

Companies and Intellectual Property Commission

Republic of South Africa

Memorandum of Incorporation

of

The Johannesburg Children's Home (Undenominational) NPC

(Registration number 05/12624/08)

which is a non-profit company, and is referred to in the remainder of this MOI as "**the Company**".

Adoption of the MOI

This MOI was adopted by the Board of the Company, by resolution.

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Part I - Interpretation and preliminary, continuing obligations incorporation and nature of the Company

1. Interpretation

The headings of the articles in this MOI are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any article hereof or paragraph of any schedule hereto. Unless a contrary intention clearly appears -

1.1 words importing -

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1 "**Board**" means the board of Directors of the Company, from time to time;

1.2.2 "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.2.3 "**Commissioner**" means the Commissioner for the South African Revenue Service (or its successors-in-title);

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

1.2.5 "**Director**" means a director of the Company, and where the context so provides, an alternate director appointed in respect of such director;

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

1.2.7 "**this MOI**" means this memorandum of incorporation of the Company and any schedules hereto, as amended from time to time;

1.2.8 "**Objects**" means -

1.2.8.1 the main objects of the Company, being -

- 1.2.8.1.1 to receive, care for, maintain and educate children of both sexes of all denominations and sections of the community without regard to creed or nationality, either or both of whose parents are dead, or whose parents, from poverty or physical or mental infirmity, are unable to provide for their families, or whose parents fail to provide for their families, as envisaged in paragraph 1(a) and 3(k) of Part II of the Ninth Schedule to the Income Tax Act, by contributing to school fees, text books, transport, school uniforms and stationery, providing support to young adults in respect of tertiary education and skills development;
- 1.2.8.1.2 to provide such children (as part of their maintenance) with all necessary and proper clothing, board, lodging and medicine and surgical attendance, appliances, nursing and comfort, as envisaged in paragraph 1(a) and 2(a) of Part II of the Ninth Schedule to the Income Tax Act, including providing a full-time on-staff nurse, providing over the counter medication and attending to medical, dental and related appointments at Government clinics and hospitals and similar institutions;
- 1.2.8.2 the ancillary objects of the Company, being -
- 1.2.8.2.1 the acquisition of the property, assets, and liabilities of the charitable organisation at present carried on at Johannesburg under the name of the Johannesburg Children's Home (Undenominational); and
- 1.2.8.2.2 all objects ancillary to the objects stated in article 1.2.8;
- 1.2.9 **"the Office"** means the registered office of the Company;
- 1.2.10 **"the Parties"** means the Company and each Director or any 1 (one) or more of them, as the context may require;
- 1.2.11 **"PBO"** bears the meaning ascribed thereto in section 30 of the Income Tax Act;
- 1.2.12 **"Prescribed Officer"** bears the meaning ascribed thereto in section 1 of the Companies Act;

- 1.2.13 **"Regulations"** means the regulations promulgated from time to time under the Companies Act;
- 1.2.14 **"Republic"** means the Republic of South Africa;
- 1.3 a reference to a section by number refers to the corresponding section of the Companies Act;
- 1.4 where any term is defined within the context of any particular article in this MOI, the term so defined, unless it is clear from the article in question that the term so defined has limited application to the relevant article, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation article;
- 1.5 when any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next Business Day;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the articles themselves do not expressly provide for this;
- 1.8 any reference in this MOI to the Company shall if the Company is put under business rescue, liquidated or sequestrated, be applicable also to and binding upon the Company's business rescue practitioner, liquidator or trustee, as the case may be; and
- 1.9 any reference to a statute shall be a reference to such statute as at the date of the adoption of this MOI by the Company and as amended from time to time thereafter.

2. **Objects of the Company**

The Objects of the Company are as stated in article 1.2.8.

3. Incorporation and nature of the Company

3.1 Incorporation

3.1.1 The Company is a non-profit company without members, as contemplated in item 4(1) of schedule 1 to the Companies Act and is further constituted in terms of section 19(1)(c) of the Companies Act in accordance with and governed by -

3.1.1.1 the unalterable provisions of the Companies Act that are applicable to non-profit companies (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii) of the Companies Act);

3.1.1.2 the alterable provisions of the Companies Act that are applicable to non-profit companies (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii) of the Companies Act); and

3.1.1.3 the provisions of this MOI (subject to and in accordance with section 15(2) of the Companies Act).

3.1.2 This MOI constitutes an amendment of the previous memorandum of association of the Company, in order to comply with the Companies Act.

3.1.3 The Company is registered as a PBO.

3.2 Powers of the Company and restrictive conditions

3.2.1 The Company and the powers of the Board are subject to the following restrictive conditions and prohibitions and the Company shall not engage in, agree to, perform or undertake any acts or matters listed below, except as may be approved in terms of a Board resolution, whether passed at a duly convened meeting of the Directors or by way of the round-robin procedure contemplated in article 4.3, which resolution must be supported by not less than 75% (seventy-five per cent), calculated to the higher integer, of all of the Directors of the Company from time to time -

- 3.2.1.1 the amendment of this MOI, including the filing of a consolidated version of the MOI and any amendment which would affect the tax-exempt status of the Company;
- 3.2.1.2 the ratification of any action by the Company or the Directors that is inconsistent with any limit, restriction or qualification as regards the powers of the Company in this MOI;
- 3.2.1.3 the undertaking of any new Object/s outside the scope of -
 - 3.2.1.3.1 the Objects of the Company as defined; and
 - 3.2.1.3.2 any other objects undertaken by the Company by the requisite approval of the Board as contemplated in this article 3.2.1, provided that, for as long as the Company is registered as a PBO, it will not undertake any new objects outside of the scope of the public benefit activities contemplated in the Ninth Schedule to the Income Tax Act, as amended or replaced from time to time;
- 3.2.1.4 the election or re-election (as the case may be), replacement or removal of any Director or proposed Director, from time to time, including any alternate Director or proposed alternate Director;
- 3.2.1.5 the incurring of long-term debts or any other material borrowing;
- 3.2.1.6 the conclusion of any contract outside the Company's Objects;
- 3.2.1.7 the institution or defence of any legal proceedings whatsoever;
- 3.2.1.8 the issue of guarantees or suretyships or indemnities of any unusual nature;
- 3.2.1.9 the approval of any budget of the Company and the departure therefrom;
- 3.2.1.10 the creation and modification of mortgages, liens or other charges on the Company's assets;
- 3.2.1.11 discontinuation or suspension of any of the material Objects of the Company;

- 3.2.1.12 the conclusion or amendment of any agreement providing for the disposal or licensing of the Company's intellectual property;
- 3.2.1.13 the establishment or implementation of or any changes in the Company's financial policy or accounting policies of whatsoever nature;
- 3.2.1.14 the conclusion and/or implementation of any transaction with any Prescribed Officer or Director of the Company or any person related or inter-related to of any of the foregoing ("**related**" and "**inter-related**" shall have the meaning ascribed to such terms in the Companies Act) or any juristic person in which any of the foregoing has an interest or which have an interest in the Company;
- 3.2.1.15 a compromise generally with the Company's creditors;
- 3.2.1.16 the appointment or dismissal of the auditors;
- 3.2.1.17 the appointment, dismissal and/or determination and/or increase of the remuneration of the managerial level of employees of the Company;
- 3.2.1.18 the financial year end of the Company;
- 3.2.1.19 the adoption or amendment of employment benefits for any employees including medical aid, pension and provident fund benefits;
- 3.2.1.20 the conclusion of financial or suspensive sale contracts, or contracts binding the Company to any on-going financial commitments over and above any provision made for same in the then current budget of the Company; and
- 3.2.1.21 any indemnity provided by or insurance taken out by the Company in favour of any Director, alternate Director, member of any committee and/or a Prescribed Officer of the Company, as contemplated in the Companies Act.
- 3.2.2 The activities of the Company shall be carried out in a non-profit manner with an altruistic or philanthropic intent.

- 3.2.3 No activity of the Company may promote the economic self-interest of an employee or fiduciary otherwise than by reasonable remuneration.
- 3.2.4 The activities of the Company are for the benefit of, or widely accessible to the general public at large, including any sector thereof.
- 3.2.5 No single person shall, directly or indirectly, control the decision making powers of the Company.
- 3.2.6 The Company's funds shall not be distributed directly or indirectly to any person (other than for a public benefit activity) and funds are only utilised for the Objects. The Company may invest funds available for investment only in accordance with the provisions of section 30 of the Income Tax Act.
- 3.2.7 The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main Objects. No portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the Directors, or to any person related or inter-related to the Company or to the Directors; provided that nothing herein contained shall prevent any payment, made in good faith, as contemplated in item 1(3) of schedule 1 to the Companies Act.
- 3.2.8 The Company must not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director or of a related or inter-related company, or to a person related to any such Director. The foregoing shall not prohibit a transaction if it -
- 3.2.8.1 is in the ordinary course of the Company's business and for fair value;
- 3.2.8.2 constitutes an accountable advance to meet -
- 3.2.8.2.1 legal expenses in relation to a matter concerning the Company; or
- 3.2.8.2.2 anticipated expenses to be incurred by the person on behalf of the Company;
- 3.2.8.3 is to defray the person's expenses for removal at the Company's request; or

- 3.2.8.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 3.2.9 The Company shall not use its resources directly or indirectly to advance, support or oppose any political party.
- 3.2.10 The area in which the Company shall render its services shall be confined to the Province of Gauteng, Republic of South Africa.
- 3.2.11 Subject to the Companies Act, the Company shall not have the power to carry on any business including, *inter alia*, ordinary trading operations in the commercial sense, speculative transactions, dividend-stripping activities as well as the letting of property on a systematic or regular basis.
- 3.2.12 The Company shall submit a copy of any amendment to this MOI to the Commissioner and the Director of Non-Profit Organisations of the Department of Social Development, within 10 (ten) working days of such amendment being effected.

Part V - Directors and officers

4. Directors and officers

4.1 Composition of the Board

- 4.1.1 The Board shall comprise not less than the number of Directors prescribed in terms of the Companies Act and in terms of any other item of legislation or any regulation applicable to the Company from time to time, provided that there shall be at least 3 (three) Directors who shall not be connected persons to each other, as defined in the Income Tax Act, and who will accept fiduciary responsibility for the Company.
- 4.1.2 Each alternate Director is entitled to act as a Director only in the absence of the Director for whom he or she is an alternate.
- 4.1.3 **Appointment, removal and retirement of Directors**
- 4.1.3.1 New Directors shall be elected by the existing members of the Board of the Company at the first meeting of the Board held after the end of the previous financial year.

- 4.1.3.2 Subject to article 4.1.3.1, all existing members of the Board shall be deemed to retire at the end of the first meeting of the Board held after the end of the previous financial year, and are eligible for re-election at that same meeting and shall be deemed to offer themselves for re-election unless they, or any of them, shall at least 7 (seven) calendar days before such meeting notify their intention not to seek re-election.
- 4.1.3.3 No person, not being a retiring member of the Board, shall be eligible for election to the office of member of the Board unless he or she, or some other Director intending to propose him or her, has delivered or caused to be delivered to the Office of the Company a notice in writing, duly signed, signifying his or her candidature for the office or the intention of such Director to propose him or her, which notice must be received by the Office in sufficient time so as to allow the inclusion of the relevant proposal for directorship in the agenda contemplated in article 4.4.2.3.2.
- 4.1.3.4 Notwithstanding the provisions of article 4.1.3.3, the Board may invite any person who in its opinion would be a suitable candidate to apply for a directorship in the Company, and any such person shall notify her acceptance of such invitation and willingness to act as a Director in the manner contemplated in article 4.1.3.3, with the necessary amendment of detail.
- 4.1.3.5 The re-election, or election, as the case may be, of any Director in terms of articles 4.1.3.2 and 4.1.3.3 shall be deemed to be effective as at the end of the meeting at which he or she is re-elected or elected, as the case may be.
- 4.1.3.6 Subject to article 4.1.6 and any other provision of any legislation or regulation pertaining to the Company, no person shall be eligible for election as contemplated in this MOI unless such person, in the opinion of not less than 75% (seventy-five per cent) of the Board, possesses the requisite skills and attributes to effectively promote and further the Objects of the Company.
- 4.1.3.7 Any member of the Board or of any sub-committee of the Board may retire from office upon giving 1 (one) month's notice in writing to the Board of his or her intention so to do, and such resignation shall take

effect at the expiry of the period of such notice or its earlier acceptance.

4.1.4 **Alternate Directors**

4.1.4.1 Any Director shall have the power to nominate another person as an alternate Director to act in such Director's place during his/her absence or inability to act, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors. A person may be appointed as alternate to more than 1 (one) Director. Where a person is alternate to more than 1 (one) Director or where an alternate Director is a Director, he/she shall have a separate vote, on behalf of each Director he/she is representing in addition to his/her own vote, if any. Each Director irrevocably undertakes in favour of the other/s to vote in favour of the appointment of any alternate to a Director who meets the criteria contemplated in articles 4.1.3 and 4.1.6, and not to propose, or to vote in favour of any resolution for the removal of any alternate nominated by a Director unless the Director who nominated the alternate himself or herself votes in favour of such resolution or the provisions of this MOI require that such alternate be removed, in which case each Director shall be obliged to vote in favour of his removal and undertakes to do so. Any removal of an alternate as aforesaid shall be without any claim for compensation and the Director/s which nominated any such alternate Director hereby indemnifies and holds the Company harmless against any claim arising out of or in connection with such removal.

4.1.4.2 The alternate Directors, whilst acting in the place of the Directors whom they represent, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he/she were a Director, would cause him/her to cease to hold office or if the Director for which he or she is an alternate ceases to be a Director, or gives notice to the secretary of the Company that the alternate Director representing him/her shall have ceased to do so. An alternate Director shall look to the Director for which he or she is an alternate for his/her remuneration, if any.

4.1.5 **Managing Director**

4.1.5.1 The Board shall appoint 1 (one) of its members to be managing Director of the Company, or to be the holder of any other executive office in the Company, and may, subject to any contract between him or her or them and the Company, from time to time terminate his or her or their appointment and appoint another or others in his or her or their place or places.

4.1.5.2 The Directors may from time to time entrust to and confer upon a managing Director or other executive officer appointed under article 4.1.5.1 for the time being such of the powers and authorities vested in them as they think fit, and may confer such powers and authorities for such time, and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may convert such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities. Without limiting the foregoing, the managing Director shall be responsible for the day-to-day administration of the Company and its property.

4.1.6 **Eligibility or qualification criteria for Directors**

In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, without limiting the rights of the Directors to remove a Director under certain circumstances under the Companies Act, a Director or Prescribed Officer shall not be entitled to remain serving as a Director or a Prescribed Officer of the Company if -

4.1.6.1 he or she is concerned or interested in or participates in the profits of any contract with or work done for the Company, without disclosing same in compliance with the Companies Act;

4.1.6.2 he or she is removed by the Director appointing him or her;

4.1.6.3 his or her estate is finally sequestrated;

- 4.1.6.4 he or she files a petition for the surrender of his or her estate as insolvent;
- 4.1.6.5 he or she is placed under curatorship by any court of competent jurisdiction;
- 4.1.6.6 he or she enters into a compromise with his or her creditors generally;
- 4.1.6.7 he or she delivers a notice of his or her resignation at the Office in terms of article 4.1.3.7;
- 4.1.6.8 he or she becomes of unsound mind; and/or
- 4.1.6.9 he or she absents himself or herself from meetings of Directors for 6 (six) consecutive months without the leave of the other Directors, and they resolve that his or her office shall be vacated, provided that this provision shall not apply to a Director who is represented by an alternate who does not so absent himself or herself.

4.1.7 **Vacancies on the Board**

Subject to the Companies Act -

- 4.1.7.1 any casual vacancy occurring among members of the Board shall forthwith be filled by the remaining Directors, but any person so chosen shall retain his or her office so long only as the vacating Director would have retained the same if no vacancy had occurred; and
- 4.1.7.2 the continuing Directors may act notwithstanding any vacancy in their number, but, if and for so long as their number is reduced below 5 (five) Directors, the continuing Directors may act for the purpose of increasing the number of Directors to the minimum number of Directors required in terms of article 4.1.1 and for no other purpose.

4.1.8 **Removal of a Director by other Directors**

The authority of the Board to remove a Director, as set out in section 71(3) of the Companies Act, shall be subject to the Director/s who nominated the relevant Director for appointment in the first place, consenting in writing to such removal.

4.2 **Appointment of the chairperson of the Board**

4.2.1 The chairperson of the Board will be appointed by the Board from among its members at the first meeting of the Board held after the end of each financial year, and shall serve as chairperson until the conclusion of the first meeting of the Board held after the end of that subsequent financial year.

4.2.2 The chairperson shall take the chair at all meetings of the Board and if the chairperson is not present then the vice-chairperson (if any) shall take the chair. If neither the chairperson nor the vice-chairperson is present, then the members of the Board present shall appoint someone from amongst their own number to take the chair at such meeting.

4.3 **Round robin resolutions of the Board**

The following provisions limiting or restricting the authority of the Board to consider a matter other than at a meeting, as contemplated in section 74 of the Companies Act apply -

4.3.1 a written resolution (which may consist of 1 (one) or more documents in like form) signed by such percentage of Directors required to support any resolution contemplated in article 3.2, alternatively the majority (to the higher integer) of the total number of Directors of the Company from time to time in respect of any other resolution, and inserted in the minute book, shall be valid and effective in accordance with its terms as if passed at a meeting of Directors;

4.3.2 unless the contrary is stated therein, any such resolution shall be deemed to have been passed on the latest date on which it was signed by all relevant Directors;

4.3.3 a fax of a Director's signed resolution, or an email sent by a Director unequivocally indicating that Director's vote on a particular resolution, shall be acceptable evidence that such resolution has been voted on by the Director; and

4.3.4 it is recorded that, provided that proper notice of the written resolution was duly given to each Director in terms of this MOI, any failure by any Director to sign any written resolution within the period stipulated in the notice to the Director shall not affect the validity of such written resolution; provided

further that such written resolution is passed by the Directors holding the requisite number of votes.

4.4 **Requisitioning of Directors' meetings**

The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1)(b) of the Companies Act, may be exercised in terms of section 73(2) of the Companies Act, by any 1 (one) Director.

4.4.1 **Board meetings by electronic communication**

4.4.1.1 A resolution signed by the number of Directors required to vote in favour of a resolution who were connected by electronic communication at a Board meeting where a quorum was present where -

4.4.1.1.1 all such Directors remained connected for the duration of the electronic meeting;

4.4.1.1.2 the subject matter of the resolution has been discussed; and

4.4.1.1.3 the chairperson or any other Director present in person or electronically certified in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of the meeting).

4.4.1.2 Such resolution may consist of several documents, each of which may be signed by 1 (one) or more Directors who participated in the electronic meeting.

4.4.1.3 Within 10 (ten) Business Days after the adoption or failing of a resolution at a meeting contemplated in article 4.4.1.1, the Company shall -

4.4.1.3.1 deliver to each Director a copy of the resolution proposed with a statement describing the results; and

4.4.1.3.2 insert a copy of the resolution and statement referred to in article 4.4.1.3.1 in the Company's minute book.

4.4.2 **Notice of Board meetings**

4.4.2.1 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Companies Act is amended to the extent set out below.

4.4.2.2 Subject to section 73(5)(a) of the Companies Act, a notice of a Board meeting must be in writing (including by way of email notification) and delivered to each Director of the Company (including each alternate Director) so as to be received by the Director in question in the ordinary course not less than 15 Business Days before the date appointed for the Board meeting, provided that in exceptional circumstances, as determined by the chairperson of the Board, the notice period may be shortened as is necessary to allow the Directors to attend to the exceptional circumstances in question.

4.4.2.3 Such notice of a Board meeting may be in any form determined by the Board but must as a minimum include -

4.4.2.3.1 the date, time and place for the meeting;

4.4.2.3.2 a detailed agenda for the meeting;

4.4.2.3.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by electronic communication and the necessary information to enable Directors (including their alternates) to access the available medium or means of communication; and

4.4.2.3.4 the general purpose of the meeting.

4.4.2.4 The contents of the notice and agenda shall be prepared by and be the responsibility of the chairperson of the Board.

4.4.2.5 Any Director may at any time require that any matter be included on the agenda for a meeting.

4.4.2.6 Board meetings will be held at a reasonable time and venue. In the ordinary course, Board meetings will be held at the principal place of business of the Company or at such other venue as the Board may agree to in writing.

4.4.3 **Quorum for Board meetings**

The quorum for a Board meeting shall be at least 3 (three) members of the Board in office from time to time, and who must be personally present at the meeting or participate in person electronically, before a vote may be called at such meeting.

4.4.4 **Adjournment and postponement of Directors' meetings**

4.4.4.1 **Automatic postponement of a meeting**

4.4.4.1.1 If within 30 (thirty) minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for 1 (one) week.

4.4.4.1.2 The 30 (thirty) minute limit may be extended for a reasonable period not exceeding 2 (two) hours by the chairperson of the meeting.

4.4.4.2 **Automatic adjournment of a meeting**

If at the time a matter is to be considered at a Board meeting, such meeting ceases to be quorate and there is no other business on the agenda which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for 1 (one) week.

4.4.4.3 **Further notice required for postponed or adjourned meeting**

Further notice of a Board meeting that is postponed or adjourned is required on the same basis as the original meeting which is being postponed or adjourned, save that notice shall be given within 2 (two) Business Days of the date on which the meeting which is being postponed or adjourned was held and the only items on the agenda may be the items which were on the agenda for the original meeting.

4.4.4.4 Deemed quorum at a postponed or adjourned meeting

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those Directors, present in person at the Board meeting including those participating electronically, will be deemed to constitute a quorum.

4.4.4.5 Adjournment by Directors

A Board meeting may otherwise be adjourned by majority vote of the Directors present at the meeting.

4.5 Proceedings of Directors

The Directors shall meet together for the despatch of business, not less frequently than once each calendar quarter. They may otherwise meet, adjourn and regulate their meetings and proceedings as they see fit, subject to the Companies Act.

4.6 Voting, approval of resolutions and minutes of Directors' meetings

4.6.1 Number of votes at Board meetings

Subject to the exclusions in the Companies Act, each Director or his/her alternate shall have 1 (one) vote.

4.6.2 Approval of resolutions

Subject to article 3.2, resolutions of Directors in order to be of force and effect must be approved by a majority of the votes exercised.

4.6.3 Tied votes

The chairperson of the Board shall have a casting vote.

4.6.4 Minutes

Minutes will be -

4.6.4.1 kept of all Board meetings and meetings of sub-committees of the Board and must, in addition to the information required in terms of

section 73(7) of the Companies Act, at least include information relating to -

- 4.6.4.1.1 all appointments of Prescribed Officers;
- 4.6.4.1.2 the names of the members of the Board present at each meeting;
- 4.6.4.1.3 all decisions taken by the Board or any sub-committee of the Board as the case may be;
- 4.6.4.1.4 all orders, by-laws and regulations, made by the Board or sub-committee, as applicable; and
- 4.6.4.1.5 all affairs and proceedings of meetings of the Board or sub-committee;
- 4.6.4.2 settled by the chairperson of the Board and circulated to all Directors within 30 (thirty) days following the Board meeting;
- 4.6.4.3 submitted to the next Board meeting for approval, with or without modification; and
- 4.6.4.4 signed by the chairperson of that meeting confirming the approval of the meeting.

5. Remuneration of Directors

- 5.1 The Directors shall receive no remuneration for their service as Directors as contemplated in section 66(8) of the Companies Act, provided that this article shall not be interpreted as precluding the remuneration of any Director who is employed by the Company in terms of a contract of employment or any similar agreement.
- 5.2 Subject to the Companies Act and article 3.2.2, any Director who -
 - 5.2.1 serves on any executive or other committee; or
 - 5.2.2 devotes special attention to the Objects of the Company; or

5.2.3 otherwise performs or binds himself or herself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such reasonable remuneration or allowance as the Directors may from time to time determine.

5.3 Any remuneration or allowance payable in terms of clause 5.2 shall be commensurate with the services actually rendered and shall not be excessive, having regard to what is generally considered reasonable for similar services.

5.4 Notwithstanding anything contained in clause 5.2, no remuneration shall directly or indirectly benefit any person in a manner inconsistent with the Objects of the Company.

6. Powers and duties of Directors

6.1 The Board, at the first meeting of the Board held after the end of each financial year, shall review and approve, with or without amendment, the budget for the current fiscal year of the Company.

6.2 All bills, notes and cheques drawn on the Company shall be signed by 2 (two) persons duly authorised by the Board.

6.3 The Board shall ensure that the Company does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.

7. Committees of the Board

7.1 Authority of the Board to appoint committees of Directors and to delegate to any such committee any of the authority of the Board

7.1.1 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Companies Act, and to include in any such

committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act is amended to the extent set out in article 7.1.2.

7.1.2 Any delegation by the Board of its authority to a committee may be wholly or partially withdrawn by the Board at any time.

7.2 **Authority of a committee appointed by the Board**

7.2.1 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c) of the Companies Act is amended to the extent set out in article 7.2.2.

7.2.2 A committee appointed by the Board -

7.2.2.1 shall conform to any regulations that may from time to time be imposed on it by the Directors;

7.2.2.2 shall be governed by the provisions of this MOI for regulating the meetings and proceedings of Directors so far as same is applicable thereto and not superseded by any regulations made by the Directors under article 7.2.2.1;

7.2.2.3 may with the prior approval in each instance of the Board, consult with or receive advice from any person, at the expense of the Company;

7.2.2.4 shall have the full authority of the Board in respect of a matter referred to it, save that in the exercise of the authority delegated to it, and in carrying out its duties, the committee shall comply with any mandates or instructions that may from time to time be given by the Board;

7.2.2.5 may make recommendations to the Board on any matter within its remit, provided that the final decision on such matters shall be taken by the Board; and

7.2.2.6 may include persons who are not Directors and such non-Director members may not vote on any matter to be decided by the committee.

8. Office bearers

8.1 Save as may be required in terms of any legislation or regulations pertaining to the Company other than the Companies Act and/or the Regulations, the Board may, but is not obliged to appoint the following office bearers from time -

8.1.1 a company secretary; and

8.1.2 a treasurer.

8.2 The Directors may from time to time confer upon such persons such of the powers and authority vested in them as they may think fit, for such time, for such purposes, upon such terms and conditions and with such restrictions as they may think fit and the Directors may from time to time revoke or vary all or any of such powers and authorities.

Part VI - Financial matters

9. Accounting records

9.1 Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.

9.2 The Company shall comply with such reporting requirements as may be prescribed by the Commissioner and will provide annual returns to the Commissioner.

10. Annual Financial Statements

10.1 The annual financial statements of the Company are not required in terms of the Companies Act or this MOI to be audited, and with respect to any financial year of the Company -

10.1.1 will be audited if the Company is required to have its annual financial statements audited for that financial year in terms of sections 30(2) and (7), read with Regulation 28; or

10.1.2 will be audited voluntarily if the Board so determines, in which case the appointment of any auditor will be on such terms and subject to such

conditions as the Board in its discretion may from time to time determine; or

10.1.3 if not audited as aforesaid, must be independently reviewed in a manner that satisfies the provisions of Regulation 29.

10.2 The annual financial statements must -

10.2.1 include an auditor's report, if the statements are audited;

10.2.2 include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company, including:

10.2.2.1 any material matter relating to the Company's state of affairs; and

10.2.2.2 any other prescribed information in terms of any legislation or regulations pertaining to the Company from time to time;

10.2.3 be approved by the Board and signed by an authorised Director; and

10.2.4 be submitted to any relevant authority as may be prescribed in terms of any legislation or regulations pertaining to the Company from time to time.

11. Donations

11.1 The Directors shall, in respect of every donation received, furnish to the donor in each case a receipt of which the following particulars are given -

11.1.1 the reference number of the Company issued by the Commissioner for the purposes of section 18A of the Income Tax Act;

11.1.2 the date of receipt of the donation;

11.1.3 the name of the Company, together with an address to which enquiries may be directed in connection therewith;

11.1.4 the name and address of the donor;

11.1.5 the amount or nature of the donation if not in cash; and

11.1.6 a certificate to the effect that the receipt is issued for purposes of section 18A of the Income Tax Act, and that the donation has been or will be used exclusively for the main object of the Company.

11.2 The Company shall not accept any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act and the donor may not impose conditions which could enable such donor, or any connected person (as defined in the Income Tax Act) in relation to such donor, to derive some direct or indirect benefit from the application of such donation.

11.3 The Company may only make donations to other entities or associations of persons, whether corporate or unincorporated, having a main object similar to the Company's main Objects and where the Company has satisfied the Commissioner that it has put in place reasonable measures to ensure that such funds are utilised for the purpose for which they were provided.

12. **Application of Donations**

The Company shall from time to time and as often as they may think desirable, award, lend or otherwise disburse so much of the donations received by the Company as the Directors may in their discretion decide, solely to achieve all or any of the Objects of the Company.

13. **Indemnity**

13.1 The authority of the Company to advance expenses to a Director, or to indemnify a Director, and to purchase insurance to protect the Company, or a Director, shall be as contemplated in the Companies Act, subject to article 3.2.1.21.

13.2 Article 13.1, read with section 78 of the Companies Act, shall apply *mutatis mutandis* to any secretary of the Company, Prescribed Officers, and employees of the Company as if such persons were Directors for the purposes of section 78, to the extent permitted in terms of the Companies Act.

14. **Winding-up**

Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act, as follows -

- 14.1 no past or present member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied;
- 14.2 the entire net value of the Company must be distributed to 1 (one) or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts -
 - 14.2.1 which are PBOs approved in terms of section 30 of the Income Tax Act or any institution board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principle object the carrying on of any public benefit activity;
 - 14.2.2 having objects similar to its stated Objects; and
 - 14.2.3 which is required to use those funds solely for the purposes of carrying on 1 (one) or more public benefit activities.

Part VII - General

15. Delivery and publication of notices and certain documents

- 15.1 All notices and documents required to be published as contemplated in the Companies Act or this MOI shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11), read with Regulation 7 and Table CR3, to each person who is required to receive notice in terms of the Companies Act or this MOI to any of his/her/its addresses notified to the Company in writing from time to time.
- 15.2 If a Party has not notified an address to the Company, he/she/it shall be deemed (for all purposes, including for the purposes set out in article 15.1 and article 16) to have nominated the Company's registered address, from time to time.
- 15.3 Where a notice is sent by post, the post office shall be the agent for the relevant addressee and that addressee shall, from the time and date of delivery of the notice to the post office, bear all risks associated with that notice including of non-delivery or late delivery of the notice.
- 15.4 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

16. *Domicilium citandi et executandi*

- 16.1 Subject to the provisions of the Companies Act and the Regulations, the Parties have chosen as their *domicilia citandi et executandi* for all purposes under this MOI, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the business address, residential address, postal address and available e-mail address of that person as notified to the Company in writing from time to time.
- 16.2 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a person to whom such notice was addressed or the Company, as the case may be, shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*, subject to the provisions of the Companies Act.

17. **Arbitration**

- 17.1 If any dispute arises between any of the Parties in relation to any matter pertaining to, or arising out of this MOI, or arising out of the termination thereof, then such dispute shall, at the instance of any of the Parties, be referred to arbitration by a single arbitrator, in accordance with the provisions of this article 17.
- 17.2 The arbitration shall be held -
- 17.2.1 at Johannesburg;
- 17.2.2 subject to the provisions of this article 17, in accordance with the Arbitration Foundation of Southern Africa ("**AFSA**") rules relating to expedited arbitrations ("**Rules**"); and
- 17.2.3 as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) Business Days after it is demanded by any 1 (one) of the Directors and/or the Company. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 17.3 The arbitrator shall be agreed upon between the Parties to the dispute, provided that should such Parties fail to agree on an arbitrator within 3 (three) Business

Days after the dispute is referred to arbitration in terms of article 17.1, the arbitrator shall, at the written request of any of the Parties, be appointed by the President for the time being of AFSA or its successor. If that person fails or refuses to make the nomination, any of the Parties may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 17.4 The arbitrator shall determine which of the Parties shall pay the costs of and incidental to the arbitration or, if more than 1 (one) is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.
- 17.5 Subject to each of the Parties' rights of appeal to a tribunal of arbitrators in accordance with the Rules, the Parties irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect, and shall be capable of being made an order of the High Court of South Africa.
- 17.6 The provisions of this article 17 -
- 17.6.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and none of the Parties shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
- 17.6.2 are severable from the rest of this MOI and shall remain in effect despite the termination of or invalidity for any reason of this MOI; and
- 17.6.3 shall not preclude any of the Parties from obtaining interim relief on an urgent basis from the High Court of South Africa pending the decision of the arbitrator.
- 17.7 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 17.8 The arbitrator shall be obliged to give his award in writing fully supported by reasons, unless otherwise mutually agreed to by the Parties in writing.
- 17.9 The arbitrator shall have the power to give default judgment if any of the Parties to the dispute fails to make submissions on due date and/or fails to appear at the arbitration.

18. Breach and specific performance

18.1 Subject to article 18.2, if any Party ("**Defaulting Party**") breaches any material provision or term of this MOI, and fails to remedy such breach within 10 (ten) days of receipt of a written notice requiring it to do so, such breach shall not constitute grounds for winding up the Company, and the Board and/or the Company shall be entitled at its option without prejudice to any other specific remedy or right that it may have under this MOI -

18.1.1 to uphold this MOI against the Defaulting Party and sue for specific performance of the Defaulting Party's obligations to it under this MOI, with or without a claim for damages; or

18.1.2 to uphold this MOI against the Defaulting Party and sue for damages,

it being recorded that the remedy of cancellation shall not be available to any Party.

18.2 It is acknowledged that it may be difficult or even impossible to measure in money, the damages that will arise from the failure of any Party to perform any of its obligations under this MOI. Bearing in mind that cancellation is not a remedy available under this MOI, it is recorded that it shall be competent for any Party to bring an action for specific performance of the provisions of this MOI and the Parties waive their rights to claim or raise as a defence, that an alternative adequate remedy exists at law.

19. Confidentiality

19.1 The Parties agree -

19.1.1 that any information obtained by any Party in terms, or arising from the implementation, of this MOI shall be treated as confidential by them and shall not be used, divulged or permitted to be divulged to any person not being a Party without the prior written consent of the Board and the Company;

19.1.2 to -

19.1.2.1 keep confidential all information (written, including information contained in electronic format or oral) concerning the business and

affairs of the disclosing Party which it has obtained or received whether pursuant to this MOI or otherwise ("**the Information**");

19.1.2.2 not without the disclosing Party's written consent disclose the Information in whole or in part to any other person save those of the receiving party's employees and/or affiliates involved in the implementation, of this MOI and who have a need to know the same; and

19.1.2.3 use this Information solely in connection with this MOI and not for its own or the benefit of any third party,

save that -

19.1.2.4 each of the Parties shall be entitled to disclose such Information to such of its employees (which shall include any of its Directors) and/or contractors who need to know for the purposes of this MOI. Before revealing such Information to any such employees and/or contractors, it undertakes to procure that the employees and/or contractors are aware of the confidential nature of the Information being made available to them;

19.1.2.5 any Information which is required to be furnished by law or by existing contract may be so furnished; and

19.1.2.6 none of the Parties shall be precluded from using or divulging such Information in order to pursue any legal remedy available to it.

19.2 Each of the Parties undertakes to the other to make all relevant employees, affiliates and agents aware of the confidentiality of the Information and the provisions of this article 19 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, affiliates and agents with the provisions of this article 19.

19.3 Upon the expiration of this MOI or a person ceasing to be a Party for any reason whatsoever, each Party shall promptly return the Information of the other, together with all copies, notes and reproductions in connection with such Information to the disclosing Party.

19.4 Furthermore, the Parties shall ensure that the utmost confidentiality is maintained in respect of any matter that may affect the Company negatively or any of the investments or activities of the Company.

19.5 The Parties acknowledge and agree that the provisions of this article 19 shall survive the termination of this MOI.

20. Severability

Any provision in this MOI which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this MOI shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this MOI, without invalidating the remaining provisions of this MOI or affecting the validity or enforceability of such provision in any other jurisdiction.

21. Variation, cancellation and waiver

No contract varying, adding to, deleting from or cancelling this MOI, and no waiver of any right under this MOI, shall be effective unless reduced to writing and signed by or on behalf of the Parties and the provisions of the Companies Act in respect of any such amendment to the MOI have been complied with.

22. Indulgences

No indulgence granted by a Party shall constitute a waiver of any of that Party's rights under this MOI; accordingly, that Party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

23. Cession

Save as expressly provided to the contrary in this MOI, no Party may cede its rights or delegate its obligations under this MOI without the prior written consent of the other Parties.

24. Applicable law

This MOI shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

25. Jurisdiction of South African courts

The Parties consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with this MOI.