



MAHONS ATTORNEYS

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

MEMORANDUM OF INCORPORATION

of

THE TEDDY BEAR CLINIC FOR ABUSED CHILDREN NPC

a Non-Profit Company

Registration Number: 2003/000306/08

Registration Date: 10 December 2003

("the Company")

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1 INTERPRETATION

In this Memorandum, unless the context clearly indicates otherwise:

- 1.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.3 clause headings are for convenience only and are not to be used in its interpretation;
- 1.4 an expression which denotes any gender includes the other genders; a natural person includes a juristic person and *vice versa*; and the singular includes the plural and *vice versa*.
- 1.5 the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

“the Act”	means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations
“Auditor”	means the Auditors of the Company from time to time
“the Board”	means the Board of Directors of the Company from time to time
“Business Day”	means any day, other than a Saturday, Sunday or official public holiday in the Republic of South Africa
“the Commission”	means the Company and Intellectual Property Commission established by section 185 of the Act
“the Commissioner”	means the Commissioner of the South African Revenue Services
“the Company	means the rules published by the Board as

Rules"	contemplated in clause 9 of this Memorandum
"Director"	means a Member of the Board of the Company, as contemplated in section 66 of the Act, or an alternate Director of the Company, and includes any person occupying the position of a Director by whatever name designated
"the Income Tax Act"	means Act 58 of 1962 as amended or substituted from time to time
"the Member/s"	means a person who holds a Membership in, and specified rights in respect of the Company, as contemplated in schedule 1 of the Act
"Memorandum"	means the Memorandum of Incorporation of the Company in terms of the Act
"Non-Profit Company"	means any Non-Profit Company incorporated in terms of the Act
"Public Benefit Objective"	means a public benefit objective as contemplated in section 30(1) of the Income Tax Act
"the Record Date"	means the date set by the Board in order to determine which Members are entitled to - <ul style="list-style-type: none"> (a) receive notice of Members' meetings; and (b) decide any matter by written consent or electronic communication as contemplated in section 60 of the Act.
"the Republic"	means the Republic of South Africa
"Signature Date"	means the last date of signature of this Memorandum

- 1.6 if the due date for performance of any obligation in terms of this Memorandum is a day which is not a Business Day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding Business Day;

- 1.7 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum;
- 1.8 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 1.9 any reference to:
- 1.9.1 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "Business Day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.9.2 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.9.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 1.10 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.11 unless otherwise provided in this Memorandum or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.

- 1.12 where a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.13 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.14 any reference herein to "this Memorandum" shall be construed as a reference to this Memorandum as amended from time to time.
- 1.15 whenever any person is required to act "as an expert and not as an arbitrator" in terms of this Memorandum, then:
- 1.15.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.15.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.15.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.15.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.16 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

2 **INCORPORATION**

- 2.1 This Memorandum was adopted by the Members of the Company, in accordance with section 13(1) of the Act.
- 2.2 The Company is incorporated in accordance with, and governed by -

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

3 THE COMPANY AND ITS OBJECTS

- 3.1 The Company is a pre-existing no-profit company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum replaces and supersedes any Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof..
- 3.2 The objects of the Company shall be -
 - 3.2.1 to carry out medical assessments of, administer tests to and provide treatment for abused children;
 - 3.2.2 to carry out psychological assessments of abused children and appear in court to testify to the findings of the assessments;
 - 3.2.3 to provide therapy to victims and/or survivors of abuse;
 - 3.2.4 to provide court preparation for children and their caregivers as well as support them on an ongoing basis throughout criminal court proceedings;
 - 3.2.5 to embrace the concepts of restorative and youth justice by running a diversion programme for youth sex offenders and training other organisations in its implementation;
 - 3.2.6 to gather statistics relevant to child sexual abuse in the Republic and publish these;
 - 3.2.7 to provide ongoing training and skills development in the prevention of child abuse in general, with particular emphasis on child sexual abuse;
 - 3.2.8 to actively seek and build the capacity of Community Based Organisations rendering services by using the high level of expertise and

experience gained by the clinic in its field of specialisation;

- 3.2.9 to provide specialist consultancy in the field of child sexual abuse;
- 3.2.10 to network with organisations and individuals who have expertise in the prevention of child abuse; co-operate with central, provincial and local government authorities and with other national and international organisations and institutions, in all matters relating to child abuse and neglect;
- 3.2.11 to formulate policies, and promote and support legislative and other measures designed to promote the effective prevention of child abuse;
- 3.2.12 to undertake lobbying and advocacy activities to ensure that services relating to the care of abused children are of a high quality and are accessible to all in a consistent manner; and
- 3.2.13 to take such other actions and perform such other acts as may contribute towards the attainment of the objectives of the Company.

4 **POWERS**

- 4.1 The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 4.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Act.

5 **SPECIAL CONDITIONS**

This Memorandum does not contain any special conditions applicable to the Company as contemplated in section 15(2)(b) or (c) of the Act.

6 **INCOME AND PROPERTY OF THE COMPANY**

- 6.1 The Company shall apply all its assets and income, however derived, to advance its stated objects as set out in this Memorandum, and no portion thereof must be paid or transferred, *in specie*, directly or indirectly by way of dividend, bonus or otherwise whatsoever to any Member of the Company.
- 6.2 Having regard to the objects of the Company, this paragraph does not preclude –

- 6.2.1 the right to acquire and hold securities issued by a profit Company; or
- 6.2.2 directly or directly alone or with any other person to carry on any business, or undertaking consistent with or ancillary to its stated objects; or
- 6.2.3 the payment or transfer of property in good faith; or
- 6.2.4 reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to the Company; or
- 6.2.5 reasonable remuneration of any person or persons in cash for services rendered in its formation or in the development of the Company's activities; or
- 6.2.6 paying gratuities and pensions and establish pension schemes, in respect of its officers and employees.

7 **VOLUNTARY WINDING-UP**

- 7.1 The Company may be voluntarily wound-up, as contemplated in section 80 of the Act, by way of a special resolution of its Members or creditors.
- 7.2 Upon dissolution of the Company, its net assets must be distributed in the manner set out below determined in accordance with item 1(4)(b) of schedule 1 to the Act in that –
 - 7.2.1 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; and
 - 7.2.2 the entire net value of the Company must be distributed to one or more Non-Profit companies, registered external Non-Profit companies carrying on activities within the Republic, voluntary associations or Non-Profit trusts having objectives similar to the Company's objectives as determined by the Members or by a court.
 - 7.2.3 In the event that the net assets of the Company cannot be distributed as set out in clause 7.2.2 above, the distribution of assets will take place as decided by –

7.2.3.1 the Company's Members or its Directors, at or immediately before the time of its dissolution; or

7.2.3.2 a court if the Members or Directors fail to make such a determination.

8 **AMENDMENT OF THE MEMORANDUM**

8.1 Where such amendment is done by way of special resolution –

8.1.1 such amendment must be proposed by -

8.1.1.1 the Board of the Company; or

8.1.1.2 Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.

8.1.2 such amendment must be adopted at a Members' meeting by voting by way of hand or any other method as contemplated in this Memorandum; and

8.1.3 the Company must deliver a notice to all Members, as of the record date of the meeting, in the manner prescribed by the Act, not less than 21 days before the meeting is to begin.

8.2 The Company must publish a notice of any alteration of this Memorandum made in terms of section 17(1) of the Act by delivering a copy of those amendments to each Director by ordinary mail.

9 **COMPANY RULES**

9.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum by:

9.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) of the Act by delivering a copy of such Rules or amendments to each Shareholder by ordinary mail; and

9.1.2 filing a copy of those Rules with the Commission.

9.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4) of the Act.

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

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

9.3.2 Filing a notice of the alteration.

10 COMPANY RECORDS

10.1 The financial year end of the Company will be 31 December each year.

10.2 The Company must have a separate banking account from which its financial transactions will be conducted and all withdrawals from which will be on the signatures of at least two authorised persons.

10.3 Deeds and other instruments of conveyance, instruments to satisfy or release a *lien*, mortgages and deeds of trust or other security instruments, upon due authorisation of the Directors, will be executed on behalf of the Company by the chairman or any Director duly appointed for such purpose by the Board of Directors and countersigned by the secretary or any Director duly appointed for such purpose.

10.4 The Company must cause Company and accounting records to be created and maintained at the registered office of the Company in the prescribed form as contemplated in section 24, 25 and 28 of the Act.

10.5 Every Member of the Company has the rights to access information by direct request made to the Company in the prescribed manner either in person, or through an attorney or other personal representative designated in writing or in accordance with the Promotion of Access to Information Act 2 of 2000.

10.6 The Board must from time to time in accordance with the Act, cause to be prepared and laid before the Company in a Members' meeting, annual financial statements as required by the Act.

10.7 Notwithstanding clause 10.5 above, a copy of the financial statements which is to be laid before the Company in a Members' meeting, must be sent to every Member of the Company, of which the Member's address is known, by prepaid

post, or by email, not less than 21 days before notice of the date of the meeting is sent to every Member.

- 10.8 The Company elects in terms of section 34(2), to comply voluntarily with particular provisions of Chapter 3 of the Act. This is done only to the extent that this Memorandum requires Auditors to be appointed in terms of section 90 of the Act. Sections 90, 91 and 93 of the Act shall be applicable. None of the other provisions of Chapter 3 will be applicable. The Auditors of the Company will be appointed by the Directors from time to time.
- 10.9 The Board of the Company must ensure that provisions of the income Tax are complied with, which specifically includes the provisions of section 30 of that Income Tax Act.

11 MEMBERS OF THE COMPANY

- 11.1 The Company is a Non-Profit Company with Members.
- 11.2 Members of the Company shall be natural persons .
- 11.3 The Members of the Company –
- 11.3.1 must be approved by the majority of the Board, who may in their sole and absolute discretion refuse Membership, without assigning any reasons therefor;
 - 11.3.2 must pay the prescribed Membership fee and offer voluntary services and/or donate funds to the Company;
 - 11.3.3 are –
 - 11.3.3.1 the incorporators of this Memorandum; and
 - 11.3.3.2 other persons who applied in writing for Membership under the obligation to be bound by the terms of this Memorandum of which the written application must include a prominent statement that it will support the objectives of the Company Membership in the Company is not transferable.
- 11.4 The Membership in the Company will terminate –

- 11.4.1 upon the expiration of the period of at least 1 (one) month's notice in writing by the Member to the Company of his intention to terminate his Membership;
- 11.4.2 if, at any time, notwithstanding anything contained in this Memorandum, the Company, by ordinary resolution, removed a Member;
- 11.4.3 where the Board terminated the Membership by written notice for any of the following reasons –
 - 11.4.3.1 the Member fails to attend at least 2 (Two) consecutive Members' meetings without prior written pardon by the Member, for reasons acceptable to the Board;
 - 11.4.3.2 wilful violations of this Memorandum or any other reasonable rules adopted by the Company for its operations;
 - 11.4.3.3 wilful conduct prejudicial to the interests of the Company;
 - 11.4.3.4 a failure to meet and maintain the initial qualifications for Membership in the Company;
 - 11.4.3.5 the Member is no longer committed to furthering the objects of the Company; or
 - 11.4.3.6 if such Member's estate is surrendered or sequestrated, whether voluntarily or compulsorily.
- 11.5 The Membership in the Company will terminate automatically –
 - 11.5.1.1 on the death of a Member;
 - 11.5.1.2 where a *curator bonis* is appointed to conduct the affairs of a Member; or
 - 11.5.1.3 if such Member commits any act of insolvency or where a Member is deemed unable to pay its debts in terms of the Act or the Close Corporations Act, whichever is applicable.
- 11.6 The Company must maintain at its registered office a register of Members of the Company as provided in section 23 of the Act.

12 PROXIES

- 12.1 Any Member may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Member, as a proxy to:
- 12.1.1 participate in, and speak and vote at, a Members' meeting on behalf of that Member; or
 - 12.1.2 give or withhold written consent on behalf of that Member to a decision contemplated in section 60 of the Act.
- 12.2 A proxy appointment:
- 12.2.1 must be in writing, dated and signed by the Member; and
 - 12.2.2 remains valid for:
 - 12.2.2.1 1 (One) year after the date on which it was signed; or
 - 12.2.2.2 any longer or shorter period expressly set out in the appointment,
- unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.
- 12.3 The holder of a power of attorney or other written authority from a Member may, if so authorised thereby, represent such Member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Member at a Members' meeting.
- 12.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular:
- 12.4.1 a Member has the right to appoint 2 (Two) or more persons concurrently as proxies as set out in section 58(3)(a) of the Act;
 - 12.4.2 a Member's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b) of the Act;
 - 12.4.3 a Member or his proxy must deliver to the Company a copy of the

instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Member's rights ; and

12.4.4 unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act,

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

12.6 If, at any time, the Company's Board fails to determine a record date, as contemplated in section 59 of the Act, the record date for the relevant matter is determined in accordance with section 59(3).

13 MEMBERS' MEETINGS

13.1 In addition to those instances where Members' meetings are specifically required by the Act, the Company is required to convene Member's meetings -

13.1.1 annually, provided that no more than 15 (fifteen) months must elapse between the date of one annual general meeting and that of the next and an annual general meeting must be held within 9 (nine) months after the expiration of the financial year of the Company; and

13.1.2 whenever not less than 4 (Four) of the Members demand a Members' meeting of which such meetings may be held at any time.

13.2 Annual general meetings and other Members' meetings will be held at such a time and place as the Board appoints, irrespective of whether the location is within the Republic or elsewhere.

13.3 The minimum number of days for the Company to deliver notice in writing of a Members' meeting is in respect of –

13.3.1 the annual general meeting, fifteen (15) days;

13.3.2 a meeting called for the passing of a Special Resolution, fifteen (15) days; and

13.3.3 any other Members' meeting, ten (10) days,

of which the notice must comply with section 62(3) of the Act.

13.4 The Company may call a Members' meeting with less notice than required by this Memorandum, but such a meeting may proceed only if 50% (Fifty percent) of the people who is entitled to exercise voting rights in respect of any item on the meeting agenda –

13.4.1 is present at the meeting; and

13.4.2 votes to waive the required minimum notice of the meeting.

13.5 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act, is not limited or restricted by this Memorandum.

13.6 No Members' meeting may commence, nor may any matter be considered unless a quorum of Members is present. Save as otherwise provided herein, 4 (four) Members personally present will be a quorum.

13.7 If, within thirty (30) minutes after the appointed time for a meeting to begin has elapsed and sufficient Members to establish quorum are not present –

13.7.1 for that meeting to begin, the meeting is postponed without motion, vote or further notice, for 1 (one) week; or

13.7.2 for consideration of a particular matter if there is –

13.7.2.1 other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion; or

13.7.2.2 other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote; and

13.7.3 if at an adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the Members present will be quorum.

13.8 Where quorum is established for a meeting to begin or a matter to be considered, the meeting may continue, or the matter may be considered as long as 50% of the voting Member's attending the meeting remain present.

- 13.9 The maximum period allowable for an adjournment of a Members' meeting may not exceed the earlier of –
- 13.9.1 the date that is 120 (one hundred and twenty) Business Days after the record date determined in accordance with this Memorandum; or
 - 13.9.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 13.10 No business will be transacted at the resumption of any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- 13.11 The chairman or, failing him, the deputy-chairman of the Directors will be the chairman of each general meeting. If no chairman or deputy-chairman is present and willing to act, the Members present will elect one of the Directors or, if no Director is present and willing to act, a Member, to be chairman of that general meeting.
- 13.12 The chairman of a general meeting will, if obliged to do so in terms of the Act, and may, in his discretion in any other circumstance, adjourn that general meeting from time to time.
- 13.13 In the case of an equality of votes, the chairmen of the meeting shall be entitled to a second or casting vote.

14 **MEMBERS RESOLUTION**

- 14.1 For an ordinary resolution to be adopted at the Members' meeting, it must be supported by more than 50% of the Members who voted on the resolution.
- 14.2 For a special resolution to be adopted at the Members' meeting, it must be supported by at least 75% of the Members who voted on the resolution, of which, such special resolution will be required only relating to matters as contemplated in section 65(11) of the Act.
- 14.3 The annual general meeting will deal with and dispose of all matters prescribed by the Act, which will include the consideration of financial statements, the election of Directors and the appointment of an Auditor and may deal with any

other business laid before it. All business laid before any other Members' meeting will be considered special business.

14.4 At any general meeting a resolution put to vote will be decided on a show of hands if no poll is demanded on or before the declaration of the result of a show of hands. A poll may only be demanded by –

14.4.1 the chairman of the meeting; or

14.4.2 a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the general meeting.

14.5 On a show of hands at a general meeting a declaration by the chairman as to the result of the voting on any particular resolution and an entry to that effect in the minutes will be conclusive proof of that result, without proof of the number or proportions of votes recorded in favour of, against and as abstaining from such resolution.

14.6 If a poll is demanded at a general meeting –

14.6.1 on the election of a chairman or on an adjournment, the poll will be taken immediately and in such manner as the general meeting determines, and a poll on any other question will be taken at such time and in such manner as the chairman of the general meeting directs;

14.6.2 the result of the poll will be deemed to be the resolution of the general meeting at which the poll was demanded;

14.6.3 the demand will not preclude the general meeting from considering any question other than that on which the poll has been demanded unless the general meeting decides otherwise;

14.6.4 the demand may be withdrawn at any time.

14.7 No objection will be taken to the admission or rejection of any vote except at the general meeting at which the vote in dispute is cast, or, if it is adjourned, the resumption thereof. The chairman of that general meeting or resumed general meeting will determine any issue raised by such objection and his determination will be final and binding.

- 14.8 Subject to the Act and this Memorandum, the chairman of any general meeting will determine the procedure to be followed at that meeting.

15 NOTICES OF MEMBERS' MEETINGS

- 15.1 A notice may be given by the Company to any Member, either personally or by sending it by post in a prepaid letter addressed to such Member at his registered address outside the Republic, or at the address, if any, within the Republic supplied by him to the Company for the giving of notices to him.
- 15.2 Any notices given by post will be deemed to have been served at the time when the letter containing same is put into the Post Office and, in proving the giving of notice sent by post, it will be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.
- 15.3 Notice of every Members' meeting will be given in any manner authorised by the Board to the Members as set out in clause 15.4 hereof and to the Auditor for the time being of the Company. No other persons will be entitled to receive notice of Members' meetings.
- 15.4 A notice of a Members' meeting must be in writing, and must include –
- 15.4.1 the date, time and place for the meeting, and the record date for the meeting;
 - 15.4.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a), if applicable;
 - 15.4.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
 - 15.4.4 in the case of an annual general meeting of the Company –
 - 15.4.4.1 the financial statements to be presented or a summarised form thereof; and
 - 15.4.4.2 a reasonably prominent statement that –
 - 15.4.4.2.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend,

participate in and vote at the meeting in the place of the Member, or two or more proxies if the Memorandum so permits;

15.4.4.2.2 a proxy need not also be a Member of the Company; and section 63(1) requires that meeting participants provide satisfactory identification.

16 **DIRECTORS AND OFFICERS**

16.1 The Board of the Company must comprise of at least 2 (Two) Directors and unless otherwise determined in a Members' meeting, the total number of Directors may not exceed 12 (Twelve). The Board of the Company shall, in addition, be entitled to co-opt not more than 2 (Two) persons to the Board of the Company on the ground of such persons' special expertise or skills.

16.2 Only Members of the Company shall be entitled to be appointed to the Board.

17 **VACANCIES AND EX OFFICIO DIRECTORS**

17.1 In addition to the appointed Directors –

17.1.1 unless the Members otherwise determine in a Members' meeting, any casual vacancy may be filled by the Board, but the person so chosen will be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he was appointed was last elected as a Director;

17.1.2 there are no ex officio Directors of the Company.

18 **APPOINTMENT AND REMOVAL OF DIRECTORS**

18.1 Subject to Schedule 1 of the Act and this Memorandum, Directors are appointed -

18.1.1 by the Members of the Company in a Members' meeting;

18.1.2 yearly;

18.1.3 where at least one third of the current Directors must be re-elected;

- 18.1.4 if a vacancy is not filled during a Members' meeting, the meeting will stand adjourned till the same day in the next week at the same time and place. If the vacancy is not filled during the adjourned meeting, the vacating Directors or such of them as have not had their places filled, will be deemed to have been re-elected at the adjourned meeting.
- 18.2 The Company may remove any Director by ordinary resolution once special notice has been given and the Director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Act. This power remains regardless of -
- 18.2.1 anything mentioned in this Memorandum;
- 18.2.2 any agreement between the Company and the Director; or
- 18.2.3 the fact that the Directors prescribed term has not expired; and
- such removal will be without prejudice to any claim the Director may have for damages or breach of any contract of service between him and the Company.
- 18.3 Over and above the provisions of section 69 of the Act, the office of any Director will be vacated if the Director -
- 18.3.1 is declared mentally unfit;
- 18.3.2 resigns his office by notice in writing to the Company;
- 18.3.3 compounds with his creditors;
- 18.3.4 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
- 18.3.5 absents himself from meetings of Directors for 6 (six) consecutive months without the leave of the other Directors, and they resolve that his office will be vacated; or
- 18.3.6 is no longer committed to furthering the objects of the Company.
- 18.4 Any failure by the Company at any time to have the minimum number of Directors as required by the Act or this Memorandum, does not limit or negate the authority of the Board, or invalidate anything done by the Board of the Company.

19 AUTHORITY OF BOARD DIRECTORS

19.1 The authority of the Board to manage and direct business and affairs of the Company, as set out in section 66(1) of the Act, is limited to the extent set out below.

19.1.1 The business of the Company will be managed by the Board, who will pay all expenses incurred in the promotion of the Company and may exercise all such powers of the Company as are not by the statutes or any statutory modification thereof, or by this Memorandum, required to be exercised by the Company in a Members' meeting, subject nevertheless to any of the regulations contained in this Memorandum, to the provisions of the Act and to such regulations not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in a Members' meeting; but no regulation made by the Company in a Members' meeting will invalidate any prior act of the Board which would have been valid if such regulation had not been made. The Members must abide by the decisions of the Directors.

19.1.2 Without prejudice to the general powers conferred by clause 19.1.1 of this Memorandum, it is hereby expressly declared that the Board will have the following powers, that is to say to –

19.1.2.1 purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorised to acquire at a price and generally upon such terms and conditions as they think fit;

19.1.2.2 appoint at their discretion, to remove or suspend any employee, whether temporary or permanent, as they from time to time may think fit, and to determine their power, duties and fix their salaries or emoluments and to require security in such instances and to such amounts as they think fit;

19.1.2.3 execute in the name and on behalf of the Company or in favour of any Director or such person who may incur or be about to incur any personal liability for the benefit of the Company such bonds or mortgages of the property of the Company, present or future, as they think fit;

- 19.1.2.4 engage, due regard being had to the objects of the Company, consultants, technical advisers, engineers, architects, surveyors and town planners and to determine the period of their engagement and determine their powers, duties and fix their rewards;
 - 19.1.2.5 borrow, lend or secure the repayment of money for the purpose of the Company on such terms and in such manner as they may think fit;
 - 19.1.2.6 sign, execute, endorse and complete undertakings, promissory notes and other documents for the accommodation of any other person, persons or other juristic person or trust in such form and upon such terms and conditions as the Directors determine; and
 - 19.1.2.7 to raise funds and to invite and receive contributions.
- 19.1.3 The Directors must ensure that –
- 19.1.3.1 no benefits are allocated by the Company for any purpose other than the objects of the Company;
 - 19.1.3.2 no loans be made to any person other than those who benefit in terms of the objects of the Company. The power to pledge any of the assets of the Company may be exercised only in respect of the obligations of the beneficiary;
 - 19.1.3.3 funds available for investment may be invested only with registered financial institutions and listed securities as defined in the Securities Services Act, 36 of 2004, save and except where shares, other than shares as mentioned above, have been donated and bequeathed to the Company;
 - 19.1.3.4 no buildings owned by the Company may be occupied free of charge by any person and the Company may not acquire assets or property from any donor and/or any of their relatives other than by way of donation or bequest;

19.1.3.5 they are precluded from entering into speculative transactions. All donations made or accepted by the Company are irrevocable and subject to the terms and conditions of this Memorandum.

19.1.4 Where a Director or a related person to the Director, as contemplated in section 2(1)(a) to (c) and 75(1)(b) of the Act, contracts with the Company as vendor or purchaser or by any of any contract or arrangement in which he or his related person has an interest, the procedure as set out in section 75(4) and (5) of the Act must be followed.

19.2 In addition to and without limitation of the powers expressly conferred upon the Directors by the Act or this Memorandum, they may –

19.2.1 exercise or delegate to any one or more persons all or any such powers; and

19.2.2 do or delegate to any one or more persons the doing of all or any such acts (including the right to sub-delegate),

as may be exercised or done by the Company and are not in terms of the Act or by this Memorandum expressly directed or required to be exercised or done by a general meeting, subject, nevertheless, to that management and control not being inconsistent with any resolution passed by general meeting.

20 **BOARD OF DIRECTORS' MEETINGS**

20.1 The Board may meet together for the despatch of business, adjourn or otherwise regulate its meetings, as the Directors think fit. They may determine what notice must be given of their meetings and the means of giving that notice, provided that any such prior determination may be varied to the extent necessitated by the circumstances and reasons for the Directors' meeting in question.

20.2 The authority of the Company's Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act, is not limited or restricted by this Memorandum.

20.3 The right of the Company's Board to requisition a meeting at any time, as set out in section 73(1), may be exercised by any one of the Directors and the secretary on the requisition of a Director, despite the provisions of that section.

20.4 In addition to the provisions of section 73(4) of the Act, prior written notice must be given of each meeting and the agenda for each meeting must be distributed beforehand. In the event that notice is defective in some way, the provisions of section 73(5) of the Act will apply.

20.5 The quorum necessary will be at least 50% (Fifty percent) of the Directors in office. Questions arising at any meeting will be decided by a majority vote by way of a show of hands. In case of an equality of votes the chairman will have a second casting vote.

21 **MINUTES OF BOARD MEETINGS**

21.1 The Directors must cause minutes as contemplated in section 24 of the Act, in books to be provided for the purpose, to be kept –

21.1.1 must be dated and sequentially numbered;

21.1.2 of all appointments of officers made by the Board;

21.1.3 of the names of the Directors present at each Board meeting, and of any committee of Directors; and

21.1.4 of all resolutions and proceedings at all meetings of the Company and the Directors, and of committees of Directors, and every Director present at any Board meeting or committee of Directors must sign his name in a book to be kept for that purpose. The minutes of the meetings must be distributed at least 5 (five) days before the next meeting and will be confirmed as a true record of proceedings at the next meeting of Directors and signed by the chairman.

22 **DIRECTORS' REMUNERATION**

Despite the provisions of section 66(8) and (9) and subject to item 1(3) of Schedule 1 of the Act, a Director must not directly or indirectly receive any remuneration for any services rendered by him to the Company in his capacity as Director provided that nothing herein contained will prevent the payment in good faith of reasonable remuneration to any Director of the Company in return for any services other than those as Director rendered to the Company. If any Director commits a breach of this clause, he must forthwith vacate his appointment and will not be eligible for re-election.

23 CHAIRMAN, DEPUTY-CHAIRMAN AND BOARD COMMITTEES

- 23.1 Subject as aforesaid, the Board of Directors shall appoint, from the Members of the Board, a chairman and a deputy-chairman to preside at Board meetings and determine the period for which they are to hold office, but if such chairman or deputy-chairman is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Directors present must choose someone of their number to be the chairman of the meeting.
- 23.2 Subject to section 72 of the Act, the Directors may delegate any of their powers to a committee or committees consisting of such Member or Members of the Company as they think fit, and any committee so formed must, in the exercise of the powers so delegated, conform to any regulation that may be imposed on them by the Directors and regularly report back to the Directors regarding their activities.
- 23.3 A committee may elect a chairman for the meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Members present may choose one of their number to be the chairman of that meeting.
- 23.4 A committee may meet and adjourn as they think proper. Questions arising at any meeting will be determined by a majority vote of the Members present, and in the case of an equality of votes the chairman will have a second or casting vote.

24 INDEMNIFICATION OF DIRECTORS

- 24.1 The authority of the Board to –
- 24.1.1 advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(3) of the Act;
 - 24.1.2 indemnify a Director in respect of liability, as set out in section 78(5) of the Act;
 - 24.1.3 purchase insurance to protect the Company, or a Director, as set out in section 78(6) of the Act;
- is not limited or restricted by this Memorandum.

ADOPTION

This Memorandum of Incorporation was adopted by the incorporators of the Company in accordance with section 13(1) of the Act as evidenced by the following signatures made by each of them or on their behalf –

Signature of Incorporator	
Name of Incorporator	
Registration/Identity Number	
Date	

Signature of Incorporator	
Name of Incorporator	
Registration/Identity Number	
Date	