporation are based on any unalterable provisions of the Companies Act or the regulations and any of these provisions are amended, the directors may propose amendments to this memorandum of incorporation to reflect such amendments and the shareholders shall vote in favour thereof, subject to the approval thereof by the JSE, and which the shareholders shall be obliged to vote in favour of.

2.4.2 If any provision of this memorandum of incorporation has been inserted to comply with a then applicable provision of the JSE Listings Requirements, which is subsequently removed or modified, the provision in question shall, with effect from the date upon which the JSE Listings Requirements are amended, no longer apply if the relevant provision has been removed or shall apply as modified in the JSE Listings Requirements. The directors may propose amendments to this memorandum of incorporation to reflect such amendments and the shareholders shall be obliged to vote in favour thereof, subject to the approval thereof by the JSE.

2.4.3 If for any reason the requirements of the JSE Listings Requirements, as a whole, no longer apply to the company, among other things, the provisions of this memorandum of incorporation that have been inserted to comply with the provisions of the JSE Listings Requirements shall no longer apply. The directors may propose amendments to this memorandum of incorporation to reflect such amendments and the shareholders shall be obliged to vote in favour thereof.

2.4.4 If the board resolves to list the securities of the company on a recognised securities exchange licensed in South Africa other than the JSE, either as an addition to or in substitution of the company's current JSE listing, the shareholders shall vote in favour of, and adopt, such amendments and/or revisions to this memorandum of incorporation proposed by the board as are reasonably necessary and required to accommodate such new listing and to qualify the company for such new listing.

**PART 2: JURISTIC PERSONALITY, POWERS AND RESTRICTIONS**

3 **JURISTIC PERSONALITY**

3.1 The company is a pre-existing public company as defined in the Companies Act and continues to exist as a public company as if it had been incorporated and registered in terms of the Companies Act, as contemplated in item 2 of schedule 5 to the Companies Act, and this memorandum of incorporation replaces and supersedes the Old MOI.

3.2 The company is incorporated in accordance with and governed by –

3.2.1 the unalterable provisions of the Companies 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;

3.2.2 the JSE Listings Requirements;

3.2.3 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this memorandum of incorporation; and

3.2.4 the other provisions of this memorandum of incorporation.

4 **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, except to the extent that the Companies Act or this memorandum of incorporation provides otherwise.

5 **POWERS AND OBJECTS OF THE COMPANY**

5.1 Subject to the provisions of clause 6, the company has, all of the legal powers and capacity contemplated in the Companies Act, save to the extent negated, limited, or restricted in this memorandum of incorporation.

5.2 The main object of the company is to be an investment vehicle through which shareholders, indirectly acquire exposure to VGL shares and, for the duration of the funding period, to be a B-BBEE owned company and a B-BBEE controlled company compliant with the B-BBEE laws and the B-BBBEE principles (insofar as they apply to the company, and to enforce same insofar as they apply to securities holders).

5.3 Furthermore, the legal powers and capacity of the company are subject to the restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Companies Act as provided in clause 6.

## 6 RESTRICTIVE PROVISIONS

6.1 The activities of the company shall be restricted to –

6.1.1 implementing the transaction, matters ancillary thereto, and do all such things necessary to give effect to the transaction;

6.1.2 carrying on the business of acquiring and holding shares in YY ShareCo and matters ancillary thereto, in each case, in accordance with and subject to, as applicable, this memorandum of incorporation and the permitted agreements;

6.1.3 receiving and distributing dividends or other distributions received by it pursuant to (i) its holding of YY ShareCo shares and/or (ii) its indirect holding of VGL shares.

6.1.4 maintaining its listing on the JSE and/or on another recognised securities exchange licensed in South Africa;

6.1.5 appointing such advisors as the board may consider to have the requisite knowledge and experience required to assist the company to achieve its objects; and

6.1.6 exercising its rights and performing its obligations in terms of this memorandum of incorporation, the implementation agreement, the relationship agreement, the VGL service level agreement, the funding agreements and any other agreements contemplated in any of such documents (collectively the "**permitted agreements**"), and do all such things necessary to give effect to the permitted agreements.

6.2 For the purposes of clause 6.1, a matter shall be deemed to be "ancillary" or "necessary", as the case may be, in connection with the company's restricted objects and activities, if at least 75% (seventy five percent) of the directors determine by means of a vote that such a matter is "ancillary" or "necessary", as the case may be.

6.3 None of the following shall be of any force or effect (and, to the maximum extent permitted by law, the powers of the board and each other body and organ shall be restricted accordingly), –

6.3.1 any holding by the company of any investment or conducting of any business, other than as set out in clause 6.1;

6.3.2 any disposal of or encumbrance or entry into of any other transaction in respect of the shares held by it in YY ShareCo (or any rights and interests therein) save as contemplated in this memorandum of incorporation and the other permitted agreements (insofar as they may be relevant);

6.3.3 during the funding agreements restricted period, any incurrence of any debt other than as allowed in the funders funding agreements**;**

6.3.4 any disposal of or encumbrance or ceasing to exercise direct control over the whole or any material part of its present or future assets, undertakings, rights or revenues, whether in terms of one action or a series of actions;

6.3.5 any entering into of any merger, consolidation, or amalgamation or similar restructuring; and/or

6.3.6 during the funding period, the passing of any shareholders resolution of YY ShareCo without VGL's prior written consent,

provided that the above matters (and any other matters beyond the capacity and powers of the company as stated in this memorandum of incorporation) may be negotiated, approved and entered into by the company but only on an expressly conditional basis that this memorandum of incorporation be amended prior to the implementation of any such matters to give the company the power and authority to implement same.

6.4 The company shall, to the extent within its powers to do so, procure that none of the matters contemplated in clause 6.3 shall occur in relation to YY ShareCo.

6.5 No amendment to or replacement of this clause 6 shall be taken by the company through its directors, any committees of the board, shareholders or otherwise, without (i) the approval of the shareholders by way of special resolution, provided that the approval threshold shall be increased to 76% (seventy six percent), and (ii) during the funding period, the prior written consent of VGL in terms of the relationship agreement.

6.6 In addition to any other requirement with regard thereto, the preference share agent's prior written consent will also be required –

6.6.1 to undertake any of the items listed in clause 6.3; and/or

6.6.2 amend or replacement of this clause 6, as contemplated in clause 6.5.

## 7 APPLICATION OF OPTIONAL PROVISIONS OF THE COMPANIES ACT

The company, being a public company, will comply with –

7.1 the extended accountability provisions set out in Chapter 3 of the Companies Act; and

7.2 the provisions of Parts B and C of Chapter 5 of the Companies Act, and to the Takeover Regulations in terms of the Companies Act.

## PART 3: AUTHORISED SHARE CAPITAL

8 **SHARES**

8.1 **Authorised share capital**

8.1.1 The company is authorised to issue –

8.1.1.1 100,000,000 (one hundred million) ordinary shares of no par value and of the same class, each of which ranks *pari passu* (which shall have the meaning ascribed thereto in paragraph 3.29 of the JSE Listings Requirements) in all respects, and each of which, save as specifically provided otherwise in **Annexure A** hereto, ranks *pari passu* with the N-shares, and entitles the holder to –

8.1.1.1.1 attend, participate in, speak at and vote on any matter to be decided by the shareholders of the company, in person or by proxy, and to 1 (one) vote in the case of a vote by means of a poll;

8.1.1.1.2 participate proportionally in any dividend paid by the company and which is not made to the holders of another class of shares in accordance with the preferences, rights and limitations of such class of shares;

8.1.1.1.3 receive proportionally the net assets of the company upon its liquidation; and

8.1.1.1.4 any other rights attaching to the ordinary shares in terms of the Companies Act or any other law;

8.1.1.2 12,000,000 (twelve million) N-shares, 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 ordinary shares in all respects, save as specifically provided otherwise in **Annexure A** hereto;

8.1.1.3 25,000,000 (twenty five million) class A preference shares of the same class, each of which ranks *pari passu* with all of the other class A preference shares in all respects, with those with preferences, rights, limitations and other terms set out in **Annexure B** hereto; and

8.1.1.4 25,000,000 (twenty five million) class B preference shares of the same class, each of which ranks *pari passu* with all of the other class B preference shares in all respects, with those with preferences, rights, limitations and other terms set out in **Annexure C** hereto.

8.1.2 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. The variation of any preferences, rights, limitations and other terms associated with any class of shares as set out in this memorandum of incorporation may be enacted only by an amendment of this memorandum of incorporation by special resolution of the ordinary shareholders. If any amendment of the memorandum of incorporation relates to the variation of any preferences, rights, limitation or any other terms attaching to any other class of shares already in issue, that amendment must not be implemented without a special resolution adopted by the holders of shares of that class. In such instances, the holders of such shares will be allowed to vote at the combined general meeting of all shareholders, subject to clause 27.2. No resolution of shareholders in respect of such amendment shall be proposed or passed, unless a special resolution of the holders of the shares of that class approves the amendment.

8.2 **Board's powers**

8.2.1 The board shall not have the power to –

8.2.1.1 increase or decrease the number of authorised shares of any class of the company's shares;

8.2.1.2 consolidate and reduce the number of the company's issued and authorised shares of any class;

8.2.1.3 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;

8.2.1.4 convert one class of shares into one or more other classes, save where a right of conversion attaches to the class of shares created;

8.2.1.5 reclassify any classified shares that have been authorised but not issued;

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

8.2.1.7 vary any preference rights, limitations or other terms attaching to any class of shares,

and such powers shall only be capable of being exercised by the shareholders by way of special resolution adopted by the shareholders and (to the extent required) an amendment to the memorandum of incorporation.

8.2.2 The company has the power, subject to the authority of a special resolution as contemplated in clause 8.2, to subdivide and/or consolidate its shares of any class. Such subdivision may be effected through a mere splitting of, and consequential increase in, the authorised and issued shares of the relevant class, and without an issue of new shares and an increase of its capital. Similarly, such consolidation may be effected through a mere combining of, and consequential decrease in, the authorised and issued shares of the relevant class, and without an acquisition by the company of any issued shares or a decrease of its capital.

8.2.3 The authorisation and classification of shares, the creation of any class of shares, the conversion of one class of shares into one or more other classes, the consolidation of securities, the sub-division of securities, the change of the name of the company, the increase of the number of authorised securities, and the variation of any preferences, rights, limitations and other terms associated with each class of shares as set out in this memorandum of incorporation may be changed only by an amendment of this memorandum of incorporation by special resolution of the shareholders and in accordance with the JSE Listings Requirements, to the extent required, save if such an amendment is ordered by a court in terms of sections 16(1)(a) and 16(4) of the Companies Act.

8.2.4 No shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of shares may be varied and no such resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act.

8.2.5 In addition to any other requirement with regard thereto, the preference share agent's prior written consent will also be required in relation to the items in clauses 8.2.1, 8.2.2, and 8.2.3.

## PART 4: SHARE ISSUES

9 **SHARE ISSUES**

9.1 **General**

9.1.1 The company may only issue shares which are fully paid up and are, subject to the B-BBEE principles, freely transferable. In addition to any other requirements in terms of this memorandum of incorporation, the company may only issue such shares with the prior written consent of the preference share agent.

9.1.2 The board may, subject to clauses 9.1.1 and 9.1.6, resolve to issue shares of the company, securities convertible into shares and/or grant options to subscribe for shares, 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.

9.1.3 All issues of shares for cash, and all issues of options and convertible securities granted or issued for cash must, in addition and to the extent applicable, be undertaken in compliance with the JSE Listings Requirements.

9.1.4 All securities of the company for which a listing is sought on the JSE and all securities of the same class as securities of the company which are listed on the JSE must, despite the provisions of section 40(5) of the Companies Act, but unless otherwise required by the Companies Act, only be issued after the company has received the consideration approved by the company for the issuance of such securities.

9.1.5 Subject to sections 40(5) to 40(7) of the Companies Act, when the company has received the consideration approved by the board for the issuance of any shares –

9.1.5.1 those shares are fully paid up; and

9.1.5.2 the company must issue those shares and cause the name of the holder to be entered onto the company's securities register in accordance with sections 49 to 56 of the Companies Act.

9.1.6 Despite anything to the contrary contained in this memorandum of incorporation, any issue of shares, securities convertible into shares, or rights exercisable for shares in a transaction, or a series of integrated transactions shall, if and to the extent that this may be required in terms of the provisions of section 41(3) of the Companies 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.

9.2 **Pre-emptive right on issue**

9.2.1 To the extent that the JSE Listings Requirements or the JSE by directive requires the board to first offer any shares to existing shareholders in proportion to their shareholding before issuing those shares to any party ("**rights offer**"), the board shall comply with any such requirement or directive, provided that if any entitlement to a fraction of a share arises pursuant to such an offer, all allocations of securities will, to the extent that such apply, be calculated in accordance with the prevailing JSE Listings Requirements, failing which such shall be calculated in such manner set out by the board.

9.2.2 After the expiration of the time within which a rights offer may be accepted, or on the receipt of a confirmation from the person to whom the offer is made that he or she declines to accept the shares offered, the directors may, subject to the aforegoing provisions, issue such shares in such manner as they consider most beneficial to the company.

9.2.3 The directors may exclude any shareholders or category of shareholders from a rights offer if and to the extent that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the rights offer.

9.2.4 Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of shares is issued or as may otherwise be provided in this memorandum of incorporation, no shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional shares issued by the company (this shall include, among other things, that the provisions of section 39(2) of the Companies Act are hereby excluded).

## 10 CAPITALISATION SHARES

10.1 The board shall have the power and authority to –

10.1.1 approve the issuing of any authorised shares as capitalisation shares;

10.1.2 issue shares of one class as capitalisation shares in respect of shares of another class; and

10.1.3 resolve to permit shareholders to elect to receive a cash payment *in lieu* of a capitalisation share,

provided that such issue is effected in accordance with the requirements of section 47 of the Companies Act and has been approved by the JSE to the extent required under the

JSE Listings Requirements and that the JSE Listings Requirements have otherwise been complied with.

10.2 The board may not resolve to offer a cash payment *in lieu* of awarding a capitalisation share, as contemplated in clause 10.1.3, unless the board –

10.2.1 has considered the solvency and liquidity test as required by section 46 of the Companies Act, on the assumption that every such shareholder would elect to receive cash; and

10.2.2 is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of such cash distribution.

## PART 5: SECURITIES REGISTER

### 11 CERTIFICATED AND UNCERTIFICATED SECURITIES

11.1 Securities of the company are to be issued in certificated or uncertificated form in accordance with the Financial Markets Act and Companies Act, provided that to the extent that the Financial Markets Act requires fresh issues of listed securities to be in uncertificated form such issues shall only be in such form.

11.2 The shares may be held as certificated securities or uncertificated securities.

11.3 Except to the extent otherwise provided in the Companies Act, the rights and obligations of securities holders shall not be different solely on the basis of their securities being certificated securities or uncertificated securities and each provision of this memorandum of incorporation applies with respect to any uncertificated securities in the same manner as it applies to certificated securities, unless otherwise stated or indicated by the context.

11.4 Any certificated securities may cease to be evidenced by certificates and thereafter become uncertificated securities.

11.5 Any uncertificated securities may be withdrawn from the uncertificated securities register, and certificates issued evidencing those securities at the election of the holder of those uncertificated securities. A holder of uncertificated securities who elects to withdraw all or part of the uncertificated securities held by it in an uncertificated securities register, and obtain a certificate in respect of those withdrawn securities, may so notify the relevant CSDP by the rules of the CSDP.

11.6 After receiving notice from a CSDP, that the holder of uncertificated securities wishes to withdraw all or part of the uncertificated securities held by it in an uncertificated securities register, and obtain a certificate in respect thereof, the company shall –

11.6.1 immediately enter the relevant securities holder's name and details of its holding of securities in the securities register and indicate on the securities register that the securities so withdrawn are no longer held in uncertificated form; and

11.6.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of securities who is not resident within South Africa) prepare and deliver to the relevant person a certificate in respect of the securities and notify the CSDP that the securities are no longer held in uncertificated form.

11.7 The company may charge a holder of its securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

## 12 SECURITIES REGISTER

12.1 The company must establish or cause to be established a securities register in the form prescribed by the Companies Act and the regulations and maintain the securities register in accordance with the prescribed standards.

12.2 As soon as practicable after issuing any securities the company must enter or cause to be entered in the securities register, in respect of every class of securities it has issued or which have been transferred –

12.2.1 the total number of those securities that are held in uncertificated form; and

12.2.2 with respect to certificated securities –

12.2.2.1 the names and addresses of the persons to whom the securities were issued or transferred;

12.2.2.2 the number of securities issued or transferred to each of them;

12.2.2.3 the number of, and prescribed circumstances relating to, any securities that have been placed in trust as contemplated in section 40(6)(d) of the Companies Act or whose transfer has been restricted;

12.2.2.4 each holder of certificated securities shall be entitled to one certificate for all the certificated securities of a particular class registered in his or her 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;

12.2.2.5 in the case of securities other than shares as contemplated in section 43 of the Companies 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

12.2.2.6 any other prescribed information.

12.3 The securities register maintained in accordance with the Companies Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.

12.4 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.

12.5 A certificate evidencing any certificated securities of the company –

12.5.1 must state on its face –

12.5.1.1 the name of the company;

12.5.1.2 the name of the person to whom the securities were issued;

12.5.1.3 the number and class of shares and designation of the series, if any, evidenced by that certificate;

12.5.1.4 any restriction on the transfer of the securities evidenced by that certificate;

12.5.2 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; and

12.5.3 is proof that the named securities holder owns the securities, in the absence of evidence to the contrary.

12.6 A certificate remains valid despite the subsequent departure from office of any person who signed it.

12.7 If, as contemplated in clause 12.4, all of the shares rank equally for all purposes, and are therefore not distinguished by a numbering system –

12.7.1 each certificate issued in respect of those shares must be distinguished by a numbering system; and

12.7.2 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 12.5 to 12.7 is not a contravention of the Companies Act and does not invalidate that certificate.

## 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 Companies Act, provided that the registered holder of the securities must disclose to the company –

13.1 the identity of the beneficial owner of the securities; and

13.2 the identity of each person with a beneficial interest in the securities so held, the number and class of securities held for each such person with a beneficial interest, and the extent of each such beneficial interest,

in accordance with the provisions of section 56 of the Companies Act.

## PART 6: SHARE TRANSFERS, TRANSMISSION AND REPURCHASES; ODD-LOT OFFERS

### 14 TRANSFER OF SECURITIES

#### 14.1 Transfer of certificated securities

14.1.1 The instrument of transfer of any certificated securities which are not listed on the JSE shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such certificated security until the name of the transferee is entered in the securities register. The directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.

14.1.2 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 therefor in law, but shall, to that extent, be recoverable from the person acquiring such securities.

14.1.3 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 clause 11.2, this clause 14 and clauses 19, 20, 21 and 22, any shareholder or holder of other securities may transfer all or any of its certificated securities by way of an instrument in writing in any usual or common form or any other form which the directors may approve.

14.1.4 Every instrument of transfer shall be delivered to the principal place of business of the company, alternatively the offices of the company's transfer secretaries, as appointed from time to time, accompanied by –

14.1.4.1 the certificate issued in respect of the certificated securities to be transferred; and/or

14.1.4.2 such other evidence as the company may require to prove the title of the transferor, or his or her right to transfer the certificated securities.

14.1.5 All authorities to sign instruments of transfer granted by holders of securities for the purpose of transferring certificated securities which may be lodged with or produced or exhibited to the company at its registered office or at its transfer 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 duly given and lodged at the company's registered office or transfer office 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.

14.1.6 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.

14.2 **Transfer of uncertificated securities**

14.2.1 The transfer of uncertificated securities may be effected only –

14.2.1.1 by a CSDP;

14.2.1.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a CSDP or an order of a court; and

14.2.1.3 in accordance with section 53 of the Companies Act and the rules of the CSDP.

14.2.2 Transfer of ownership in any uncertificated securities must be effected by debiting the account in the uncertificated securities register from which the transfer is effected and crediting the account in the uncertificated securities register to which the transfer is effected, in accordance with the rules of the CSDP.

15 **TRANSMISSION OF SECURITIES**

15.1 Any person who submits proof of his or her appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased shareholder or securities holder of the company, or of a securities holder whose estate has been sequestrated or of a securities holder who is otherwise under a disability or as the liquidator of any body corporate which is a securities holder of the company, shall be entered in the securities register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a securities holder, subject to the provisions of clauses 21, 21.1,21.2,21.3 and 21.4 below.

15.2 The executor of the estate of a deceased sole holder of any securities shall be the only person recognised by the company as having any title to such securities. In the case of securities registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased shareholder, as determined by the board, shall be the only person recognised by the company as having any title to the securities.

15.3 Any person becoming entitled to any securities by virtue of the death of a securities holder shall, upon producing such evidence that he or she has such title or rights as the directors think sufficient, have the right either to have such securities transferred to him or herself or to make such other transfer of the securities as such securities holder could have made: provided that in respect of a transfer other than to him or herself –

15.3.1 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 securities by such securities holder before his or her death; and

15.3.2 a person becoming entitled to any securities shall not, unless and until he or she is him or herself registered as a securities holder in respect of such securities, be entitled to exercise any voting or other right attaching to such securities or any other right relating to meetings of the company.

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

16.1 Subject to the JSE Listings Requirements, the provisions of the Companies Act, including section 48 of the Companies Act, and the further provisions of this clause 16 –

16.1.1 the board may, with the prior written consent of the preference share agent, determine that the company acquire a number of its own shares; and

16.1.2 any subsidiary of the company may acquire shares of the company, but –

16.1.2.1 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

16.1.2.2 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.

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

16.2.1 such complies with the JSE Listings Requirements applicable thereto; and

16.2.2 the acquisition –

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

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

16.2.3 it reasonably appears that the company will satisfy the solvency and liquidity test immediately after completing the proposed acquisition; and

16.2.4 the board, by resolution, has acknowledged that it has applied the solvency and liquidity test and reasonably concluded that the company will satisfy the solvency and liquidity test immediately after completing the proposed acquisition.

16.3 A decision of the board referred to in clause 16.1.1 –

16.3.1 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 (as contemplated in the Companies Act); and

16.3.2 is subject to the requirements of sections 114 and 115 of the Companies Act if considered alone, or together with other transactions in a series of integrated 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.

16.4 Despite any other provision of this memorandum of incorporation to the contrary, 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 –

16.4.1 shares held by one or more subsidiaries of the company; or

16.4.2 convertible or redeemable shares.

## 17 DEEMED OFFER

With effect from the first day following the elapse of the funding period, the provisions of clause 22 (*Deemed Offer*) shall be deemed to be incorporated into this clause and apply (the terms adjusted for the context as necessary), save that the only trigger event shall be the trigger event in clause 22.2.5.

## 18 ODD-LOT OFFERS

18.1 The company shall be entitled to implement an odd-lot offer in accordance with the provisions of this clause 17 if approved by the shareholders by ordinary resolution and in accordance with the restrictions and procedures imposed by the JSE Listings Requirements.

18.2 If, upon implementation of any odd-lot offer made by the company, there are holders of shares holding in aggregate less than 100 (one hundred) shares, or such other number of shares as determined by the JSE as amounting to an odd-lot ("**odd-lots**") in the company ("**odd-lot holders**"), then the company shall, save in respect of odd-lot holders who have elected to retain their odd-lots in the company –

18.2.1 cause the odd-lots to be expropriated by the company from the odd-lot holders who have not made an election to retain their odd-lots in the company or sold in such manner as the directors may direct; and

18.2.2 procure that the proceeds of such expropriation or sales are paid to such odd-lot holders.

18.3 All unclaimed proceeds of such sales (other than monetary proceeds) may be invested, provided that all monies due to shareholders must be held by the company in trust. Subject to the laws of prescription, proceeds of such sales which remain unclaimed for a period of 3 (three) years from the date on which they were declared (or such longer period as may be required under the laws of prescription) 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.

## PART 7: FUNDING PERIOD B-BBEE RESTRICTIONS

### 19 APPLICATION OF THE B-BBEE PRINCIPLES

19.1 The B-BBEE principles shall only apply for the duration of the funding period, after which date, they shall no longer be of any force or effect.

19.2 The B-BBEE principles applicable to the shareholders shall, despite any provision of the B-BBEE principles to the contrary, be subject to the exclusions in clause 23**.**

### 20 RESTRICTIONS ON THE SALE AND ENCUMBRANCE OF SHARES

20.1 All the shares will be subject to the restrictions that –

20.1.1 only black participants shall be eligible to be holders thereof;

20.1.2 the company shall not issue shares, securities convertible into shares, or rights exercisable for shares otherwise than to –

20.1.2.1 black participants; or

20.1.2.2 nominees who will hold such shares on behalf of black participants; and

20.1.3 no holder of securities shall dispose of its securities other than to a black participant or to nominees who will hold such shares on behalf of black participants,

such that only black participants may be the beneficial holders of securities, only black participants or nominees (who will hold such shares on behalf of black participants) may be the registered holders of securities.

20.2 Without prejudice to any specific restrictions with regard thereto, shareholders shall be entitled to encumber their shares in favour of persons that are not black participants, provided that any disposal pursuant thereto shall be subject to the B-BBEE principles, included in which is that only black participants may be the beneficial holders of securities, only black participants or nominees (who will hold such shares on behalf of black participants) may be the registered holders of securities.

20.3 All securities holders hereby undertake to –

20.3.1 comply with the B-BBEE undertakings set out in **Annexure D** to the extent such undertakings apply to securities holders, and

20.3.2 procure (to the extent within its powers to do so) that the company complies with the B-BBEE undertakings set out in **Annexure D** to the extent such undertakings apply to the company.

20.4 In the event that the provisions of any B-BBEE laws are amended in such a manner that the commercial rationale of the B-BBEE principles is materially negated, alternatively, that the rights and obligations of any person flowing from this clause are materially affected, the board of the company shall, save to the extent that such amendment would result in the principles herein being misaligned with the relationship agreement (in which case the provisions of this memorandum of incorporation shall continue to apply, without proposal being made by the board to amend same), recommend appropriate amendments of the provisions of this clause 20 to the shareholders, so as to achieve the intended effect and to align with the amended B-BBEE laws, provided that no person shall be in breach of the provisions of this clause 20 and/or **Annexure D** by reason of a change to the B-BBEE laws occurring subsequent to the filing date unless and until the provisions of this clause 20 and/or **Annexure D** have been duly amended to align with the changes contemplated in the applicable B-BBEE laws (the "**exclusion**"). The directors shall propose amendments to this memorandum of incorporation to effect the aforesaid alignment and the shareholders shall vote in favour thereof. The exclusion shall not apply, however, if after the board has proposed the necessary amendments to the memorandum of incorporation, the shareholders do not pass the necessary resolution. In addition to any other requirement with regard thereto, the preference share agent's prior written consent will also be required to amend the memorandum of incorporation.

20.5 Subject to clause 23.1, the B-BBEE principles shall, save for with VGL's prior written consent to the contrary (which consent may be given subject to conditions), equally apply to all other securities issued by the company, and the holders thereof.

## 21 RESTRICTIONS ON THE TRANSMISSION OF SHARES

### 21.1 Death of a natural person

In the event of death of a securities holder who is a natural person, then –

21.1.1 the securities held by such deceased securities holder shall be permitted and required to be transferred by the executor of such deceased securities holder's estate to a black participant within a period of 180 (one hundred and eighty) days of such death; and

21.1.2 in the event that such executor fails to comply with the provisions of clause 21.1.1 within the 180 (one hundred and eighty) day time period, the securities concerned shall be deemed to have been offered to the company in accordance with the provisions of clause 22 and the provisions of clause 22 shall apply.

21.2 **Death of a member of a black entity**

In the event of the death of a shareholder, member, participant and/or beneficiary of a securities holder, which securities holder holds securities as a black entity, as a result of which death the relevant securities holder no longer qualifies as a black entity, then –

21.2.1 in the first place, such securities holder shall be entitled to rectify such position, within 180 (one hundred and eighty) days of such death, and submit to the company a B-BBEE ownership certificate of compliance in respect of such securities holder recording such information as required by the company; and

21.2.2 in the event that such securities holder fails to comply with the provisions of clause 21.2.1 within the 180 (one hundred and eighty) day time period, or, on the basis of the B-BBEE ownership certificate of compliance issued in respect of such securities holder, pursuant to clause 21.2.1, such securities holder does not constitute a black entity, the securities concerned shall be deemed to have been offered to the company in accordance with the provisions of clause 22 and the provisions of clause 22 shall apply.

21.3 **Sequestration of a black person**

In the event that a securities holder, which securities holder is a black person, is sequestrated (whether provisionally of finally), then –

21.3.1 the securities held by such sequestrated securities holder shall be permitted and required to be transferred by such securities holder and/or the trustee of such securities holder's insolvent estate to a black participant within a period of 180 (one hundred and eighty) days from the date of the provisional or final sequestration (whichever is the earlier), unless the relevant sequestration order is set aside within such period; and

21.3.2 in the event that the sequestrated securities holder and/or the relevant trustee of such securities holder's insolvent estate fails to comply with the provisions of clause 21.3.1, the securities concerned shall be deemed to have been offered to the company in accordance with the provisions of clause 22 and the provisions of clause 22 shall apply.

21.4 **Liquidation of a black entity**

In the event that a securities holder, which securities holder is a black entity, is liquidated (whether provisionally of finally), then –

21.4.1 the securities held by such liquidated securities holder shall be permitted and required to be transferred by such securities holder and/or the liquidator of such securities holder's insolvent estate to a black participant within a period of 180 (one hundred and eighty) days from the date of the provisional or final liquidation (whichever is the earlier), unless the relevant liquidation order is set aside within such period; and

21.4.2 in the event that the liquidated securities holder and/or the relevant liquidator of such securities holder's insolvent estate fails to comply with the provisions of clause 21.4.1, the securities concerned shall be deemed to have been offered to the company in accordance with the provisions of clause 22 and the provisions of clause 22 shall apply.

22 **DEEMED OFFER**

22.1 In this clause 22, unless inconsistent with or otherwise indicated by the context, the following terms words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

22.1.1 "**death event**" means the occurrence of an event set out in clause 21.1 or 21.2, being the death of a securities holder who is a natural person or the death of a shareholder, member, participant or beneficiary of a black entity;

22.1.2 "**insolvency event**" means the occurrence of an event set out in clause 21.3 or 21.4, being the involuntary sequestration of a shareholder who is a natural person, or the involuntary liquidation of a black entity;

22.1.3 "**offer**" means the deemed offer of the offer shares by the offeror to the company or its nominee in terms of clause 22.2;

22.1.4 "**offer date**" means the day on which the relevant event contemplated in clauses 22.2.1 to 22.2.4 occurs;

22.1.5 "**offer shares**" means, in relation to an event contemplated in clauses 22.2.1 to 22.2.4, all the ordinary shares of the offeror;

22.1.6 "**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 22.2.1 to 22.2.4 has occurred;

22.1.7 "**offeror**" means the relevant securities holder (or his or her estate) in respect of which an event contemplated in clauses 22.2.1 to 22.2.4 has occurred;

22.1.8 "**trading day**" means any day on which trading takes place on the JSE; and

22.1.9 "**VWAP**" means, in relation to shares or securities listed on an exchange, as at any day ("**valuation day**") and in relation to a named number of trading days, the volume weighted average traded price of the securities traded on that exchange for the named number of trading days immediately prior to the valuation day, provided that in the determination of that volume weighted average traded price, transactions that are not concluded through the trading systems of the JSE, but which are nevertheless settled through the settlement systems of the JSE, shall be disregarded. The VWAP shall be determined by the company's sponsor.

22.2 If –

22.2.1 a death event occurs, and the executor of the deceased estate fails to dispose of the offer shares, or the black entity fails to rectify its lower B-BBEE status to the same or higher B-BBEE 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 21.1 and/or 21.2;

22.2.2 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 21.3 and/or 21.4;

22.2.3 a securities holder is in breach of a B-BBEE principle;

22.2.4 a securities holder makes a false declaration in respect of his/her/its B-BBEE status; or

22.2.5 a securities holder otherwise breaches the terms of this memorandum of incorporation (and to the extent that such can be remedied, fails to remedy such within 14 business days of being called on to do so),

then the offeror shall be deemed to have made an offer in respect of the offer shares to the company or its nominee on the day immediately preceding the offer date, based on the terms and conditions recorded in this clause 22.

22.3 The offer shall be open for acceptance by the company or its nominee for the duration of the offer period, and may be accepted by written notice to that effect to the offeror. In this regard, the company may accept the offer for itself, or on behalf of its nominee.

22.4 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 (or its nominee, as applicable) purchases or repurchases from the offeror the offer shares, on the following terms and conditions –

22.4.1 the offer shares shall be acquired with effect from the offer date;

22.4.2 if an offer arises –

22.4.2.1 in terms of clause 22.2.1, the purchase price per offer share shall be equal to the 30 (thirty) day VWAP of the shares; or

22.4.2.2 in terms of clauses 22.2.3,22.2.4 and/or 22.2.5 (all inclusive), the purchase price per offer share shall be equal to the 30 (thirty) trading day VWAP of the shares less 27% (twenty seven percent), provided that –

22.4.2.2.1 the purchase price per offer share shall be equal to the 30 (thirty) trading day VWAP of the shares less 7% (seven percent) if the relevant breach of a B-BBEE principle was caused by facts or circumstances beyond the control of the relevant securities holder and/or its ultimate controlling shareholders, as the case may be, other than as a result of a change in the B-BBEE laws (but which shall include for the avoidance of doubt, where a breach of a B-BBEE principle arises as a result of a B-BBEE verification agency adopting a different interpretation of any provision of the B-BBEE laws from the interpretation adopted by a B-BBEE verification agency as at the as at the date of filing of this memorandum of incorporation) and the relevant breach could not have been avoided even if securities holder and/or its ultimate controlling shareholders, as the case may be, took timely, necessary and lawful steps which could reasonably be expected from it to avoid such breach; and

22.4.2.2.2 the purchase price per offer share shall be equal to the 30 (thirty) trading day VWAP of the shares less 1% (one percent) if the relevant breach of a B-BBEE principle was caused by any change in the B-BBEE laws, the consequences of which were outside of the reasonable control of relevant securities holder and/or its ultimate controlling shareholders.

22.4.3 the purchase price shall be payable against delivery of the relevant documents of title of the offer shares to the company;

22.4.4 the offeror shall be deemed to irrevocably authorise the company to give such instructions to the transfer secretaries, the nominee and/or the CSDP as are required to give effect to the sale or repurchase pursuant to the offer; and

22.4.5 the offeror shall be deemed to warrant that it –

22.4.5.1 is the lawful owner and holder of the offer shares; and

22.4.5.2 has not encumbered, sold, transferred or granted any right to a third party in respect of the offer shares.

23 **VGL ESOP, YY ESOP AND PREFERENCE SHARES**

23.1 The B-BBEE principles shall not be applicable to the preference shares and the preference shareholders.

23.2 Persons and/or YY ESOP participants and/or VGL ESOP participants who are entitled to become or become securities holders pursuant to the unwinding, and/or unbundling of the YY ESOP and/or VGL ESOP (and/or otherwise distribution of their assets to their participants) shall, despite that they may not be black participants, be permitted to receive initial beneficial interest in (and/or otherwise become the initial registered holders of) such securities, provided that they shall otherwise be subject to the B-BBEE principles in respect of such securities, and/or generally.

## PART 8: SHAREHOLDERS MEETINGS

### 24 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

24.1 The record date(s) for the purpose of determining which shareholders are entitled to –

24.1.1 receive notice of a shareholders meeting;

24.1.2 participate in and vote at a shareholders meeting;

24.1.3 decide any matter by written consent or by electronic communication;

24.1.4 receive a distribution; or

24.1.5 be allotted or exercise other rights,

shall be determined by the board, provided that, for as long as the JSE Listings Requirements apply to the company and prescribe a record date, such record date shall be the record date so prescribed.

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

### 25 SHAREHOLDERS MEETINGS

25.1 **Calling of shareholders meetings**

25.1.1 The board, or any prescribed officer of the company authorised by the board, is entitled to call a shareholders meeting at any time and may also, if deemed fit, cancel any shareholders meeting called by it (other than pursuant to clause 25.1.3), reasonably in advance of the meeting date.

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

25.1.2.1 at any time that the board is required by the Companies Act, the JSE Listings Requirements or this memorandum of incorporation to refer a matter to shareholders for decision;

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

25.1.2.3 when required in terms of clause 25.1.3 or by any other provision of this memorandum of incorporation.

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

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

25.1.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as 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.

25.1.4 The company shall deliver notices of meetings to each shareholder entitled to vote at such meeting who has elected to receive such documents.

25.1.5 Save as otherwise provided herein, the company is not required to hold any other shareholders meetings other than those specifically required by the Companies Act and the JSE Listings Requirements.

25.2 **Annual general meetings**

25.2.1 Notwithstanding any provision of the Companies 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.

25.2.2 Subject to the provisions of the Companies Act and/or the JSE Listings Requirements, any such annual general meeting –

25.2.2.1 shall be capable of being held by electronic communication in accordance with the further provisions of this memorandum of incorporation; and

25.2.2.2 shall not be capable of being held in accordance with the provisions of section 60 of the Companies Act set out in clause 30.

25.2.3 Each annual general meeting of the company contemplated in clause 25.1.4 shall provide for at least the following business to be transacted –

25.2.3.1 the adoption of the audited financial statements, including the directors report for the immediately preceding financial year of the company, and an audit committee report;

25.2.3.2 the election of directors, to the extent required by the Companies Act or by this memorandum of incorporation (including clause 31);

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

25.2.3.4 any matters raised by the shareholders, with or without advance notice to the company, provided that matters raised without notice shall only be capable of being approved at a subsequent shareholder's meeting duly convened in terms of this memorandum of incorporation or, to the extent permissible in terms of this memorandum of incorporation, in terms of a subsequent written resolution duly proposed for adoption by the shareholders.

25.3 **Location and notice of meeting**

25.3.1 The board may determine the location of any shareholders meeting, and the company may hold any such meeting in South Africa or in any foreign country, and the authority of the board and the company in this regard is not limited or restricted by this memorandum of incorporation. Despite the above, the board should take cognisance of any impact on the company's place of effective management when making decisions as contemplated in this clause 25.3.1.

25.3.2 Every shareholder's meeting shall be reasonably accessible within South Africa for electronic participation by shareholders.

25.3.3 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice.

25.4 **Quorum and adjournment of meetings**

25.4.1 The quorum requirements for a shareholders meeting to begin or for a matter to be considered are as set out in section 64(1) of the Companies Act without variation, and accordingly –

25.4.1.1 a shareholders meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

25.4.1.2 a matter to be decided at a shareholders meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.

25.4.2 The time periods specified in sections 64(4) and (5) of the Companies Act apply to the company without variation, and accordingly, if within (1) one hour after the appointed time for a meeting to begin, the requirements of clause 25.4.1 –

25.4.2.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;

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

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

25.4.2.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 25.4.1 may extend the 1 (one) hour limit allowed in clause 25.4.2 for a reasonable period on the grounds that –

25.4.2.2.3 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or

25.4.2.2.4 one or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders, together with others in attendance, would satisfy the requirements of clause 25.4.1.

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

25.4.4 The company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 25.4.2 unless the location for the meeting is different from –

25.4.4.1 the location of the postponed or adjourned meeting; or

25.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.

25.4.5 Despite the provisions of clause 25.4.4 to the contrary, for so long as the company's securities are listed on the JSE, the company shall release notice on SENS of any postponed or adjourned meeting (whether postponed or adjourned in terms of clause 25.4.2 or otherwise).

25.4.6 If at the time appointed in terms of clause 25.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 25.4.1 have not been satisfied, the shareholders present in person or by proxy will be deemed to constitute a quorum.

25.4.7 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) of the Companies Act are not limited or restricted by this memorandum of incorporation.

25.4.8 The chairperson of a meeting may with the consent of a meeting at which a quorum is present (and must if the meeting resolves thus) adjourn the meeting from time to time and from place to place, but an adjourned meeting may only deal with matters which could legally be dealt with at the meeting on which the adjournment took place.

25.4.9 The maximum period allowable for an adjournment of a shareholders meeting is as set out in section 64(12) of the Companies Act, without variation.

25.5 **Conduct of meetings**

25.5.1 The chairperson, if any, of the board, shall preside as chairperson at every shareholders meeting.

25.5.2 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the directors present shall choose 1 (one) of their number to be chairperson. If no director is willing to act as chairperson or if no director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the shareholders present shall by way of a poll appoint 1 (one) of their number to be chairperson of the meeting.

25.5.3 The chairperson of a shareholders meeting may –

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

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

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

25.5.4.1 it is brought to the attention of the chairperson at the meeting; and

25.5.4.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

25.5.5 Any objection to the admissibility of any vote shall be raised –

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

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

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

25.5.6 Even if he or she is not a shareholder –

25.5.6.1 any director;

25.5.6.2 the chairperson;

25.5.6.3 the company's auditor;

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

25.5.6.5 the company's JSE sponsor (or any director or JSE approved executive thereof),

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

## 26 SHAREHOLDERS MEETINGS BY ELECTRONIC COMMUNICATION

26.1 The company may, subject to the JSE Listings Requirements, 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 Companies Act, and the power of the company to do so is not limited or restricted by this memorandum of incorporation. Accordingly, –

26.1.1 any shareholders meeting may be conducted entirely by electronic communication; or

26.1.2 one or more shareholders, or proxies for shareholders, may participate by electronic communication in all or part of any shareholders meeting that is being held in person,

so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

26.2 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.

## 27 VOTES OF SHAREHOLDERS

27.1 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 –

27.1.1 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;

27.1.2 on a poll any person who is present at the meeting, whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the securities held by that shareholder; and

27.1.3 the holders of securities other than ordinary shares shall not be entitled to vote on any resolution at a meeting of ordinary shareholders, except as provided in clause 27.2.

27.2 On any resolution the total voting rights of all securities (other than ordinary shares and any securities which are special shares created for the purposes of B-BBEE) shall not carry special rights or privileges and shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary shareholders and holders of B-BBEE shares) exercisable at that meeting (with any fraction of a vote in respect of any shares held by rounded down to the nearest whole number).

27.3 A poll shall be taken in such manner as the chairperson directs (including the use of ballots or voting papers or tickets), 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.

27.4 In the case of an equality of votes, the chairperson of the meeting shall not be entitled to a second or casting vote.

27.5 If an amendment is proposed to any resolution under consideration but is ruled out of order by the chairperson of the meeting, acting in good faith, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.

27.6 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.

27.7 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 –

27.7.1 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

27.7.2 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 chairperson or secretary thereof, with the company before the commencement of any shareholders meeting at which such person intends to exercise any rights of such shareholder, unless excused from doing so by the chairperson of such meeting in his or her sole discretion.

28 **PROXIES AND REPRESENTATIVES**

28.1 Any shareholder may at any time appoint any natural person (or 2 (two) or more natural persons concurrently), including a natural person who is not a shareholder, as a proxy to –

28.1.1 participate in, and speak and vote at, a shareholders meeting on behalf of that shareholder; or

28.1.2 give or withhold written consent on behalf of that shareholder to a decision contemplated in section 60 of the Companies Act,

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

28.2 A proxy appointment –

28.2.1 must be in writing, dated and signed by the shareholder; and

28.2.2 remains valid for –

28.2.2.1 1 (one) year after the date on which it was signed; or

28.2.2.2 any longer or shorter period expressly set out in the appointment,

unless it is revoked in a manner contemplated in the Companies Act or expires earlier as contemplated in the Companies Act.

28.3 The holder of a power of attorney or other written authority from a shareholder may, if so authorised thereby, represent such shareholder at any meeting of the company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the company before such holder exercises any rights of the shareholder at a shareholders meeting. A shareholder so represented at a meeting of the company shall be deemed for purposes of this memorandum of incorporation to be a shareholder who is present at the meeting.

28.4 All of the remaining provisions of the Companies Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –

28.4.1 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 Companies 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;

28.4.2 a shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b) of the Companies Act;

28.4.3 it is recommended that a shareholder or his or her proxy deliver to the company a copy of the instrument appointing a proxy not later than 24 (twenty four) hours before the commencement of the meeting at which the proxy intends to exercise that shareholder's rights, provided that a shareholder or his or her proxy shall be entitled to deliver such instrument at any time before the proxy exercises any rights of the shareholder at such meeting; and

28.4.4 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 Companies Act,

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

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

"I/We ____________________________________

being a shareholder of **YeboYethu (RF) Limited** do hereby appoint

_______________________________________

or failing him/her

_______________________________________

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

| | In favour of | Against | Abstain |
|---|---|---|---|
| special resolution 1 | .......... | .......... | ........... |
| ordinary resolution 1 | .......... | .......... | ........... |

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

**SIGNED** this day of in the year of .

SHAREHOLDER'S SIGNATURE

*(Note – A shareholder entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a shareholder of the company)*."

29 **SHAREHOLDERS RESOLUTIONS**

29.1 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 Companies Act. Despite anything to the contrary contained in this memorandum of incorporation to the contrary, to the extent that the JSE Listings Requirements require a higher percentage in respect of any particular ordinary resolution, the company shall not implement such ordinary resolution unless the company has obtained the support of the applicable percentage prescribed in terms of the JSE Listings Requirements.

29.2 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 Companies Act.

29.3 No matters, except –

29.3.1 those matters set out in section 65(11) of the Companies Act;

29.3.2 any other matter required by the Companies Act and/or this memorandum of incorporation to be resolved by means of a special resolution; or

29.3.3 for so long as the company's securities are listed on the JSE, and other matter required by the JSE Listings Requirements to be resolved by means of a special resolution,

require a special resolution.

29.4 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.

**30 SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

30.1 In accordance with the provisions of section 60 of the Companies Act, but subject to clause 30.4, a resolution that could be voted on at a shareholders meeting (other than in respect of the election of directors) may instead be –

30.1.1 submitted by the board for consideration to the shareholders entitled to exercise the voting rights in relation to the resolution; and

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

30.2 A resolution contemplated in clause 30.1 –

30.2.1 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

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

30.3 Within 10 (ten) business days after adopting a resolution, in accordance with the procedures provided in this clause 30, 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.

30.4 The provisions of this clause 30 shall not apply to the passing of any shareholder resolutions that are required by the JSE Listings Requirements or Companies Act to be considered and passed at a meeting.

## PART 9: DIRECTORS, DIRECTORS MEETINGS AND COMPANY SECRETARY

### 31 COMPOSITION OF THE BOARD OF DIRECTORS

31.1 **Board size**

In addition to the minimum number of directors, if any, that the company must have to satisfy any requirement in terms of the Companies Act to appoint an audit committee and a social and ethics committee, the board must comprise at least 5 (five) directors and a maximum of 9 (nine) directors and the shareholders shall be entitled, by ordinary resolution, to change such maximum number of directors as they from time to time shall consider appropriate, subject to the requirement that the majority of directors appointed to the board must be independent.

31.2 **Qualification**

31.2.1 The board of directors shall comprise at least 50% (fifty percent) black people and 25% (twenty five percent) black women.

31.2.2 Apart from satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, and the qualification criteria applicable to the board as a whole in clause 31.1, a person need not satisfy any further eligibility requirements or qualifications to become or remain a director or a prescribed officer of the company.

31.3 **Observer on board of directors**

31.3.1 VGL shall from time to time during the funding period be entitled, on written notice to the company, to appoint 1 (one) person as an observer who shall be entitled to attend the meetings of directors but who shall not be entitled to vote at such meetings. Such observer shall bind himself to a confidentiality and non-disclosure agreement with the company in terms of which he or she will undertake, *inter alia*, to keep confidential and not to disclose to any party (other than VGL) any of the information which is disclosed to him or her in relation to and at such meetings.

31.3.2 Such observer shall not be entitled to attend any part of a meeting of directors at which the board will discuss –

31.3.2.1 any matter relating to a breach of the funding agreements and/or the relationship agreement;

31.3.2.2 any negotiations with VGL in relation to or in terms of the relationship agreement or the funding agreements (including a refinancing thereof); or

31.3.2.3 any matter which, in the opinion of the chairperson of such meeting, acting reasonably, will result in a conflict of interest for such observer.

31.4 **Chairperson**

The directors may elect a chairperson and determine the period for which he or she is to hold office. The chairperson of the directors meetings shall be an independent non-executive director.

31.5 **Nomination**

31.5.1 Every shareholder holder shall be entitled to nominate 1 (one) director for appointment to the board for every 10% (ten percent) of the issued ordinary shares of the company held individually by that shareholder, and propose the removal of such director nominated by that shareholder, and to nominate a director to replace any such director who ceases for any reason to be a director. The appointment and/or removal of such director, or any replacement director, however, shall be, without prejudice to any other provision of this memorandum of incorporation and/or any rights in law. In any election of directors, the shareholders shall vote in such a manner as to procure the appointment or removal of the such director.

31.5.2 A shareholder shall be obliged to propose the removal of its nominated director from the board if such shareholder's shareholding is diluted to less than 10% (ten percent) of the issued ordinary shares. If such shareholder fails to remove its nominated director from the board after being notified to do so by the other shareholders or the board, the board shall, without prejudice to its rights to do so generally, be entitled to propose to the shareholders the removal of such nominated director.

31.6 **Election of directors**

31.6.1 Subject to the provisions of clause 31.5, the directors shall be elected in terms of section 68(1) of the Companies 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.

31.6.2 All directors shall be elected by an ordinary resolution of the shareholders at a general or annual general meeting of the company or a resolution passed in terms of section 60 of the Companies Act.

31.6.3 In any election of directors –

31.6.3.1 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

31.6.3.2 in each vote to fill a vacancy –

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

31.6.3.2.2 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 31.6.3 will not apply and the election of directors shall take place in such manner as the shareholder shall determine.

31.6.4 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 Companies Act.

31.7 **Rotation and retirement**

31.7.1 The elected directors shall rotate in accordance with the following provisions of this clause 31.7 –

31.7.1.1 at the general meeting of the company contemplated in clause 25.2 all the elected directors shall retire from office, and at each subsequent general meeting referred to in clause 25.2 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 one-third, but not less than one-third, shall retire from office;

31.7.1.2 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;

31.7.1.3 a retiring director shall be eligible for re-election;

31.7.1.4 the shareholders, 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; and

31.7.1.5 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 25.4.2 to 25.4.4 (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.

31.7.2 Subject to the provisions of clause 31.5, 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 –

31.7.2.1 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;

31.7.2.2 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

31.7.2.3 notice in writing by the proposed person of his or her willingness to be elected accompanies such notice or notices (except where one of the proposers is the same person as the proposed).

31.7.3 Despite any contrary provisions contained in this memorandum of incorporation to the contrary, a director shall vacate his or her 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.

32 **REMOVAL OF DIRECTORS**

Subject to the provisions of the Companies Act, the shareholders may by ordinary resolution remove any director before the expiration of his or her period of office and may by ordinary resolution elect another person in his or her stead. The person so elected shall hold office during such time only as the director in whose place he or she is elected would have held office.

33 **DISQUALIFICATION OF DIRECTORS**

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

33.1 if he or she becomes insolvent, or assigns his or her estate for the benefit of his or her creditors, and the board resolves that his office is vacated;

33.2 suspends payment or files a petition for the liquidation of his or her affairs, or compounds with his or her creditors, and the board resolves that his office is vacated;

33.3 if he or she becomes of unsound mind, and the board resolves that his or her office is vacated;

33.4 if he or she 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;

33.5 if he or she is removed under clause 32;

33.6 if he or she 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 shareholders then entitled to vote on a poll at a general meeting, of the termination of his or her appointment;

33.7 if he or she resigns his or her office by notice in writing to the company; or

33.8 if he or she shall pursuant to the provisions of the Companies Act be disqualified or cease to hold office or be prohibited from acting as director, and the board resolves that his or her office is vacated.

## 34 ALTERNATE DIRECTORS

34.1 Each director shall have the power to appoint (to the extent that such person is already a director of the company) and/or to nominate a person to act as alternate director in his or her place ("**alternate director**"), and at his or her discretion to remove such alternate director, and to appoint another in his or her 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 or her shall not act him or herself.

34.2 An alternate director whilst acting in the place of the director who appointed him or her, shall exercise and discharge all the duties and functions of the director he or she 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 or her shall cease to be a director or shall give notice in writing to the secretary that the alternate director representing him or her 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 34, be deemed to a director.

34.3 The appointment of an alternate director shall be cancelled and the alternate director shall cease to hold office on the happening of any event, in which, if he or she were a director, would cause him or her to cease to hold office in terms of this memorandum of incorporation.

34.4 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 or she represents, the vacancy so arising shall be filled by the chairperson of the directors who shall appoint a person to fill such vacancy subject to the approval of the board.

34.5 A person may be appointed as an alternate director to more than one director and where a person is an alternate director to more than one director, or where an alternate director is a director, he or she shall have a separate vote, on behalf of each director he or she is representing, in addition to his or her own vote, if any.

## 35 POWERS OF THE DIRECTORS

35.1 Subject to the provisions of clause 6, the board has the power to –

35.1.1 fill any vacancy on the board or appoint an additional director on a temporary basis, subject to subsequent confirmation by the shareholders in a general meeting as required by the Companies Act and/or the JSE Listings Requirements; and

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

35.2 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 Companies 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 shareholders 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.

35.3 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.

35.4 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.

35.5 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 or she 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 37.1.

35.6 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.

35.7 Each 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 Companies Act and the qualifications contained in section 75(3) of the Companies Act, comply with all of the provisions of section 75 of the Companies 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.

35.8 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.

35.9 The directors may not 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 section 20(2) and section 20(6) of the Companies Act).

## 36 DIRECTORS MEETINGS

36.1 Save as may be provided otherwise herein, the directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

36.2 The chairperson shall be entitled to preside over all meetings of directors. If no chairperson is elected, or if at any meeting neither is present or willing to act as chairperson 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 chairperson of such meeting.

36.3 In addition to the provisions of section 73(1) of the Companies Act, any director shall at any time be entitled to call a meeting of the directors.

36.4 The board has the power to –

36.4.1 consider any matter and/or adopt any resolution other than at a meeting as contemplated in section 74 of the Companies 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;

36.4.2 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 Companies 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;

36.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4) of the Companies Act, provided that –

36.4.3.1 the notice period for the convening of any meeting of the board will be at least 7 (seven) days unless the decision of the directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the board, or failing the chairperson for any reason, the decision of any 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;

36.4.3.2 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 36.4.3.1;

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

36.4.4 if deemed fit, cancel any meeting called by it reasonably in advance of the meeting date,

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

36.5 The quorum requirement for a directors meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5) of the Companies Act, subject only to clause 36.6, and accordingly –

36.5.1 if all of the directors of the company –

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

36.5.1.2 are present at the meeting; or

36.5.1.3 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;

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

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

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

36.5.5 in the case of a tied vote –

36.5.5.1 the chairperson shall not have a deciding vote in addition to any deliberative vote; and

36.5.5.2 the matter being voted on fails.

36.6 If, within 30 (thirty) minutes from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is a public holiday in South Africa, to the next succeeding business day. If present within 30 (thirty) minutes from the time appointed for the meeting, the directors at that meeting shall constitute a quorum.

36.7 Resolutions adopted by the board –

36.7.1 must be dated and sequentially numbered; and

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

36.8 The company shall keep minutes of the meetings of the board, and of any of its committees, and include in the minutes –

36.8.1 any disclosure made by notice or made by a director as required by section 75 of the Companies Act, as contemplated in clause 35.7; and

36.8.2 every resolution adopted by the board.

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

36.10 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 36.10 is of the same effect as if it had been approved by voting at a meeting of the board.

## 37 DIRECTORS COMPENSATION

37.1 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 sections 66(8) and 66(9) of the Companies Act, and the power of the company in this regard is not limited or restricted by this memorandum of incorporation.

37.2 Directors may also be paid all their travelling and other reasonable expenses necessarily incurred by them in connection with –

37.2.1 the business of the company; and

37.2.2 attending meetings of the directors or of committees of the directors of the company.

37.3 Prior to the holding of any meeting of shareholders at which the remuneration of the directors shall be determined, the company shall appoint a remuneration specialist 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. This requirement shall not be applicable, however, where the remuneration of the directors to be approved represents, with reference to the remuneration most recently previously approved and paid to such directors in their role as such (the "**previously approved remuneration**") (i) a decrease to the previously approved remuneration; and/or (ii) an increase to the previously approved remuneration, where such increase, as a percentage of the previously approved remuneration, is equal to or less than the increase in the consumer price index (all urban areas / headline consumer price index) over the period commencing on the date upon which the previously approved remuneration was first paid to such directors, and the date upon which the remuneration to be approved is intended to become effective.

## 38 INDEMNIFICATION OF DIRECTORS

38.1 The company may –

38.1.1 advance expenses to a director or directly or indirectly indemnify a director in respect of the defence of legal proceedings, as set out in section 78(4) of the Companies Act;

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

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

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

38.2 The provisions of clause 38.1 shall apply *mutatis mutandis* in respect of any former director, prescribed officer or member of any committee of the board, including the audit committee.

## 39 COMMITTEES OF THE BOARD

39.1 The board may –

39.1.1 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 Companies Act; and/or

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

and the power of the board in this regard is not limited or restricted by this memorandum of incorporation.

39.2 The authority of a committee appointed by the board as set out in sections 72(2)(b) and 72(2)(c) of the Companies Act is not limited or restricted by this memorandum of incorporation.

39.3 If and for as long as it is required to do so in terms of the Companies Act or the regulations and unless the company is exempted in terms of section 72(5) of the Companies 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 Companies Act and the regulations, including the following committees –

39.3.1 an audit committee; and

39.3.2 a social and ethics committee.

39.4 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.

39.5 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.

40 **COMPANY SECRETARY**

40.1 The company must appoint a company secretary.

40.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of South Africa.

40.3 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.

40.4 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.

## PART 10: GENERAL

41 **DEBT INSTRUMENTS**

The board may authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Companies Act, but no special privileges associated with any debt instruments to be issued by the company, as set out in section 43(3) of the Companies Act may be granted and the authority of the board in such regard is accordingly limited by this memorandum of incorporation. In addition to any other requirements in terms of this memorandum of incorporation, the board may only authorise such issue of debt instruments with the prior written consent of the preference share agent.

42 **FINANCIAL ASSISTANCE**

42.1 The board may authorise the company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the company or a related or inter-related company, or for the purchase of any such securities, as set out in (and in accordance with) section 44 of the Companies Act, and the authority of the board in this regard is not limited or restricted by this memorandum of incorporation.

42.2 The board may, as set out in and subject to the requirements of section 45 of the Companies Act, authorise the company to provide financial assistance to a director, prescribed officer or other person referred to in section 45(2) of the Companies Act, and the power of the board in this regard is not limited or restricted by this memorandum of incorporation.

42.3 In addition to any other requirements in terms of this memorandum of incorporation, the board may only authorise such financial assistance with the prior written consent of the preference share agent.

43 **ANNUAL FINANCIAL STATEMENTS**

43.1 Despite the provisions of clause 7 –

43.1.1 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 –

43.1.1.1 the Companies Act;

43.1.1.2 any other law with respect to the preparation of financial statements to which the company may be subject;

43.1.1.3 the regulations; and

43.1.1.4 this memorandum of incorporation.

43.1.2 The company shall each year prepare annual financial statements within 4 (four) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) of the Companies Act.

43.2 The company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

43.3 For purposes of the affairs of the company, with regard to and/or relating to the auditor of the company, the provisions of sections 90(1), 90(1A), 90(2)(a) and (b), 90(3), 90(5), 90(6)(a)(i) to (iii), 90(6)(b) and (c), 91(1), 91(2), and 93(1) of the Companies Act are incorporated, *mutatis mutandis*, into this memorandum of incorporation.

43.4 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Companies Act and shall –

43.4.1 satisfy, as to form and content, the financial reporting standards of IFRS; and

43.4.2 subject to and in accordance with IFRS –

43.4.2.1 present fairly the state of affairs and business of the company and explain the transactions and financial position of the business of the company;

43.4.2.2 show the company's assets, liabilities and equity, as well as its income and expenses;

43.4.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and

43.4.2.4 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.

44 **DISTRIBUTIONS**

44.1 Subject to the provisions of the Companies Act, and particularly section 46 of the Companies Act, and the funding agreements to the extent applicable, the company may make a proposed distribution if such distribution –

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

44.1.2 is authorised by resolution of the board, in compliance with the JSE Listings Requirements,

provided that if such distribution is a repayment of capital, the company shall not be entitled to require the subsequent subscription of such amount.

44.2 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.

44.3 Distributions may be declared either free of or subject to the deduction of income tax and/or dividends tax and any other tax or duty in respect of which the company may be chargeable or liable to withhold.

44.4 All distributions are to be declared by the directors in accordance with the provisions of the Companies Act.

44.5 The directors may from time to time declare and pay to the shareholders such interim distributions as the directors consider to be appropriate.

44.6 No larger distribution shall be declared by the company in general meeting than is recommended by the directors, but the company in general meeting may declare a smaller distribution.

44.7 All unclaimed distributions (other than monetary 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 (or such other period as the law may prescribe for the prescription of a claim) from the date on which they were declared may be declared by the directors as forfeited for the benefit of the company. The directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. All unclaimed monetary distributions due to any shareholder/s shall be held by the company in trust for an indefinite period until lawfully claimed by such shareholder/s, provided that such unclaimed monetary distributions shall be subject to the laws of prescription.

44.8 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.

44.9 The making of such electronic transfer, to whomsoever effected, shall be a good discharge to the company.

44.10 A holder or any one of two or more joint holders, or his or her 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.

44.11 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.

44.12 Without detracting from the ability of the company to issue capitalisation shares, any distribution may be paid wholly or in part –

44.12.1 by the distribution of specific assets;

44.12.2 by the issue of shares, debentures or securities of the company or securities of any other company;

44.12.3 in cash; or

44.12.4 in any other way which the directors or the company in general meeting may at the time of declaring the distribution determine.

44.13 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.

44.14 The directors may –

44.14.1 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

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

44.15 Any distribution must be made payable to shareholders registered as at a record date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.

## 45 PAYMENT OF COMMISSION

45.1 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 or her 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 of the company.

45.2 Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.

45.3 Such commission may be paid in cash or, if authorised by the company in general meeting, by the allotment of fully or partly paid-up shares, or partly in one way and partly in the other.

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

46 **ACCESS TO COMPANY RECORDS**

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

46.1.1 this memorandum of incorporation, and any amendments or alterations thereof;

46.1.2 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 Companies Act;

46.1.3 all –

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

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

46.1.4 notice and minutes of all shareholders meetings, including –

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

46.1.4.2 any document that was made available by the company to the holders of securities in relation to each such resolution;

46.1.5 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

46.1.6 the securities register of the company.

46.2 A person not contemplated in clause 46.1 has a right to inspect the securities register and the register of directors of the company upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

47 **AUTHENTICATION OF DOCUMENTS**

47.1 Any director or the company secretary or any person appointed by the directors for the purpose shall have power to authenticate –

47.1.1 the memorandum of incorporation;

47.1.2 any resolutions passed by the company or the directors; or

47.1.3 any books, records, documents and accounts relating to the business of the company,

and to certify copies thereof or extracts therefrom as true copies or extracts.

47.2 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.

48 **NOTICES**

48.1 All notices shall be –

48.1.1 delivered by the company to each shareholder of the company physically, by fax, by email, by registered post, or by any other means authorised in terms of table CR 3 annexed to the regulations; and

48.1.2 simultaneously given to the Issuer Regulation Division of the JSE,

and shall be given in writing in any manner authorised by the JSE Listings Requirements and the regulations. All notices shall, in addition to the above, be released through SENS provided that, in the event that the shares or other securities of the company are not listed on the JSE, all the provisions of this memorandum of incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Companies Act.

48.2 Each shareholder of the company –

48.2.1 shall notify in writing to the company an address, which address shall be his or her registered address for the purposes of receiving written notices from the company by post; and

48.2.2 may notify in writing to the company an email address and/or facsimile number, which address shall be his or her address for the purposes of receiving notices by way of electronic communication (and by doing so the shareholder concerned shall be deemed to have confirmed that notices sent to such address can conveniently be printed by that shareholder within a reasonable time and at a reasonable cost as contemplated in section 6(10) of the Companies Act).

48.3 Except in the case of notification by a shareholder as contemplated in clause 48.2.2 above, any shareholder whose address in the securities register is an address not within South Africa, shall be entitled to have notices served upon him or her at such address.

48.4 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.

48.5 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.

48.6 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 or her name and address being entered in the securities register, was given to the person from whom he or she derives his or her title to such share.

48.7 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, despite that such shareholder was then deceased, and whether or not the company has notice of his or her 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 or her 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 or her heirs, executors or administrators, and all persons (if any) jointly interested with him or her in any such shares.

48.8 As required in terms of section 93(1)(c)(ii) of the Companies Act, the company shall provide the auditors of the company with all notices of and other communications relating to any general shareholders meeting.

## 49 WINDING UP

49.1 If the company shall be wound up, whether voluntarily or otherwise, the liquidator may with the sanction of a special resolution divide among the shareholders *in specie* any part of the assets of the company.

49.2 The liquidator may (with the like sanction) vest any part of the assets of the company in trust for the benefit of the shareholders as he or she shall think fit, and if thought expedient any such division so sanctioned may be otherwise than in accordance with the legal rights of the shareholders of the company, and in particular any class may be given preferential or special rights or may be excluded altogether or in part.

**50 AMENDMENT OF MEMORANDUM OF INCORPORATION**

50.1 Subject to (i) the provisions of clause 6, (ii) the Companies Act, (iii) the JSE Listings Requirements, and (iv) during the funding period, the prior written consent of the preference share agent in terms of the funding agreements having been obtained, this memorandum of incorporation may (in addition to (i) to (iv) above) only be altered or amended by way of a special resolution of the ordinary shareholders in accordance with section 16(1)(c) of the Companies Act, except if such amendment is –

50.1.1 in compliance with a Court order as contemplated in sections 16(1)(a) and 16(4) of the Companies Act; or

50.1.2 in accordance with clause 2.4; or

50.1.3 to correct errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in this memorandum of incorporation; or

50.1.4 for complying with any applicable requirements of the Companies Act when debentures and other debt instruments are created and/or issued, which the board is empowered to do.

50.2 The board shall publish a copy of any correction effected by the board in accordance with this clause 49 on the company's website.

50.3 An amendment of this memorandum of incorporation will take effect from the later of –

50.3.1 the date on, and time at, which CIPC accepts the filing of the notice of amendment contemplated in section 16(7) of the Companies Act; and

50.3.2 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 CIPC.

**51 COMPANY RULES**

The board is prohibited from making, amending or repealing any rules as contemplated in section 15(3) of the Companies Act and the board's capacity to make such rules is hereby excluded.

**ADOPTION**

This memorandum of incorporation was adopted by special resolution of the shareholders on **[●]**.

**Annexure A**

## N-SHARE TERMS

1 In this **Annexure A**, 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) Vodacom SA A-shares;

1.2 "**ESOP call option**" means the call option available to Vodacom SA 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 Vodacom SA;

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 Vodacom SA has exercised the ESOP call option;

1.4 "**facilitation period**" means the period ending on the "*First Implementation Day*", as such term is defined in Vodacom SA's memorandum of incorporation;

1.5 "**notional outstandings**" means the notional outstanding in respect of the Vodacom SA A-shares, as defined and envisaged in the memorandum of incorporation of Vodacom SA; and

1.6 "**Vodacom SA A-shares**" means "A" ordinary shares with a par value of R0.00,001 (one thousandth of a cent) each in the share capital of Vodacom SA, issued and allotted to the company.

2 Notwithstanding any contrary provisions contained in the memorandum of incorporation or this **Annexure A**, the following rights shall apply to the N-shares –

2.1 the N-shares shall not entitle the YY 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 ordinary share;

2.3 on the ESOP conversion date –

2.3.1 each N-share shall automatically convert into 1 (one) ordinary share; and

2.3.2 simultaneous with the conversion of each N-share into 1 (one) ordinary share, the company shall repurchase at the original par value of R0.00,001 (one thousandth of a cent) such number of ordinary shares from the YY ESOP as is calculated in terms of the following formula (each variable below, unless expressly stated to the contrary, being as at the ESOP conversion date) –

$$R = 12{,}000{,}000 - \frac{EA \times VSA\ SP}{YY\ NAVPS}$$

where –

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

2.3.2.2 ***EA*** = the number of ESOP A-shares retained by the company after the transfer of the ESOP A-shares to Vodacom SA pursuant to the exercise of the ESOP call option by Vodacom SA;

2.3.2.3 ***VSA SP*** = the fair market value of Vodacom SA (as determined in the calculations related to the ESOP call option in Vodacom SA's memorandum of incorporation) divided by the total number of Vodacom SA shares in issue (not limited only to the Vodacom SA A-shares); and

2.3.2.4 ***YY NAVPS*** = the value of each ordinary share, represented as a price per ordinary share, determined by: (i) multiplying the aggregate number of "public A-shares" and "public ordinary shares" retained by the company after the exercise of the "public call option" (as each of such terms are defined in Vodacom SA's memorandum of incorporation) by the VSA SP; and (ii) dividing the result by the number of ordinary shares in issue immediately prior to the ESOP conversion date,

it being recorded that the initial subscribers for 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 ordinary shares in terms of this paragraph 2.3.2, provided that (a) the repurchase of the ordinary shares is subject to the provisions of the Companies Act, and (b) failing the passing, registration or implementation of such special resolution as contemplated above (for any reason whatsoever) or, if required in terms of the Act, the shareholder's shall, in anticipation of the ESOP conversion date, vote in favour of a special resolution on the terms set out in this paragraph 2.3.2; and

2.4 after and subject to the conversion of the N-shares and the repurchase of the ordinary shares by the company (as contemplated in paragraph 2.3.1 and 2.3.2), the YY ESOP shall distribute its remaining ordinary shares to the YY ESOP participants in their respective participation ratios as at the ESOP conversion date, whereafter the YY ESOP shall be terminated and the YY ESOP participants shall hold the relevant ordinary shares directly.

3 Save as set out in this **Annexure A**, the N-shares and the ordinary shares shall rank *pari passu* in all respects.

**Annexure B**

## CLASS A PREFERENCE SHARE TERMS

**PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS ATTACHED TO THE PREFERENCE SHARES**

**1. DEFINITIONS**

In this Clause 1, unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall have corresponding meanings:

**Acceptable Secured Asset** means cash, VGL Shares or any other asset acceptable to the Preference Share Agent which has been encumbered in favour of the Finance Parties for purposes of remedying a breach of the Share Cover Ratio;

**Accounting Principles** means IFRS;

**Account Bank** means RMB or any replacement Account Bank approved in writing by the Preference Share Agent;

**Additional Dividend Date** bears the meaning specified in Clause 8.1.1.1;

**Additional Preference Dividend** bears the meaning specified in Clause 8.1.1.1;

**Adjustment Date** bears the meaning specified in Clause 8.1.1.2;

**Adjustment Event** bears the meaning specified in Clause 8.2 (Adjustment Events);

**Adjustment Notice** means the notice sent by the Preference Share Agent to the Company in accordance with Clause 8 (Change in circumstances);

**Affected Holder** bears the meaning specified in Clause 8.1.1;

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

**Annual Financial Statements** means, the financial statements for a Financial Year delivered pursuant to Clause 19.1.1 (Financial Statements);

**Applicable Law** means any law (including statutory, common or customary law), statute, constitution, decree, treaty, regulation, judgment, directive, by-law, order, other legislative measure, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court;

**Auditors** means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or any other firm approved in advance by the Preference Share Agent (such approval not to be unreasonably delayed);

**Authorisation** means any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, registration, agreement, certificate, permit and/or authority, or any exemption from any of the aforesaid, by, with or from any authority;

**Authorising Resolution** means a resolution of the Board authorising *inter alia* the conclusion of the Subscription Agreement and the issue of the Preference Shares on terms set out in the Subscription Agreement;

**B Preference Shares** means the B preference shares issued by the Company to VGL pursuant to the Class B VGL Preference Share Agreement;

**Bank Account** means the Proceeds Account or the Reserve Account (as applicable);

**Banks Act** means the Banks Act, 1990;

**Board** means the board of directors of the Company from time to time;

**Business Day** means any day (other than a Saturday, Sunday or an official public holiday in South Africa within the meaning of the Public Holidays Act, 1994);

**CIPC** means the Companies and Intellectual Properties Commission;

**Class B VGL Funding Documents** means the Class B VGL Preference Share Agreement and each Finance Document (as defined in the Class B VGL Preference Share Agreement);

**Class B VGL Preference Share Agreement** means the Preference Share Subscription Agreement entered into between the Company and VGL on or about the Signature Date;

**Companies Act** means the Companies Act, 2008;

**Company** means YeboYethu (RF) Limited, a public company duly incorporated under the laws of South Africa under registration number 2008/014734/06;

**Company Cession and Pledge in Security** means the cession and pledge in security entered into or to be entered into on or about the Signature Date between the Company and the Finance Parties;

**Company MOI** means the Memorandum of Incorporation of the Company (including these Preference Share Terms);

**Company Payment Instruction Letter** means a letter to be entered into between the Company and the Preference Share Agent;

**Compliance Certificate** means a compliance certificate substantially in the form set out in Schedule 4 (Form of Compliance Certificate) to the Subscription Agreement;

**Compounding Date** means, for the purposes of the calculation of the Mandatory Preference Dividends in respect of each Preference Share, the last day of each calendar month occurring after the Subscription Date of such Preference Share and the Redemption Date;

**Compounding Period** means, for the purposes of the calculation of the Mandatory Preference Dividends in respect of each Preference Share, each period commencing on (and including) a Compounding Date and ending on (and excluding) the next Compounding Date; provided that:

(a) the first Compounding Period in respect of each Preference Share, shall be the period from (and including) the Subscription Date of such Preference Share until (and excluding) the first Compounding Date occurring thereafter; and

(b) the final Compounding Period in respect of each Preference Share, shall be the period from (and including) the Compounding Date immediately preceding the Final Dividend Date until (and excluding) the Final Dividend Date of such Preference Share;

**Confidentiality Undertaking** means a confidentiality undertaking substantially in the recommended form of the Loan Market Association for the time being.;

**Consolidating Company** means, in relation to a Holder, a company which (i) is licensed to conduct the “business of a bank” under the Banks Act, or (ii) is a financial institution duly registered as such with any statutory or monetary authority in South Africa, and that consolidates the financial results of that Holder into its financial results for the purposes of IFRS;

**Constitutional Documents** means, in respect of any Entity at any time, the then current constitutional documents of such Entity at such time (including, where applicable, such Entity’s memorandum of association, articles of association, certificate of incorporation, memorandum of incorporation, rules, bylaws, articles of incorporation, trust deed and/or letters of authority);

**Corporate Tax Rate** means the maximum nominal rate of income tax (expressed as a decimal) levied on the taxable income of companies from time to time in terms of the Income Tax Act, being as at the Signature Date 0.28 (zero point twenty eight);

**CP Fulfilment Notice** means the notice delivered by the Preference Share Agent to the Company pursuant to Clause 3.1 (Initial Conditions Precedent) of the Subscription Agreement;

**CPI** means the consumer price index for all expenditure groups: Metropolitan and other urban areas (B2018=100) as published from time to time by Statistics SA in Statistical Release P1041 provided that if, after the Signature Date:

(a) such index shall cease to be published; or

(b) either the Preference Share Agent or the Company should notify the other, in writing, on reasonable grounds that, due to a change in circumstances, the index is no longer representative,

then, in any such circumstances, the Preference Share Agent and the Company will use such other official information or index calculating the rate of inflation as may be available and acceptable to them, or failing such acceptance within three Business Days of the Company or the Preference Share Agent declaring a dispute in writing as to the information or index acceptable to it, then, for the purposes of the Finance Documents, an alternative index shall be determined by a majority decision of a panel of three independent chartered accountants of South Africa appointed, at the request of the Company or the Preference Share Agent, by the Chief Economist of Absa, which determination, and any determination by such panel as to the date from which any alternative index shall take effect, shall be binding upon the Parties.

The costs of determining an alternative index (in circumstances envisaged in paragraph (a) above or where the Company notifies the Preference Share Agent that the index is no longer representative) shall be borne by the Company and the Company hereby indemnifies and holds the Preference Share Agent harmless accordingly.

The costs of determining an alternative index (in circumstances where the Preference Share Agent notifies the Company that the index is no longer representative) shall be borne by the Holders and the Holders hereby indemnify and hold the Company harmless accordingly;

**Cure Amount** means an amount contemplated in Clause 21.3 (Equity Cure);

**Default Dividend Rate** means the Dividend Rate plus 2%;

**Discharge Date** means the date on which:

(a) all of the Preference Shares have been redeemed and the Company's obligations and liabilities (other than any post-redemption obligations and liabilities) under the Finance Documents have been fully, finally and irrevocably paid and unconditionally discharged to the reasonable satisfaction of the Preference Share Agent whether or not as a result of enforcement; and

(b) the Holders have no commitment, obligation or liability (whether actual or contingent) to lend money, subscribe for any shares or provide other financial accommodation to the Company under any Finance Document;

**Discussion Circumstances** means, on any day, the Share Cover Ratio is less than or equal to 2.4 times;

**Discussion Circumstances Commencement Date** means any date on which the Discussion Circumstances arise;

**Disposal** means a sale, sale and lease-back, licence, transfer, expropriation or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions), and **Dispose** shall be construed accordingly;

**Disposal Proceeds** means in respect of a Disposal by any person, the cash consideration received (including any amount owing to and set off by any purchaser) by that person for any Disposal to any person that is not an Affiliate of that person of all or part of the business, undertaking or assets it holds after deducting:

(a) any reasonable expenses incurred by the seller with respect to the applicable Disposal; and

(b) any Tax incurred and required to be paid by the seller in connection with that Disposal;

**Disruption Event** means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the subscription for the Preference Shares (or otherwise in order for the transactions contemplated by the Finance

Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payment operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted;

**Distribution** means any payment by way of interest, principal, dividend, fee, royalty or other distribution of whatsoever nature and howsoever described (including share buy backs, a distribution or payment upon or in connection with a reduction of capital, an issue of shares or other securities credited as fully or partly paid up by way of a capitalisation of profits or reserves and the payment (or repayment) of any amount on the loan account) by or on behalf of a company to or for the account of any member or shareholder of that company, in each case whether paid or payable and whether paid or payable in cash or in specie, and for the avoidance of doubt, includes any “distributions” as defined in the Companies Act;

**Dividend** means a dividend as defined in section 1 of the Income Tax Act;

**Dividend Payment Date** means each Mandatory Dividend Date, each Additional Dividend Date, each Refinance Dividend Date and each Final Dividend Date;

**Dividend Rate** means a rate equal to the Dividend Rate Percentage of the Prime Rate;

**Dividend Rate Percentage** means:

(a) prior to adjustment in accordance with the provisions of Clause 8 (Change in circumstances), 68%; and

(b) subsequent to adjustment in accordance with the provisions of Clause 8 (Change in circumstances), the new Dividend Rate Percentage determined in accordance with Clause 8 (Change in circumstances);

**Dividends Tax** means the Dividends Tax as contemplated in Part VIII of Chapter II of the Income Tax Act;

**Early Redemption Date** means, in relation to a Preference Share:

(a) a Voluntary Redemption Date;

(b) the date on which the Company is obliged to redeem that Preference Share in accordance with Clause 10.2 (Illegality); or

(c) the date on which the Company is obliged to redeem that Preference Share in accordance with Clause 10.4 (Redemption upon the occurrence of a Trigger Event);

**Early Redemption Notice** bears the meaning specified in Clause 10.4.1.2;

**Eligible Party** means a Holder or Consolidating Company or Holding Company of that Holder;

**Entity** means any juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, Joint Venture, trust, undertaking, voluntary association, body corporate and any similar entity;

**Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water);

**Environmental Claim** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**Environmental Law** means any Applicable Law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

**Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group;

**Equity Cure** means the right contemplated in Clause 21.3 (Equity Cure);

**Existing Holder** bears the meaning specified in Clause 16.1.1;

**FATCA** means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

**FATCA Application Date** means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

**FATCA Deduction** means a deduction or withholding from a payment under a Finance Document required by FATCA;

**FATCA Exempt Party** means a Party that is entitled to receive payments free from any FATCA Deduction;

**Fee Letter** means any letter or letters entered into by reference to the Subscription Agreement between the Company, the Finance Parties and the Preference Share Agent setting out any of the fees referred to in Clause 8 of the Subscription Agreement;

**Final Discharge Date** means, in respect of each Holder, the date of expiry of a period of three years (or such period as the South African Revenue Service has extended such three year period in terms of section 99(3) or 99(4) of the Tax Administration Act, 2011) after the date on which the South African Revenue Service is no longer entitled to make an additional assessment, as determined in accordance with section 100(2) of the Tax Administration Act, 2011, in respect of all receipts and accruals pertaining to all or any Preference Shares at any time held by that Holder;

**Final Dividend Date** means, in relation to any Preference Share, the date on which it is redeemed by the Company;

**Final Redemption Date** means the date occurring five years after the Subscription Date;

**Finance Documents** means:

(a) the Subscription Agreement;

(b) the Company MOI;

(c) the Authorising Resolution;

(d) each Security Document;

(e) the Vodacom Letter;

(f) the Guarantee Agreement;

(g) the Funds Flow Agreement;

(h) the Company Payment Instruction Letter;

(i) the ShareCo Payment Instruction Letter;

(j) the Fee Letter;

(k) each Holder Accession Undertaking;

(l) each Compliance Certificate;

(m) the CP Fulfilment Notice;

(n) any other written agreement or document designated as a "Finance Document" by written agreement between the Company and the Preference Share Agent; and

(o) any amendment agreement to any of the Finance Documents referred to in paragraphs (a) to (n) above,

and **Finance Document** means, as the context requires, any of them;

**Finance Lease** means any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;

**Finance Party** means:

(a) the Subscribers;

(b) each Holder; and

(c) the Preference Share Agent,

and **Finance Parties** means, as the context requires, all of them;

**Financial Covenant** bears the meaning specified in Clause 21 (Financial Covenants);

**Financial Half Year** means 30 September;

**Financial Indebtedness** means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks and other financial institutions;

(b) any acceptance under any acceptance credit facility or bill discounting facility (or dematerialised equivalent);

(c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of Finance Leases;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);

(f) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) any amount raised by the issue of shares which are redeemable (whether mandatorily or optionally) or are otherwise classified as borrowings under the Accounting Principles;

(j) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;

(k) the amount of any liability in respect of any guarantee, put option or indemnity for any of the items referred to in paragraphs (a) to (j) above;

**Financial Year** means the financial year of the Company and VGL, commencing on 1 April and ending on 31 March of every calendar year;

**FRB** means FirstRand Bank Limited, a public company and registered bank duly incorporated under the laws of South Africa with registration number 1929/001225/06;

**Fulfilment Date** means the date of the notice given or to be given by the Preference Share Agent pursuant to Clause 3.1 of the Subscription Agreement;

**Funds Flow Agreement** means the flow of funds agreement entered into or to be entered into between, inert alios, the Company, the Preference Share Agent and ShareCo;

**Gross-Up Amount** means an amount that, after Tax (if any) puts that Eligible Party, in the same position as that Eligible Party would have been in had Tax not been imposed on any payment by the Company to the Holder under these Preference Share Terms, or as a consequence of the Holder holding the Preference Shares;

**Group** means the Company, ShareCo and any member of the VGL Group;

**Guarantee Agreement** means the guarantee to be entered between ShareCo and the Finance Parties on or about the Signature Date;

**Guarantor** means ShareCo;

**Guarantor Cession and Pledge in Security** means the cession and pledge in security to be entered into on or about the Signature Date between ShareCo and the Finance Parties;

**Holder** means each holder of any Preference Shares from time to time and which will initially be the Subscribers and shall include each New Holder, and **Holders** means, as the context requires, all of them;

**Holder Accession Undertaking** means in relation to a New Holder, an undertaking in the form agreed between the Company and the Preference Share Agent;

**Holding Company** means a "holding company" as defined in the Companies Act and any company, corporation or other juristic person that would be a Holding Company if it was a "company" as defined in the Companies Act;

**IFRS** means International Financial Reporting Standards within the meaning of International Accounting Standard Regulation 1606/2002;

**Illegality Event** means the event contemplated in Clause 10.2 (Illegality);

**Implementation Agreement** means the implementation agreement entered into or to be entered into between, inter alios, VGL, the Company and Lisinfo 209 Investments Proprietary Limited;

**Income Tax Act** means the Income Tax Act, 1962;

**Increased Costs** means, in relation to any Holder:

(a) a reduction in that Eligible Party's, Return or on that Eligible Party's overall return on capital (including, without limitation, as a result of any reduction in that Eligible Party's return on capital brought about by more capital being required to be allocated by that Eligible Party or that Eligible Party being required to comply with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement));

(b) an additional or increased cost, liability or expense; or

(c) a reduction of any amount payable under the Preference Shares (including, without limitation, the after-Tax Preference Dividend receipt by that Holder in respect of the Preference Shares),

which is incurred or suffered by that Eligible Party, as a consequence of, or attributable to, that Holder having subscribed (or having committed to subscribe) for, or holding and/or funding, any of the Preference Shares or to that Holder performing its obligations under any Finance Document;

**Indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

**Indemnified Party** means a Holder or an erstwhile Holder or any Consolidating Company or Holding Company of a Holder or an erstwhile Holder;

**Indexed** means in relation to any sum, that sum adjusted annually to take account of year-on-year changes in the CPI since the Signature Date;

**Inter-funder Agreement** means the inter-funder agreement to be entered into among the Subscribers and the Preference Share Agent;

**Issue Date** means, in relation to a Preference Share, the date upon which that Preference Share is issued by the Company in accordance with Clause 5(b)(i) of the Subscription Agreement;

**Issue Price** means, in respect of each Preference Share, ZAR1000.00 (One Thousand Rand) per Preference Share issued to the Subscriber;

**Joint Venture** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity;

**JSE** means the securities exchange licensed in terms of the Financial Markets Act, 2012 owned and operated by JSE Limited, a public company duly incorporated under the laws of the Republic of South Africa with registration number 2005/022939/06;

**Leverage Ratio** bears the meaning specified in Clause 21.1.1;

**Listed Share** means, on any day, a share which is listed on the JSE;

**Mandatory Dividend Date** means, subject to Clause 5.1.2, in relation to each Preference Share the date which is 5 (five) Business Days after the date on which the Company receives any ShareCo Net Distributable Proceeds;

**Mandatory Preference Dividend** has the meaning specified in Clause 5.1 (Mandatory Preference Dividends);

**Market Value** means, on any day,

(a) in respect of the VGL Shares, the VWAP of the VGL Shares on that day calculated over the immediately preceding 5 Trading Day Period; and

(b) in respect of any Acceptable Secured Asset, the market value of such asset agreed between the Company and the Preference Share Agent;

**Material Adverse Change** means an occurrence or circumstance which has a material adverse effect on:

(c) the business, operations, property or condition (financial or otherwise) or prospects of any Obligor or VGL; or

(d) the ability of any Obligor or VGL to perform its obligations under the Finance Documents; or

(e) the validity or enforceability of the Finance Documents or the validity or enforceability of, or the effectiveness or ranking of, any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Holders under any of the Finance Documents;

**Material Company** means any member of the VGL Group whose gross assets or earnings before interest, taxation, depreciation and amortisation is equal to or exceeds 20% of the consolidated gross assets of VGL or VGL Group EBITDA at any time as determined with reference to the most recent financial statements delivered pursuant to Clause 19.1 (Financial Statements) and provided that if a company ceases to satisfy the conditions contemplated in this definition, it shall cease to be a Material Company;

**Maximum Exposure** means, at any time, an amount equal to 135% of the aggregate Issue Prices of all the Unredeemed Preference Shares at the time;

**Measurement Date** bears the meaning specified in Clause 21.1.5;

**Measurement Period** bears the meaning specified in Clause 21.1.6;

**Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

**New Holder** bears the meaning specified in Clause 16.1 (Restrictions on Transfer of the Preference Shares);

**Obligors** means:

(a) the Company; and

(b) the Guarantor;

**Operational Expenses** means all and any statutory and administrative costs and expenses incurred or to be incurred by the Company in maintaining its corporate existence and complying with all applicable laws and its obligations under and in terms of the Finance Documents (excluding any Taxes which are payable by the Company from time to time), subject to a maximum aggregate amount of R20,000,000 per annum (Indexed) for all such Operational Expenses and ShareCo Operational Expenses, or such other amount as the Preference Share Agent may agree in writing;

**Ordinary Shareholder** means the holders of ordinary shares in the Company from time to time;

**Other Shares** means any shares of any class of the Company other than the Preference Shares;

**Outstanding Preference Shares Obligations** means, at any time and without double counting, an amount equal to the aggregate of:

(a) the Issue Price of each Unredeemed Preference Share at that time;

(b) any outstanding Mandatory Preference Dividends at that time;

(c) any outstanding Additional Preference Dividends at that time;

(d) any outstanding Refinance Preference Dividends at that time;

(e) any Gross-Up Amount due and payable by the Company at that time; and

(f) any other amount due and payable, and unpaid by the Company in accordance with these Preference Shares Terms and the Subscription Agreement at that time;

**Parties** means:

(a) the Company;

(b) each Subscriber;

(c) the Preference Share Agent; and

(d) each Holder for so long as it is a holder of Preference Shares,

and **Party** means, as the context requires, any one of them;

**Permitted Disposal** means a Disposal**:**

(e) of the VGL Shares in order:

(i) to effect an Equity Cure in accordance with Clause 21.3.1;

(ii) to ensure that the Outstanding Preference Share Obligations are less than the Maximum Exposure; or

(iii) to enable VGL to exercise its rights under a deemed offer as contemplated in the Relationship Agreement,

provided in each case that no Trigger Event is continuing at the time (save for the occurrence of a Trigger Event that resulted in VGL becoming entitled to exercise its rights under clause 5.3.4.1 of the Relationship Agreement) or will arise as a result of such Disposal;

(f) with the prior written consent of the Preference Share Agent;

**Permitted Distribution** means:

(g) a Distribution by the Company to the Holders under the Transaction Documents;

(h) any Distribution by the Company to the Ordinary Shareholders in accordance with the Priority of Payments; or

(i) any other Distribution made with the prior approval of the Preference Share Agent;

**Permitted Indebtedness** means Indebtedness incurred:

(a) under the Finance Documents;

(b) under the Class B VGL Funding Documents as at the Fulfilment Date;

(c) in respect of Refinancing; or

(d) any other Indebtedness incurred with the prior written approval of the Preference Share Agent;

**Permitted Guarantee** means any guarantee or indemnity:

(a) arising under or evidenced by a Finance Document; or

(b) entered into with the prior written consent of the Preference Share Agent;

**Permitted Security** means:

(a) any Security arising under or evidenced by a Finance Document; or

(b) any other Security created with the prior approval of the Preference Share Agent;

**Permitted Transferee** means any banks or financial institutions listed in Schedule 5 to the Subscription Agreement to the extent that such persons are incorporated in accordance with the company laws of South Africa and are South African tax residents

**Post-Redemption Period** means the period commencing on the Discharge Date until the Final Discharge Date;

**Potential Trigger Event** means, in relation to any Preference Share, any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of the foregoing) be a Trigger Event;

**Pre-Emptive Rights Notice** means a written notice delivered by the Preference Share Agent to VGL as contemplated in the Vodacom Letter;

**Preference Dividends** means the Additional Preference Dividends, the Mandatory Preference Dividends and the Refinance Preference Dividends;

**Preference Share Agent** means RMB or such other persons as may be appointed from time to time to act on behalf of the Holders;

**Preference Shares** means 5,833,000 class A cumulative redeemable preference shares in the Company, issued in accordance with the Subscription Agreement, the terms of which are set out in the Preference Shares Terms, and **Preference Share** means, as the context requires, any one of them;

**Preference Shares Terms** means the preferences, rights, limitations and other terms attached to the Preference Shares, being those preferences, rights, limitations and other terms set out in this **Annexure B** (*Class A Preference Share Terms*) and which are incorporated in the Company MOI and will be attached to the Preference Shares;

**Prime Rate** means the publicly quoted basic rate of interest (per cent., per annum, compounded monthly in arrear and calculated on a 365 day year (irrespective of whether or not the year is a leap year)) from time to time published by First National Bank (a division of FRB) as being its prime overdraft rate as certified by any authorised official of such bank, whose appointment, designation or authority need not be proved;

**Priority of Payments** means the priority of payments contemplated in Clause 11 (Priority of Payments);

**Proceeds Account** means the following bank account held by the Company with the Preference Share Agent:

| | |
|---|---|
| Account Name: | RMB Domestic Money Market Account |
| Bank: | First National Bank |
| Branch: | FNB Corporate Core Banking |
| Branch Code: | 25-50-05 |
| Account Number: | 506 190 16740 |
| Reference: | IBD ZHZ YeboProAcc |
| For Further Credit to: | Proceeds Account |

**R** or **Rand** or **ZAR** means the lawful currency of South Africa;

**Redemption Amount** means, in respect of each Preference Share, an amount equal to its Issue Price;

**Redemption Date** means, in relation to a Preference Share, the Early Redemption Date or the Final Redemption Date (as applicable);

**Refinance Dividend Date** means, in relation to the Refinance Preference Dividend, the date contemplated in Clause 5.2 (Refinance Preference Dividend);

**Refinance Preference Dividend** means, subject to Clause 5.2 (Refinance Preference Dividend), a preference cash dividend in respect of each Preference Share equal to:

(a) if the Preference Share is redeemed before the first anniversary of the Subscription Date, 2% of the Outstanding Preference Share Obligations divided by the number of Unredeemed Preference Shares; or

(b) if the Preference Share is redeemed on or after the first anniversary of the Subscription Date but before the second anniversary of the Subscription Date, 1% of the Outstanding Preference Share Obligations divided by the number of Unredeemed Preference Shares; or

(c) if the Preference Share is redeemed on or after the second anniversary of the Subscription Date, 0%;

**Refinancing** means the redemption of any Preference Shares, funded directly or indirectly by the Company, by way of the incurral by the Company or any other person of indebtedness or the issue of any securities or other instrument which has the commercial effect of raising funding by the Company or any member of the VGL Group for the purposes of funding such redemption but shall not include the redemption of any Preference Shares from the proceeds of Distributions received from VGL or any Disposal Proceeds received in respect of the Disposal of the VGL Shares and **Refinance** shall be construed accordingly;

**Register** means the “securities register” of the Company required to be established in terms of section 50(1) of the Companies Act;

**Relationship Agreement** means the relationship agreement entered into or to be entered between the Company, VGL and ShareCo on or about the Signature Date;

**Repeating Representations** shall have the same meaning specified in Clause 18.25.3.3;

**Repetition Date** shall have the same meaning specified in Clause 18.25.3.4;

**Representations** means the representations and warranties given by the Company in favour of the Finance Parties as set out in Clause 18 (Representations and Warranties);

**Reserve Account** means the bank account held by the Company with the Account Bank:

| | |
|---|---|
| Account Name: | RMB Domestic Money Market Account |
| Bank: | First National Bank |
| Branch: | FNB Corporate Core Banking |
| Branch Code: | 25-50-05 |
| Account Number: | 506 190 16740 |
| Reference: | IBD ZHZ YeboProAcc |
| For Further Credit to: | Reserve Account |

**Restricted Period** means the period commencing on the Issue Date and terminating on the third anniversary of the Issue Date (both dates inclusive);

**Return** means, in relation to a Holder, the overall return on investment to be achieved by such Eligible Party, as the case may be, measured as at the Fulfilment Date in respect of, or in connection with, the subscription, holding and/or funding of the Preference Shares, and includes (but is not limited to):

(a) such Eligible Party's, financial return, net of charges, costs, imposts, capital adequacy or liquidity requirements or any other costs, charges, levies or imposts in respect of which an Adjustment Event may apply; and/or

(b) such Eligible Party's, after-Tax return (net of all Taxes payable in respect of, or in connection with, or as a result of the subscribing for, holding and/or funding of the Preference Shares);

**RMB** means FRB (acting through its Rand Merchant Bank division);

**Sanctioned Entity** means:

(a) a person, country or territory which is listed on a Sanctions List or is subject to Sanctions; and/or

(b) a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions;

**Sanctioned Transaction** means the use of the proceeds of the Preference Shares for the purpose of financing or providing any credit, directly or indirectly, to:

(a) a Sanctioned Entity; or

(b) any other person or entity, if a member of the Group has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity, in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions;

**Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;

**Sanctions Authority** means:

(a) the United Nations;

(b) the European Union;

(c) the Council of Europe (founded under the Treaty of London, 1946);

(d) the government of the United States of America (**US**);

(e) the government of the United Kingdom;

(f) the government of the Republic of France; or

(g) the government of Australia;

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (**OFAC**), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (**HMT**) and the French Ministry of Finance (**MINEFI**);

**Sanctions List** means:

(a) the Specially Designated Nationals and Blocked Persons List maintained and published by OFAC; or

(b) the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained and published, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

**Security** means:

(a) any mortgage, charge (whether fixed or floating), pledge, lien, assignment or cession conferring security, hypothecation, security interest, preferential right or trust arrangement or other encumbrance securing any obligation of any person;

(b) any arrangement under which money or claims to, or for the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person;

(c) any other security interest of any kind whatsoever, or any agreement to sell or otherwise Dispose of any asset, on terms whereby such asset is or may be leased or reacquired or acquired; or

(d) any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of a security interest;

**Security Documents** means:

(e) the Company Cession and Pledge; and

(f) the Guarantor Cession and Pledge,

**Semi-Annual Date** means 1 July and 1 December of each year during the Term;

**Semi-Annual Financial Statements** means the financial statements for a Financial Half Year delivered pursuant to Clause 19.1.2;

**Semi-Annual Payment Amount** means:

(a) in respect of each Semi-Annual Period ending on or before the second anniversary of the Subscription Date, ZAR70,000,000; and

(b) in respect of each Semi-Annual Period ending after the second anniversary of the Subscription Date, ZAR90,000,000;

**Semi-Annual Period** means each consecutive period commencing on a Semi-Annual Date, provided that the first Semi-Annual Period will commence on the Subscription Date and end on the first Semi-Annual Date occurring thereafter;

**Share Cover Ratio** bears the meaning specified in Clause 21.1.7;

**ShareCo** means YeboYethu Investment Company (RF) Proprietary Limited, a private company incorporated under the laws of South Africa with registration number 2018/264887/07;

**ShareCo Distributable Proceeds** means any cash proceeds received by ShareCo from time to time, including but not limited to cash Distributions received in respect of the VGL Shares and cash Disposal Proceeds arising from any VGL Shares issued by VGL to ShareCo;

**ShareCo Net Distributable Proceeds** means the ShareCo Distributable Proceeds less:

(c) any Tax actually incurred and required to be paid by ShareCo; and

(d) an amount equal to the ShareCo Operational Expenses incurred in the Financial Year in which the relevant ShareCo Distributable Proceeds are received, that have not been deducted in respect of previous ShareCo Distributable Proceeds received by the Company in such Financial Year;

**ShareCo Operational Expenses** means all and any statutory and administrative costs and expenses incurred or to be incurred by ShareCo in maintaining its corporate existence and complying with all applicable laws and its obligations under and in terms of the Finance Documents (excluding any Taxes which are payable by ShareCo from time to time), subject to a maximum aggregate amount of R20,000,000 per annum (Indexed) for all such ShareCo Operational Expenses and Operational Expenses, or such other amount as the Preference Share Agent may agree in writing;

**ShareCo Payment Instruction Letter** means a letter to be entered into between ShareCo and the Preference Share Agent;

**Share Transfer Form** means a share transfer form in a form agreed to by the Company and the Preference Share Agent, which shall be the instrument of transfer as contemplated by section 51(6)(a) of the Companies Act for any transfer of Preference Shares in accordance with Clause 16.2 (Conditions of Transfer);

**Signature Date** means the date of the signature of the Party last signing the Subscription Agreement;

**Solvency and Liquidity Test** means the "solvency and liquidity test" contemplated in section 4(1) of the Companies Act;

**South Africa** means the Republic of South Africa;

**STT** means securities transfer tax levied under the Securities Transfer Tax Act, 2007;

**Step 6 VGL Shares** shall have the meaning ascribed to that term in the Implementation Agreement;

**Subscriber** means each person that subscribes for the Preference Shares pursuant to the Subscription Agreement;

**Subscription Agreement** means the Preference Shares Subscription Agreement entered into or to be entered into between the Subscribers, the Preference Share Agent and the Company pursuant to which each Subscriber agrees to subscribe for the Preference Shares;

**Subscription Date** means, in respect of each Preference Share, the date on which a Subscriber pays the Issue Price in respect of such Preference Share;

**Subsidiary** means a "subsidiary" as defined in the Companies Act and any company, corporation or other juristic person that would be a Subsidiary if it was a "company" as defined in the Companies Act;

**Tax** means all and any taxes and levies of whatever nature, including income tax, capital gains tax, dividend tax, VAT, stamp duties, STT, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties, fines, additional tax or interest payable as a consequence of any failure or delay in paying any Taxes;

**Term** means the period commencing on the Subscription Date and ending on the Discharge Date;

**Total Subscription Price** means an amount equal to ZAR 5,833,000,000 (five billion eight hundred and thirty three million Rand);

**Trading Day** means any day that is a trading day on the JSE and does not include a day on which trading on the JSE is scheduled to close or does close or is suspended prior to its regular weekday closing time;

**Transaction** means the transactions effected by and contemplated by the Finance Documents;

**Transaction Document** means:

(a) any Finance Document;

(b) each Class B VGL Funding Document;

(c) the Implementation Agreement;

(d) the Relationship Agreement;

(e) and any other agreement or document at any time designated a Transaction Document by written agreement between the Company and the Preference Share Agent; and

(f) any amendment agreement to any of the Transaction Documents referred to in paragraphs (a) to (e) above,

and **Transaction Documents** means, as the context requires, all of them;

**Transaction Security** means the Security created or expressed to be created pursuant to the Security Documents.

**Transactional Accounts** means the following bank accounts held by the Company with the following details:

| | |
|---|---|
| Bank: | The Standard Bank of South Africa Limited |
| Branch Code: | 051 001 |
| Account Number: | 22674853 |

| | |
|---|---|
| Bank: | First National Bank Limited |
| Branch Code: | 250 655 |
| Account Number: | 62417314367 |

| | |
|---|---|
| Bank: | First National Bank Limited |
| Branch Code: | 250 655 |
| Account Number: | 6241734 |

| | |
|---|---|
| Bank: | First National Bank Limited |
| Branch Code: | 250 655 |
| Account Number: | 62444333778 |

**Transfer Date** bears the meaning specified in Clause 16.2.3;

**Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreements, interest rates or currency future or option contracts, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement or any derivative transaction and any other similar agreement entered into in connection with protection against or benefit from fluctuation in any rate or price;

**Trigger Event** means any one or more of the events, circumstances or occurrences specified as such in Clause 12 (Trigger Events);

**Trigger Event Remedy Notice** bears the meaning specified in Clause 10.4.1.1;

**Unpaid Amount** means any amount under these Preference Share Terms (other than any Preference Dividends) that has not been paid on its due date;

**Unredeemed Preference Shares** means, at any time, any Preference Shares which have not been redeemed by the Company at that time in accordance with these Preference Shares Terms;

**US** means the United States of America;

**VAT** means value added tax as levied in terms of the Value Added Tax Act, 1991 and any other Tax of a similar nature;

**VGL** means Vodacom Group Limited, a public company incorporated under the laws of the Republic of South Africa with registration number 1993/005461/06;

**VGL Group** means:

(a) for the purposes of the definition of "Material Company" each company in which VGL holds more than 50% of the share capital of that company;

(b) for all other purposes of the Finance Documents, VGL and its Subsidiaries for the time being;

**VGL Group Cash and Cash Equivalents** bears the meaning specified in Clause 21.1.8;

**VGL Group EBITDA** bears the meaning specified in Clause 21.1.9;

**VGL Group Net Debt** bears the meaning specified in Clause 21.1.10;

**VGL Shares** means the ordinary shares of VGL held by ShareCo;

**Vodacom Letter** means the letter entered into or to be entered into between, *inter alios*, the Finance Parties, VGL and ShareCo on or about the Signature Date;

**Vodafone** means Vodafone International Holdings B.V, a private company registered and duly incorporated in accordance with the laws of the Netherlands with registration number 24235177;

**Voluntary Redemption Date** bears the meaning specified in Clause 10.3.3.2;

**Voluntary Redemption Notice** bears the meaning specified in Clause 10.3.3;

**VWAP** means, in respect of a Listed Share on a Trading Day, the order book volume weighted average price of that Listed Share (excluding off-market trades even if settled on the JSE and block trades designated as such in terms of the Rules of the JSE) published by or derived from the applicable Bloomberg page for that Listed Share or such other source as shall be determined to be appropriate by the Preference Share Agent (acting reasonably) on such Trading Day, provided that if on any such Trading Day such price is not available or cannot otherwise be determined as provided above, the VWAP of a Listed Share in respect of such Trading Day shall be the VWAP, determined as provided above, on the immediately preceding Trading Day on which the same can be so determined.

**2. INTERPRETATION**

2.1 Unless inconsistent with the context or a contrary indication appears, any reference in these Preference Shares Terms to:

2.1.1 any **Holder**, any **Finance Party**, the **Preference Share Agent** or any **Party** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

2.1.2 **assets** includes present and future assets, properties, revenues and rights of every description;

2.1.3 **audited** means, in respect of any financial statements, those financial statements as audited by the Auditors;

2.1.4 **authority** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;

2.1.5 **control** means, in relation to any company or similar organisation or person:

2.1.5.1 the power (whether by way of ownership of shares, proxy, contract, agency or otherwise and whether directly or indirectly) to:

2.1.5.1.1 cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of that person;

2.1.5.1.2 appoint or remove all, or the majority, of the directors or other equivalent officers of that person; or

2.1.5.1.3 give directions with respect to the operating and financial policies of that person with which the directors or other equivalent officers of that person are obliged to comply; and

2.1.5.2 the holding beneficially and legally, of more than 50% of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

2.1.6 a **Finance Document** or any other agreement or instrument includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to, or novations of, that Finance Document or other agreement or instrument, including any amendment or novation providing for any increase in the amount of a facility or any additional facility or replacement facility;

2.1.7 the use of the word **including** or the phrase **in particular** followed by specific examples will not be construed as limiting the generality of the words preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general words or such specific examples;

2.1.8 in the opinion of the Preference Share Agent or approved by the Preference Share Agent or to the satisfaction of the Preference Share Agent or words to that effect shall mean the Preference Share Agent acting in accordance with the instructions of the relevant majority of Holders or such other category of persons as prescribed in relation to any particular matter by the Holders;

2.1.9 the words **other** and **otherwise** shall not be construed *eiusdem generis* with any foregoing words where a wider construction is possible;

2.1.10 a **person** includes any individual or Entity;

2.1.11 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

2.1.12 **security interest** means any agreement or arrangement having the effect of creating a security interest or right of possession including any mortgage, charge (whether fixed or floating), pledge, cession, cession *in securitatem debiti*, lien, lease, right of retention, right of set-off or claim (but excluding any right of set-off, consolidation, merger or combination of accounts arising in favour of a banker by operation of law), hypothecation, assignment, security interest, title retention, trust arrangement, preferential arrangement or encumbrance whatever, however created or arising;

2.1.13 **repay** (or any derivative form of that word) includes **prepay** (or any derivative form of that word);

2.1.14 a provision of law is a reference to that provision as amended or re-enacted from time to time;

2.1.15 a time of day shall be construed as a reference to Johannesburg time;

2.1.16 where any party is required to provide any consent, approval or to agree to the actions of any other party, the request for such consent, approval or agreement shall be made in writing and such consent, approval or agreement shall be in writing; and

2.1.17 where any party is required, entitled or obliged to provide a notice to any other party, such notice shall be in writing.

2.2 Clause headings are for reference purposes only.

2.3 A Potential Trigger Event is **continuing** if it has not been remedied (within the time period provided for the remedy of such Potential Trigger Event in the Preference Share Terms or any other Finance Document, or any extension of time allowed by the Preference Share

Agent) or waived in writing by the Preference Share Agent and any waiver shall not take effect unless any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent.

2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in a definitions Clause, effect shall be given to it as if it were a substantive provision of this Clause 1.

2.5 Unless inconsistent with the context, an expression in these Preference Shares Terms which denotes:

2.5.1 any one gender includes the other genders;

2.5.2 a natural person includes an artificial or juristic person and vice versa; and

2.5.3 the singular includes the plural and vice versa.

2.6 Where figures are referred to in numerals and in words in this Clause 1, if there is any conflict between the two, the words shall prevail.

2.7 Unless a contrary indication expressly appears, where any number of days is to be determined from or after a particular day, such number of days shall be determined so as to include that particular day and to exclude the last day of such period; provided that if such last day falls on a day which is not a Business Day, such last day shall be the next succeeding Business Day.

2.8 Where any term is defined within the context of any particular Clause in these Preference Share Terms, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Clause 1, notwithstanding that that term has not been defined in Clause 1 (Definitions).

2.9 The use of any expression in these Preference Shares Terms covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

**3. ISSUE OF PREFERENCE SHARES**

3.1 Each Preference Share shall be issued for the Issue Price.

3.2 The Preference Shares shall be issued by the Company in accordance with the terms of the Subscription Agreement.

**4. RANKING**

4.1 The Preference Shares rank:

4.1.1 equally among themselves; and

4.1.2 in priority to the rights of all Other Shares,

with respect to:

4.1.2.1 the payment of dividends by the Company; and

4.1.2.2 the distribution of the assets of the Company in the event of the liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, or any other distribution of the assets of the Company whether for the purpose of winding up its affairs or otherwise.

4.2 The Preference Shares do not confer on the Holders the right to participate in the profits or assets of the Company except as set out in these Preference Shares Terms.

## 5. DIVIDEND RIGHTS OF THE PREFERENCE SHARES

The Holders will be entitled to receive the cumulative preferential cash dividends to be determined and paid in accordance with the provisions of this Clause 5 (Dividend Rights of the Preference Shares).

### 5.1 Mandatory Preference Dividends

5.1.1 Each Preference Share shall have attached to it the right of the Holder to receive, during the period from (and including) the Subscription Date to (but excluding) the date on which such Preference Share is redeemed, a cumulative preferential cash dividend (each, a **Mandatory Preference Dividend**) which will accrue in respect of such Preference Share for each Compounding Period in accordance with the following formula:

MPD = [(IP + APD) x ND x DR] ÷ 365

where:

MPD = the Mandatory Preference Dividend payable on each Preference Share to be calculated, expressed in Rand;

IP = the Issue Price of that Preference Share;

APD = the aggregate amount of (i) the Mandatory Preference Dividend that has accrued in respect of that Preference Share in accordance with this Clause 5.1.1 during all preceding Compounding Periods and which has not been paid in accordance with Clause 5.1.2 plus (ii) any Additional Preference Dividend that has accrued in respect of that Preference Share in accordance with Clause 5.3 (Additional Preference Dividends) and which has not been paid in accordance with Clause 5.1.2 and (iii) any Unpaid Amounts;

ND = subject to Clause 5.1.3, the number of days in that Compounding Period; and

DR = subject to Clause 5.1.5, while no Trigger Event is continuing, the Dividend Rate or, while any Trigger Event is continuing, the Default Dividend Rate (as applicable at the time).

5.1.2 On each Mandatory Dividend Date, each Holder shall have the right to receive and be paid and the Company shall be obliged to pay, in respect of each Preference

Share, the lower of (i) all of the Mandatory Preference Dividends that have accrued as at (but excluding) such Mandatory Dividend Date in accordance with Clause 5.1.1 and any Additional Dividends that have become payable in accordance with Clause 5.3 (Additional Preference Dividends) and (ii) such portion of the Mandatory Preference Dividends that have accrued in accordance with Clause 5.1.1 as at such Mandatory Dividend Date, as is available, in accordance with the Priority of Payments, for purposes of paying the Mandatory Preference Dividends on such Mandatory Dividend Date.

5.1.3 On the Final Dividend Date, the Company shall be obliged to pay, in respect of each Preference Share being redeemed, the Mandatory Preference Dividend that has accrued in accordance with Clause 5.1.1 and which has not otherwise been paid in accordance with Clause 5.1.2.

5.1.4 A Mandatory Preference Dividend shall, for the purposes of calculation, be determined inclusive of the first day and exclusive of the last day of each Compounding Period for which it is determined.

5.1.5 To the extent that the Dividend Rate changes during a Compounding Period (whether as a result of a change in the Prime Rate, the occurrence of an Adjustment Event or otherwise), the Mandatory Preference Dividend shall be calculated for:

5.1.5.1 the period commencing on the first day of the Compounding Period and ending on (and excluding) the date on which the Dividend Rate changes, using the Dividend Rate prior to such change; and

5.1.5.2 for the period commencing on (and including) the date on which the Dividend Rate changes and ending on the last day of that Compounding Period, using the new Dividend Rate; and

5.1.5.3 thereafter, the Dividend Rate shall remain fixed until the next change, at which time the Mandatory Preference Dividend shall be calculated on the basis set out in Clauses 5.1.5.1 and 5.1.5.2.

**5.2 Refinance Preference Dividend**

5.2.1 Subject to Clause 5.2.2, if pursuant to Clause 10.3 (Voluntary Redemption), the Company elects to redeem a Preference Share out of the proceeds of a Refinancing (other than a Refinancing of that Preference Share pursuant to an Equity Cure), such Preference Share shall have attached to it the right of the Holder registered as such on the date on which such Preference Share is redeemed, to receive and be paid the Refinance Preference Dividend, on the Redemption Date (the **Refinance Dividend Date**) of such Preference Share.

5.2.2 The Company shall not be required to pay a Refinance Preference Dividend to a Holder:

5.2.2.1 in respect of the portion of the Refinancing in which that Holder participates; or

5.2.2.2 if the Company Refinances the Preference Shares held by such Holder as a result of the occurrence of an Adjustment Event which results in an increase in the Dividend Rate Percentage or the payment of Additional Dividends provided that such refinancing is implemented within 180 days after the delivery of the Adjustment Notice.

**5.3 Additional Preference Dividends**

Each Holder shall have the right to receive and be paid in respect of each Preference Share held by it on the Additional Dividend Date an Additional Preference Dividend to the extent that Holder is entitled to require, and has required, the payment of such Additional Preference Dividend in accordance with Clause 8.3 (Specific provisions applicable to certain Adjustment Events).

**5.4 Accumulated Preference Dividends**

The Preference Dividends are cumulative and, to the extent that all or any part of a Preference Dividend has accrued or has become payable in accordance with these Preference Shares Terms, the Company shall be liable to pay, and the Holders shall be entitled to be paid, by no later than the Redemption Date, all Preference Dividends that have accrued or become payable in relation to the Preference Shares in accordance with these Preference Shares Terms and which have not been paid on the applicable Dividend Payment Dates.

**5.5 Payment of Preference Dividends**

Each Preference Dividend is due and payable and shall be paid in cash on its Dividend Payment Date.

**5.6 Right of the Preference Shares on liquidation, dissolution or winding-up**

Each Preference Share shall have attached to it the right of the Holder to receive, in the event of the liquidation, dissolution or winding-up of the Company, a preferred right, in priority to the rights of all Other Shares, to a return of capital in an amount equal to the Outstanding Preference Shares Obligations in respect of such Preference Share calculated on the date on which payment of that return of capital is made by the Company to the Holder of such Preference Share.

**6. ENVIRONMENTAL INDEMNITY**

6.1 The Company hereby indemnifies each Finance Party, each Affiliate of a Finance Party and each officer, director, employee, agent, advisor, and representative of a Finance Party (together, the **Indemnified Parties**) on demand against any losses, claims, damages, liabilities or other costs or expenses suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or wilful default) as a result of:

6.1.1 any breach of any Environmental Law (whether by the Company or any other member of the Group);

6.1.2 an Environmental Claim; or

6.1.3 any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party, which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Indemnified Party may rely on this Clause 6 as a stipulation for its or his benefit, capable of acceptance at any time.

**7. FATCA DEDUCTION**

7.1 Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

7.2 Each Party shall as soon as reasonably possible, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Preference Share Agent and the Preference Share Agent shall notify the other Finance Parties.

**8. CHANGE IN CIRCUMSTANCES**

**8.1 Consequences of the occurrence of an Adjustment Event**

8.1.1 Subject to Clause 8.4 (Exceptions), if, in relation to a Holder (each, an **Affected Holder**), at any time after the Fulfilment Date, any event described as an adjustment event in Clause 8.2 (Adjustment Events) (each, an **Adjustment Event**) occurs that results in an Increased Cost or a reduction in the Return for the Affected Holder or Consolidating Company or any Holding Company of the Affected Holder (each, an **Affected Party**) which would not have resulted but for the occurrence of that Adjustment Event, then the Affected Holder shall be entitled, by delivering a written notice (each, an **Adjustment Notice**) to the Company (with a copy to the Preference Share Agent), to require the Company, in which event the Company shall be obliged (in the sole discretion of the Affected Holder), to:

8.1.1.1 forthwith declare and pay on the date specified in the Adjustment Notice (each an **Additional Dividend Date**), such amount specified by the Affected Holder in the Adjustment Notice and in addition, specifying whether or not such dividend is to be a dividend as defined in section 1 of the Income Tax Act (each an **Additional Preference Dividend**); and/or

8.1.1.2 increase the Dividend Rate Percentage, with effect from the date (the **Adjustment Date**) specified in the Adjustment Notice (which may be a date earlier than the date of the Adjustment Notice), by such a margin specified by the Affected Holder in the Adjustment Notice,

either:

8.1.1.2.1 in the case of the Adjustment Events referred to in Clause 8.2.1 and Clause 8.2.3, as may be necessary to compensate the Affected Party for the occurrence of that Increased Cost or reduction in Return and place the Affected Party in the same after-Tax position in respect of the Preference Shares to which the Adjustment Notice applies and/or ensure that the Affected Party will receive the same Return, in either case as if the relevant Adjustment Event had not occurred; and/or

8.1.1.2.2 in the case of the Adjustment Events referred to in Clauses 8.2.2, 8.2.4 and 8.2.5, as determined in accordance with Clause 8.3 (Specific provisions applicable to certain Adjustment Events),

provided that if an event occurs which constitutes an Adjustment Event both under Clause 8.2.1 and Clause 8.2.2, 8.2.4 or 8.2.5 then the Affected Holder shall be entitled to apply either or both Clause 8.1.1.2.1 or Clause 8.1.1.2.2 to achieve the same Return it would have achieved had the applicable Adjustment Event not occurred.

**8.2 Adjustment Events**

An **Adjustment Event** shall occur if:

8.2.1 there is any change in Applicable Law or in the interpretation or general application thereof, or the introduction of any new Applicable Law;

8.2.2 the Affected Holder ceases to be exempt from Dividends Tax, or after the Affected Holder ceases to be exempt the applicable rate at which Dividends Tax is levied is increased;

8.2.3 for so long as the Affected Party, as the case may be, is a bank duly registered as such in accordance with the Banks Act, or is otherwise subject to regulation under the Banks Act, or is a financial institution duly registered as such with any statutory or monetary authority, or is a Subsidiary of such bank or financial institution, there is any:

8.2.3.1 proposal or measure implemented pursuant to any version of the International Convergence of Capital Measurement and Capital Standards (Basel Accord) on a basis materially different to that which is in force as at the Fulfilment Date;

8.2.3.2 directive of any central bank or any other fiscal, monetary, regulatory or other authority in South Africa having jurisdiction in respect of such bank, financial institution or Subsidiary, as the case may be;

8.2.3.3 change in practice as it affects or is applied generally by such banks, financial institutions or Subsidiaries, as the case may be, in South Africa;

8.2.3.4 requirement or request by any central bank or statutory or monetary authority with which such banks, financial institutions or Subsidiaries, as the case may be, in South Africa generally comply, to pay any amounts or maintain any special deposits or reserve assets in addition to those paid or maintained or reserved by the Affected Party, as the case may be, as at the Fulfilment Date; or

8.2.3.5 compliance by the Affected Party, as the case may be, with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement) whether or not having the force of law, in respect of the Preference Shares with which such banks, financial institutions or subsidiaries, as the case may be, in South Africa generally comply in addition to those applicable as at the Fulfilment Date,

which is applicable to that bank, financial institution or Subsidiary, as the case may be;

8.2.4 any Tax is or becomes payable by the Affected Holder, as the case may be or for which the Affected Holder, as the case may be is or becomes liable on, or in respect of the Preference Shares (including as a result of the subscription for, acquisition of, the holding of and/or the funding of the Preference Shares), any Preference Dividend or any amount payable on the redemption of any Preference Share, whether before or after redemption of the Preference Shares; or

8.2.5 there is any increase or decrease in the Corporate Tax Rate.

**8.3 Specific provisions applicable to certain Adjustment Events**

8.3.1 Subject to Clause 8.4 (Exceptions), the Company agrees that the provisions of this Clause 8.3 (Specific provisions applicable to certain Adjustment Events) will apply in respect of the Adjustment Events contemplated in Clauses 8.2.2, 8.2.4 and 8.2.5.

8.3.2 If any Adjustment Event described in Clause 8.2.2 or Clause 8.2.4 occurs:

8.3.2.1 the Additional Preference Dividend payable by the Company as a consequence of the occurrence of that Adjustment Event shall be an amount such that the Affected Party will receive after Tax an amount equal to the amount which would otherwise have been receivable by the Affected Party in the absence of the occurrence of any such Adjustment Event; or

8.3.2.2 the Dividend Rate Percentage shall be increased, with effect from the Adjustment Date specified in the Adjustment Notice (which may be a date earlier than the date of the Adjustment Notice), specified by the Affected Party in the Adjustment Notice, by such percentage as will ensure that the Affected Holder will receive a Return equal to the Return which would otherwise have been receivable by the Affected Party in the absence of the occurrence of any such Adjustment Event.

8.3.3 If any Adjustment Event described in Clause 8.2.5 occurs, the new Dividend Rate Percentage will be calculated in accordance with the following formula and accordingly the new Dividend Rate will be the new Dividend Rate Percentage so determined of the Prime Rate:

$$\mathrm{NDRP} = \mathrm{ODRP} \times (1 - \mathrm{NCTR}) / (1 - \mathrm{OCTR})$$

Where:

NDRP = the new Dividend Rate Percentage to be determined, expressed as a percentage;

| | | |
|---|---|---|
| ODRP | = | the Dividend Rate Percentage applicable immediately prior to the occurrence of such Adjustment Event expressed as a percentage; |
| OCTR | = | the Corporate Tax Rate applicable immediately prior to the occurrence of such Adjustment Event; and |
| NCTR | = | the new Corporate Tax Rate applicable pursuant to such Adjustment Event. |

The new Dividend Rate Percentage determined in accordance with this Clause 8.3.3 shall be applied retrospectively, to the extent required to achieve the same Return it would have achieved had the applicable Adjustment Event not occurred, in re-calculating, *mutatis mutandis* in accordance with Clause 5.1 (Mandatory Preference Dividends), all Mandatory Preference Dividends that have accrued in respect of each Unredeemed Preference Share in accordance with Clause 5.1 (Mandatory Preference Dividends) during the current and all preceding Compounding Periods and which have not been paid to the Holder of such Unredeemed Preference Share in accordance with Clause 5.1 (Mandatory Preference Dividends).

8.3.4 Without double counting, if any amount payable to the Affected Holder pursuant to the provisions of Clause 8.3.2 or Clause 8.3.3 is subject to Tax, then the Company shall pay such additional amounts to the Affected Holder so as to place the Affected Party in a position as if no such Tax was payable.

**8.4 Exceptions**

Notwithstanding anything to the contrary contained in the provisions of this Clause 8 (Change in circumstances) no Adjustment Event shall occur, where any Preference Dividend paid or payable by the Company to an Affected Holder, is deemed to be an amount of income in terms of section 8EA(2) or 10(1)(k)(i)(ff) of the Income Tax Act solely by reason of the Affected Holder, without the consent of the Company, having, as a separate and distinct transaction, entered into any agreement with a third party which is not a person contemplated in section 8EA(3) of the Income Tax Act and which results in the Preference Shares held by that Affected Holder becoming third-party backed shares as envisaged in section 8EA(2) of the Income Tax Act.

**8.5 Reciprocity**

If the Dividend Rate in relation to an Affected Holder is increased by that Affected Holder in accordance with the foregoing provisions of this Clause 8 (Change in circumstances) and following such increase in the Dividend Rate, any of the events contemplated by Clause 8.2 (Adjustment Events) (other than an increase in the Corporate Tax Rate) occurs and the occurrence of any such event(s) results in the Increased Cost or reduced Return that gave rise to the increase in the Dividend Rate being wholly or partially reduced or eliminated, the Company shall be entitled to give written notice to the Affected Holder, and upon receipt of such notice, the Affected Holder shall, if its calculations confirm that as a result of the occurrence of any such event(s), the Holder has actually received the benefit of such Increased Cost or reduced Return that gave rise to the increase in the Dividend Rate being wholly or partially reduced or eliminated by the occurrence of any such event(s), at the election of the Affected Holder, either (i) pay an amount to the Company and/or (ii) decrease the Dividend Rate, so that the Affected Party is placed in the same after-tax position that it would have been in had the Adjustment Event(s) giving rise to the increase in the Dividend Rate not occurred, provided that:

8.5.1 the Dividend Rate in respect of any Preference Share shall not be decreased to a rate less than the Dividend Rate applicable as at the Fulfilment Date;

8.5.2 the Company's written demand pursuant to this Clause 8.5 is delivered to the Affected Holder within 30 days after the occurrence of any such event/s;

8.5.3 no Holder shall be under any obligation to provide the Company with any notice of the occurrence of any such event or disclose any information and/or documentation relating to its affairs (tax or otherwise); and

8.5.4 the Company shall not be entitled to give notice pursuant to this Clause 8.5 if a Potential Redemption Event is continuing or a Trigger Event has occurred.

**8.6 Disputes**

8.6.1 If the Company disputes the correctness of any calculation in an Adjustment Notice, the occurrence of an Adjustment Event, the effect of the occurrence of an Adjustment Event or the Affected Holder's calculation in terms of Clause 8.3 (Specific provisions applicable to certain Adjustment Events), Clause 8.4 (Exceptions), a certificate by the auditors of the Affected Party shall, in the absence of manifest error, be prima facie proof of the correctness of such calculation.

8.6.2 The Company shall only be entitled to raise any such dispute in writing for a period of 30 Business Days after delivery to the Company of the relevant Adjustment Notice or notification of the Holder's calculation in terms of Clause 8.4 (Exceptions).

**8.7 Post-Redemption Payment**

If:

8.7.1 the occurrence of an Adjustment Event; and/or

8.7.2 the effect of an Adjustment Event in respect of a Preference Share only becomes apparent; and/or

8.7.3 an Indemnified Party only becomes aware of the effects of such Adjustment Event,

after such Preference Share has been redeemed or transferred the Company shall and hereby does indemnify and hold that Indemnified Party harmless against the effect of such Adjustment Event and, accordingly, shall pay to the Indemnified Party, on demand, an amount that, after the Tax (if any) puts that Indemnified Party, in the same position as that Indemnified Party would have been in had the Adjustment Event not occurred. The provisions of this Clause 8.7 (Post-Redemption Payment) shall survive the redemption or transfer of the Preference Shares and shall remain enforceable against the Company by each Indemnified Party until the Final Discharge Date.

## 9. MANDATORY RESERVING: SANCTIONS

9.1 For purposes of this Clause 9 (Mandatory Reserving: Sanctions), a **Sanctions Exit Event** shall occur if:

9.1.1 any member of the Group finances or makes any funds available directly or indirectly to any person or entity which is currently a Sanctioned Entity or as part of a Sanctioned Transaction, to the extent such financing or provision of funds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions;

9.1.2 any member of the Group is contributing or will contribute or otherwise make available any funds to any other person or entity for the purpose of financing the activities of any person or entity which is currently listed on a Sanctions List, to the extent such contribution or provision of proceeds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions; or

9.1.3 any member of the Group has been or is targeted under any Sanctions; or

9.1.4 any member of the Group has violated or is violating any applicable Sanctions.

9.1.5 any member of the Group has failed to conduct its businesses in compliance with applicable anti-corruption laws and has failed to institute or maintain policies and procedures designed to promote and achieve compliance with such laws.

9.2 If any Sanctions Exit Event occurs, the Company shall notify the Preference Share Agent promptly upon becoming aware of that event and if any Holder (**Relevant Holder**) so requires and notifies the Preference Share Agent accordingly, the Company shall:

9.2.1 upon receipt of not less than two Business Days' notice from the Preference Share Agent ensure that the Company reserves assets acceptable to the Preference Share Agent for such value which is at least equal to the Outstanding Preference Share Obligations as at that date;

9.2.2 by no later than the last Business Day of each calendar month (the **Top-up Date**) occurring after a Sanction Exit Event, the Company reserves such additional assets acceptable to the Preference Share Agent, so as to ensure that as at the Top-up Date, the aggregate value of the assets so reserved are at least equal to the Outstanding Preference Share Obligations as at such Top-up Date.

## 10. MANDATORY REDEMPTION

### 10.1 Final Redemption

The Company shall, subject to Clauses 10.2 (Illegality), be obliged to redeem all Unredeemed Preference Shares on the Final Redemption Date.

### 10.2 Illegality

If, at any time, it is or becomes illegal or unlawful for a Holder (the **Relevant Holder**) to perform any of its obligations as contemplated by the Finance Documents or to hold the Preference Shares it holds or to claim and recover all or any part of a Preference Dividend or a Redemption Amount (the **Illegality Event**):

10.2.1 the Relevant Holder shall, promptly upon becoming aware of the same, notify the Preference Share Agent; and

10.2.2 if the relevant Parties fail to remove or rectify such Illegality Event (provided such Illegality Event is capable of being removed or rectified), or agree upon alternative acceptable provisions within ten Business Days (or such longer period as the Parties may agree in the circumstances) of the date (**Illegality Notification Date**) on which the Preference Share Agent notifies the Company of the Illegality Event, the Relevant Holder shall be entitled, by written notice to the Company, to require the Company to redeem all of the Relevant Holder's Unredeemed Preference Shares no earlier than ten Business Days (or such shorter period as may be required by Applicable Law) after the Illegality Notification Date for the aggregate Redemption Amount in respect of such Relevant Holder's Unredeemed Preference Shares, whereupon the Company shall immediately redeem all of the Relevant Holder's Unredeemed Preference Shares.

**10.3 Voluntary Redemption**

10.3.1 The Company shall not be entitled to voluntarily redeem any of the Preference Shares unless the provisions and procedure set out in this Clause 10.3 (Voluntary Redemption) have been complied with.

10.3.2 The Company shall, at any time, be entitled (but not obliged), to voluntarily redeem any Unredeemed Preference Shares, provided that if the Company redeems any Unredeemed Preference Shares from the proceeds of a Refinancing, the Company shall be obliged to redeem all (and not less than all) of the Unredeemed Preference Shares.

10.3.3 The Company shall advise the Preference Share Agent of its election to voluntarily redeem all or any of the Unredeemed Preference Shares in terms of Clause 10.3.2 by written notice (each, a **Voluntary Redemption Notice**), which it may give at any time, which Voluntary Redemption Notice shall set out:

10.3.3.1 the number of such Preference Shares to be redeemed;

10.3.3.2 the date on which such Preference Shares are to be redeemed (the **Voluntary Redemption Date**), which date shall not be earlier than the 30th Business Day after the Preference Share Agent receives such Voluntary Redemption Notice (or such earlier date as the Preference Share Agent may agree); and

10.3.3.3 the nature of the proceeds that are being applied to effect the voluntary redemption,

and which Voluntary Redemption Notice may be revoked by the Company, and whether or not such Voluntary Redemption Notice is revoked by the Company, delivery of such notice shall not in any circumstances oblige the Company to redeem any Preference Shares or entitle any Holder to require redemption of any Preference Shares.

**10.4 Redemption upon the occurrence of a Trigger Event**

10.4.1 If a Trigger Event occurs and is Continuing:

10.4.1.1 the Preference Share Agent shall be entitled, but not obliged, to give written notice (**Trigger Event Remedy Notice**) to the Company in which the Preference Share Agent requires the Company to remedy that Trigger Event within a period of one Business Day of delivery of the Trigger Event Remedy Notice; and

10.4.1.2 if the Preference Share Agent delivers a Trigger Event Remedy Notice to the Company and the Company fails to remedy that Trigger Event within the aforesaid one Business Day period, the Preference Share Agent shall, subject to Clause 10.4.2, be entitled, but not obliged, to deliver written notice (**Early Redemption Notice**) to the Company in which the Preference Share Agent requires the Company to redeem the Unredeemed Preference Shares on a date (**Early Redemption Date**) set out in the Early Redemption Notice.

10.4.2 If a Trigger Event has occurred in respect of the Obligors, the Preference Share Agent shall not be entitled to deliver a Trigger Event Remedy Notice unless the Pre-Emptive Rights Notice has been delivered to the Company and:

10.4.2.1 a period of five Business Days has elapsed since the delivery of such notice and VGL has not exercised the pre-emptive right contemplated in the Pre-Emptive Rights Notice; or

10.4.2.2 VGL has delivered a written notice to the Preference Share Agent confirming that it has elected not to exercise the pre-emptive right contemplated in the Vodacom Letter, in which case the Preference Share Agent shall be entitled to deliver a Trigger Event Remedy Notice at any time thereafter.

10.4.3 If the Preference Share Agent delivers an Early Redemption Notice to the Company, the Company shall, on the Early Redemption Date set out in the Early Redemption Notice, redeem all Unredeemed Preference Shares.

**10.5 Procedure for Redemptions**

10.5.1 Subject to the provisions of Applicable Law:

10.5.1.1 the Board shall, on or before the applicable Redemption Date, apply the Solvency and Liquidity Test and if the Board is reasonably satisfied that the Company will satisfy the Solvency and Liquidity Test immediately after paying all unpaid Preference Dividends and the aggregate Redemption Amount in respect of each Preference Share being redeemed, the Board shall, on or before the applicable Redemption Date, pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying all unpaid Preference Dividends and the aggregate Redemption Amount in respect of each Preference Share being redeemed;

10.5.1.2 the payment of any Redemption Amount will reduce the contributed tax capital of the Company as defined in section 1 of the Income Tax Act;

10.5.1.3 the Company shall, on the applicable Redemption Date, pay, in respect of each Preference Share being redeemed, all unpaid Preference Dividends; and

10.5.1.4 the Company shall, on the applicable Redemption Date, redeem the relevant Preference Shares for, and by paying, the aggregate Redemption Amount in respect of all of the Preference Shares being redeemed.

10.5.2 If the Company decides to voluntarily redeem any Preference Shares, the Preference Shares held by each Holder shall be redeemed in the proportion that the Preference Shares held by that Holder bears to the total number of Unredeemed Preference Shares, provided that if any Holder requires the payment of an Additional Preference Dividend or a Gross-Up Amount or an increase in the Dividend Rate Percentage in respect of the Preference Shares held by that Holder, the Company may voluntarily redeem the Preference Shares held by that Holder only.

10.5.3 The Company shall be liable for any STT and/or any other similar duty, cost and/or penalty which may be or become payable by the Company and/or a Holder in respect of the redemption of any Preference Shares for any reason. To the extent that any Holder becomes liable to pay such STT and/or any other similar duty, cost and/or penalty, the Company shall pay to the relevant Holder on demand an amount equal to such STT and/or other similar duty, cost and/or penalty paid by that Holder and the Company hereby indemnifies and holds that Holder harmless accordingly.

10.5.4 Upon redemption of any of a Holder's Preference Shares, that Holder shall, against receipt of payment, surrender its share certificate in respect of such Preference Shares to the Company (or, if such certificate(s) has/have been lost or destroyed, such proof of loss or destruction and such indemnity as the Company is entitled to require in terms of Clause 17.3 and against such surrender, unless all of the Preference Shares of that Holder have been redeemed, the Company shall (to the extent necessary) issue a share certificate(s) to that Holder in respect of those Preference Shares held by that Holder which were not redeemed within five Business Days of such surrender or provision of such indemnity, as the case may be.

## 11. PRIORITY OF PAYMENTS

The Company may only apply the ShareCo Net Distributable Proceeds for the purposes of making the following payments in the following order of priority:

11.1 **first**, to pay or provide for any Tax that has been incurred and required to be paid by the Company that has not been deducted in respect of previous ShareCo Net Distributable Proceeds received by the Company in such Financial Year;

11.2 **second**, to pay for or provide for Operational Expenses incurred for the Financial Year during which the applicable ShareCo Net Distributable Proceeds are received by the Company, that have not been deducted in respect of previous ShareCo Net Distributable Proceeds received by the Company, in such Financial Year;

11.3 **third**, to pay all accrued and unpaid Additional Preference Dividends and any post redemption indemnity payments contemplated in Clause 8.7 (Post-Redemption Payment) that have become payable;

11.4 **fourth**, to pay the accrued and unpaid Mandatory Preference Dividends;

11.5 **fifth**:

11.5.1 during the Restricted Period, to pay the lesser of (i) the Semi-Annual Payment Amounts in respect of the relevant Semi-Annual Period and (ii) the aggregate Outstanding Preference Share Obligations into the Reserve Account and, at the election of the Company, to apply the balance towards the voluntary redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.5.2 after the expiry of the Restricted Period, to apply the lesser of (i) the Semi-Annual Payment Amounts in respect of the relevant Semi-Annual Period and (ii) the aggregate Outstanding Preference Share Obligations towards the mandatory redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.6 **sixth**, if in respect of any Semi-Annual Period, the amount applied towards the payments contemplated in Clause 11.5 (the **Required Amounts**) is less than the Semi-Annual Payment Amount for that Semi-Annual Period (such shortfall, the **Catch-Up Amount**), the lesser of the balance remaining and the Catch-Up Amount to be applied as contemplated in Clause 11.5;

11.7 **seventh**, to the extent that:

11.7.1 the Share Cover Ratio is less than or equal to 2.4 times:

11.7.1.1 during the Restricted Period, to pay the balance into the Reserve Account and, at the election of the Company, to apply the balance towards the voluntary redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.7.1.2 after the expiry of the Restricted Period, to apply the balance towards the mandatory redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.7.2 if the Share Cover Ratio is greater than 2.4 times and will be greater than 2.4 times after the payment of ordinary dividends contemplated in this Clause 11.7.2 and provided that no Trigger Event has occurred and no Potential Trigger Event or Trigger Event will arise as a result of the payment of ordinary dividends contemplated in this Clause 11.7.2, the greater of:

11.7.2.1 ZAR76,000,000 per year (escalating by 5% annually commencing on the Subscription Date); and

11.7.2.2 20% of the balance remaining after the payments contemplated in Clause 11.1 to 11.6,

towards the payment of ordinary dividends (at the election of the Company), provided that if the balance remaining after the payments contemplated in Clause

11.1 to 11.6 is less than the amount contemplated 11.7.2.1, the balance shall be applied towards the payment of ordinary dividends (at the election of the Company).

11.7.3 **eighth:**

11.7.3.1 for so long as a Potential Trigger Event or a Trigger Event is continuing :

11.7.3.1.1 during the Restricted Period, at the election of the Company to pay the balance into the Reserve Account or to apply the balance towards the voluntary redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.7.3.1.2 after the expiry of the Restricted Period, to apply the balance towards the mandatory redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.7.3.2 if the Final Redemption Date has occurred, to apply the balance towards the mandatory redemption of the Unredeemed Preference Shares; and

11.7.3.3 for so long as no Potential Trigger Event or a Trigger Event is continuing and no Potential Trigger Event or Trigger Event will arise as a result of the payment of accrued and unpaid preference dividends in respect of the B Preference Shares and/or the redemption of the B Preference Shares (as applicable)and if Final Redemption Date has not occurred:

11.7.3.3.1 during the Restricted Period, towards the payments of accrued and unpaid preference dividends in respect of the B Preference Shares in accordance with the Class B VGL Preference Share Agreement; and

11.7.3.3.2 after the expiry of the Restricted Period, towards the payments of accrued and unpaid preference dividends in respect of the B Preference Shares and the redemption of the B Preference Shares in accordance with the Class B VGL Preference Share Agreement; and

11.7.4 **lastly**:

11.7.4.1 during the Restricted Period, at the election of the Company to pay the balance into the Reserve Account or to apply the balance towards the voluntary redemption of such number of Unredeemed Preference Shares as can be redeemed at that time; and

11.7.4.2 after the expiry of the Restricted Period, to apply the balance towards the mandatory redemption of such number of Unredeemed Preference Shares as can be redeemed at that time.

## 12. TRIGGER EVENTS

Each of the events set out in this Clause 12 (Trigger Events) is a Trigger Event (whether or not caused by any reason whatsoever outside of the control of the Company or any other person).

### 12.1 Solvency and Liquidity Test

On or before each Dividend Payment Date in respect of the payment of any Preference Dividend by the Company and/or each Redemption Date in respect of the payment of any Redemption Amount by the Company (each a **Preference Share Distribution**):

12.1.1 the Board fails to apply the Solvency and Liquidity Test to determine whether after payment of the relevant Preference Share Distribution the Company will satisfy the Solvency and Liquidity Test for any reason whatsoever; or

12.1.2 the Board applies the Solvency and Liquidity Test in respect of the applicable Preference Share Distribution and is satisfied that after payment of such Preference Share Distribution the Company will satisfy the Solvency and Liquidity Test but the Board fails to pass a resolution acknowledging that the Board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant Preference Share Distribution for any reason whatsoever.

### 12.2 Non-Payment

The failure by the Company to pay any Preference Dividend on its Dividend Payment Date for any reason whatsoever (including a failure to satisfy the Solvency and Liquidity Test) unless its failure to pay is caused by administrative or technical error (other than an administrative or technical error of or caused by the Company) and payment is made within two Business Days of its due date.

### 12.3 Non-Redemption

The failure by the Company for any reason whatsoever to redeem the Preference Shares on the relevant Redemption Date.

### 12.4 Maximum Exposure

If, at any time, as a result of any portion of the Mandatory Preference Dividends that have accrued in accordance with Clause 5.1.1 not being paid, the Outstanding Preference Share Obligations are equal to or greater than the Maximum Exposure and such event is not remedied within 10 days of receipt of written notice from the Preference Share Agent calling upon the Company to remedy such event.

**12.5 Financial Covenants**

Any requirement of Clause 21.2 (Financial Condition) is not satisfied and is not restored in the manner contemplated in Clause 21.3 (Equity Cure) within 2 Business Days from the date on which the Share Cover Ratio is less than or equal to 2 times.

**12.6 Leverage Ratio**

The Leverage Ratio exceeds 2.5 times in any Measurement Period.

**12.7 Other Obligations**

12.7.1 Subject to Clause 12.7.2, the Company does not comply with any provision of the Transaction Documents.

12.7.2 No Trigger Event under Clause 12.7.1 will occur if:

12.7.2.1 the failure to comply is capable of remedy and is remedied within 5 Business Days of the Preference Share Agent giving written notice to the Company; or

12.7.2.2 the failure to comply constitutes a Potential Trigger Event under any other clause in this Clause 12 (Trigger Events) and such Potential Trigger Event is remedied within the grace period provided for in that clause.

**12.8 Misrepresentation**

12.8.1 Any representation or statement made by any Obligor or VGL in the Finance Documents or any other document delivered by or on behalf of any Obligor or VGL under or in connection with any Finance Document is or proves to have been incorrect or misleading when made.

12.8.2 No Trigger Event under Clause 12.8.1 will occur if the circumstances causing such representation or statement to be incorrect or misleading are capable of remedy and are remedied within 10 Business Days of the Preference Share Agent giving written notice to the Company.

**12.9 Cross Default**

12.9.1 Any Financial Indebtedness of any Obligor, VGL or Material Company is not paid when due nor within any originally applicable grace period.

12.9.2 Any Financial Indebtedness of any Obligor, VGL or Material Company declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

12.9.3 Any commitment for any Financial Indebtedness of any Obligor, VGL or Material Company is cancelled or suspended by a creditor of such entity as a result of an event of default (however described).

12.9.4 Any creditor of Obligor, VGL or Material Company becomes entitled to declare any Financial Indebtedness of the Company due and payable prior to its specified maturity as a result of an event of default (however described) other than Financial Indebtedness incurred under the Class B VGL Funding Documents.

12.9.5 No Trigger Event under Clauses 12.9.1 to 12.9.4 will occur if:

12.9.5.1 the Financial Indebtedness is in respect of the B Preference Shares; or

12.9.5.2 the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 12.9.1 to 12.9.4 in respect of VGL or any Material Company is less than ZAR1,000,000,000 (one billion Rand).

**12.10 Insolvency**

12.10.1 Any Obligor, Material Company or VGL:

12.10.1.1 is unable or admits inability to pay its debts as they fall due;

12.10.1.2 is deemed to, or is declared to, be unable to pay its debts under applicable law; or

12.10.1.3 by reason of actual or anticipated financial difficulties:

12.10.1.3.1 suspends or threatens to suspend making payments on any of its debts; or

12.10.1.3.2 commences negotiations with one or more of its creditors (excluding the Holders in their capacity as such) with a view to rescheduling any of its indebtedness.

12.10.2 The fair value of the assets of any Obligor, Material Company or VGL is less than its liabilities (taking into account contingent and prospective liabilities).

12.10.3 A moratorium is declared in respect of any indebtedness of any Obligor, Material Company or VGL. If a moratorium occurs, the ending of the moratorium will not remedy any Potential Trigger Event caused by that moratorium.

12.10.4 Any Obligor, Material Company or VGL is or is deemed for the purposes of any applicable law to be financially distressed (as defined in the Companies Act).

**12.11 Insolvency and business rescue proceedings**

12.11.1 Any corporate action, legal proceedings or other procedure or step (including an application to court, proposal or convening of a meeting) is taken with a view to:

12.11.1.1 the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor, Material Company or VGL;

12.11.1.2 a composition, compromise, assignment or arrangement with any creditor of any Obligor, Material Company or VGL ;

12.11.1.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any Obligor, Material Company or VGL; or

12.11.1.4 enforcement of any Security over any assets of any Obligor, Material Company or VGL,

or any analogous procedure or step is taken in any jurisdiction and such event.

12.11.2 A meeting is proposed or convened by the directors of any Obligor, Material Company or VGL, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue or administration proceedings (or any similar proceedings) in respect of any Obligor, Material Company or VGL, or any analogous procedure or step is taken in any jurisdiction.

**12.12 Litigation**

12.12.1 Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in writing against any Obligor, VGL or a Material Company.

12.12.2 No Trigger Event under Clause 12.12.1 will occur if in the case of any Material Company or VGL, such litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are not reasonably likely to result in a Material Adverse Change.

**12.13 VGL Shares**

12.13.1 Trading in VGL shares listed on the JSE is suspended for any reason (other than a voluntary or general suspension of trading on the JSE) and trading remains suspended for more than one Trading Days.

12.13.2 Trading in VGL shares listed on the JSE is voluntarily suspended for any reason and trading remains suspended for three Trading Days.

12.13.3 The listings committee of the JSE, or any other applicable regulatory body, publishes a notice of its intention to suspend or discontinue the listing of any VGL shares listed on the JSE.

**12.14 Creditors' process**

12.14.1 Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution affects any asset or assets of an Obligor, Material Company or VGL.

12.14.2 No Trigger Event under Clause 12.14.1 will occur in respect of VGL or a Material Company if the aggregate value of affected assets is less than ZAR200,000,000 (two hundred million Rand).

**12.15 Unlawfulness and invalidity**

12.15.1 It is or becomes unlawful, for any reason, for any Obligor to perform any of its obligations under the Finance Documents to which it is a party.

12.15.2 Any Transaction Security created or expressed to be created or evidenced by a Security Document, for any reason:

12.15.2.1 is not or ceases to be legal, valid, binding, enforceable or effective;

12.15.2.2 is alleged by any person (other than the Finance Parties) to be ineffective or unlawful;

12.15.2.3 fails to establish the ranking and priority of Security which it purports to create; or

12.15.2.4 is or becomes unlawful.

12.15.3 Any obligation or obligations of any Obligor under any Finance Documents to which it is a party, are not or cease to be legal, valid, binding or enforceable.

12.15.4 Any Transaction Document is or ceases to be in full force and effect or is or ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Preference Share Agent) to be ineffective or unlawful.

**12.16 Cessation of business**

An Obligor, Material Company or VGL suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**12.17 Audit Qualification**

The Auditors qualify the Financial Statements of any Obligor or VGL delivered under Clause 19.1.

**12.18 Expropriation or governmental intervention**

The authority or ability of any Obligor, Material Company or VGL to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, Material Company or VGL or any of its assets.

**12.19 Repudiation and rescission of agreements**

12.19.1 An Obligor (or any other party to a Finance Document) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

12.19.2 Any party to any Transaction Document (other than a Finance Document) rescinds or purports to rescind or repudiates any of those agreements or instruments in whole or in part.

**12.20 Change of Ownership**

12.20.1 Vodafone (directly or indirectly) ceases to control VGL without the Preference Share Agent's prior written consent.

12.20.2 The Company ceases to own all the issued shares in ShareCo.

**12.21 Material Adverse Effect**

The occurrence of a Material Adverse Change.

## 13. PAYMENT MECHANICS

### 13.1 Payments to the Preference Share Agent

13.1.1 On each date on which the Company is required to make a payment in respect of the Preference Shares or under the Preference Shares Terms, the Company shall make the same available to the Preference Share Agent for value on the due date at the time and in such funds specified by the Preference Share Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

13.1.2 Payment to the Preference Share Agent (for the benefit of the Holders) shall be made to the following account:

| | |
|---|---|
| Account Name: | RMB Domestic Money Market Account |
| Bank: | First National Bank |
| Account Number: | 50619016740 |
| Branch: | FNB Corporate Core Banking |
| Branch Code: | 255005 |
| Reference: | IBD ZHZ |

or such other account of the Preference Share Agent as the Preference Share Agent may have specified for this purpose from time to time, so as to be received by 11:00 a.m. on the due date for each such payment.

### 13.2 Distributions by the Preference Share Agent

Each payment received by the Preference Share Agent for the benefit of the Holders under the Preference Share Terms shall be made available by the Preference Share Agent to the Holders in accordance with the provisions of the Inter-funder Agreement.

### 13.3 Partial Payments

13.3.1 If the Preference Share Agent receives a payment for application against amounts due in respect of the Preference Shares held by such Holder that is insufficient to discharge all the amounts then due and payable by the Company under the Preference Shares Terms, the Preference Share Agent shall apply that payment towards the obligations of the Company under the Preference Shares Terms in the following order:

13.3.1.1 **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Preference Share Agent under the Finance Documents;

13.3.1.2 **secondly**, in or towards payment pro rata of any unpaid Preference Dividends then payable;

13.3.1.3 **thirdly**, in or towards payment pro rata of any Redemption Amounts then payable; and

13.3.1.4 **fourthly**, in or towards payment pro rata of any other sum due but unpaid under these Preference Shares Terms.

13.3.2 The Preference Share Agent shall, if so directed by all the Holders, vary the order set out in Clause 13.3.1.

13.3.3 Clause 13.3.1 will override any appropriation made by the Company.

**13.4 No set-off by the Company**

All payments to be made by the Company under these Preference Shares Terms shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**13.5 Business Days**

13.5.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the immediately succeeding Business Day in the same calendar month (if there is one) or on the preceding Business Day (if there is not), unless, if as a result of such adjustment, any redemption of a Preference Share will occur before three years and one day after its Issue Date in which event the relevant day for payment shall be the next succeeding Business Day.

13.5.2 During any extension of the due date for payment under these Preference Shares Terms the Mandatory Preference Dividends continue to accrue at the rate payable on the original due date.

**13.6 Currency of Account**

Rand is the currency of account and payment for any sum due from the Company under these Preference Shares Terms.

**13.7 Disruption to Payment Systems etc.**

If either the Preference Share Agent determines (in its discretion) that a Disruption Event has occurred or the Preference Share Agent is notified by the Company that a Disruption Event has occurred:

13.7.1 the Preference Share Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Preference Shares Terms as the Preference Share Agent may deem necessary in the circumstances;

13.7.2 the Preference Share Agent shall not be obliged to consult with the Company in relation to any changes mentioned in Clause 13.7.1 if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

13.7.3 the Preference Share Agent may consult with the Finance Parties in relation to any changes made in Clause 13.7.1 but shall not be obligated to do so, if in its opinion, it is not practicable to do so in the circumstances;

13.7.4 any such changes agreed upon by the Preference Share Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents;

13.7.5 the Preference Share Agent shall not be liable for any damages, costs or losses whatsoever arising as a result of taking, or failing to take, any actions pursuant to or in connection with this Clause 13.7 (Disruption to Payment Systems etc); and

13.7.6 the Preference Share Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 13.7.4.

**14. CERTIFICATE**

A certificate by any manager or authorised signatory of the Preference Share Agent (whose authority, status and appointment need not be proved) as to the existence and amount of any Outstanding Preference Shares Obligations or any other amount due and payable by the Company to any Holder in accordance with these Preference Shares Terms, the fact that such amount is due and payable, the Dividend Rate or the Default Dividend Rate applicable, or other fact relating to such amount shall be, save for manifest error:

14.1 prima facie proof of its contents and of their correctness for all purposes;

14.2 valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by the Preference Share Agent or that Holder against the Company; and

14.3 deemed to be sufficiently particular for the purposes of pleading or trial in any action or other proceedings instituted by the Preference Share Agent or that Holder against the Company.

**15. NOTICES OF MEETINGS AND VOTING RIGHTS**

15.1 The Preference Share Agent (acting on behalf of the Holders) shall be given due notice of, and shall be entitled to be present (either in person or through a duly authorised representative) at, all shareholders meetings of the Company.

15.2 Subject to Clause 15.3, the Preference Share Agent (acting on behalf of the Holders) shall not have any voting rights at any shareholders meeting unless any one or more of the following circumstances is prevailing at the time of such shareholders meeting any Trigger Event or a Potential Trigger Event has occurred and is continuing.

15.3 A resolution of the Preference Share Agent (acting on behalf of the Holders, as a separate class of shareholders) shall be required to be passed, in addition to the resolution required to be passed by ordinary shareholders, in respect of the following matters:

15.3.1 amending or varying these Preference Share Terms, the rights to receive the Preference Dividends and the rights to receive the Redemption Amounts;

15.3.2 increasing, altering, subdividing, repurchasing, reduction, return or repayment of any share capital, share premium, stated capital, non-distributable reserve account or reserves of the issued and/or authorised share capital of the Company, including the issue and allotment of shares, share options, warrants and debentures (and other similar instruments);

15.3.3 amending, varying or cancelling any of the rights attaching to the ordinary shares held by the Company in ShareCo;

15.3.4 amending the Company MOI;

15.3.5 approving a scheme of arrangement, liquidation, winding-up or application for business rescue of the Company;

15.3.6 undertaking any act that requires a special resolution to be passed under the Companies Act.

15.4 The Company shall procure that to the extent that any resolution of ordinary shareholders is required to be passed by ShareCo in relation to the following matters, ShareCo shall not implement or undertake any such matter, without the prior written consent of the Preference Share Agent:

15.4.1 increasing, altering, subdividing, repurchasing, reduction, return or repayment of any share capital, share premium, stated capital, non-distributable reserve account or reserves of the issued and/or authorised share capital of ShareCo, including the issue and allotment of shares, share options, warrants and debentures (and other similar instruments);

15.4.2 sale, disposal or encumbrance of any shares held by ShareCo directly or indirectly;

15.4.3 amending, varying or cancelling any of the rights attaching to the ordinary shares held by ShareCo;

15.4.4 amending the constitutional documents of ShareCo;

15.4.5 approving a scheme of arrangement, liquidation, winding up or application for business rescue of ShareCo;

15.4.6 incurring any debt or guaranteeing any indebtedness, make any investments by ShareCo other than pursuant to the Transaction Documents; and

15.4.7 change the nature of the business of ShareCo.

15.5 Without derogating from the aforegoing, the Company shall be obliged to give the Preference Share Agent (acting on behalf of the Holders) notice, in terms of this Company MOI and the Companies Act, of any meeting of the shareholders or class of shareholders.

15.6 At every meeting of the Holders as a separate class of shareholders of the Company the provisions of this Company MOI relating to shareholders meetings shall apply *mutatis mutandis*.

15.7 At every shareholders meeting at which the Holders are entitled to exercise voting rights the provisions of the Company MOI relating to shareholders meetings shall apply *mutatis mutandis*, except that there shall be no quorum unless the Preference Share Agent (representing one or more Holders by proxy) is present, provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the Company MOI relating to adjourned general meetings shall, *mutatis mutandis*, apply.

15.8 At every shareholders meeting or adjourned shareholders meeting of the Company contemplated in Clause 15.2 at which the Holders are entitled to exercise voting rights:

15.8.1 all resolutions put to the meeting shall be voted on by way of a poll; and

15.8.2 each Holder shall, in respect of each Preference Share held by it, be entitled to exercise 1 (one) vote per Preference Share, provided that if the total voting rights of all the Holders exceeds 24.99% of the total voting rights of all shareholders of the Company, then each Holder shall, in respect of each Preference Share held by it, be entitled to exercise 24.99% of the voting rights exercisable by all the shareholders at such meeting divided by the numbers of Preference Shares then in issue.

15.9 At every shareholders meeting or adjourned shareholders meeting of the Company contemplated in Clause 15.3:

15.9.1 all resolutions put to the meeting shall be voted on by way of a poll; and

15.9.2 each Holder shall in respect of each Preference Share held by it be entitled to 1 vote.

15.10 At all times while the Holders are entitled to exercise voting rights at any shareholders meeting of the Company in accordance with this Clause 15 (Notices of meetings and voting rights), the Preference Share Agent (acting on behalf of the Holders) shall be entitled to:

15.10.1 convene a meeting of the shareholders of the Company in accordance with section 61 of the Companies Act; and

15.10.2 appoint the chairman of a shareholders meeting of the Company.

**16. TRANSFERS OF PREFERENCE SHARES**

**16.1 Restrictions on Transfer of the Preference Shares**

16.1.1 Notwithstanding anything to the contrary set out in the Company MOI, subject to Clause 16.2 (Conditions of Transfer), a Holder (the **Existing Holder**) may transfer any of its Preference Shares to any other person (the **New Holder**) by written notice to the Company.

16.1.2 Every share certificate evidencing Preference Shares shall, in accordance with section 51(1)(a)(iv) of the Companies Act, contain the following statement referring to the restrictions on transfer of the Preference Shares contemplated by this Clause 16 (Transfers of Preference Shares):

*"The securities evidenced by this share certificate are transferable only upon compliance with the provisions of Clause 1.24 of* ***Annexure B*** *(Class A Preference Share Terms) to the Memorandum of Incorporation of the Company, as amended or substituted from time to time, a copy of which is on file with the Company."*

**16.2 Conditions of Transfer**

16.2.1 The Company consents to a transfer of Preference Shares by an Existing Holder:

16.2.1.1 to another Holder or an Affiliate or Eligible Party;

16.2.1.2 to a Permitted Transferee; or

16.2.1.3 to any person at a time when a Potential Trigger Event is continuing or a Trigger Event has occurred.

16.2.2 Other than in relation to a transfer of Preference Shares in accordance with Clause 16.2.1, the consent of the Company to a transfer of Preference Shares shall be required and must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent 15 days after the Existing Holder has requested it, unless consent is expressly refused by the Company (acting reasonably) within that time.

16.2.3 A transfer of Preference Shares shall only be effective on the date (the **Transfer Date**) of receipt by the Company of:

16.2.3.1 a duly completed Share Transfer Form executed by or on behalf of the Existing Holder (as **Transferor**), the New Holder (as **Transferee**) and the Preference Share Agent;

16.2.3.2 an exemption declaration and undertaking as required for the application of the exemptions from Dividends Tax referred to in section 64F (read with sections 64FA(1), 64G(2) or 64H(2)(a)) of the Income Tax Act from the New Holder (as Transferee);

16.2.3.3 the share certificate(s) evidencing the Preference Shares transferred in terms of such Share Transfer Form; and

16.2.3.4 a duly completed Holder Accession Undertaking executed by or on behalf of the New Holder and the Preference Share Agent.

16.2.4 The Preference Share Agent shall deliver the Holder Accession Undertaking to the Company as soon as reasonably possible after it has been delivered to the Preference Share Agent. Any failure by the Preference Share Agent to deliver the Holder Accession Undertaking will not affect the validity of any transfer pursuant to Clause 16.2.3.

16.2.5 The Company shall not be liable for any Increased Cost in circumstances where a New Holder suffers an Increased Cost or a reduction in Return as a result of the tax treatment of the New Holder being different to the tax treatment of the Existing Holder as at the Transfer Date, provided that this Clause 16.2.4 shall not apply if the tax treatment of the New Holder is the same as the tax treatment of the Existing Holder on the Transfer Date and subsequent to the Transfer Date, the tax treatment of the New Holder differs from that of the Existing Holder.

16.2.6 The New Holder shall be liable for the payment of any STT payable in connection with any transfer of any Preference Shares to it and to the extent that the Company becomes liable to pay or has paid any such STT under section 6(2) of the Securities Transfer Tax Act, 2007 such New Holder shall pay to the Company within five Business Days of written demand the amount of such STT.

16.2.7 On the Transfer Date the Company shall record the New Holder as the Holder of the relevant Preference Shares in the Register in accordance with section 51(5) of the Companies Act and the New Holder shall become a Holder for the purposes of these Preference Shares Terms on the Transfer Date.

16.2.8 Within ten Business Days after the date of receipt by the Company of the Share Transfer Form pursuant to Clause 16.2.3 the Company shall:

16.2.8.1 deliver to the New Holder a new share certificate(s) complying with section 51(1) of the Companies Act in respect of the relevant Preference Shares transferred to the New Holder pursuant to such Share Transfer Form; and

16.2.8.2 (if applicable) deliver to the Existing Holder a new share certificate in respect of such number of Preference Shares evidenced by the share certificate(s) delivered to the Company pursuant to Clause 16.2.3 that are not transferred to the New Holder pursuant to such Share Transfer Form.

**16.3 Limitation of responsibility of Existing Holder**

16.3.1 Unless expressly agreed to the contrary, an Existing Holder makes no representation or warranty and assumes no responsibility to a New Holder for:

16.3.1.1 the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

16.3.1.2 the financial condition of the Group or any Obligor;

16.3.1.3 the performance and observance by the Company of its obligations under the Finance Documents or any other documents; or

16.3.1.4 the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

16.3.2 Each New Holder confirms to the Existing Holder and the other Finance Parties that it:

16.3.2.1 has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Obligors and the Group and its related entities in connection with the Preference Shares;

16.3.2.2 has not relied exclusively on any information provided to it by the Existing Holder in connection with the Preference Shares or any Finance Document; and

16.3.2.3 will continue to make its own independent appraisal of the creditworthiness of the Company in connection with the Preference Shares or any Finance Document.

16.3.3 Nothing in any Finance Document obliges an Existing Holder to:

16.3.3.1 accept a re-transfer from a New Holder of any Preference Share; or

16.3.3.2 support any losses directly or indirectly incurred by the New Holder by reason of the non-performance by the Company of its obligations under the Finance Documents or otherwise.

**16.4 Disclosure of Information**

Any Holder may disclose to any of its Affiliates, its Consolidating Company or its Holding Company and any other person:

16.4.1 to (or through) whom that Holder transfers (or may potentially transfer) all or any of its Preference Shares (including to any agent or professional advisor of any such person who/which is under a duty of confidentiality); or

16.4.2 with (or through) whom that Holder entered into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Preference Shares and the Finance Documents or the Company; or

16.4.3 to whom, and to the extent that, information is required to be disclosed by any Applicable Law or regulation; or

any information about the Company and the Finance Documents as that Holder shall (acting reasonably) consider appropriate for the purpose of that actual or potential transfer or sub-participation if, in relation to Clause 16.4.1, the person to whom the information is to be given has entered into a Confidentiality Undertaking in favour of the Company.

**17. GENERAL**

17.1 Notwithstanding any provisions to the contrary in this Clause 1:

17.1.1 these Preference Shares Terms may not be modified, amended, altered, varied, added to or abrogated;

17.1.2 the number of authorised shares of the Company of any class of shares may not be increased or decreased;

17.1.3 any classified shares that have been authorised but not issued may not be reclassified;

17.1.4 any unclassified shares that have been authorised but not issued may not be classified;

17.1.5 the preferences, rights, limitations and other terms of any class of Other Shares may not be determined (other than the preferences, rights, limitations and other terms of the B Preference Shares); and

17.1.6 no shares of the Company ranking in any manner (including as regards rights to dividends or redemption, or on a winding-up as regards return of capital) *pari passu* with and/or in priority to the Preference Shares shall be authorised, created or issued,

without the prior written consent of the Preference Share Agent and the prior sanction of a resolution passed at a separate class meeting of the Holders held at the election of any Holder on written notice to the Company and the Preference Share Agent in the same manner *mutatis mutandis* as a special resolution.

17.2 Any provision of these Preference Shares Terms which contemplates performance or observance subsequent to any termination or expiration of the Finance Documents or the redemption or transfer of the Preference Shares shall survive any such termination, expiration or redemption or transfer and continue in full force and effect and shall be enforceable by the Company or any Holder or its successors in title or assigns.

17.3 If any certificate issued in respect of a Preference Share is defaced, lost or destroyed, it shall be replaced by the Company upon receipt by the Company of either:

17.3.1 the defaced certificate; or

17.3.2 an affidavit by the relevant Holder (or a director of the relevant Holder) to the effect that such certificate has been lost or destroyed; and

17.3.3 a written undertaking by the relevant Holder to indemnify the Company against any loss, liability, damage, cost or expense which the Company may suffer as a result of issuing such replacement certificate.

**18. REPRESENTATIONS AND WARRANTIES**

18.1.1 The Company makes the representations and warranties set out in this Clause 18 (Representations and Warranties) to each Holder.

18.1.2 The Company makes the Representations in relation to itself and ShareCo and for this purpose a reference in this Clause 18 (Representations and Warranties) to "it" or "its" includes ShareCo.

**18.2 Status**

18.2.1 It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

18.2.2 It has the power to own its assets and carry on its business as it is being conducted.

**18.3 Binding Obligations**

18.3.1 The obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations, other than the obligations of the Company under the Company Cession and Pledge in Security in circumstances where the Company is unable to pass the "solvency and liquidity test" (as defined in the Companies Act)).

18.3.2 Without limiting the generality of Clause 18.2.1, each Security Document to which it is a party creates the security interests which it purports to create and those security interests are valid and effective, other than the Security granted by the Company under the Company Cession and Pledge in Security in circumstances where the Company is unable to pass the "solvency and liquidity test" (as defined in the Companies Act)).

**18.4 Non-conflict With Other Obligations**

The entry into and performance by the Obligors of, and the transactions contemplated by, the Transaction Documents do not and will not conflict with:

18.4.1 any law or regulation applicable to it;

18.4.2 its Constitutional Documents; or

18.4.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

**18.5 Power and Authority**

18.5.1 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

18.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

**18.6 Validity and admissibility in evidence**

18.6.1 All Authorisations required or desirable:

18.6.1.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party and to ensure that the obligations expressed to be assumed by it in the Transaction Documents to which it is a party are legal, valid and binding and enforceable; and

18.6.1.2 to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

18.6.2 All Authorisations necessary and material for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect.

**18.7 Governing Law and enforcement**

The choice of South African law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

**18.8 Deduction of Tax**

As at the Fulfilment Date, save for Dividends Tax, it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Documents to any Finance Party.

**18.9 Insolvency**

18.9.1 No:

18.9.1.1 corporate action, legal proceeding or other procedure or step described in Clause 12.11.1; or

18.9.1.2 creditors' process described in Clause 12.1.1, has been taken or, to the knowledge of the Company (after due and careful enquiry), threatened against it and none of the circumstances contemplated in Clause 12.10 (Insolvency) applies to it.

18.9.2 To the best of its knowledge and belief, it is not "*financially distressed*" (as defined in the Companies Act) and there is no reasonable likelihood of it becoming "*financially distressed*" (as defined in the Companies Act) within the next 6 (six) Months.

**18.10 No filing or stamp taxes**

Other than in the event that the transactions contemplated in the Finance Documents are reportable in accordance with the provisions of the Tax Administration Act, 2011 or the filing of these Preference Share Terms with CIPC, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

**18.11 Breach**

18.11.1 No Trigger Event has occurred and no Potential Trigger Event is continuing or might reasonably be expected to result from the entry into of, or the performance of any transaction contemplated by, the Transaction Documents.

18.11.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject.

**18.12 No Misleading Information**

Save as disclosed in writing to the Preference Share Agent prior to the Fulfilment Date:

18.12.1 any factual information provided by it to the Finance Parties in connection with the Transaction Documents was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

18.12.2 no event or circumstance has occurred or arisen and no information has been omitted from any factual information provided by it to the Finance Parties in connection with the Transaction Documents and no information has been given or withheld that results in the information, provided by it or by any Obligor, Material Company or VGL in connection with the Finance Documents being untrue or misleading in any material respect;

18.12.3 all information referred to in this Clause 18.12 (No Misleading Information) has been disclosed to the Finance Parties without breaching any confidentiality obligation binding upon it or its assets; and

18.12.4 it has not knowingly withheld any information which, if disclosed, would reasonably be expected to materially and adversely affect the decision of any Finance Party to provide finance to the Company.

**18.13 Financial Statements**

18.13.1 Its most recent financial statements delivered pursuant to Clause 19.1 (Financial Statements):

18.13.1.1 have been prepared in accordance with the Accounting Principles; and

18.13.1.2 give a true and fair view of (if audited) or fairly present (if unaudited) its financial condition as at the end of the period to which they relate.

18.13.2 Since the date of the most recent financial statements delivered pursuant to Clause 19.1 (Financial Statements) there has been no material adverse change in the business, assets or financial condition of the Obligors.

**18.14 No Proceedings Pending or Threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have been started or threatened against it.

**18.15 No Breach of Laws**

It has not breached any Applicable Law or regulation which is material to the conduct of its business.

**18.16 Environmental laws**

18.16.1 It is in compliance with Clause 22.3 (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance or which is reasonably likely to give rise to a financial liability for any Finance Party.

18.16.2 All Environmental Permits required for it to carry on its respective businesses in the ordinary course have been obtained or effected and are in full force and effect.

18.16.3 No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it.

18.16.4 The cost to it of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

**18.17 Taxation**

18.17.1 It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within a time period allowed without incurring penalties except to that extent that:

18.17.1.1 payment is being contested in good faith;

18.17.1.2 it has maintained adequate provisions for those taxes; and

18.17.1.3 payment can be lawfully withheld.

18.17.2 No claims have been made, and to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it with respect to Taxes, other than where any such claim arises as a result of the exceptions set out in Clauses 18.17.1.1 to 18.17.1.3.

18.17.3 It is resident for Tax purposes only in its jurisdiction of incorporation.

**18.18 Security and Financial Indebtedness**

18.18.1 No Security or Quasi-Security exists over its present and future assets other than Permitted Security.

18.18.2 It has no Financial Indebtedness outstanding other than Permitted Indebtedness.

**18.19 Legal and Beneficial Ownership**

The entire issued share capital of the ShareCo is owned, legally and beneficially, by the Company.

**18.20 Shares**

18.20.1 The shares which are subject to the Transaction Security are fully paid and not subject to any option by any third person to purchase or similar rights, other than a pre-emptive right contemplated in the Vodacom Letter.

18.20.2 The Constitutional Documents of the Obligors whose Shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security, or to the extent that any such Constitutional Documents do or could restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security, the relevant parties in whose favour such restrictions apply have waived their rights in respect thereof.

18.20.3 There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).

18.20.4 No person has a right to obtain an order for the rectification of the register of any Obligor.

**18.21 Accounting Reference Date**

The financial year end of the Company is 31 March.

**18.22 Security Documents**

18.22.1 The Security Documents to which it is a party validly create the security interest which is expressed to be created by that document, other than the security granted by the Company under the Company Cession and Pledge in Security in circumstances where the Company is unable to pass the "solvency and liquidity test" (as defined in the Companies Act)).

18.22.2 The Security created by the Security Documents to which it is a party are not or will not be subject to avoidance in the event of any winding-up, business rescue, dissolution or administration involving the Company, other than the security granted by the Company under the Company Cession and Pledge in Security in circumstances where the Company is unable to pass the “solvency and liquidity test” (as defined in the Companies Act)).

**18.23 No Immunity**

18.23.1 The entry into by it of each Transaction Document to which it is a party constitutes, and the exercise by it of its rights and performance of its obligations under each Transaction Document will constitute private and commercial acts performed for private and commercial purposes.

18.23.2 In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Transaction Document to which it is a party.

**18.24 Preference Shares**

18.24.1 The Company does not have any class of shares which rank in priority to or *pari passu* with the Preference Shares in any respect.

18.24.2 The Company shall ensure that, prior to any Distribution, the Board complies with section 46 of the Companies Act in relation to such Distribution.

**18.25 Repetition**

18.25.1 The Repeating Representations are deemed to be made on each Repetition Date by the Company by reference to the facts and circumstances then existing on that Repetition Date.

18.25.2 The Post-Redemption Representations are deemed to be made by the Company on each Post-Redemption Repetition Date.

18.25.3 For the purposes of Clause 18.25.1:

18.25.3.1 **Post-Redemption Repeating Representations** means the representations and warranties set out in Clause 18.2 (Status), Clause 18.3 (Binding Obligations), Clause 18.4 (Non-conflict With Other Obligations), Clause 18.5 (Power and Authority), Clause 18.6 (Validity and admissibility in evidence), Clause 18.7 (Governing Law and enforcement), Clause 18.16 (Environmental laws) and Clause 18.17 (Taxation);

18.25.3.2 **Post-Redemption Repeating Date** means each day during the Post-Redemption Period;

18.25.3.3 **Repeating Representations** means the representations and warranties contained in this Clause 18 (Representations and Warranties) other than Clause 18.9 (Insolvency), Clause 18.11 (Breach), Clause 18.12 (No Misleading Information), Clause 18.14 (No Proceedings Pending or Threatened) and Clause 18.15 (No Breach of Laws); and

18.25.3.4 **Repetition Date** means each date from the first Subscription Date until the Discharge Date.

### 18.26 Reliance

The Finance Parties have entered into the Finance Documents on the strength of, and relying on, the Representations, each of which shall be deemed to be a separate Representation given without prejudice to any other Representation deemed to be a material representation inducing the Finance Parties to enter into the Finance Documents to which each of them is a party.

## 19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 (Information Undertakings) remain in force from the Subscription Date until the Discharge Date.

### 19.1 Financial Statements

The Company shall supply to the Preference Share Agent in sufficient copies for all the Finance Parties:

19.1.1 as soon as they are available, but in any event within 120 days after the end of each of its Financial Years, the audited consolidated annual financial statements of each Obligor and the audited consolidated annual financial statements of VGL for that Financial Year; and

19.1.2 as soon as they are available, but in any event within 90 days after the end of each of its Financial Half Years, VGL's condensed consolidated interim financial statements for that Financial Half Year.

### 19.2 Provision and Contents of Compliance Certificate

19.2.1 The Company shall supply to the Preference Share Agent, with each set of consolidated Annual Financial Statements and each set of consolidated Semi-Annual Financial Statements delivered pursuant to Clause 19.1 (Financial Statements), a Compliance Certificate.

19.2.2 The Compliance Certificate shall, among other things:

19.2.2.1 certify whether or not as at the relevant Measurement Date there was compliance with Clause 21.2 (Financial Condition);

19.2.2.2 set out (in reasonable detail) computations as to compliance with Clause 21.2 (Financial Condition); and

19.2.2.3 confirm that no Potential Trigger Event has occurred and is continuing or, if a Potential Trigger Event has occurred, what Potential Trigger Event has occurred and the steps being taken to remedy that Potential Trigger Event.

19.2.3 Each Compliance Certificate shall be signed by a director of the Company.

### 19.3 Requirements as to Financial Statements

Each set of Financial Statements delivered pursuant to Clause 19.1 (Financial Statements):

19.3.1 shall be certified by a director of the Company or VGL (as applicable) as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up; and

19.3.2 shall be prepared in accordance with the Accounting Principles, unless, in relation to any set of financial statements, the Company notifies the Preference Share Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of VGL) deliver to the Preference Share Agent:

19.3.2.1 a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements were prepared; and

19.3.2.2 sufficient information, in form and substance as may be reasonably required by the Preference Share Agent to enable the Preference Share Agent to determine whether Clause 21 (Financial Covenants) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

**19.4 Information: Miscellaneous**

The Company shall supply to the Preference Share Agent (in sufficient copies for all the Finance Parties, if the Preference Share Agent so requests):

19.4.1 at the same time as they are dispatched, copies of all documents dispatched by the Company to its shareholders generally (or any class of them) or dispatched by the Company to its creditors generally (or any class of them);

19.4.2 as soon as reasonably possible upon becoming aware of them, the details of any litigation, arbitration, administrative proceedings, liquidation applications, winding-up applications or business rescue applications which are current, threatened or pending against any Obligor and provide the Finance Parties with full details of any steps which the Company or that Obligor is taking or proposes to take in order to prevent, remedy or mitigate the effect of any such proceedings and/or application;

19.4.3 promptly, notice of any change in Authorised Signatories of it or any other Obligor signed by a director or company secretary of it or such other Obligor (as the case may be) accompanied by specimen signatures of any new Authorised Signatories;

19.4.4 promptly upon becoming aware of them, details and copies of any changes proposed to be or made to the Constitutional Documents of any Obligor;

19.4.5 promptly upon becoming aware of them, details and copies of any changes proposed to be made to any provision of the Class B VGL Funding Documents;

19.4.6 promptly inform the Finance Parties of any event or any circumstance whatsoever which may make any of the information disclosed to the Preference Share Agent` which is material in the context of the Preference Share Terms untrue, materially incorrect or misleading; and

19.4.7 promptly, and in any event by no later than ten Business Days after written request (or such longer period as the Finance Parties may reasonably stipulate in the circumstances), provide the Finance Parties with such financial and other information concerning any Obligor and its affairs as the Preference Share Agent may from time to time require and provide such assistance in this regard as the Finance Parties or any of their respective agents or employees may require.

## 20. FATCA INFORMATION

20.1 Subject to paragraph 20.3 below, each Party shall, within ten Business Days of a reasonable request by another Party:

20.1.1 confirm to that other Party whether it is:

20.1.1.1 a FATCA Exempt Party; or

20.1.1.2 not a FATCA Exempt Party;

20.1.2 supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

20.1.3 supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

20.2 If a Party confirms to another Party pursuant to paragraph 20.1.1 above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party as soon as reasonably possible.

20.3 Paragraph 20.1 above shall not oblige any Finance Party to do anything, and paragraph 20.1.3 above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

20.3.1 any law or regulation;

20.3.2 any fiduciary duty; or

20.3.3 any duty of confidentiality.

20.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph 20.1.1 or 20.1.2 above (including, for the avoidance of doubt, where paragraph 20.3 above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

### 20.5 Notification of Potential Trigger Event

20.5.1 The Company shall notify the Preference Share Agent of any Potential Trigger Event (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

20.5.2 Promptly upon a request by the Preference Share Agent, the Company shall supply to the Preference Share Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Potential Trigger Event is continuing (or if a Potential Trigger Event is continuing, specifying the Potential Trigger Event and the steps, if any, being taken to remedy it).

**20.6 Know Your Customer Requirements**

If:

20.6.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Fulfilment Date;

20.6.2 any mandatory provision of any applicable law and/or any ongoing compliance requirement;

20.6.3 any change in the status of the Company or the composition of the shareholders of the Company after the Fulfilment Date; or

20.6.4 a proposed transfer by a Holder of its Preference Shares and any of its rights and/or obligations under the Finance Documents to a party that is not a Holder prior to such transfer,

obliges the Holder (or, in the case of Clause 20.6.4, any prospective New Holder) to comply with "know your customer" or similar identification procedures (whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise) in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of any Holder supply, or procure the supply of, such documentation and other evidence as is reasonably requested by any Holder (for itself or, in the case of the event described in Clause 20.6.4, on behalf of any prospective New Holder) in order for such Holder or, in the case of the event described in Clause 20.6.4, any prospective New Holder to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**21. FINANCIAL COVENANTS**

**21.1 Financial definitions**

In this Clause 21 (Financial Covenants):

21.1.1 **Cash** means *cash* as determined in accordance with IFRS;

21.1.2 **Cash Equivalents** means *cash equivalents* as determined in accordance with IFRS;

21.1.3 **Exceptional Items** means any exceptional, once off, non-recurring or extraordinary items, including those arising on:

21.1.3.1 the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

21.1.3.2 disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment; and

21.1.3.3 disposals of assets associated with discontinued operations.

21.1.4 **Leverage Ratio** means, in respect of any Measurement Period, the ratio of:

21.1.4.1 the VGL Group Net Debt on the last day of that Measurement Period; to

21.1.4.2 the VGL Group EBITDA in respect of that Measurement Period;

21.1.5 **Measurement Date** means each Financial Half Year and the last day of each Financial Year;

21.1.6 **Measurement Period** means each period of 12 (twelve) months ending on each Measurement Date with the first Measurement Period ending on 30 September 2018;

21.1.7 **Share Cover Ratio** means, on any day, the ratio that:

21.1.7.1 the aggregate Market Value of the VGL Shares and any Acceptable Secured Asset; bears to

21.1.7.2 the Outstanding Preference Shares Obligations less amounts standing to the credit of the Reserve Account for so long as the Reserve Account is subject to Security as contemplated by the Company Cession and Pledge in Security;

21.1.8 **VGL Group Cash and Cash Equivalents** means, at any time, cash and cash equivalents as contemplated in the VGL's financial statements delivered pursuant to Clause 19.1 (Financial Statements) and acquired in accordance with VGL's treasury policy;

21.1.9 **VGL Group EBITDA** means, in respect of any Measurement Period, the consolidated net operating income of the VGL Group (as determined in accordance with the Accounting Principles) before taxation and adjusted for the below which have reported through the income statement and calculated on a consolidated basis where applicable (without double counting):

21.1.9.1 before any finance income, finance costs and other finance payments whether paid or payable by any member of the VGL Group;

21.1.9.2 before any depreciation or amortisation, and any charge for impairment or any reversal in that period of any previous impairment charge;

21.1.9.3 before taking into account any Exceptional Items;

21.1.9.4 before taking into account any gains or losses on remeasurement of any financial instrument (other than trading receivables and payables and any financial instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;

21.1.9.5 before taking into account any gain or loss arising from an upward or downward revaluation of any other asset (other than inventory and trade receivables) during that period;

21.1.9.6 before taking into account any profit or loss arising from the disposal of investments, property, plant and equipment and intangible assets during that period;

21.1.9.7 before taking into account net profit or loss from Subsidiaries, associates and joint ventures;

21.1.9.8 before taking into account any share-based payment expense of B-BBEE arrangements of the VGL Group accrued for during that period;

21.1.9.9 after taking into account dividends or proceeds received of a similar nature, from an entity not consolidated within VGL;

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the VGL Group before taxation in accordance with the Accounting Principles.

21.1.10 **VGL Group Net Debt** means, at any time, the consolidated obligations of members of the VGL Group for or in respect of Financial Indebtedness in respect of the VGL Group at the time but:

21.1.10.1 excluding any such obligations to any other member of the VGL Group;

21.1.10.2 adding or deducting (as applicable) the marked to market value of Treasury Transactions;

21.1.10.3 including, in the case of Finance Leases only, their capitalised value;

21.1.10.4 deducting the consolidated VGL Group Cash and Cash Equivalents at the time;

21.1.10.5 deducting the Outstanding Preference Shares Obligations at the time (for so long as the Company is consolidated in the VGL Group);

21.1.10.6 adding Cash and Cash Equivalents held by the Company and ShareCo (for so long as the Company and ShareCo are consolidated in the VGL group).

**21.2 Financial Condition**

The Company shall ensure that on each day during the Term the Share Cover Ratio shall not be less than or equal to 2 times.

**21.3 Equity Cure**

21.3.1 If the requirements of Clause 21.2 (Financial Condition) are not met, the Company shall be entitled to remedy such breach by:

21.3.1.1 voluntary redeeming such number of the Preference Shares such that after such redemption, the Share Cover Ratio will be greater than 2.4 times;

21.3.1.2 depositing such amount into the Reserve Account such that after such payment of amount into the Reserve Account, the Share Cover Ratio will be greater than 2.4 times;

21.3.1.3 encumbering other assets acceptable to the Preference Share Agent in favour of the Finance Parties such that after taking into account the Market Value of the Acceptable Secured Asset(s) the Share Cover Ratio will be greater than 2.4 times; or

or any other mechanism acceptable to the Preference Share Agent.

21.3.2 There shall be no more than 3 (three) Equity Cures during the Term and only 2 (two) Equity Cure within any two consecutive 6 month periods.

**21.4 Discussion Circumstances**

Without prejudice to any rights which the Holders may have in terms of any Finance Document or at law, with effect from the Discussion Circumstances Commencement Date and while the Discussion Circumstances are continuing, the Parties shall, for a period of not more than 30 (thirty) days after the Discussion Circumstances Commencement Date (or until such time as the Share Cover Ratio falls below 2.0 times), use their best endeavours to meet, discuss and implement (as applicable) the manner in which the Share Cover Ratio may be restored to at least 2.7 times.

**21.5 Financial Testing**

21.5.1 The Leverage Ratio shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to Clause 19.1 (Financial Statements) and/or each Compliance Certificate delivered pursuant to Clause 19.2 (Provision and Contents of Compliance Certificate).

21.5.2 In relation to any calculation under this Clause 21 (Financial Covenants) in respect of any Measurement Period, any amount denominated in a currency other than Rand shall be taken into account using the relevant translation methodology as prescribed by IFRS.

**22. GENERAL UNDERTAKINGS**

The undertakings in this Clause 22 (General Undertakings) remain in force from the Subscription Date until the Discharge Date. The undertakings in Clause 22.1 (Authorisations), Clause 22.2 (Compliance with Laws), Clause 22.3 (Environmental compliance), Clause 22.4 (Environmental claims) and Clause 22.5 (Anti-corruption law and sanctions) shall remain in force during the Post-Redemption Period. Each undertaking shall be a separate undertaking and shall in no way be limited to or restricted by reference to or by inference from the terms of any other undertaking, or by any words of any of the Finance Documents.

**22.1 Authorisations**

The Company shall (and the Company shall procure that ShareCo shall) promptly:

22.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

22.1.2 supply certified copies to the Preference Share Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to:

22.1.3 enable it to perform its obligations under the Transaction Documents;

22.1.4 to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document to which it is a party; and

22.1.5 carry on its business.

**22.2 Compliance with Laws**

The Company shall (and the Company shall procure that ShareCo shall) comply in all respects with all laws and regulations to which it may be subject to the extent the same is material to the lawful conduct of its business and/or performance of its obligations under the Transaction Documents to which it is a party.

**22.3 Environmental compliance**

The Company shall (and the Company shall procure that ShareCo shall):

22.3.1 comply with all Environmental Law;

22.3.2 obtain, maintain and ensure compliance with all requisite Environmental Permits necessary to be held by the Company; and

22.3.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**22.4 Environmental claims**

The Company shall, promptly upon becoming aware of the same, inform the Preference Share Agent in writing of:

22.4.1 any Environmental Claim against any Obligor which is current, pending or threatened; and

22.4.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any Obligor,

where the claim, if determined against that Obligor, has or is reasonably likely to result in a Material Adverse Change or would result in a financial liability for any Finance Party or the Company.

**22.5 Anti-corruption law and sanctions**

22.5.1 The Company shall not (and the Company shall ensure that no other member of the Group will):

22.5.1.1 contravene any Sanctions;

22.5.1.2 be a party to or participate in a Sanctioned Transaction in any manner; or

22.5.1.3 directly or indirectly use the proceeds of the Issue Price of the Preference Shares for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

22.5.2 The Company shall (and the Company shall ensure that each other member of the Group will):

22.5.2.1 take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it from being or becoming involved in a Sanctioned Transaction; and

22.5.2.2 conduct its businesses in compliance with applicable anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

**22.6 Taxation**

22.6.1 The Company shall (and the Company shall procure that ShareCo shall) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

22.6.1.1 such payment is being contested in good faith;

22.6.1.2 adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest Financial Statements delivered to the Preference Share Agent under Clause 19.1 (Financial Statements); and

22.6.1.3 such payment can be lawfully withheld.

22.6.2 The Company shall not (and the Company shall procure that ShareCo shall not) change its residence for Tax purposes.

**22.7 Mergers**

The Company shall not (and the Company shall procure that ShareCo shall not) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than with the prior approval of the Preference Share Agent.

**22.8 Change of Business**

The Company shall not (and the Company shall procure that ShareCo shall not) change the nature of the business from that carried on by it at the Fulfilment Date.

**22.9 Acquisitions**

The Company shall not (and the Company shall procure that ShareCo shall not):

22.9.1 acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them), other than the acquisition of ordinary shares in VGL by ShareCo; or

22.9.2 incorporate a company;

other than with the prior written consent of the Preference Share Agent.

**22.10 Joint ventures**

The Company shall not (and the Company shall procure that ShareCo shall not):

22.10.1 enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

22.10.2 transfer any assets or lend to or guarantee or give an indemnity for or grant any Security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing);

without the prior written consent of the Preference Share Agent.

**22.11 Preservation of Assets**

The Company shall (and the Company shall procure that ShareCo shall) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

**22.12 Negative Pledge**

In this Clause 22.12 (Negative Pledge), **Quasi-Security** means an arrangement or transaction described in Clause 22.12.2.

22.12.1 Except as permitted under Clause 22.12.3, the Company shall not (and the Company shall ensure that ShareCo shall not) create or permit to subsist any Security over any of its assets.

22.12.2 The Company shall not:

22.12.2.1 sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Obligor;

22.12.2.2 sell, transfer or otherwise dispose of any of its receivables on recourse terms;

22.12.2.3 enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or

22.12.2.4 enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

22.12.3 Clause 22.12.1 does not apply to Security which is Permitted Security.

**22.13 Disposals**

The Company shall not (and the Company shall procure that ShareCo shall not) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to Dispose of any asset other than a Permitted Disposal.

**22.14 Arm's Length Basis**

The Company shall not (and the Company shall procure that ShareCo shall not) enter into any transaction with any person except on arm's length terms and for full market value, other than with the prior written consent of the Preference Share Agent.

**22.15 Loans and Credit**

The Company shall not (and the Company shall procure that ShareCo shall not) make any loans or be a creditor in respect of any Financial Indebtedness other than with the prior written consent of the Preference Share Agent.

**22.16 No Guarantees and Indemnities**

The Company shall not (and the Company shall procure that ShareCo shall not) incur or allow to remain outstanding any guarantee in respect of any obligation of any person other than Permitted Guarantees.

**22.17 Distributions**

The Company shall not declare, make or pay any Distribution or pay, prepay, repay, dispose, exchange or repurchase any shareholder loans or make any other payment (whether as a fee, royalty, donation, repayment of a loan or any other form of payment) to any shareholder other than a Permitted Distribution.

**22.18 Financial Indebtedness**

The Company shall not (and the Company shall procure that ShareCo shall not) assume, incur or allow to remain outstanding any Financial Indebtedness other than pursuant to Permitted Indebtedness.

**22.19 Class B VGL Funding Documents**

The Company shall procure that it will not amend any of Class B VGL Funding Documents without the prior written consent of the Preference Share Agent.

**22.20 Bank Accounts**

22.20.1 As from the Fulfilment Date until the Discharge Date, the Company shall maintain the Bank Accounts with the Account Bank in South Africa, in the name of the Company.

22.20.2 The Company shall ensure that all ShareCo Net Distributable Proceeds are paid directly into the Proceeds Account.

22.20.3 The Company shall not have any bank accounts other than the Bank Accounts and the Transactional Accounts.

**22.21 Share Capital**

The Company shall not issue or register any transfer of ownership of any Other Shares except as permitted under the Relationship Agreement, the Company MOI or arising as a result of the enforcement of any Permitted Security, other than with the prior written consent of the Preference Share Agent.

**22.22 Access**

If a Potential Trigger Event is continuing or the Preference Share Agent reasonably suspects a Potential Trigger Event is continuing or may occur, the Company shall, and the Company shall ensure that each Obligor will, permit the Preference Share Agent and/or accountants or other professional advisers and contractors of the Preference Share Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Company to the premises, assets, books, accounts and records of each Obligor.

**22.23 Financial assistance**

The Company shall comply in all respects with section 44, section 45 and section 46 of the Companies Act (to the extent applicable) including in relation to the execution of the Security Documents and payment of amounts due under the Finance Documents to which it is a party.

**22.24 Preference Shares**

The Company shall maintain these Preference Shares Terms and shall ensure that the Preference Shares remain validly issued until redeemed in accordance with these Preference Shares Terms.

**Annexure C**

## CLASS B PREFERENCE SHARE TERMS

1 **DEFINITIONS**

1.1 In these terms and conditions, unless inconsistent with or otherwise indicated by the context -

1.1.1 **A Finance Documents** means the "Finance Documents" as defined in the A Subscription Agreement;

1.1.2 **A Potential Trigger Event** means a "Potential Trigger Event" as defined in the A Preference Share Terms;

1.1.3 **A Preference Shares** means the preference shares that the Company will issue to the Senior Subscribers in terms of the A Subscription Agreement;

1.1.4 **A Preference Share Terms** means the preferences, rights, limitations and other terms associated with the A Preference Shares as set out in **Schedule 3** to the A Subscription Agreement;

1.1.5 **A Priority of Payments** means the "Priority of Payments" contained in clause 1.11 of the A Preference Share Terms;

1.1.6 **A Reserve Account** means the "Reserve Account" as envisaged in the A Preference Share Terms;

1.1.7 **A Subscription Agreement** means an agreement titled a "Preference Share Subscription Agreement" concluded between the Senior Subscribers, FirstRand Bank Limited, acting through its RMB Division, (as Mandated Lead Arranger) and the Company pursuant to which the Company will issue the A Preference Shares to the Senior Subscribers;

1.1.8 Accumulated Dividends means, on any day –

1.1.8.1 any Scheduled Dividend for any Compounding Period which ended prior to that day, to the extent to which that Scheduled Dividend has not been paid; and

1.1.8.2 any Additional Dividends that have become payable as a result of the delivery of an Adjustment Notice, to the extent to which those Additional Dividends have not been paid;

1.1.9 **Actual Issue Date** means, in relation to any B Preference Share, the date on which the Company issues that B Preference Share pursuant to the B Subscription Agreement;

1.1.10 **Actual Redemption Date** means, in relation to any B Preference Share, the date on which the Company redeems that B Preference Share by paying its B Redemption Price to its B Holder (provided that the Company has paid all the B Preference Dividends in respect of that B Preference Share);

1.1.11 **Additional Dividends** means any dividends that become payable by the Company in respect of a B Preference Share as a result of the delivery of an Adjustment Notice by the B Holder of that B Preference Share;

1.1.12 **Adjustment Event** means the Occurrence of a Tax Event in relation to any B Holder;

1.1.13 **Adjustment Notice** means an "Adjustment Notice" as defined in clause 2.6;

1.1.14 **Applicable Laws** means, from time to time, any law (including statutory, common or customary law), statute, constitution, decree, treaty, regulation, judgment, directive, by-law, order, other legislative measure, requirement, request or guideline (whether or not having the force or law but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court;

1.1.15 **Available B Cash** means on each Dividend Payment Date, the ShareCo Distributions or Disposal Proceeds received by the Company on the corresponding Cashflow Receipt Date after deducting the aggregate of the (i) Required A Cashflows that must be paid and/or reserved out of those ShareCo Distributions and/or Disposal Proceeds, and (ii) the Permitted Ordinary Distributions that the Company is entitled to pay out of those ShareCo Distributions and/or Disposal Proceeds;

1.1.16 **B Finance Documents** means the "Finance Documents" as defined in the B Subscription Agreement;

1.1.17 **B Holder** means, in relation to any Outstanding B Preference Share and at any time, the person who then holds that Outstanding B Preference Share (and whose name is reflected in the Company's securities register as the holder of that Outstanding B Preference Share), and **B Holders** means all of them (as the context may require);

1.1.18 **B Preference Dividends** means any dividends which the Company undertakes to pay in respect of the B Preference Shares (in terms of those B Preference Share Terms);

1.1.19 **B Preference Share Terms** means the preferences, rights, limitations and other terms that will be associated with the B Preference Shares as set out in this **Schedule 3** to the B Subscription Agreement;

1.1.20 **B Preference Shares** means such number of the shares as is equal to the aggregate B Subscription Prices divided by R1,000,000 in the Company's share capital which, as a result of the adoption of the new Memorandum of Incorporation, will have associated with them the preferences, rights, limitations and other terms set out in the B Preference Share Terms, and a **B Preference Share** means any one of them;

1.1.21 **B Redemption Price** means, in relation to each B Preference Share, an amount equal to its B Subscription Price;

1.1.22 **B Subscription Agreement** means the agreement titled a "Preference Share Subscription Agreement" to which these B Preference Share Terms have been annexed;

1.1.23 **B Subscription Price** means, in relation to each B Preference Share, the subscription price paid to the Company (in terms of the B Subscription Agreement) for the issue of that B Preference Share;

1.1.24 **B Trigger Event** means any event listed in clause 3;

1.1.25 **Board** means the Company's board of directors;

1.1.26 **Business Day** means any day (other than a Saturday, Sunday or officially recognised public holiday) on which banks are generally open for business in the Republic of South Africa;

1.1.27 **Cashflow Receipt Date** means any date on which the Company receives (i) any ShareCo Distributions from ShareCo, and/or (ii) any Disposal Proceeds in respect of the Disposal of any ShareCo Shares;

1.1.28 **Calendar Month** means each month of the Gregorian Calendar;

1.1.29 **Companies Act** means the Companies Act, 2008;

1.1.30 **Company** means Yeboyethu (RF) Limited, registration number 2008/014734/06, a public company incorporated in accordance with the laws of South Africa;

1.1.31 **Company MoI** means the Company's Memorandum of Incorporation;

1.1.32 **Compounding Date** means, in relation to any B Preference Share, the last day of each Calendar Month which occurs after the Actual Issue Date of that B Preference Share;

1.1.33 **Compounding Period** means each period commencing on (and including) a Compounding Date and ending on (but excluding) the next Compounding Date provided that –

1.1.33.1 the first Compounding Period in respect of a B Preference Share shall be the period from (and including) the date on which the Subscriber pays the B

Subscription Price to the Company in respect of that B Preference Share until (but excluding) the first Compounding Date which occurs thereafter; and

1.1.33.2 the final Compounding Period in respect of a B Preference Share shall be the period from (and including) the last Compounding Date which occurs immediately preceding the Actual Redemption Date of that B Preference Share until (and including) that Actual Redemption Date;

1.1.34 **Contributed Tax Capital** means, in relation to any company, its "contributed tax capital" as defined in section 1 of the ITA;

1.1.35 **Corporate Tax Rate** means the maximum nominal rate of income tax (expressed as a decimal) levied on the Taxable Income of companies (other than small business corporations, non-resident companies, employment companies, gold mining companies, long-term insurance companies and tax holiday companies) from time to time in terms of the ITA, and it is recorded that, as at the Signature Date, such rate (expressed as a decimal) is 0.28 (zero point two eight);

1.1.36 **Daily Amounts** means the amounts calculated in accordance with clause 2.4;

1.1.37 **Disposal** means any sale, transfer, out and out cession, assignment, lease, donation, renunciation, surrender, waiver, relinquishment, exchange or other disposal of any nature whatsoever, and **Dispose** has a corresponding meaning;

1.1.38 **Disposal Proceeds** means, if the Company Disposes of any ShareCo Shares, the proceeds actually paid to the Company in respect of that Disposal after deducting the aggregate of (i) a reasonable provision for any Taxes that will become payable as a result of that Disposal, and (ii) all the reasonable costs incurred by the Company in effecting that Disposal;

1.1.39 **Distribution** means, in relation to any company, any payment (whether in cash or in *specie* and whether by way of set-off, counterclaim or otherwise) by way of interest or principal (whether in respect of an inter-company loan or otherwise), dividend, redemption, fee, royalty or other distribution or payment (including by way of the repurchase of any shares) by or on behalf of that company to or for the account of any direct or indirect shareholder of that company (in its capacity as such), and includes a "distribution" as defined in section 1 of the Companies Act, and **Distribute** has a corresponding meaning;

1.1.40 **Dividend Payment Date** means the date 5 (five) Business Days after a Cashflow Receipt Date; and

1.1.41 **Dividends Tax** means the dividends tax imposed under Part VIII of Chapter II of the ITA;

1.1.42 **Dividend Rate** means, subject to adjustment in accordance with any applicable provisions of these B Preference Share Terms, a rate equal to 70% (seventy percent) of the Prime Rate;

1.1.43 **Final Discharge Date** means, in relation to each B Holder, the date on which SARS becomes precluded, in terms of section 100(2) of the Tax Administration Act, 2011, from making an additional assessment for any year of assessment during which that B Holder holds any B Preference Shares;

1.1.44 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of –

1.1.44.1 moneys borrowed or credit obtained;

1.1.44.2 any amount raised by acceptance under any acceptance credit facility or dematerialized equivalent;

1.1.44.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

1.1.44.4 any amount raised pursuant to any issue of shares which are expressed to be redeemable whether at the instance of the Company or the holder of such preference shares;

1.1.44.5 the amount of any liability in respect of any lease, hire purchase contract or licence agreement which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;

1.1.44.6 any liability in respect of any advance or deferred purchase agreement if one of the primary reasons for entering into such agreement is to raise finance or if such agreement is not in the ordinary course of business;

1.1.44.7 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

1.1.44.8 any agreement or option to re-acquire an asset if one of the primary reasons for entering into such agreement or option is to raise finance;

1.1.44.9 any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

1.1.44.10 any Treasury Transaction and, for the purpose of calculating the amount of any person's Financial Indebtedness, a Treasury Transaction shall be valued at an amount equal to (i) the marked to market value thereof, plus (ii) if an amount owing by that person under the applicable Treasury Transaction has not been paid, that amount;

1.1.44.11 any counter-indemnity obligation in respect of a guarantee, surety, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a Bank or financial institution; and

1.1.44.12 the amount of any liability in respect of any guarantee, surety or indemnity for any of the items referred to in clauses 1.1.44.1 to 1.1.44.11 above;

1.1.45 **Holders' Designated Account** means such a bank account as the B Holders may from time to time in writing designate for the purpose of the making of payments (on account of the B Preference Dividends, the B Redemption Prices and any other amounts that become payable by the Company to the B Holders);

1.1.46 **Insolvency Event** means, in relation to any person, any of the following events or circumstances –

1.1.46.1 it is dissolved or de-registered;

1.1.46.2 an order or declaration is made, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or an order or declaration is made, or a resolution is passed, to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

1.1.46.3 it convenes any meeting to consider the passing of a resolution for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

1.1.46.4 it seeks the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or estate;

1.1.46.5 it has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;

1.1.46.6 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of any of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

1.1.46.7 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;

1.1.46.8 any receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it, its estate or any material part of its assets or it requests any such appointment;

1.1.46.9 it commits any act which, if such act was committed by a natural person, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such person is subject;

1.1.46.10 it is or is deemed by any authority or legislation to be financially distressed (as defined in the Companies Act);

1.1.46.11 it causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction to which it is subject, has an analogous effect to any of the events specified in clauses 1.1.46.1 to 1.1.46.10; or

1.1.46.12 it takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

1.1.47 **ITA** means the Income Tax Act, 1962;

1.1.48 **Material Adverse Change** means the occurrence of any events or circumstances which have a material adverse effect on -

1.1.48.1 the business, operations, property, condition (financial or otherwise) or prospects of the Material Parties; or

1.1.48.2 the ability of a Material Party to perform its obligations under the Transaction Documents or B Finance Documents;

1.1.49 **Material Parties** means the Company and ShareCo and a **Material Party** means either of them;

1.1.50 **Normal Tax** means the Tax levied on Taxable Income in terms of section 5 of the ITA;

1.1.51 **Occurred** means, in relation to –

1.1.51.1 the Tax Event envisaged in clause 1.1.75.1, that (i) SARS has assessed the applicable B Holder to the applicable Tax, or (ii) the applicable B Holder has obtained an opinion from a senior tax advocate or advisor who specialises in Tax matters which is to the effect that it is more likely than not that the applicable Tax has or will become payable by that B Holder, or (iii) any change has been made to the Applicable Laws which has the effect that the applicable Tax will become payable; or

1.1.51.2 any other Tax Event, that the applicable change in the applicable legislation has occurred,

and **Occurrence** shall be construed accordingly;

1.1.52 **Ordinary Shares** means ordinary no par value shares in the Company's issue share capital;

1.1.53 **Outstanding B Preference Share** means, on any day, any B Preference Share which has been issued in terms of the B Subscription Agreement but which has not been redeemed in terms of these B Preference Share Terms, and **Outstanding B Preference Shares** means all or some of them (as the context may require);

1.1.54 **Penalty Dividend Rate** means the aggregate of the Dividend Rate plus 2% (two percent);

1.1.55 **Permitted Ordinary Distribution** means –

1.1.55.1 until such time as the A Preference Shares have been redeemed; any distribution which the A Finance Documents permit the Company to make in respect of the Ordinary Shares; and

1.1.55.2 after the A Preference Shares have been redeemed and subject to the terms and conditions of any agreements regulating any Financial Indebtedness which refinances the A Preference SHares, the greater of ZAR76,000,000 per year (escalating by 5% annually commencing on the Subscription Date) and 20% of the balance remaining after paying any Taxes and making a reasonable provision for operational expenses;

1.1.56 **Potential B Trigger Event** means the occurrence of any facts and/or circumstances which will become a B Trigger Event if those facts and/or circumstances are not remedied -

1.1.56.1 within the applicable grace period (if any) stipulated in clause 3 of these B Preference Share Terms; or

1.1.56.2 after any notice required by clause 3 of these B Preference Share Terms has been given and has expired;

1.1.57 **Prime Rate** means the publicly quoted basic rate of interest (expressed as a nominal annual compounded monthly in arrears rate) levied by Nedbank from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year and proved, prima facie, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any manager of the Subscriber, whose appointment and authority need not be proved;

1.1.58 **Rate Change Event** means any change in the Corporate Tax Rate that takes effect after the Signature Date;

1.1.59 **Refinance** means any Financial Indebtedness incurred by a Material Party for the purpose of funding the redemption of the Outstanding B Preference Shares (and paying the outstanding B Preference Dividends in respect of the Outstanding B Preference Shares);

1.1.60 **Restricted Period** means the period of 3 (three) years and 1 (one) day that occurs after the date on which the Company issues the B Preference Shares;

1.1.61 **Required A Cashflows** means, for so long as the A Preference Shares remain outstanding, all the amounts that must, from time to time and in terms of the A Priority of Payments, be applied by the Company to make payments on account of the A Preference Shares and/or to pay amounts into the A Reserve Account;

1.1.62 **Return** means the net after Tax return to be achieved by any B Holder as a result of the acquisition, holding and/or disposal of any B Preference Shares by that B Holder;

1.1.63 **Return of Capital** means any Distribution made by any company which reduces the Contributed Tax Capital of that company;

1.1.64 **Scheduled Dividend** means, in respect of each B Preference Share and for each Compounding Period, the dividend calculated in accordance with the formula contained in clause 2.3 of these B Preference Share Terms;

1.1.65 **Scheduled Redemption Date** means, in relation to any B Preference Share, the date 10 (ten) years 1 (one) day after its Actual Issue Date;

1.1.66 **Security Interest** means any mortgage bond, notarial bond, pledge, security cession, lien, charge, hypothecation, assignment, deposit by way of security or any other agreement or arrangement which has a similar effect (including set off and title retention);

1.1.67 **ShareCo** means YeboYethu Investment Company (RF) Proprietary Limited, registration number 2018/264887/07, a private company incorporated in accordance with the laws of South Africa;

1.1.68 **ShareCo Distribution** means any Distribution that ShareCo makes to the Company, whether out of any Distribution received by ShareCo in respect of its VGL Shares, the proceeds of the Disposal of any VGL Shares by ShareCo or any other income of any nature whatsoever;

1.1.69 **ShareCo Shares** means ordinary shares in the issue share capital of ShareCo;

1.1.70 **Signature Date** means the "Signature Date", as defined in the B Subscription Agreement;

1.1.71 **Solvency and Liquidity Test** means the "solvency and liquidity test" contained in section 4 of the Companies Act;

1.1.72 **STT** means the securities transfer tax imposed under the Securities Transfer Tax Act, 2007;

1.1.73 **Subsidiary** means a subsidiary as defined in the Companies Act and shall include any person who would, but for not being a company under the Companies Act, qualify as a subsidiary as defined in the Companies Act;

1.1.74 **Tax** means all taxes, charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the aforegoing on whomsoever imposed, levied, collected, withheld or assessed under South African law by any South African monetary or fiscal authority, together with any penalties, additions, fines, surcharges or interest relating thereto, and the word **Taxes** shall be construed accordingly;

1.1.75 **Tax Event** means, in relation to any B Holder **-**

1.1.75.1 any amount paid or payable by the Company in respect of any B Preference Share (including, without limitation, any B Preference Dividends, any B Redemption Price and any Return of Capital) becomes subject to any Tax, other than the Dividends Tax, in the hands of that B Holder whether such Tax is imposed (i) as a withholding Tax or otherwise, or (ii) as a result of any change in the applicable legislation or as a result of the application of that legislation as at the Signature Date, or any B Holder otherwise incurs or becomes liable for any Tax as a result of its subscription for and/or holding of the B Preference Shares;

1.1.75.2 if the B Holder is exempt from the Dividends Tax on the date on which it first acquires the B Preference Shares held by it (either by subscription or in any other manner), there is a change in the Applicable Laws which has the result that the B Holder will no longer be exempt from the Dividends Tax; or

1.1.75.3 if (i) the B Holder is exempt from the Dividends Tax on the date on which it first acquires its B Preference Shares, (ii) thereafter, and as a result of an amendment to the Applicable Laws, the B Holder ceases to be exempt from the Dividends Tax, and (iii) after the B Holder ceases to be exempt from the Dividends Tax, the rate at which that Tax is levied changes;

1.1.76 **Taxable Income** means, in relation to any person, its "taxable income" as defined in accordance with the ITA;

1.1.77 **Transferee** means any person to whom any B Holder transfers a B Preference Share in accordance with the applicable provisions of the B Subscription Agreement;

1.1.78 **Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement in each case entered into in connection with protection against or benefit from fluctuation in any rate or price; and

1.1.79 capitalised terms, unless otherwise defined herein, shall bear the meaning ascribed to them in the B Subscription Agreement.

## 2 DIVIDENDS

**Entitlement**

2.1 Each B Holder shall be entitled, in respect of each B Preference Share held by it, to the B Preference Dividends calculated in accordance with the provisions of this clause 2.

2.2 The B Preference Shares shall rank, in relation to Distributions (i) after the A Preference Shares and the Permitted Ordinary Distribution, and (ii) prior to any other classes of shares including the Ordinary Shares (in respect of Distributions other than the Permitted Ordinary Distributions).

**Scheduled Dividends**

2.3 For each Compounding Period, each B Preference Share shall have associated with it the right of the B Holder to receive a Scheduled Dividend which shall be equal to the aggregate of the Daily Amounts for each day within that Compounding Period.

2.4 The Daily Amounts shall be calculated in respect of each B Preference Share in accordance with the following formula —

a = b x c ÷ 365

in which formula -

a = the Daily Amount for the applicable day;

b = the aggregate of (i) the Subscription Price of that B Preference Share, and (ii) the Accumulated Dividends in respect of that B Preference Share; and

c = the Dividend Rate or, for so long as a B Trigger Event has occurred and has not been remedied (other than a B Trigger Event which occurs solely as a result of an A Trigger Event), the Penalty Dividend Rate.

2.5 On each Dividend Payment Date, the Company shall pay to the B Holders, *pro rata* to the numbers of the Outstanding B Preference Shares held by them, an aggregate amount equal to the lesser of the Available B Cash and the Accumulated Dividends.

**Adjustment Events**

2.6 If (i) an Adjustment Event Occurs after the Signature Date in relation to a B Holder, that B Holder shall be entitled to deliver written notice (an **Adjustment Notice**) to the Company in which the B Holder requires the Company to -

2.6.1 pay dividends (the **Additional Dividends**) to the B Holder in such amount; and/or

2.6.2 increase the Dividend Rate with effect from a date specified in the Adjustment Notice (which date may be earlier than the date of the Adjustment Notice) by such a margin,

as will result in the applicable B Holder achieving the same Return as it would have achieved had the applicable Adjustment Event not occurred (and whether an Additional Dividend must be paid and/or the Dividend Rate must be increased shall be determined by the applicable B Holder in its discretion).

2.7 Subject to any contrary determination made pursuant to clause 2.15, the Company shall comply with the applicable B Holder's requirements as set out in any Adjustment Notice (and the Company shall do so with effect from the date set out in that Adjustment Notice). If a B Holder requires the Company to pay Additional Dividends, those dividends shall –

2.7.1 become due on the date of delivery of the Adjustment Notice; and

2.7.2 be paid on the Dividend Payment Dates and in accordance with the provisions of clause 2.5.

2.8 If a Rate Change Event occurs (whether that event increases or decreases the Corporate Tax Rate), the Dividend Rate shall, with effect from the date on which the applicable change in the Corporate Tax Rate becomes effective, be recalculated in accordance with the following formula -

d = x* (100% - t)

in which formula –

d = the Dividend Rate, expressed as a percentage of the Prime Rate after its adjustment;

t = the Corporate Tax Rate (expressed as a percentage) after the Rate Change Event has occurred; and

x = (i) 97.22% (ninety seven point twenty two percent),

provided that if a B Trigger Event has occurred and is continuing (i) the value of "x" in the above formula shall be recalculated on the basis that the value of "d" in that formula is the Penalty Dividend Rate, and (ii) thereafter the Dividend Rate shall be recalculated in accordance with the above formula but after the value of "x" has been adjusted as aforesaid.

2.9 If –

2.9.1 a Rate Change Event occurs; and

2.9.2 on the date of such occurrence (the **Rate Change Date**) any Scheduled Dividend for any Dividend Period which ended prior to the Rate Change Date remains unpaid,

that Scheduled Dividend shall be recalculated at the Dividend Rate determined in accordance with clause 2.8.

2.10 If any Adjustment Event has occurred and if a Rate Change Event occurs thereafter -

2.10.1 the B Holder shall recalculate the value of "x" in the formula contained in clause 2.5 on the basis that the value of "d" in that formula shall be the Dividend Rate as adjusted pursuant to the occurrence of the applicable Adjustment Event; and

2.10.2 the Dividend Rate shall then be recalculated (as a result of the occurrence of the Rate Change Event) on the basis of that formula after the value of "x" has been adjusted as aforesaid.

2.11 If a Rate Change Event occurs each B Holder shall calculate the altered Dividend Rate for the Dividend Period in which the Rate Change Event becomes effective (and for each Dividend Period thereafter) and in writing (an **Alteration Notice**) advise the Company accordingly as soon as reasonably possible after the Rate Change Event occurs.

**Post Redemption Indemnity**

2.12 If the effect of an Adjustment Event becomes apparent, in respect of any B Preference Share, only once that B Preference Share has been redeemed or transferred to a Transferee (whether or not the applicable B Holder was aware of the potential Occurrence of the Adjustment Event at the time of such redemption or transfer) the Company shall pay to the applicable B Holder, on demand, such an amount as will restore that B Holder's Return in respect of the applicable B Preference Share to that which it would have been had the Adjustment Event not occurred.

2.13 The Company's obligations under clause 2.12 shall terminate, in respect of any B Holder, on the Final Discharge Date in relation to that B Holder.

**Reciprocity**

2.14 If the Dividend Rate in relation to a B Holder is increased by that B Holder (the **Affected B Holder**) in accordance with the provisions of clauses 2.6 to 2.11 and following such increase in the Dividend Rate an Adjustment Event occurs and the occurrence of such Adjustment Event/s results in the lower Return that gave rise to the increase in the Dividend Rate being wholly or partially reduced or eliminated, the Company shall be entitled to give written notice to the Affected B Holder, and upon receipt of such notice the Affected B Holder shall, if its calculations confirm that as a result of the occurrence of any such Adjustment Event/s, such lower Return that gave rise to the increase in the Dividend Rate has been wholly or partially reduced or eliminated by the occurrence of any such Adjustment Event/s, decrease the Dividend Rate so that the Affected B Holder or its Consolidating Company, as the case may be, is placed in the same after-Tax position that it would have been in had the Adjustment Event/s giving rise to the increase in the Dividend Rate not occurred, provided that, notwithstanding the aforegoing –

2.14.1 the Dividend Rate shall not be decreased to a rate lower than the Dividend Rate applicable as at the Signature Date;

2.14.2 the Company's written demand pursuant to this clause 2.14 is delivered to the Affected B Holder within 60 (sixty) days after the occurrence of the applicable Adjustment Event/s;

2.14.3 the Company shall not be entitled to make a written demand pursuant to this clause 2.14 if a B Trigger Event or Potential B Trigger Event has occurred and is continuing; and

2.14.4 no B Holder shall be under any obligation to provide the Company with any notice of the occurrence of any such Adjustment Event.

**Disputes**

2.15 If the Company disputes the Occurrence of an Adjustment Event, the effect of such Occurrence or the correctness of any calculation in an Adjustment Notice and/or an Alteration Notice, a certificate by the auditors of the relevant B Holder or any Consolidating Company in relation to the relevant B Holder shall, in the absence of manifest error, be prima facie proof of the Occurrence of such Adjustment Event, the effect thereof or the correctness of such calculation.

**Actual Redemption Date**

2.16 The Company shall, to the extent to which it has not yet done so, pay all the B Preference Dividends in respect of each B Preference Share on the Actual Redemption Date of that B Preference Share.

**Allocation**

2.17 If, at any time, the Company makes payment on account of the B Preference Dividends in an amount which is less than all the B Preference Dividends then payable by the Company, the amount of that payment shall be allocated –

2.17.1 firstly to any Additional Dividends that have become payable but which remain unpaid; and

2.17.2 thereafter to any Scheduled Dividends that have become payable but which remain unpaid (to be applied to the outstanding Scheduled Dividend in the order of the Dividend Periods for which they accrued).

**Solvency and Liquidity Test**

2.18 The Company shall, prior to making payment of any B Preference Dividends or any B Redemption Price of any Outstanding B Preference Share, cause its Board to -

2.18.1 apply the Solvency and Liquidity Test in respect of that payment; and

2.18.2 if the Board is so satisfied, acknowledge by resolution that it has reasonably concluded that the Company will satisfy that test immediately after paying the applicable B Preference Dividends.

## 3 TRIGGER EVENTS

3.1 Each of the events or circumstances set out in this clause 3 is a B Trigger Event, whether or not the occurrence of such event is within the Company's control.

**Solvency and Liquidity Test**

3.2 The Company pays any B Preference Dividends or any B Redemption Price in respect of any B Preference Share without applying the Solvency and Liquidity Test to that payment.

3.3 The Board applies the Solvency and Liquidity Test to the payment of any B Preference Dividends or B Redemption Price in respect of a B Preference Share but the Board fails to –

3.3.1 satisfy itself that after such payment the Company will comply with the Solvency and Liquidity Test; or

3.3.2 adopt a resolution in which it acknowledges that it has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy that test immediately after making the applicable payment;

**Failure to pay Dividends**

3.4 The Company fails, on any Dividend Payment Date, to pay the B Preference Dividends then due for payment, unless failure to pay is caused by administrative or technical error and payment is made within 3 (three) Business Days of its due date.

**Scheduled Redemption**

3.5 The Company fails to redeem the Outstanding B Preference Shares on the Scheduled Redemption Date.

**Breach of Undertakings**

3.6 The Company fails to comply with any undertaking given by it to the B Holders in any B Finance Document except if that non-compliance -

3.6.1 is capable of remedy; and

3.6.2 is remedied within 5 (five) Business Days after the earlier of the date on which the B Holder gives notice of the breach to the applicable Material Party or that Material Party becoming aware of the non-compliance.

**Breach of Other Obligations**

3.7 The Company fails to comply with any obligation imposed on it under any B Finance Document, other than an obligation envisaged in clauses 3.1 to 3.6 except if that non-compliance -

3.7.1 is capable of remedy; and

3.7.2 is remedied within 5 (five) Business Days after the earlier of the date on which the B Holder gives notice of the breach to the applicable Material Party and that Material Party becoming aware of the breach.

**Misrepresentation**

3.8 Any warranty given by the Company to the B Holders in any B Finance Document is incorrect or misleading in any material respect except if –

3.8.1 the applicable circumstances are capable of remedy; and

3.8.2 those circumstances are remedied within 5 (five) Business Days of the earlier of the date on which any B Holder gives notice to the Company or the Company becoming aware of those circumstances.

**Cross-Default: Company**

3.9 Any of the following occurs in respect of a Material Party -

3.9.1 any of its Financial Indebtedness is not paid when due, after the expiry of any originally applicable grace period;

3.9.2 any of its Financial Indebtedness is declared to be or otherwise becomes due and payable before its specified maturity, is placed on demand or is capable of being declared by or on behalf of a creditor to be prematurely due and payable or of being placed on demand, in each case, as a result of an event of default (howsoever described);

3.9.3 a commitment for, or an underwriting of, any Financial Indebtedness is cancelled or suspended by a creditor as a result of an event of default (howsoever described); or

3.9.4 any of its creditors become entitled to foreclose on any Security Interest given to secure any of its Financial Indebtedness.

**Insolvency Events**

3.10 An Insolvency Event occurs in relation to a Material Party.

3.11 Clause 3.10 shall not apply to -

51.1.1 any winding-up petition or application which is frivolous or vexatious or is contested in good faith (in each case in the reasonable opinion of the B Holders) and is discharged, stayed or dismissed within 15 (fifteen) Business Days of commencement; or

51.1.2 any solvent winding up or liquidation with the prior written consent of the B Holders.

**Creditors' Process**

3.12 Any attachment, liquidation, implementation of any business rescue plan, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Party which is/are material to the conduct of business by that Material Party.

3.13 Clause 3.12 shall not apply if such attachment, sequestration, implementation of any business rescue plan, distress or execution or analogous process is discharged within 21 (twenty-one) days of the date on which the applicable Material Party becomes aware thereof.

**Failure to comply with a Compliance Notice**

3.14 A Material Party fails to comply with a compliance notice issued under section 171 of the Companies Act and such event is not remedied within 15 (fifteen) Business Days of receipt of written notice from the B Holders calling upon the applicable Material Party to remedy such event or procure that such event is remedied.

**Final Judgment**

3.15 Any final judgment of any court of competent jurisdiction is granted against a Material Party and the applicable Material Party fails to pay the amount of that judgment on the day on which it becomes obliged to do so (and a final judgment is a judgment which is not subject to further appeal or review).

**Cessation of Business**

3.16 Any Material Party ceases to carry on its business in the normal and ordinary course thereof.

**B Finance Documents**

3.17 It is or becomes unlawful for the Company or any B Holder to perform any of its obligations under the B Finance Documents.

3.18 Any B Finance Document is or becomes unenforceable and/or invalid for any reason whatsoever or the Company purports to terminate any B Finance Document to which it is a party.

**Repudiation**

3.19 The Company repudiates any of the B Finance Documents or evidences an intention to repudiate any B Finance Document.

**Material Adverse Change**

3.20 Any Material Adverse Change occurs.

**Expropriation**

3.21 Any seizure, expropriation or nationalisation by or on behalf of any governmental, regulatory or other authority of the whole or the greater part of a Material Party's business and/or assets (and whether or not any such seizure, expropriation or nationalisation is of the whole or the greater part of the applicable Material Party's business and/or assets shall be determined in accordance with section 112 of the Companies Act).

**Authorisations**

3.22 Any material authorisation required by any Material Party to carry on its business in the ordinary course and in all material respects as it is being conducted is revoked or cancelled by any government or regulatory authority and such authorisation is not reinstated within 5 (five) Business Days of the date upon which the applicable Material Party becomes aware of such revocation or termination.

**Audit Qualification**

3.23 The auditors of a Material Party qualify any financial statements of that Material Party.

**Change in Shareholding**

3.24 Any person who holds any Ordinary Shares in the Company transfers all or any of those shares to any person in violation of any restriction on such transfer which is contained in the Company's Memorandum of Incorporation.

3.25 The Company ceases to hold all the issued ordinary shares in ShareCo.

**A Trigger Event**

3.26 An A Trigger Event occurs.

4 **REDEMPTION**

**Scheduled Redemption**

4.1 On each Dividend Payment Date which occurs after the Restricted Period, the Company shall use the balance (if any) of the Available B Cash which remains (after the Company has paid Accumulated Dividends in accordance with clause 2.5) to redeem so any Outstanding B Preference Shares as can be redeemed out of that cash.

4.2 Despite the provisions of clause 4.1, the Company shall redeem each Outstanding B Preference Share on the Scheduled Redemption Date by paying the B Redemption Price thereof to its B Holder (and the Company shall, prior to such redemption, pay all outstanding B Preference Dividends in respect of that B Preference Share to its B Holder).

**Voluntary Redemption**

4.3 The Company shall be entitled (but not obliged) to redeem –

4.3.1 at any time, all (but not some) of the Outstanding B Preference Shares out of any Refinance; and

4.3.2 within 20 (twenty) days of any Dividend Payment Date such a number of Outstanding B Preference Shares as the Company may in its sole discretion determine out of any Available B Cash which remains after the Accumulated Dividends that are outstanding on that Dividend Payment Date have been paid in full which occurs after the last day of the Restricted Period.

4.4 If the Company elects to redeem any Outstanding B Preference Shares voluntarily it shall -

4.4.1 pay, into the Holders' Designated Account (i) the B Redemption Prices of the Outstanding B Preference Shares that it elects to redeem voluntarily, and (ii) the Accumulated Dividends in respect of all those Outstanding B Preference Shares on the Actual Redemption Date on which the Company pays the applicable B Redemption Prices into the Holders' Designated Account; and

4.4.2 in writing advise each B Holder of (i) the fact that it has made the aforesaid payment into the Holders' Designated Account, (ii) the number of the Outstanding B Preference Shares that it has redeemed, and (iii) the amount of the Accumulated Dividends that it has paid in respect of those Outstanding B Preference Shares,

and if (i) there is more than 1 (one) B Holder, and (ii) the Company redeems some but not all of the Outstanding B Preference Shares, the Company shall redeem the Outstanding B Preference Shares of the B Holders *pro rata* to the number of those shares held by them.

**Compulsory Early Redemption**

4.5 If a B Trigger Event occurs -

4.5.1 the B Holders shall be entitled (but not obliged) to give written notice to the Company in which the B Holder requires the Company to remedy that B Trigger Event within a period of 2 (two) Business Days, provided that the B Holders shall not deliver such a notice to the Company until all the A Preference Shares have been redeemed and all the A Preference Dividends have been paid; and

4.5.2 if the Company does not remedy the applicable B Trigger Event within the aforesaid 2 (two) Business Day period the B Holder shall be entitled (but not obliged) to deliver written notice (an **Early Redemption Notice**) to the Company in which the B Holder requires the Company to redeem the Outstanding B Preference Shares on a date (the **Early Redemption Date**) set out in the Early Redemption Notice, the Early Redemption Date to be no sooner than 1 (one) Business Day after the date on which the B Holder delivers the Early Redemption Notice to the Company.

4.6 If the B Holder delivers an Early Redemption Notice to the Company, the Company shall, on the Early Redemption Date set out in the Early Redemption Notice -

4.6.1 pay all the outstanding B Preference Dividends in respect of the Outstanding B Preference Shares; and

4.6.2 redeem the Outstanding B Preference Shares.

**Procedure for Redemption**

4.7 The Company shall redeem each Outstanding B Preference Share by paying its B Redemption Price and the Accumulated Dividends in respect thereof into the Holder's Designated Account.

4.8 Against payment of the B Redemption Price of any Outstanding B Preference Share (together with the Accumulated Dividends, if any, in respect thereof) the applicable B Holder shall surrender its share certificates in respect of that Outstanding B Preference Share to the Company.

5 **VOTING**

5.1 No B Preference Share shall have any votes except if -

5.1.1 a B Trigger Event has occurred and is continuing; or

5.1.2 the shareholders of the Company propose a resolution which affects the rights and privileges attaching to any B Preference Shares or the interests of the B Holders, including a resolution for the winding-up, commencement of business rescue proceedings or liquidation of the Company, the reduction of the Company's capital or the acquisition by the Company of its shares in terms of section 48 of the Companies Act.

5.2 If the circumstances envisaged in clause 5.1 or 5.2 are continuing –

5.2.1 at any time prior to the date on which all the A Preference Shares have been redeemed and all the A Preference Dividends have been paid in full, the B Preference Shares shall, between them, have 1 (one) vote at general meetings of the Company; or

5.2.2 after the date on which all the A Preference Shares have been redeemed and all the A Preference Dividends have been paid in full, each B Preference Share shall confer on its B Holder 1 (one) vote at general meetings of the Company.

5.3 The B Holders shall be entitled to notices of general meetings at which the B Preference Shares are entitled to vote (but not to any other notice of any other general meetings).

6 **RETURN OF CAPITAL ON LIQUIDATION**

6.1 If the Company is liquidated each Outstanding B Preference Share shall be entitled to a return of capital equal to -

6.1.1 its Subscription Price; and

6.1.2 the Accumulated Dividends up to the date on which that return of capital is paid to the B Holders.

6.2 Each B Preference Share's right to a return of capital shall rank after the rights of the A Preference Shares but prior to the rights of any other shares of any class, including the Ordinary Shares.

6.3 Except for the rights conferred on the B Preference Shares in terms of clauses 6.1 and 6.2, no B Preference Share shall have any right to participate in excess assets in the event of the Company's liquidation.

7 **PAYMENTS**

All B Preference Dividends and B Redemption Prices which become payable by the Company under these B Preference Share Terms shall be paid into the Holders' Designated Account.

8 **GENERAL**

8.1 The B Preference Share Terms may not be modified, altered, varied, added to or abrogated without the prior written consent of the B Holders.

8.2 Except for the A Preference Shares, no shares in the capital of the Company ranking, as regards rights to dividends, or on a winding-up as regards capital, in priority to or *pari* *passu* with the B Preference Shares shall be created or issued without the prior written consent of the B Holders, which consent shall not be unreasonably withheld.

8.3 A certificate delivered by any B Holder to the Company, reflecting the amount owing by the Company to that B Holder, will be *prima facie* proof of the amount owing. The appointment of the director, divisional director, manager or employee of the B Holder providing such certification, shall not be required to be proved.

**Annexure D**

## B-BBEE RESTRICTIONS ON THE COMPANY

9 **B-BBEE UNDERTAKINGS**

9.1 **B-BBEE ownership credentials of the company**

For the entire duration of the funding period, unless VGL in its sole, absolute and unfettered discretion agrees otherwise in writing in terms of the relationship agreement, the company and YY ShareCo shall be black owned.

9.2 **Restrictions in respect of the company**

For the duration of the funding period, the company shall –

9.2.1 maintain its corporate existence in terms of the Companies Act;

9.2.2 obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required under or by any laws to enable it lawfully to enter into and to perform its obligations in terms of each transaction document, and to ensure the legality and enforceability of each transaction document, including maintaining its listing in terms of the JSE Listings Requirements;

9.2.3 comply in all respects with all laws, compliance with which is material to the conduct of its business;

9.2.4 save for with VGL's prior written consent, not create or permit to subsist any encumbrance over any of its assets, other than permitted encumbrances;

9.2.5 save in terms of the funding agreements, or as may be required under applicable law, not enter into any transaction, whether voluntary or involuntary, to dispose of any of its assets, including the YY ShareCo Shares held by it;

9.2.6 save in terms of the funding agreements and the relationship agreement, procure that YY ShareCo does not enter into any transaction, whether voluntary or involuntary, to dispose of any of its assets, including the VGL Shares held by it;

9.2.7 repay its indebtedness in terms of the funding agreements, and use its reasonable endeavours, subject to the provisions of Funding Agreements and the Income Tax Act 58 of 1962, to use any excess cash to do so for the purpose of maximising the net value points that VGL would derive from the company on VGL's ownership scorecard (as set out in the B-BBEE Codes), save where YY ShareCo's VGL Shares have been disposed of in accordance with the Relationship Agreement;

9.2.8 comply with the B-BBEE laws;

9.2.9 procure that no change is made to this memorandum of incorporation without the prior written consent of VGL, as required in terms of the relationship agreement, which will not be unreasonably withheld or delayed in the event that it has no, or is unlikely to have any, negative impact on VGL;

9.2.10 not agree to any amendment, replacement or substitution of the funding agreements (including any refinancing thereof, with the same or different parties, and whether prior to or on the date for repayment thereof) (or otherwise allow such amendment, replacement and/or substitution to occur), save for with VGL's prior written consent, which will not be unreasonably withheld or delayed in the event that it has no, or is unlikely to have any, negative impact on VGL and/or the VGL Group (however, such consent may include conditions, including, among other things, that this Agreement is amended with regard to any terms which inter-refer to the funding agreements, and which must or should change as a result of the amendment thereof); and

9.2.11 save in terms of the funding agreements, not, whether directly or indirectly, obtain any further acquisition finance in respect of the YY ShareCo Shares held by it, without the prior written consent of VGL, which consent shall not be unreasonably withheld or delayed in the event that it has no, or is unlikely to have any, negative impact on VGL and/or the VGL Group.

9.3 **Ring-fencing of the company**

9.3.1 The company's role in the transaction is primarily to enhance the B-BBEE status of the VGL Group.

9.3.2 Accordingly, for the entire duration of the funding period, the company shall comply with (insofar as they apply to the company and YY ShareCo), and it shall enforce (insofar as they apply the company's securities holders), the B-BBEE principles.

9.4 **Observer on the company's board of directors**

9.4.1 VGL shall from time to time during the funding period be entitled, on written notice to the company, to appoint 1 (one) person as an observer who shall be entitled to attend the meetings of the company's board of directors but who shall not be entitled to vote at such meetings. Such observer shall bind him or herself, prior to attending any meeting of the board of directors of the company, to a confidentiality and non-disclosure agreement with the company in terms of which he or she will undertake, *inter alia*, to keep confidential and not to disclose to any party (other than VGL) any of the information which is disclosed to him or her in relation to and at such meetings.

9.4.2 Such observer shall not be entitled to attend any part of a meeting of the company's board of directors at which the board will discuss –

9.4.2.1 any matter relating to a breach of the funding agreements and/or the relationship agreement;

9.4.2.2 any negotiations with VGL in relation to or in terms of the relationship agreement or the funding agreements (including a refinancing thereof); or

9.4.2.3 any matter which, in the opinion of the chairperson of the company's board of directors, acting reasonably, will result in a conflict of interest for such observer.

9.5 **The company's budget**

9.5.1 The company's annual budget for operating costs, excluding any costs as contemplated in clause 9.5.2, shall not exceed an amount of R20,000,000, which amount shall escalate on each anniversary of the final implementation date in the same ratio as any increase in the Consumer Price Index year-on-year. For the purposes hereof, "Consumer Price Index" means the weighted average consumer price index for all areas for the month in which the date concerned falls, as published from time to time by Statistics South Africa ("**official index**"), provided that –

9.5.1.1 if the official index is at any time discontinued, or is otherwise unavailable, an expert (as such term is defined in the relationship agreement) shall select or prepare a similar index and may direct how it is to be applied so as to have the same effect as nearly as possible as the official index would have had if it had not been discontinued or otherwise become unavailable; and

9.5.1.2 if the basis of the official index is modified at any time after the signature date of the relationship agreement, an expert shall, if so requested by any party to the relationship agreement, and if the expert considers that the modification is material, make such adjustments to the official index as will restore it as nearly as possible to the position it would have been in had its basis not been so modified.

9.5.2 Any costs that may be incurred by the company outside of the ordinary course of business shall be subject to the prior written approval of VGL, which shall not be unreasonably withheld or delayed.

9.6 **Restrictions on the YY ShareCo Shares**

The company shall not, for the entire duration of the funding period –

9.6.1 dispose of or encumber any or all of the YY ShareCo Shares held by it other than as a compulsory disposal pursuant to the funding agreements or as otherwise permitted with VGL's prior written consent; or

9.6.2 allow YY ShareCo to dispose of or encumber any or all of the VGL Shares held by it, other than as a compulsory disposal pursuant to the funding agreements and/or voluntary disposal in accordance with, and subject to the terms of, clause 17 of the relationship agreement titled "*FUNDING AGREEMENTS: MUTUAL SUPPORT*".

9.7 **Compliance with memoranda of incorporation**

The company shall not in any respect breach any of the provisions of this memorandum of incorporation or the memorandum of incorporation of YY ShareCo.

9.8 **Notification of breach**

If any event occurs or any circumstance arises which constitutes a breach or which is reasonably expected to result in a breach of any of the provisions of this **Annexure D**, the company shall give notice thereof to VGL, as required in terms of the relationship agreement, as soon as reasonably possible after becoming aware of such event or circumstance. For this purpose, as soon as such event or circumstance comes to the knowledge of the board of directors of the company, the company shall be deemed to have knowledge of the event or circumstance in question.

10 **COMPLIANCE WITH B-BBEE PRINCIPLES BY THE COMPANY**

10.1 **Access to information**

The company shall, within 10 (ten) business days of receiving a written notice from VGL reasonably requesting documents or information in order to enable VGL to evaluate and monitor the company's compliance with the B-BBEE principles and the provisions of the relationship agreement and the transaction documents, provide such documents and information to VGL as may be in its possession or under its control, all as provided for in the relationship agreement.

10.2 **B-BBEE verification certificate**

As required in terms of the relationship agreement, the company shall deliver to VGL on or before 30 April each year (or such other date as may be agreed to by VGL) and at its own cost and expense, a B-BBEE verification certificate issued not earlier than 30 (thirty) days prior to the date on which such certificate is delivered to VGL and issued by any of the following accredited B-BBEE verification agencies –

10.3 at a given point in time, the agency appointed to conduct VGL's immediately preceding B-BBEE verification, or if VGL's next verification is imminent, the agency appointed to conduct VGL's next B-BBEE verification; or

10.4 an agency whose identity has been approved in writing by VGL (which approval shall not be unreasonably withheld or delayed and VGL shall notify the company of its decision within 10 (ten) business days of any request for approval),

10.5 certifying and confirming –

10.5.1 the beneficial holding of the company and the composition of its board of directors; and

10.5.2 whether or not the company is black owned.

11 **BREACH OF B-BBEE PRINCIPLES**

11.1 The company shall comply with the B-BBEE principles.

11.2 If the company is in breach of a B-BBEE principle, VGL shall, in terms of the relationship agreement, be entitled to deliver a written notice ("**breach notice**") to that effect to the company, which breach notice shall set out the nature of the breach.

11.3 If the company disputes the fact that it is in breach of a B-BBEE principle, the company shall be entitled to refer the matter to an expert (as such term is defined in the relationship agreement) for determination within 20 (twenty) business days of the date on which the breach notice is delivered to it, failing which the company will be deemed to be in agreement with the breach notice.

11.4 The company shall be entitled to a grace period of 40 (forty) business days to rectify the breach identified in the breach notice calculated from the later of (i) the date on which the breach notice is delivered to it and (ii) in the event that the matter is referred to expert determination in accordance with clause 11.3 and the expert finds that the company has breached a B-BBEE principle, the date on which the expert makes his or her determination, provided that if the breach identified in the breach notice arises as a result of facts or circumstances beyond the control of the company, YY ShareCo and their ultimate controlling shareholders (including amendments to the B-BBEE laws or the coming into force of any new laws relating to B-BBEE), the parties to the relationship agreement shall, in good faith, consult with one another and use their respective reasonable endeavours to engage and negotiate with each other during such grace period to find an appropriate resolution to such breach in order to maintain and safeguard the continuation of the transaction.

11.5 If the company fails to remedy a breach to the satisfaction of VGL within the grace period referred to in clause 11.4, or if the parties to the relationship agreement are unable to find an appropriate resolution to a breach arising from facts or circumstances beyond the control of the company, YY ShareCo and their ultimate controlling shareholders as contemplated in clause 11.4, a "deemed offer" will have been triggered in terms of clause 16 of the relationship agreement.

11.6