

MEMORANDUM OF INCORPORATION FOR A LISTED PUBLIC COMPANY

REPUBLIC OF SOUTH AFRICA COMPANIES ACT NO 71 OF 2008, AS AMENDED

NAME OF COMPANY: TRUWORTHS INTERNATIONAL LIMITED

REGISTRATION NUMBER: 1944/017491/06

DEFINITIONS AND INTERPRETATION

In this Memorandum of Incorporation, including Annexure A hereto, unless the context otherwise indicates:

- (a) “the Act” means the Companies Act No. 71 of 2008, as amended from time to time including the regulations promulgated thereunder and for the time being in force. Reference to the Act shall, if the Act is replaced by any other statute, be construed as a reference to the statute or statutes from time to time in force relating to companies. Reference to any provision of the Act shall be construed as a reference to such provision as modified or re-enacted by any statute for the time being in force;
- (b) “the Board” means the board of directors of the Company, as it may be constituted from time to time;
- (c) “Books of Account” means any documents, accounts, books, writings, records or other information that a company is required to keep in terms of the Act or any other laws or codes of corporate governance;
- (d) “Business Day” means any day other than a Saturday, Sunday or officially designated public holiday in the Republic of South Africa;
- (e) “the Company” means Truworths International Limited, Registration Number 1944/017491/06, the Company that has adopted, and is governed by, this Memorandum of Incorporation;
- (f) “in writing” or “written” means and includes words printed, auto-graphed, represented or produced in any mode in a visible form and further includes a data message being information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic mail;
- (g) “JSE” means the JSE Limited, Registration Number 2005/022939/06;
- (h) “JSE Listing Requirements” means the listing requirements issued by the JSE in respect of securities listed on the JSE, as amended from time to time;
- (i) “Memorandum of Incorporation” means this document, being the Memorandum of Incorporation of the Company, including the Annexures annexed hereto;
- (j) “notice” includes, without limitation, circulars, abridged and full annual financial statements, quarterly and interim reports, listing particulars, dividend and interest notices and proxy forms;
- (k) “registered address” in relation to a shareholder means an electronic mail address, fax number, physical or postal address notified by a shareholder to the Company in terms of Article 3.2(1) hereof;
- (l) “person” includes a juristic person as defined in the Act;
- (m) “prescribed officer” will have the meaning ascribed to it by the Act;
- (n) “Rules” means any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum of Incorporation;

- (o) words that are defined in the Act and/or the JSE Listing Requirements bear the same meaning in this Memorandum of Incorporation as in the Act and/or the JSE Listing Requirements.
- (p) the provisions contained in the annexure annexed hereto marked "A" form part of this Memorandum of Incorporation.
- (q) save during the period contemplated in item 4(4) of Schedule 5 (except to the extent that Schedule 5 provides otherwise) of the Act when this Memorandum of Incorporation shall prevail, if the provisions of this Memorandum of Incorporation are in any way inconsistent with the unalterable provisions of the Act, the provisions of the Act shall prevail, and this Memorandum of Incorporation shall be read in all respects subject to the Act.
- (r) if the provisions of this Memorandum of Incorporation are in any way inconsistent with the JSE Listing Requirements, the provisions of the JSE Listing Requirements shall prevail, and this Memorandum of Incorporation shall be read in all respects subject to the JSE Listing Requirements.

ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation is proposed for adoption by the Company at its annual general meeting scheduled for 8 November 2012. The current Memorandum of Incorporation of the Company (being its "Memorandum of Association" and "Articles of Association" adopted in terms of the repealed Companies Act No. 61 of 1973, as amended) will be repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation, in accordance with the Act, assuming the requisite special resolution of the shareholders of the Company is duly passed at such annual general meeting.

ARTICLE 1 – INCORPORATION

1.1 Incorporation

- 1.1.1 The Company is a public company in terms of section 82(d) of the Act.
- 1.1.2 The Company is incorporated in accordance with and governed by:
 - (a) the unalterable provisions of the Act; and
 - (b) the alterable provisions of the Act, subject to the limitations, restrictions, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
 - (c) the provisions of this Memorandum of Incorporation

1.2 Powers of the Company

- 1.2.1 Subject to Article 2 below and the JSE Listings Requirements, the Company is not subject to any restrictive conditions nor to any prohibitions regarding the amendment of the provisions of this Memorandum of Incorporation other than those contained in the Act.
- 1.2.2 The purpose and powers of the Company are not subject to any restrictions, limitations or qualifications other than those contained in the Act, the JSE Listings Requirements and this Memorandum of Incorporation.

1.3 Memorandum of Incorporation and Company Rules

- 1.3.1 Subject to the Act, the JSE Listing Requirements and Article 2.1.1 below, this Memorandum of Incorporation may be altered or amended only in the manner set out in sections 16, 17 or 152(6)(b) of the Act. For the avoidance of doubt, an amendment includes, but is not limited to, the creation of any class of shares, the variation of any preferences, rights, limitation or other share terms attaching to any class of shares, the conversion of one class of shares into one or more other classes, the increase of the number of securities,

the consolidation of securities, the sub-division of securities, a change of the name of the company and a conversion of shares from par value to no par value (*JSE Listing Requirements 10.5(d)*).

- 1.3.2 The Company shall publish a notice of any alteration of this Memorandum of Incorporation by delivering a copy of the alteration to the registered address of each shareholder.
- 1.3.3 The Board shall not have the authority to make, amend or appeal Rules for the Company but the shareholders may by special resolution make Rules for the Company. (*JSE Listing Requirements 10.4*).

ARTICLE 2 – SECURITIES OF THE COMPANY

2.1 General

2.1.1 The following corporate actions (the Company being hereby duly authorised to undertake any such corporate actions) may be taken only in accordance with the JSE Listing Requirements:

- (a) the issue of shares for cash and options and convertible securities granted or issued for cash;
- (b) the repurchase of the Company's securities; and
- (c) the alteration of share capital, authorised shares and preferences, rights, limitations and other terms attaching to any class of shares (*JSE Listing Requirement 10.5(e) and 10.5(g)*).

(*JSE Listing Requirements 10.9*)

- 2.1.2 The authority of the Board to allow the Company's issued securities to be held, and registered in the name of one person for the beneficial interest of another person, is not limited or restricted by this Memorandum of Incorporation.
- 2.1.3 The authority of the Board to authorise the Company to provide financial assistance by way of a 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 securities of the Company or a related or inter-related company, subject to the provisions of sections 44(3) and 44(4) of the Act, is not restricted or varied by this Memorandum of Incorporation.
- 2.1.4 The Company has no power to claim a lien on securities (*JSE Listing Requirements 10.12*).
- 2.1.5 The Company shall not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the Company (*JSE Listing Requirements 10.14*).
- 2.1.6 The Company may, subject to the approval of the shareholders and in accordance with the rules and requirements of the JSE, at any time and from time to time, make an odd-lot offer to shareholders holding less than 100 shares (or such other amount as the Company may determine from time to time), in terms of which the offeree shareholders are given the right to elect to retain their shareholdings, or to sell their shareholdings, and the odd-lot offer may provide that if any offeree shareholder fails to exercise the right of election, their shareholding will be compulsorily sold as if they had elected to sell their shareholding.
- 2.1.7 The preferences, rights, limitations or other terms attaching to any class of shares of the Company may not be varied, nor any resolution 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 Act (*JSE Listing Requirements 10(5)(g)*).

2.2 Shares

- 2.2.1 The Company is authorised to issue no more than the maximum numbers of ordinary shares set out in Annexure "A" to this Memorandum of Incorporation, subject to the preferences, rights, limitations and other terms associated with each class as set out in such annexure.

- 2.2.2 The Board shall not have the power to issue authorised shares without the approval of the shareholders of the Company in terms of the Act and the JSE Listing Requirements, which approval may comprise of a special authority or a general authority for a specified period of time.
- 2.2.3 The Board's power to increase or decrease the number of authorised shares in any class; to reclassify any shares that have been authorised but are not issued; to classify any unclassified shares that have been authorised but are not issued; or to determine the preferences, rights, limitations or other terms of any class of shares that are not issued and which preferences, rights, limitations or other terms are not specified in this Memorandum of Incorporation is not restricted or varied by this Memorandum of Incorporation but is subject to the provisions of the JSE Listings Requirements
- 2.2.4 The Board power to approve the issuing of any authorised shares of the Company as capitalisation shares; to issue shares of one class as capitalisation shares in respect of shares of another class; or to resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, is not restricted or varied by this Memorandum of Incorporation (*JSE Listing Requirements 10.6*).
- 2.2.5 Any equity shares which are unissued shall be offered to existing shareholders, pro rata to their shareholdings, unless such securities are to be issued for an acquisition of assets. Notwithstanding the foregoing, the shareholders in a general meeting may authorise the Board to issue unissued equity shares and/or grant options to subscribe for unissued securities as the Board in its discretion deems fit, provided that such action has been approved by the JSE and is subject to the JSE Listing Requirements (*Listing Requirements 10.1*).
- 2.2.6 Shares of the Company are to be issued in either a dematerialised or a certified form, as the Board may determine.
- 2.2.7 The certificates or other evidence of title of shares of the Company, the transfer of such shares and all matters concerning share transactions shall be in accordance with the JSE Listing Requirements, any other recognised stock exchange on which the shares of the Company may be listed from time to time and/or any other regulatory authority controlling the issue and transfer of securities. The Company shall have the power to conform with such requirements, including the power to settle all share transactions totally electronically or otherwise as may be so approved from time to time (*JSE Listing Requirements 10.2(a)*).
- 2.2.8 Any authority to sign a transfer deed, granted by a holder of shares for the purpose of transferring shares, that may be lodged, produced or exhibited with or to the Company at any of the Company's transfer offices, shall, as between the Company and the grantor of such authority, be deemed to continue and remain in full force and effect and the Company may allow same to be acted upon until such time as express notice in writing of the revocation of same shall have been given and lodged at the company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the company, as being in order before the giving and lodging of such notice (*JSE Listing Requirements 10.2(b)*)

2.3 Debt Instruments

- 2.3.4 The power of the Board to authorise the Company to issue secured or unsecured debt instruments is not restricted or varied by this Memorandum of Incorporation.
- 2.3.5 The granting of special privileges to holders of debt instruments, such as attending and voting shareholders' meetings and the appointment of directors, is prohibited. (*JSE Listing Requirements 10.10*).

ARTICLE 3 – SHAREHOLDERS

3.1 Shareholders' authority to act

- 3.1.1 If, at any time, there is only one shareholder of the Company, the authority of that shareholder to act without notice or compliance with any other internal formalities is not limited or restricted by this Memorandum of Incorporation.

- 3.1.2 If, at anytime, every shareholder of the Company is also a director of the Company, the authority of the shareholders to act without notice or compliance with any other internal formalities is not limited or restricted by this Memorandum of Incorporation.

3.2 Notices

- 3.2.1 Each holder of registered shares (or their agent) shall notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be his registered address within the meaning of this Memorandum of Incorporation, and if he has not notified the Company of at least one of the above, he shall be deemed to have forfeited his right to be served with any notice from the Company until such time as he provides an address as contemplated. (*JSE Listing Requirements 10.18*).
- 3.2.2 The signature to any notice given by the Company may be written, printed, partly written and partly printed or may be an advanced electronic signature (as contemplated in Section 1 of the Electronic Communications and Transactions Act, No 25 of 2002, as amended).
- 3.2.3 Subject to the provisions of the Act and the JSE Listing Requirements, any notice required to be given by the Company to shareholders, or any of them, and not expressly provided for in this Memorandum of Incorporation, shall be sufficiently given if given by advertisement. Any notice given by advertisement shall be deemed to have been served on the first day that such advertisement is published.

3.3 Representation, proxies and power of attorney

- 3.3.1 The holder of an instrument of proxy or general or special power of attorney, given by a shareholder, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any meeting or proceeding of the Company, whether or not he is himself a shareholder in the Company.
- 3.3.2 The right of a shareholder to appoint persons concurrently as proxies is not limited, restricted or varied by this Memorandum of Incorporation.
- 3.3.3 A shareholder's proxy is prohibited from delegating the proxy's power to another person.
- 3.3.4 The authority of a shareholder's proxy to decide without direction from the shareholder whether to exercise or abstain from exercising any voting right of the shareholder is not limited or restricted by this Memorandum of Incorporation.
- 3.3.5 A shareholder (or their agent) shall deliver to the Company a copy of the instrument appointing a proxy or general or special power of attorney before the person named therein may exercise the shareholder's rights at a shareholders' meeting. Any instrument appointing a proxy (and the power of attorney, if any, under which it is signed, or a notarially certified copy thereof) or general or special power of attorney, shall be delivered to the registered address of the Company not less than 48 hours before the time for the holding of the meeting at which the person named in such power or instrument purports to attend or vote, failing which the instrument or power shall be treated as invalid for the purpose of attending or voting at that meeting.
- 3.3.6 Any shareholder that is a juristic person as defined in the Act may deliver a letter of representation to the registered address of the Company appointing a representative of that shareholder to attend and vote at the shareholder' meetings. Any such representative shall be entitled to attend and vote at all shareholders' meetings until the shareholder revokes such letter of representation by delivering a letter of revocation to the registered address of the Company.
- 3.3.7 A vote in accordance with the terms of an instrument of proxy or a letter of representation shall be valid notwithstanding the previous death of the principal (if applicable), revocation of the proxy or letter of representation, or transfer of the share in respect of which the vote is given; provided no intimation in writing of the death, revocation or the transfer shall have been received at the registered address of the Company or by the chairman of the meeting before the vote is given.

- 3.3.8 An instrument appointing a proxy shall be in any form approved by the Board. The Board may, in its discretion, permit proxies transmitted by shareholders of the Company by electronic mail, according to such directions as may be issued by the Board.

3.4 Record date for exercise of shareholders' rights

The record date for all transactions shall be as set out by the JSE Listing Requirements (*JSE Listing Requirements 10.15*).

ARTICLE 4 – SHAREHOLDERS' MEETINGS

4.1 General

- 4.1.1 The Board or the Company Secretary may convene a shareholders' meeting whenever it thinks fit.
- 4.1.2 A shareholders' meeting shall be convened on a requisition of the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, or in compliance with an order of court.
- 4.1.3 The Company is not required to hold any shareholders' meetings others than those specifically required by the Act and there is no prohibition or restriction on the Company from calling any meeting for the purposes of adhering to the JSE Listing Requirements (*JSE Listing Requirements 10.11(d)*).
- 4.1.4 The date and time of any shareholders' meeting shall be determined by the Board.
- 4.1.5 The authority of the Board to determine the location of any shareholders' meeting, and to hold any such meeting in the Republic of South Africa or in any foreign country, is not limited or restricted by this Memorandum of Incorporation.
- 4.1.6 The chairman of the Board or, in his absence, the lead independent non-executive director (if any) shall be entitled to take the chair at every shareholder's meeting. If there is no chairman of the Board or lead independent non-executive director, or if at any meeting he is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the other directors may choose a chairman of the meeting and, in default of their doing so, the shareholders present shall choose one of the directors to be the chairman and, if no director present is willing to take the chair, shall choose one of their number to be chairman.
- 4.1.7 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation. The Board may allow persons to participate in a shareholders' meeting by conference call or otherwise, and may allow for electronic voting when technology is in place.
- 4.1.8 Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all shareholders' meetings that are called for in terms of the JSE Listing Requirements shall be held in person and shall not be held by means of a written resolution as contemplated in section 60 of the Act (*JSE Listing Requirements 10.11(c)*).

4.2 Annual general meeting

- 4.2.1 An annual general meeting shall be held once every calendar year at such time and place as the Board may determine, provided that not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next.
- 4.2.2 The business of the annual general meeting shall be to receive, consider and if appropriate adopt the audited annual financial statements for the immediately preceding financial year, reports of the Board and auditors, the Audit Committee report, the Social and Ethics Committee report, the election of directors and the appointment of an Audit Committee and the auditors for the ensuing financial year and/or other officers of the Company in the place of those retiring by rotation or otherwise, the transaction of matters prescribed by the Act and the JSE Listing Requirements, any other business which ought to be transacted at an annual general meeting (including any matters raised by shareholders with or without advance notice to the Company), and any business which is brought under consideration by the reports of the Board laid before such meeting. All other business transacted at the annual general meeting and all business transacted at any other shareholders' meeting shall be deemed special.
- 4.2.3 At least 15 Business Days before the date of the annual general meeting, a copy of the annual financial statements of the Company shall be delivered to all shareholders, save for any shareholder who waives his right to receive such statements (*JSE Listing Requirements 10.19*).

4.3 Notice of shareholders' meetings

- 4.3.1 The minimum number of days for the Company to deliver a notice of a shareholders' meeting to the shareholders is 15 Business Days before the meeting is to begin (*JSE Listing Requirements 10.11(b)*).
- 4.3.2 A notice shall be given or served by the Company upon any shareholder by any method permitted by the Act including, but not limited to (*JSE Listing Requirements 10.11(e)*):
- (a) personal delivery;
 - (b) fax to the shareholder's fax number registered address;
 - (c) delivery by registered post to the shareholder's physical or postal registered address;
 - (d) subject to any requirements of the JSE, by electronic mail; provided that such shareholder has specified an electronic mail registered address; and
 - (e) subject to any requirements of the JSE, by posting the notice on the Company's website; provided that, simultaneously with or as soon as possible after such posting of the notice, the Company notifies the shareholder at his electronic mail registered address that the Company has posted the notice on its website.
- 4.3.3 The accidental omission to give notice of any meeting to any shareholders shall not invalidate any resolution passed at such meeting.
- 4.3.4 Notice of each shareholder's meeting shall be sent to the Manager (Listings) of the JSE at the same time as notice of the meeting is sent to the shareholders of the Company. Such notice shall also be announced through the official news service of the JSE (*JSE Listing Requirement 10.11(f)*).
- 4.3.5 All notices may, with respect to any registered shares to which persons are jointly entitled, be given to whichever of such persons is named first on the register and notice so given shall be sufficient notice to all the holders of such shares.
- 4.3.6 Any notice or document given or served by the Company upon any shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any

registered shares, whether held solely or jointly with other persons by such shareholder, until some other person is registered in his stead as the holder or joint holder thereof and such service shall, for all purposes under this Memorandum of Incorporation, be deemed a sufficient service of such notice or document on his or her heirs, executors or administrators, and all persons (if any) jointly interested with him or her in any such shares.

- 4.3.7 Every person who, by operation of law, transfer or other means whatsoever shall become entitled to any share, shall be bound by every notice in respect of such share which, prior to his name and address being entered in the register, shall have been given to the person from whom he derives his title to such share.

4.4 Quorum for shareholders' meetings

- 4.4.1 The quorum requirements for a shareholders' meeting to begin is sufficient persons present at the meeting (which includes being present in person or by proxy) to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting, provided that there shall be no quorum unless there are at least three persons so present at such meeting (*JSE Listing Requirements 10.11(h)*).

- 4.4.2 Notwithstanding anything to the contrary contained in the Act, once a quorum for the meeting has been established, all the shareholders forming the quorum must be present at every matter that is considered at the meeting (*JSE Listing Requirements 10.11(h)*).

- 4.4.3 A shareholder of the Company which is a juristic person as defined in the Act and is represented at a shareholders' meeting by an authorised representative shall be deemed to be present at the meeting.

- 4.4.4 The time periods contained in the Act regarding the postponement of a shareholders' meeting or the consideration of a particular matter at a shareholders' meeting, as a result of the quorum requirements not having been met, apply to the Company without variation.

- 4.4.5 Subject to any requirements of the JSE, the quorum at any postponed meeting shall be the shareholder or shareholders present thereat personally or by proxy, who may transact the business for which the meeting was called.

4.5 Adjournment of shareholders' meetings

- 4.5.1 The chairman of a shareholders' meeting may, with the consent of the meeting and if so directed by the meeting, adjourn the meeting from time to time and from place to place.

- 4.5.2 A shareholders' meeting shall not be adjourned beyond the earlier of 120 Business Days after the record date, or 40 Business Days after the date on which the adjournment occurred.

- 4.5.3 Subject to any requirements of the JSE, the quorum at any adjourned meeting shall be the shareholders present thereat personally or by proxy, who may transact the business for which the meeting was called.

- 4.5.4 No business shall be transacted at any adjourned shareholders' meeting of the Company other than business left unfinished at the meeting from which the adjournment took place.

4.6 Shareholder voting

- 4.6.1 A resolution put to the vote of any shareholders' meeting shall be decided on a poll taken in such manner as the chairman of the meeting directs. The result of the poll shall be deemed to be a resolution of the meeting.

- 4.6.2 Subject to the Act and any special terms or restrictions as to voting upon which any shares may be issued, upon a poll every shareholder present or represented by proxy shall have one vote for every share held by him (*JSE Listing Requirements 10.5(b)*).

- 4.6.3 The parent or guardian of a minor, the *curator bonis* of a shareholder and any person becoming entitled to shares in consequence of the death or insolvency of a shareholder, may vote at any shareholders' meeting as if he were the registered holder of shares, provided that at least 48 hours before the time of holding the meeting (or adjourned meeting, as the case may be) at which the person proposes to vote, he shall satisfy the Board of the capacity in respect of which he proposes to act, unless the Board shall have previously admitted his right to vote at such meeting in respect thereof.
- 4.6.4 Where there are joint registered holders of any share, or several executors or administrators of a deceased shareholder in whose sole name any shares stand, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share. If more than one of such joint holders, or executors or administrators, are present at any meeting, personally or by proxy, one of the said persons so present whose name stands first on the register in respect of such shares shall alone be entitled to vote in respect thereof.
- 4.7 Shareholders' resolutions**
- 4.7.1 For an ordinary resolution to be adopted by the shareholders of the Company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution.
- 4.7.2 For a special resolution to be adopted by the shareholders of the Company, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution (*JSE Listing Requirements 10.11*).
- 4.7.3 A special resolution adopted by the shareholders of the Company is not required for a matter to be determined by the Company, save for those matters set out in the Act and the JSE Listing Requirements;
- 4.7.4 The proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) of the Act is prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the JSE Listing Requirements unless otherwise agreed with the JSE (*JSE Listing Requirements 10.3*).

ARTICLE 5 – DIRECTORS AND OFFICERS

5.1 Composition of the Board

- 5.1.1 The Company shall have not less than four directors. The shareholders of the Company may from time to time increase such minimum number of directors (*JSE Listing Requirements 10.16(a)*).
- 5.1.2 If the number of directors falls below the minimum set out above, the remaining directors shall as soon as possible and in any event not later than three months from the date that the number of directors fall below the minimum, fill the vacancies on a temporary basis or call a shareholders' meeting for the purpose of filling the vacancies. The failure by the Company to have the minimum number of directors during such three-month period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company. After the expiry of the three-month period, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling shareholders' meetings (*JSE Listing Requirements 10.16(d)*).
- 5.1.3 There are no directly appointed or *ex officio* directors of the Company.
- 5.1.4 Alternate directors may be appointed in accordance with the Act (*JSE Listing Requirements 10.16(b)*).
- 5.1.5 Subject to the provisions of the Act, holders of the Company's securities who are entitled to exercise voting rights may at any time appoint any persons to the office of director and may remove from office any or all of the directors.
- 5.1.6 Directors of the Company shall be elected in the manner set out in the Act and the JSE Listings Requirements. Such elections shall take place at the annual general meeting of the Company or at any other shareholders' meeting.

- 5.1.7 The authority of the Board to fill a vacancy on the Board on a temporary basis is not limited or restricted by this Memorandum of Incorporation. Any appointment by the Board of a director to fill a vacancy on the Board, or as an addition to the Board, shall be subject to approval by the shareholders at the next annual general meeting or other shareholders' meeting, which approval shall not be given by written resolution in terms of section 60 of the Act (*JSE Listing Requirements 10.16(c)*).
- 5.1.8 In order to become and remain a director or a prescribed officer of the Company, a person need not satisfy any eligibility requirements or qualifications other than those set out in the Act. The Board or the Non-executive and Nominations Committee of the Board shall recommend the eligibility of directors or potential directors, taking into account any past performance and contributions made.
- 5.1.9 The periods of service of executive directors shall be governed by their employment contracts which shall not permit life directorships or directorships for an indefinite period. (*JSE Listing Requirements 10.16(k)*).
- 5.1.10 At each annual general meeting of the Company or other shareholders' meeting on an annual basis (and not by written resolution), one third of the directors for the time being or, if their number is not divisible by three, the number nearest to one third but not less than one third, shall retire from office. The directors to retire in each year shall be those who shall have been longest in office since their last election, provided that if more than one of them were elected directors on the same day, those to retire shall be determined by lot unless those directors agree otherwise between themselves. These retiring directors may be re-elected provided they are eligible. The Board, through the Non-executive and Nominations Committee should recommend eligibility, taking into account past performance and contributions made (*JSE Listing Requirements 10.16(g)*).
- 5.1.11 Subject to the provisions of the Act, the office of a director shall *ipso facto* be vacated if he/she:
- (a) ceases to be a director by virtue of any of the provisions of the Act or becomes prohibited from being a director by reason of an order made under the Act;
 - (b) becomes insolvent, suspends payment generally or compounds with his/her creditors;
 - (c) becomes a lunatic or of unsound mind;
 - (d) absents himself from the meetings of the Board, except on the Company's business, for a period of six months without special leave of absence from the Board and is not represented by any such meetings by an alternate director, and the Board resolves that his office be vacated;
 - (e) resigns or retires from office; or
 - (f) is removed from office by an ordinary resolution of the shareholders of the Company.
- 5.1.12 A director may be employed in any other capacity in the company or as a director or employee of a company controlled by, or itself a major subsidiary of, the company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors (*JSE Listing Requirements 10.16(e)*).

5.2 Authority of the Board of directors

- 5.2.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Act, the JSE Listing Requirements or this Memorandum of Incorporation provides otherwise.
- 5.2.2 All acts done at any meeting of the Board or of a committee of the Board (if any) or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such director or persons acting as aforesaid or that they or any of them were ineligible or disqualified to act as a director, be valid as if every such person had been duly appointed, eligible and qualified director.

- 5.2.3 If, at any time, the Company has only one director, the authority of that director to act without notice or compliance with any other internal formalities is subject to Article 5.1(2) not limited or restricted by this Memorandum of Incorporation.

5.3 Board meetings

- 5.3.1 Subject to the Act and this Memorandum of Incorporation, the directors of the Company may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think fit. Notwithstanding anything to the contrary contained in the Act, 25% of the directors (or the rounded up number of directors if a fractional number is the sum of 25% of the directors) shall be entitled to requisition a meeting of the Board.
- 5.3.2 The authority of the Board to determine the manner and form of providing notice of its meetings is not limited or restricted by this Memorandum of Incorporation.
- 5.3.3 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting is not limited or restricted by this Memorandum of Incorporation.
- 5.3.4 The quorum requirement for a Board meeting to begin is a majority of the directors. Each director shall have one vote on any matter before the Board. A majority of the votes cast on a resolution at a Board meeting is sufficient to pass that resolution.
- 5.3.5 The directors shall elect a chairman of the Board and may appoint a lead independent non-executive director; and may determine the period for which they are to hold office. If the chairman is not available at any Board meeting, the lead independent non-executive director, if any, shall assume the chair. If at any Board meeting neither of them is present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting. If the chairman of the meeting did not initially have or cast a vote he shall have a casting vote unless the quorum of directors is only two, and only two directors are present at the meeting then the chairman shall not have a casting vote (*JSE Listing Requirements 10.16(i)*).
- 5.3.6 The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation. The Board may allow persons to participate in a Board meeting by conference call or otherwise, and may allow for electronic voting when the technology is in place.
- 5.3.7 A 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 shall have received notice of the matter to be decided. Such resolution inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it, unless a statement to the contrary is contained in the resolution (*JSE Listing Requirements 10.16(j)*).

5.4 Directors' remuneration and cost reimbursement

- 5.4.1 The authority of the Company to pay remuneration to the Company's directors for their services as directors, in accordance with a special resolution approved by the Company's shareholders within the previous two years, is not limited or restricted by this Memorandum of Incorporation.
- 5.4.2 Unless the Company or any subsidiary thereof by special resolution determines otherwise, the executive directors, who are remunerated for their services as employees of the Company or its subsidiaries, shall not be paid directors' fees. The remuneration of the executive directors for their services as employees of the Company or its subsidiaries shall be determined by the Remuneration Committee of the Board. Such

Committee shall approve the terms of the contracts of employment of the executive directors of the Company before such contracts are concluded with the Company or its subsidiaries.

- 5.4.3 The directors shall in accordance with the Board approved policy be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the Board or of the committees thereof. If any director is required to perform extra services or to reside abroad, or shall be specifically occupied about the Company's business, such director shall be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to, or in substitution for, any other remuneration (*JSE Listing Requirements 10.16(f)*).

5.5 Financial assistance

The authority of the Board to authorise the Company to provide financial assistance to a Director or prescribed officer of the Company or a related or inter-related company, or to a related or inter-related company or corporation or to a member of a related or inter-related company or corporation, or to a person related to any such person or entity, subject to the provisions of sections 45(3) and 45(4) of the Act, is not restricted or varied by this Memorandum of Incorporation.

5.6 Indemnification of directors

- 5.6.1 The authority of the Company in terms of the Act to advance expenses to a director and to indemnify a director for expenses in respect of the defence of legal proceedings is not limited, restricted or extended by this Memorandum of Incorporation.
- 5.6.2 The authority of the Company in terms of the Act to indemnify a director in respect of liability is not limited or restricted by this Memorandum of Incorporation.
- 5.6.3 The authority of the Company in terms of the Act to purchase insurance to protect the Company or a director is not limited, restricted or extended by this Memorandum of Incorporation.
- 5.6.4 Subject to the provisions of the Act, no director or employee of the Company shall be liable for any act, or omission of any other director or employee, nor for any loss or damage incurred by the Company, unless the same happened through his own negligence, default, breach of duty or breach of trust.

5.7 Board committees

- 5.7.1 The authority of the Board to appoint committees of directors; to delegate to any such committee any of the authority of the Board; and to include in any such committee persons who are not directors, is not limited or restricted by this Memorandum of Incorporation.
- 5.7.2 The authority of any committee appointed by the Board is not limited or restricted by this Memorandum of Incorporation save that any fees payable to committee members must be approved by the Board.
- 5.7.3 The Board may from time to time disband any Board committee formed (other than the Audit Committee and the Social and Ethics Committee or any other committee which may be peremptory in terms of the Act from time to time) and/or revoke any powers delegated to any such committee.
- 5.7.4 Any Board committee formed shall conform to any charter that may from time to time be adopted by the Board for such Committee, provided that the meetings and proceedings of any Board committee consisting of two or more members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the meetings and proceedings of the Board, in so far as the same are applicable thereto, and are not superseded by any charter adopted by the Board for such Committee.
- 5.7.5 The Audit Committee is a Board committee and shall be appointed by the shareholders of the Company in accordance with the Act.

ARTICLE 6 – FINANCES

6.1 Reserves

- 6.1.1 The Board may, before declaring or confirming any dividends, set aside out of the profits of the Company such sums as it thinks proper as a reserve or reserves.
- 6.1.2 Subject to the provisions of the Act and the JSE Listing Requirements, the reserve or reserves shall, at the discretion of the Board, be applicable for meeting contingencies or for paying or equalising dividends, or for any other purpose whatsoever to which the profits of the Company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Board may from time to time think fit.

6.2 Dividends and Distributions

- 6.2.1 Subject to the provisions of the Act and any JSE requirements, the Board shall be entitled to declare dividends after applying the solvency and liquidity test set out in the Act and having reasonably concluded that the Company will satisfy such test immediately after paying the proposed dividend.
- 6.2.2 The Board shall make distributions, including the declaration of dividends, in accordance with the Act.
- 6.2.3 Each dividend shall be declared payable to shareholders registered as such on a date subsequent to the date of declaration of the dividend or the date of the confirmation of the dividend, whichever is the later (*JSE Listing Requirements 10.17(b)*).
- 6.2.4 No dividend shall be paid otherwise than out of the profits of the Company. Subject to the rights of any person entitled to special rights as to dividends, dividends shall be declared and paid equally on all shares.
- 6.2.5 No dividend shall bear interest against the Company, and any dividend remaining unclaimed for a period of three years, from the dividend date may, subject to the laws of prescription and provided notice of the declaration has been sent a registered address of the person entitled thereto, be forfeited by resolution of the Board for the benefit of the Company. The Board may at any time annul such forfeiture upon such conditions (if any) as it thinks fit. All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company. Any other monies due to shareholders shall be held in trust by the Company indefinitely until they are lawfully claimed by the relevant shareholders subject to the laws of prescription (*JSE Listing Requirements 10.17(c)*).
- 6.2.6 Subject to the Act and the JSE Listing Requirements, with effect from 1 January 2013, unless the Board in its discretion decides otherwise, every dividend will be paid by electronic funds transfer. The shareholders are obliged to provide the Company with their banking details and to update same from time to time. The Company shall not be responsible for the loss in transmission, or for any consequence or losses resulting from the loss in transmission, of any dividend. (*JSE Listing Requirements 10.8*).
- 6.2.7 If several persons are registered as joint holders of any share, any dividend payable on the share may be paid to any one of such shareholders and any one of them may give an effectual receipt for any such dividend.
- 6.2.8 Subject to the Act and any requirements of the JSE, the Board may resolve that any dividend be paid wholly or in part by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of the Company, or paid-up shares, debentures, or debentures stock of any other Company, or in any one or more of such ways. The shareholders right to elect whether to receive a scrip dividend or cash dividend is not limited by this Memorandum of Incorporation.

6.2.9 Where any asset, business or property is bought by the Company as from a past date upon the terms that the Company shall as from that date take the profits and bear the losses thereof, such profits or losses (as the case may be) shall, at the discretion of the Board and so far as the law allows, be credited or debited wholly or in part to a revenue account, and in that case the amount so credited or debited shall, for the purpose of ascertaining the funds available for dividends, be treated as a profit or loss arising from the business of the Company and the amount available for the dividends shall be adjusted accordingly.

6.2.10 The provisions of this article 6.2 shall apply mutatis mutandis to any other form of distributions contemplated in terms of the Act.

6.3 Auditors

Auditors shall be appointed and their duties regulated in accordance with the Act.

6.4 Company records

6.4.1 The Board shall cause to be kept such Books of Account as are prescribed by the Act.

6.4.2 Subject to the Act, the Books of Account shall be kept at, or be accessible from, the registered office of the Company and at such other place or places as the Board thinks fit and shall always be open for the inspection of the directors.

6.4.3 The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the Books of Account of the Company or any of them shall be open for the inspection of the shareholders not being directors of the Company, and no shareholders (not being a director) shall have any right of inspection of any Books of Account of the Company except as conferred by statute or authorised by the Board or by an ordinary resolution of the shareholders of the Company.

6.4.4 The Board shall from time to time cause to be prepared and laid before the Company at a shareholders' meeting such financial statements and reports as are required by the Act to be so laid. Such financial statements and reports shall comply with the financial reporting standards prescribed by the Act and the provisions of any codes of corporate governance as deemed by the Board to be applicable to the Company.

Annexure A: Memorandum of Incorporation

AUTHORISED SHARES

The Company is authorised to issue the following shares:-

Ordinary Shares

1.1 Maximum number of ordinary shares: 650 million

1.2 The following terms shall attach to the par value ordinary shares in the share capital of the company:

1.2.1 Each ordinary share is identical to every other ordinary share and ranks pari passu with the other ordinary shares in respect of all rights including, but not limited to, with regard to (*JSE Listing Requirements 10.5(a)*):-

1.2.1.1 voting on any matter to be decided by a vote of shareholders of the Company;

1.2.1.2 participating in any distribution of profits of the Company to the shareholders; and

1.2.1.3 sharing in the distribution of the Company's residual value upon the dissolution of the Company; and

1.2.2 Every holder of an ordinary share shall have one vote in respect of each share that he or she holds and shall be entitled to vote at every shareholders' meeting or annual general meeting of the company in person or by proxy (*JSE Listing Requirements 10.5(b)*).