

Republic of South Africa
Companies Act No. 71 of 2008 (as amended)

MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY

Name of company: **Cancer Association of South Africa NPC**

Registration No.: 1932/003720/08

This Memorandum of Incorporation was adopted by Special Resolution passed on _____2018, a copy of which was filed with the Companies and Intellectual Property Commission together with the notice of amendment ("**Notice of Amendment**") in substitution for the existing Memorandum of Incorporation of the Company. This Memorandum of Incorporation takes effect (in terms of Section 16(9)(b)(i) of the Companies Act) on the Date of Filing Hereof (as defined in Clause 2.1.19 in this Memorandum of Incorporation).

The Memorandum of Incorporation in the prescribed form as contemplated in Section 13(1)(a)(i) of the Companies Act shall not apply to the Company.

CONTENTS

MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY 1

1. OBJECTIVES AND ADOPTION OF MEMORANDUM OF INCORPORATION 4

2. INTERPRETATION..... 4

3. DEFINITIONS 5

4. INCORPORATION AND NATURE OF THE COMPANY 8

 4.1. Incorporation 8

 4.2. Objectives and powers of the Company 9

 4.3. Company Rules and Amendment of the MOI and Rules 9

 4.4. Categories of Members of the Company 10

5. MEMBERS OF THE COMPANY 10

 5.1. Membership..... 10

 5.2. Ordinary Members 11

 5.3. Life-time Member 12

 5.4. Honorary Member 12

 5.5. Corporate member 13

 5.6. Membership subscriptions 13

 5.7. Termination of membership 14

 5.8. Register of Members 15

6. MEMBERS RIGHTS 15

 6.1. Members' rights 15

 6.2. Members' right to information..... 16

 6.3. Record date for exercise of Member rights 16

 6.4. Proxy representation..... 17

7. MEMBERS MEETINGS 18

 7.1. Requirement to hold meetings 18

 7.2. Members' right to requisition a meeting..... 19

 7.3. Location of Members meetings..... 19

 7.4. Notice of Members meetings..... 20

 7.5. Electronic participation in Members meetings 21

 7.6. Quorum for Members meetings 21

 7.7. Adjournment of Members meetings 22

 7.8. Members resolutions 22

 7.9. Voting 24

7.10.	Conduct of meetings.....	24
7.11.	Chairperson of Members meetings	24
8.	BOARD OF DIRECTORS, COMMITTEES, PRESCRIBED OFFICERS AND COMPANY SECRETARY	25
8.1.	Composition of the Board of Directors	25
8.2.	Nominations process	27
8.3.	Directors' duties.....	28
8.4.	Ineligibility and disqualification of individuals to be Directors or Prescribed Officers 28	
8.5.	Directors' terms of office.....	29
8.6.	Nominations Committee	30
8.7.	Authority of the Board of Directors	32
8.8.	Board Committees	34
8.9.	Board of Directors' meetings	35
8.10.	Minutes and minute books.....	36
8.11.	Indemnification of Directors	37
8.12.	Cessation of office as a Director	37
8.13.	Remuneration and expenses of Directors and Members of Board Committees ..	38
8.14.	Financial assistance for Directors and their related and inter-related parties.....	38
8.15.	Prescribed Officers.....	38
8.16.	Company Secretary	39
9.	AUDITORS.....	39
9.1.	Auditor.....	39
9.2.	Rotation of auditors.....	40
10.	GENERAL PROVISIONS.....	40
10.1.	Protected disclosures	40
10.2.	Financial year-end.....	41
10.3.	Accounting records and annual financial statements	41
10.4.	Winding up or dissolution	41

1. OBJECTIVES AND ADOPTION OF MEMORANDUM OF INCORPORATION

- 1.1. The Company is a non-profit company ('NPC') with Members.
- 1.2. The Company's objective is to substantially reduce the impact of cancer by promoting health in all communities within South Africa.
- 1.3. The income and property of the Company must be applied solely for the promotion of its main objective and no portion thereof shall be paid or transferred directly or indirectly by dividends, bonus payments or otherwise to the Members of the Company provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer, employee or servant of the Company or to any Member thereof in return for any services actually rendered to the Company.
- 1.4. The Company has adopted this unique form of Memorandum of Incorporation ('MOI') and, accordingly, the standard form of MOI for non-profit companies as contained in the Regulations to the Companies Act (No.71 of 2008, as amended) (the 'Act') shall not apply to the Company;
- 1.5. This MOI was adopted by Special Resolution passed on **[INSERT DATE HERE]**, a copy of which was filed herewith, in substitution for the Company's existing Memorandum of Association and Articles of Association in accordance with Section 16(1)(c) of the Act;
- 1.6. This MOI takes effect (in terms of Section 16(9)(b)(i) of the Act) on the Date of Filing hereof.

2. INTERPRETATION

2.1. In this Memorandum of Incorporation:-

- 2.1.1. reference to a section by number refers to the corresponding Section of the Act;
- 2.1.2. words that are defined in the Act bear the same meaning in this MOI as in the Act;
- 2.1.3. an expression which denotes any gender includes the other genders;
- 2.1.4. the singular includes the plural and vice versa;
- 2.1.5. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 2.1.6. all references to "Section(s)" in this MOI refer to the sections of the Act unless the context indicates otherwise and all references to "Clauses" in this MOI refer to clauses of this MOI;

- 2.1.7. where any term is defined within the context of any particular clause of this MOI the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation clause;
- 2.1.8. if the provisions of this MOI are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and this MOI shall be read in all respects subject to the Act;
- 2.1.9. any references in this MOI to "**Date of Filing Hereof**" shall be read as meaning a reference to the date on which the Notice of Amendment substituting the previous Memorandum of Incorporation of the Company with this MOI is Filed; and
- 2.1.10. any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.

3. DEFINITIONS

- 3.1. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear the corresponding the meanings:
- 3.1.1. "**Act**" means the Companies Act, 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Regulations promulgated in terms of the Act and Schedules to the Act as amended from time to time;
- 3.1.2. "**AGM**" means annual general meeting of Members called once every calendar year and every adjournment thereof;
- 3.1.3. "**Audit**" has the meaning of audit as set out in the Auditing Professions Act, No 26 2005;
- 3.1.4. "**Auditor**" has the meaning of external auditors of the Company appointed from time to time and having the same meaning as set out in the Auditing Professions Act, No 26 2005;
- 3.1.5. "**Business day**" has the meaning referred to in Section 5(3) of the Act and includes any day other than Saturday, Sunday or South African Public Holidays as gazetted from time to time and shall be calculated by excluding the first day and including the last day;

- 3.1.6. **“Business unit”** means a specific strategic division or department of the Company as defined by the Board from time to time;
- 3.1.7. **“Board”** means the Board of Directors of the Company as constituted from time to time;
- 3.1.8. **“CEO”** means the Chief Executive Officer of the Company as appointed by the Board, or any person authorised or appointed by the Board to act in the place of the Chief Executive Officer;
- 3.1.9. **“Code of Conduct and Ethics Policy”** means the Code of Conduct and Ethics Policy of the Company approved by the Board from time to time;
- 3.1.10. **“Commission”** means the Companies and Intellectual Property Commission established in accordance with Section 185 of the Act;
- 3.1.11. **“Company”** means the Cancer Association of South Africa NPC, duly incorporated under Registration Number: 1932/003720/08;
- 3.1.12. **“Company Rules”** means any rules made by the Board in respect of the governance of the Company as contemplated in Sections 15(3) to 15(5) of the Act;
- 3.1.13. **“Director”** means a member of the Board as contemplated in Section 66 of the Act, or an alternate director, and includes any individual occupying the position of a director or alternate director, by whatever name designated;
- 3.1.14. **“Executive Director”** means a director involved in the day to day management of the Company;
- 3.1.15. **“ECT”** means Electronic Communications and Transactions Act No 25 of 2002;
- 3.1.16. **“Electronic address”** with regards to Electronic Communication, means any email address furnished to the Company by any Member;
- 3.1.17. **“Electronic Communication”** has the same meaning as set out in the ECT;
- 3.1.18. **“Individual”** means a natural person;
- 3.1.19. **“Financial Statements”** means the Annual Financial Statements of the Company;

- 3.1.20. **“General meeting”** means any ordinary or special meeting of Members (i.e. any meeting other than an AGM);
- 3.1.21. **“Management”** means the CEO and the employees of the Company;
- 3.1.22. **“Meeting”** according to the context, means convening at a prescribed venue, physically meeting with persons present, a teleconference convening via video, electronic or any other communication facility or a combination of the above as permits Members participating in the meeting to communicate with each other simultaneously and instantaneously, provided proper notice has been given or waived;
- 3.1.23. **“Members”** means paid up Members in terms of which individuals or corporates hold membership in and specified rights in respect of the Company as more fully described in this MOI and the Company Rules;
- 3.1.24. **“Membership subscription”** means any membership, application and other fee payable by Members to the Company;
- 3.1.25. **“Members meetings”** according to context, means meetings open to all voting Members of the Company and shall include the AGM, ordinary and special meetings of Members of the Company;
- 3.1.26. **“MOI”** means Memorandum of Incorporation as contemplated in Section 15 of the Act;
- 3.1.27. **“Non-Executive Director”** means an individual elected or appointed as a Director of the Company and not involved in the day-to-day management of the Company and generally independent of Management;
- 3.1.28. **“NPC”** means non-profit company incorporated for public benefit or other object as required in terms of Section 1(1) of Schedule 1 of the Act;
- 3.1.29. **“Ordinary resolution”** means a resolution adopted with the support of more than fifty percent (50%) of the voting rights exercised on the resolution at a Members’ meeting;
- 3.1.30. **“Prescribed Officer”** despite not being a Director of the Company, is an individual who exercises and participates in the general executive control over the management of the whole or a significant portion of the business and activities of the Company, or

participates to a material degree in the exercise of general control over the management of the whole or a significant portion of the business and its activities;

3.1.31. **“Person”** means the natural person and includes a juristic person;

3.1.32. **“Present at a meeting”** means to be present in person, or to be able to participate in the meeting by Electronic Communication, or to be represented by a proxy who is present in person or able to participate in the meeting by Electronic Communication including virtual presence or representation by electronic proxy;

3.1.33. **“Record date”** means the date established under Section 59 of the Act on which the Company determines the identity of its Members for the purposes of the Act;

3.1.34. **“Special resolution”** means a resolution adopted with the support of more than seventy-five percent (75%) of the voting rights exercised on the resolution at the Members’ meeting.

4. INCORPORATION AND NATURE OF THE COMPANY

4.1. Incorporation

4.1.1. The Company is incorporated as a NPC, as defined in the Act.

4.1.2. The Company is incorporated in accordance with and governed inter alia by:-

- 4.1.2.1. the unalterable provisions of the Act applicable to Non-Profit Companies;
- 4.1.2.2. 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 MOI; and
- 4.1.2.3. the provisions of this MOI.

4.1.3. The Company will comply with all applicable legislation and acknowledges the principles contained in leading governance publications and codes and will, where applicable, either apply the principles of such publications and codes or be able to explain its non-compliance to these principles.

4.1.4. The Company subscribes to the principles and standards of the United Nations Compact, the Organisation for Economic Cooperation and Development as well as the International Labour Organisation.

4.1.5. The Company is committed to being a socially responsible corporate citizen and aims to create a sustainable business with regards to its integrated performance and its ethical, economic, social and environmental impacts on its stakeholders.

4.2. **Objectives and powers of the Company**

4.2.1. The objectives of the Company are as set out in paragraph 1 of this MOI and, except to the extent necessarily implied by the stated objectives, the purposes and powers of the Company are not subject to any restriction, limitation or qualification as contemplated in Section 19(1)(b)(ii) of the Act.

4.2.2. The Company is not subject to any provision contemplated in Section 15(2)(b) or (c) of the Act.

4.2.3. The Company has all the legal powers and capacity of a Person, to the extent possible subject to any restriction, limitations or qualifications arising from this MOI.

4.3. **Company Rules and Amendment of the MOI and Rules**

4.3.1. This MOI of the Company may be altered or amended in the manner set out in Section 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in Section 16(1)(c) of the Act.

4.3.2. The Company shall submit a copy of any amendment to the MOI to the Commissioner of the South African Revenue Service in accordance with Section 30B of the Income Tax Act No.58 of 1962.

4.3.3. Except to the extent that this MOI provides otherwise, the authority of the Company's Board of Directors to make rules for the Company, as contemplated in Section 15(3) to (5) of the Act is not limited or restricted in any manner.

4.3.4. The Board must publish any Rules made in terms of Section 15(3) to (5) of the Act by delivering by electronic means, by courier or by registered mail a copy of those rules to each Member.

4.3.5. The Company must publish a notice of any alteration of the MOI or the Company Rules, made in terms of Section 17(1) of the Act, by delivering a copy of those alterations to

each Member by electronic means, by courier or by registered mail. A copy of the amendments must also be accessible via the Company's website.

4.3.6. In terms of Section 15(4) of the Act, a Rule amendment shall take effect on a date that is the later of:-

4.3.6.1. ten (10) business days after the Rule is filed with the Companies and Intellectual Property Commission; or

4.3.6.2. the date, if any, specified in the Rule, and

4.3.6.3. is binding:-

4.3.6.3.1. on an interim basis from the time it takes effect until it is put to a vote at the next general meeting of Members' of the Company; and

4.3.6.3.2. on a permanent basis only if it has been ratified by an Ordinary resolution at the meeting contemplated above.

4.3.7. If a Rule published in terms of the above is not subsequently ratified, the Board may not make a substantially similar rule within the ensuing twelve (12) months, unless it has been approved in advance by an Ordinary resolution at a general meeting.

4.3.8. In respect of the application of optional provisions of the Act, the Company elects, in terms of Section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act as set out in this MOI.

4.4. Categories of Members of the Company

4.4.1. As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members who are all in a single class, being Voting Members, each of whom has an equal vote in any matter to be decided by the Members of the Company.

4.4.2. The terms and conditions of Membership in the Company are set out in this MOI.

5. MEMBERS OF THE COMPANY

5.1. Membership

5.1.1. The Company shall from time to time keep a register of Members at its registered office.

5.1.2.No Member shall be entitled to transfer his Membership to any other Person, or to alienate or exercise any rights vested in or controlled by such Member (as required to be so vested or controlled) without the prior written authorisation of the Board.

5.1.3.Members shall be entitled to enjoy all the privileges and facilities provided by the Company.

5.1.4.Members will be required to adhere to the Company's values, Rules and Code of Conduct and Ethics Policy, as well as key policies as adopted by the Board and amended from time to time.

5.1.5.Membership of the Company shall be separated into the following categories:

- 5.1.5.1. Ordinary Members;
- 5.1.5.2. Life-time Members;
- 5.1.5.3. Honorary Members; and
- 5.1.5.4. Corporate Members.

5.2. **Ordinary Members**

5.2.1.Any natural person shall be eligible to become an Ordinary Member of the Company for one (1) calendar year provided they:

- 5.2.1.1. are nominated by at least two (2) existing Members;
- 5.2.1.2. agree to subscribe to the values, rules and policies of the Company;
- 5.2.1.3. confirm that they have no conflicting interests which detract from the Company's purpose and objectives;
- 5.2.1.4. do not have a criminal record involving dishonesty;
- 5.2.1.5. have made written application in the manner prescribed by the Board from time to time; and
- 5.2.1.6. have paid their annual membership subscription fee as determined by the Board from time to time.

5.2.2.An Ordinary Member shall be eligible to nominate a representative to hold office as a Director of the Company provided such Individual so nominated meets the requirements for Directorship as set out in this MOI and is not ineligible or disqualified from being a Director in terms of Section 69 of the Act.

5.2.3.The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Ordinary Members, including requirements which must

be satisfied by any nominee for appointment as an Ordinary Member. Any such Company Rules adopted by the Board and ratified at a Members' meeting shall be binding on the Company and its Members.

5.3. **Life-time Member**

5.3.1. A natural person shall be eligible to become a Life-time Member of the Company provided they:

5.3.1.1. are nominated by at least two (2) Directors of the Board;

5.3.1.2. agree to subscribe to the values, rules and policies of the Company;

5.3.1.3. confirm that they have no conflicting interests which detract from the Company's purpose and objectives;

5.3.1.4. do not have criminal record involving dishonesty; and

5.3.1.5. have paid their life-time membership subscription fee as determined by the Board from time to time.

5.3.2. A Life-time Member will be eligible to hold office as a Director of the Company.

5.3.3. The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Life-time Members, including requirements which must be satisfied by any nominee for appointment as a Life-time Member. Any such Company Rules adopted by the Board and ratified at a Members' meeting shall be binding on the Company and its Members.

5.4. **Honorary Member**

5.4.1. Honorary Membership is by invitation of the Board only.

5.4.2. The Board may from time to time co-opt Individuals who made a significant and valuable personal contribution to the public benefit objectives as set out in this MOI.

5.4.3. A natural person shall be eligible to become an Honorary Member of the Company provided they:

5.4.3.1. are nominated by at least two (2) Directors of the Board;

5.4.3.2. do not have a criminal record involving dishonesty; and

5.4.3.3. agree to subscribe to the values, rules and policies of the Company.

5.4.4. An Honorary Member will not be eligible to hold office as a Director of the Company.

5.4.5. An Honorary Member will not be required to pay any membership subscription fees.

5.4.6. The Board may from time to time adopt additional Company Rules regarding the nomination and appointment of Honorary Members, including requirements which must be satisfied by any nominee for appointment as an Honorary Member. Any such Company Rules adopted by the Board and ratified at a Members' meeting shall be binding on the Company and its Members.

5.5. **Corporate member**

5.5.1. Corporate Membership is by invitation of the Board only.

5.5.2. Any organisation which supports the Company's public benefit objectives is eligible to become a Corporate Member of the Company for one (1) year provided they:

5.5.2.1. are nominated by at least two (2) Directors of the Board;

5.5.2.2. agree to subscribe to the Company's values, rules and policies;

5.5.2.3. confirm that they have no conflicting interests which detract from the Company's purpose and objectives; and

5.5.2.4. have paid their annual membership subscription fees as determined by the Board from time to time.

5.5.3. A Corporate Member who is a juristic person must submit written confirmation of its duly approved representative to the Board.

5.5.4. Corporate Members will not be eligible to hold office as Director.

5.6. **Membership subscriptions**

5.6.1. Membership subscriptions shall be determined by the Board from time to time.

5.6.2. All subscriptions shall be payable annually in advance and shall become due on the anniversary date of the Member's enrolment.

5.7. Termination of membership

5.7.1. A Member may terminate their Membership by giving thirty (30) days written notice to that effect to the office of the CEO.

5.7.2. Any Member shall *ipso facto* cease to be a Member:

- 5.7.2.1. if their estate should be sequestrated or, being a company or close corporation, it should be liquidated or placed under business rescue. Upon rehabilitation, a fresh application for Membership must be made if the former Member wishes to become a Member again;
- 5.7.2.2. if they neglect or refuse to pay their annual membership subscriptions, or any other monies which may be due from them to the Company after being required, in writing, so to do, which debts shall, however, remain due to and recoverable by the Company;
- 5.7.2.3. if they neglect or refuse to comply with this MOI, the Company Rules and/or any Code of Conduct and Ethics Policy adopted by the Board, after being required, in writing to do so; or
- 5.7.2.4. if they are convicted of any criminal or civil offences involving dishonesty.

5.7.3. Subject to this MOI and the Company Rules, the Board shall have the power to remove the name of any Member from the Register; provided no Member's name shall be removed from the Register except pursuant to a Board resolution which complies with the following prerequisites:

- 5.7.3.1. not less than seventy-five percent (75%) of the total number of Directors shall be present at the Board meeting;
- 5.7.3.2. the resolution must be passed by a majority of at least seventy-five percent (75%) of the Directors present in person at the Board meeting.

5.7.4. Not less than thirty (30) calendar days written notice of the Board meeting and its purposes shall be sent to the Member whose name the Board proposes to remove from the Register and such Member shall be given an opportunity to be heard at the Board meeting; and

5.7.5. The resolution shall only be adopted after the representations (if any) made by the Member referred to in this paragraph have been duly considered.

5.7.6. A Member may on written application to the Company, appeal his termination of membership. Notice of such appeal must be given to the CEO in writing within thirty (30) days of the date on which the decision to terminate membership was given to the Member concerned. The Board must ensure that such appeal is presented for discussion and resolution at the next scheduled Members' meeting. Any decision taken at such Members' meeting in regards to the appeal in question, will be final and not subject to further appeal.

5.8. **Register of Members**

5.8.1. The Company shall maintain a register, in the form of an electronic database or such other form as the Board may determine from time to time, wherein shall be entered the name and contact details (including the Electronic Addresses) of every Member of the Company.

5.8.2. The Company shall regularly update the Register and remove the names of Persons who ceased to be Members in accordance with the provisions of this MOI; provided the Register shall be updated at least once a year.

6. **MEMBERS RIGHTS**

6.1. **Members' rights**

6.1.1. If, at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 57(4) of the Act, the authority of the Members to act without notice or compliance with any other internal formalities, is not, except to the extent that the Company's MOI provides otherwise, limited or restricted by this MOI.

6.1.2. A resolution which could be voted on at a Members' meeting may instead be adopted by written consent of the Members, given in person or by Electronic Communication, provided that:-

6.1.2.1. the resolution was submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution;

6.1.2.2. and the resolution is voted on in writing or by Electronic Communication by such Members within twenty (20) Business Days after the resolution was submitted to them.

6.1.3. A resolution contemplated above will have been adopted if it is supported by Persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special resolution, as the case may be, at a properly constituted Members' meeting; and if adopted, has the same effect as if it had been approved by voting at a meeting.

6.2. **Members' right to information**

6.2.1. In addition to the rights of access to information as set out in Section 26 read with Regulation 24 of the Act, each Member may have access to information in terms of:

- 6.2.1.1. Section 32 of the Constitution of the Republic of South Africa 1996;
- 6.2.1.2. the Promotion of Access to Information Act No. 2 of 2000, as amended; or
- 6.2.1.3. any other public legislation.

6.2.2. Each Member will also have the right to inspect and receive copies of:

- 6.2.2.1. the MOI and any amendments to it;
- 6.2.2.2. the Company Rules and Code of Conduct and Ethics Policy;
- 6.2.2.3. the Company's records on Directors including a list of other directorships each Director may hold;
- 6.2.2.4. the Director's Declaration of Interests;
- 6.2.2.5. reports presented at the AGM;
- 6.2.2.6. the annual financial statements of the Company;
- 6.2.2.7. the Members' register; and
- 6.2.2.8. the notices and minutes of Members' meetings.

6.2.3. A Member requesting access to any record held by the Company should do so in writing in terms of Section 26 of the Act, or any other applicable legislation as may be applicable from time to time.

6.3. **Record date for exercise of Member rights**

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

6.4. Proxy representation

6.4.1. A Member may, at any time by written proxy appointment ("Proxy Instrument") which complies with this MOI and the Act, appoint any Member of the Company, as a proxy to:

6.4.1.1. participate in, and speak and vote at, a Members' Meeting on behalf of the Member; or

6.4.1.2. give or withhold written consent on behalf of the Member to a decision contemplated in Section 60 of the Act, and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by Section 58 of the Act and Clause 6.4 of this MOI.

6.4.2. The Board may determine a standard form of Proxy Instrument and make it available to Members on request.

6.4.3. Subject to the provisions of the Act, a Proxy Instrument may be an instrument created or transmitted by electronic or other means, including electronic mail or facsimile.

6.4.4. A Proxy Instrument which complies with the Act and this MOI shall, if any meeting to which it relates is adjourned or postponed, unless the contrary is stated thereon, be valid at that meeting when it resumes after such adjournment or commences after such postponement, even if it had not been lodged timeously for use at the meeting as originally scheduled (prior to the adjournment or postponement).

6.4.5. A Member may not appoint more than one (1) Person concurrently as proxies and may not appoint more than one (1) proxy to exercise Voting Rights held by the Member.

6.4.6. A proxy may not delegate the proxy's authority to act on behalf of the Member to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Act and this MOI.

6.4.7. A proxy appointment:-

6.4.7.1. must be in writing, dated and signed by the Member; and

6.4.7.2. remains valid for: –

- 6.4.7.2.1. one (1) year after the date on which it was signed; or
- 6.4.7.2.2. any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in Section 58(4) (c) or expires earlier as contemplated in Section 58(8)(d).

6.4.8. A proxy shall, as contemplated in Section 58(7) of the Act, be entitled, in the Proxy's own discretion, to exercise, or abstain from exercising, any voting right of the Member; provided if the Proxy Instrument specifically provides otherwise then the specific provisions of the Proxy Instrument shall prevail.

7. MEMBERS MEETINGS

7.1. Requirement to hold meetings

7.1.1. The Company shall convene an AGM once (1) in every calendar year, but no more than fifteen (15) months after the date of the previous AGM, or within an extended time allowed by the Companies Tribunal, on good cause shown which must, at a minimum, provide for the following business to be transacted:

7.1.1.1. presentation of:

- 7.1.1.1.1. the Annual Report;
- 7.1.1.1.2. the financial statements for the immediately preceding financial year;
- 7.1.1.1.3. an Audit and Risk Committee report; and
- 7.1.1.1.4. the Social and Ethics Committee report.

- 7.1.1.2. confirmation of the appointment of the Board to the extent required by the Act and the MOI;
- 7.1.1.3. the appointment of the Company's auditors;
- 7.1.1.4. the appointment of the Audit and Risk Committee;
- 7.1.1.5. the approval of the remuneration to Directors for their services as Directors;
- 7.1.1.6. any matters raised for discussion by the Non-Executive Directors;
- 7.1.1.7. the appointment of the President of the Company (or similarly named position);
- 7.1.1.8. any matters raised for discussion by Members, with or without advance notice to the Company.

7.1.2. All Members are entitled to attend and vote at Members meetings.

7.1.3. An ordinary or special general meeting may be called either:

- 7.1.3.1. by resolution of the AGM;
- 7.1.3.2. by resolution of the Board; or
- 7.1.3.3. at the request of voting Members holding not less than five percent (5%) of the voting rights provided for in this MOI.

7.1.4. Subject to Section 60 of the Act, the Company must hold a Members meeting –

- 7.1.4.1. at any time that the Board is required by the Act or this MOI to refer a matter to the Members for decision;
- 7.1.4.2. whenever required in terms of Section 70(3) of the Act to fill a vacancy on the Board; and
- 7.1.4.3. when otherwise required -
 - 7.1.4.3.1. in terms of Subsection 61(3) or 61(7); or
 - 7.1.4.3.2. by the Company's MOI.

7.2. **Members' right to requisition a meeting**

7.2.1. The right of Members to requisition a meeting, as set out in Section 61(3) of the Act, may be exercised as provided for in that section. Not less than five percent (5%) of Members with voting rights may requisition the Directors to hold a meeting of Members, provided that requisition is demanded by Members in writing and such demand describes the specific purpose for which the meeting is proposed.

7.3. **Location of Members meetings**

7.3.1. The authority of the Company's Board as set out in Section 61(9) of the Act to determine the location of any Members meeting, and the authority of the Company to hold any such meeting is not restricted in terms of this MOI.

7.4. **Notice of Members meetings**

7.4.1. The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by Section 62 of the Act, is fifteen (15) business days before the meeting is to begin.

7.4.2. A notice of a Members meeting must be in writing and must include:-

- 7.4.2.1. the date, time and place for the meeting and the record date for the meeting;
- 7.4.2.2. the general and / or specific purpose of the meeting (as applicable);
- 7.4.2.3. 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 voting rights that will be required for that resolution to be adopted.

7.4.3. In the case of an Annual General Meeting:-

- 7.4.3.1. a summarised form of the Annual Financial Statements to be presented; and
- 7.4.3.2. directions for obtaining a copy of the complete Annual Financial Statements for the preceding financial year; and
- 7.4.3.3. a reasonably prominent statement that a Member who is entitled to attend and vote at the meeting is entitled to appoint a proxy who must be a Member of the Company with voting rights to attend, participate in and vote at the meeting in place of the Member.

7.4.4. If the Company fails to give the required notice of a Members meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if all the Members who are entitled to exercise voting rights in respect of each item on the agenda of the meeting acknowledge actual receipt of the notice, are present at the meeting, waive notice of the meeting or in the case of a material defect in the manner and form of giving notice, ratify the defective notice.

7.4.5. If a material defect in form or manner of giving notice relates only to one or more particular matters on the agenda for the meeting:-

- 7.4.5.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 7.4.5.2. the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.

7.4.6. An immaterial defect in form and manner of giving notice of a Members meeting, or an accidental or inadvertent failure in the delivery of the notice, to any particular Member to whom it was addressed, does not invalidate any action taken at the meeting;

7.4.7. A Member who is present at the meeting, either in person or by proxy, is regarded to have received or waived notice of the meeting, if at least the minimum notice was given; and has a right:-

7.4.7.1. to allege a material defect in the form of notice for a particular item on the agenda for the meeting; and

7.4.7.2. to participate in the determination whether to waive the requirements for notice, or ratify a defective notice; and

7.4.7.3. except to the extent set out in 7.4.7.1 and 7.4.7.2, is regarded to have waived any right based on an actual or alleged material defect in the notice of the meeting.

7.5. **Electronic participation in Members meetings**

7.5.1. The authority of the Company to conduct meetings 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 MOI.

7.6. **Quorum for Members meetings**

7.6.1. The quorum requirement for a Members' meeting to begin, or for a matter to be considered, shall be twenty (20) Members of the Voting Members, of whom at least ten (10) are personally present, and the remainder may be represented by proxy.

7.6.2. If within thirty (30) minutes from the time appointed for a general meeting, or at any time during the course of a general meeting, a quorum is not present, the general meeting shall stand adjourned.

7.7. Adjournment of Members meetings

7.7.1. A general meeting which has been adjourned as above, shall stand adjourned to a date not earlier than seven (7) days or later than twenty-one (21) days after the date of the said adjourned meeting.

7.7.2. The Company may publish a notice in a newspaper circulating in the province where the head office of the Company is situate stating the date, time and place to which the said meeting has been adjourned.

7.7.3. If at any adjourned meeting a quorum is not present within thirty (30) minutes from the appointed time for such meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the meeting.

7.8. Members resolutions

7.8.1. For an Ordinary resolution to be adopted at a Members meeting, it must be supported by at least fifty percent (50%) of the Members who voted on the resolution, as provided in Section 65(7) of the Act.

7.8.2. For a Special resolution to be adopted at a Members meeting, it must be supported by at least seventy-five percent (75%) of the Members who voted on the resolution.

7.8.3. A Special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in Section 65(11) of the Act; which include:

7.8.3.1. the amendment of the Company MOI to the extent required by Section 16(1)(c) and Section 32(2)(a) of the Act;

7.8.3.2. ratifying a consolidated revision of the Company MOI, as contemplated in Section 18(1)(b) of the Act;

7.8.3.3. ratifying the actions by the Company or Directors in excess of their authority, as contemplated in Section 20(2) of the Act;

7.8.3.4. approving the voluntary winding up of the Company in the circumstances contemplated in Section 81(1) of the Act;

7.8.3.5. approving an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in Section 82(5) of the Act.

7.8.4. The Board may propose any resolution to be considered by Members and may determine whether that resolution will be at a meeting or by vote or by written consent.

7.8.5. Any two (2) Members of the Company may propose a resolution concerning any matter in respect of which they are entitled to exercise voting rights.

7.8.6. When proposing a resolution, it shall be delivered at least sixty (60) Business days before the date of the meeting to the CEO in writing and must indicate that they require that the resolution be submitted to the Members for consideration:

7.8.6.1. at a meeting demanded by Members as provided for in this MOI;

7.8.6.2. at the next Members' meeting;

7.8.6.3. by written vote as provided for in terms of Section 60 of the Act.

7.8.7. A proposed resolution must be:

7.8.7.1. expressed with sufficient clarity; and

7.8.7.2. be accompanied by sufficient information or explanatory material to enable Members who are entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution.

7.8.8. At any time before the start of the meeting at which the resolution will be considered, a Member or Director who believes that the form of the resolution does not satisfy the requirements of the above, may seek leave to apply to the court for an order:

7.8.8.1. restraining the Company from putting the proposed resolution to a vote until the requirements of Section 64(4) as referred to above are satisfied;

7.8.8.2. requiring the Company, or the Members who proposed the resolution, as the case may be, to:-

7.8.8.2.1. take steps to alter the resolution so that it satisfies the requirements of Section 64(4); and

7.8.8.2.2. compensate the applicant for costs of the proceedings, if successful.

7.8.9. Once a resolution has been approved, it may not be challenged or impugned by any Person in any forum on the grounds that inappropriate notice was given.

7.9. **Voting**

7.9.1. At a general meeting, voting will be by show of hands.

7.9.2. Each Person whether present in person or by proxy, will have one (1) vote on the matters on which they are entitled to exercise voting rights.

7.10. **Conduct of meetings**

7.10.1. Before any Person may attend or participate in a Members meeting:

7.10.1.1. that Person must present reasonably satisfactory identification; and

7.10.1.2. the Person presiding at the meeting must be reasonably satisfied that the right of the Person to participate and to vote, either as a Member, or as a proxy for a Member, has been reasonably verified.

7.11. **Chairperson of Members meetings**

7.11.1. The President of the Company (or similarly named position as determined by the Board) shall preside as Chairperson at Members meetings.

7.11.2. The President of the Company shall be nominated and appointed by the Members at the AGM.

7.11.3. Nominations for President of the Company shall be submitted to the Nominations Committee at least forty-five (45) days prior to the AGM to allow sufficient time for the Nominations Committee to perform the necessary reference and background checks in accordance with its agreed procedures.

7.11.4. The President of the Company shall be a Member in good standing with the Company and must have been a Member of the Company for at least three (3) years prior to taking up the role of President.

7.11.5. If there is no President of the Company, or if at any Members meeting the President of the Company is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the Vice-President of the Company (or similarly named position as determined by the Board) shall be the

Chairperson of the Members meeting in question, or if the Vice-President of the Company is not present, then the Chairperson of the Board shall act as Chairperson of the Members meeting in question.

7.11.6. The Vice-President of the Company shall be elected by the Council of Governors.

7.11.7. The Chairperson of the Members meeting does not have a casting vote.

7.12. **Council of governors**

7.12.1. All the members of the Council of Governors, save for the President of the Company, will be appointed by the Board of Directors.

7.12.2. Any natural person will be eligible to become a member of the Council of Governors provided they:

7.12.2.1. are nominated by at least one (1) Director of the Board;

7.12.2.2. a Member in good standing with the Company;

7.12.2.3. do not have a criminal record involving dishonesty;

7.12.2.4. subscribe to the values, rules and policies of the Company; and

7.12.2.5. have been a Member of the Company for a period of more than three (3) years.

7.12.3. The Council Governors will be responsible for ensuring that the Company upholds its public benefit goals and objectives.

8. BOARD OF DIRECTORS, COMMITTEES, PRESCRIBED OFFICERS AND COMPANY SECRETARY

8.1. Composition of the Board of Directors

8.1.1. The Board shall consist of a minimum of seven (7) Directors and a maximum of ten (10) Directors, which shall include:

8.1.1.1. a minimum of three (3) Directors shall be independent Non-Executive Directors; and

8.1.1.2. a maximum of three (3) Directors shall be Executive Directors, including the CEO who shall be appointed by the Board.

- 8.1.2. Only individuals who have the requisite knowledge and skills required for the purpose of achieving the objectives of the Company, including experience in the field of governance will be eligible to serve as Director.
- 8.1.3. All the Directors of the Board, save for the CEO who shall be appointed by the Board, shall be appointed by the Members in terms of this MOI.
- 8.1.4. A Director is considered to be independent if he/she:
 - 8.1.4.1. has not been employed by the Company in an executive capacity for the previous 3 (three) financial years;
 - 8.1.4.2. is not a member of the immediate family of an individual who has in any of the past 3 (three) financial years, been employed by the Company in an executive capacity;
 - 8.1.4.3. is not a professional advisor to the Company other than in a Director capacity;
 - 8.1.4.4. is free from any business or other relationship which could be seen to materially interfere with an individual's capacity to act in an independent manner;
 - 8.1.4.5. is not a significant supplier or client of the Company; and
 - 8.1.4.6. has no significant contractual relationship with the Company.
- 8.1.5. All Directors will be required to become Members of the Company on their appointment.
- 8.1.6. The Board, once constituted, shall appoint the CEO (if not already in office at the time of the adoption of this MOI).
- 8.1.7. The board shall elect from its number a Chairperson.
- 8.1.8. No Alternate Directors may be appointed.
- 8.1.9. Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company. For the avoidance of doubt, for as long as the number of Directors is reduced below the minimum number of Directors stipulated above, the continuing Director(s) may continue to act, but only:
 - 8.1.9.1. to preserve and secure the assets and enterprise of the Company, and to ensure the continuity of its business activities and functions; and/or
 - 8.1.9.2. to cause vacancies to be filled, and the number of Directors to be increased to the required minimum in accordance with the provisions of this MOI; and/or

- 8.1.9.3. to initiate the process of appointing such additional Directors as may be required, which process may include the summoning of a Member meeting for that purpose; provided that if there is no Director able or willing to act, then any Member may initiate such process and convene such a meeting.
- 8.1.10. No election of a Director shall take effect until he/she has delivered to the Company a written consent to serve.
- 8.1.11. Any casual vacancy occurring on the Board may be filled by the Nominations Committee, but the individual so appointed shall cease to hold office at the termination of the first Member meeting to be held after the appointment of such individual as a Director unless his/her appointment is confirmed at a Member meeting.
- 8.1.12. There are no appointed or ex-officio Directors of the Company as contemplated in Section 66(4)(a)(ii) of the Act, and no individual shall have a right to effect the direct appointment or removal of one or more Directors as contemplated in Section 66(4)a)(i) of the Act.
- 8.1.13. In terms of Item 7(1) of Schedule 5 to the Act, any individual holding office as a Director of the Company immediately before the Date of Filing Hereof continues to hold that office as from the Date of Filing Hereof, subject to the provisions of this MOI and the Act.
- 8.1.14. The Board shall appoint one (1) or more persons to act as the authorised representative(s) of the Company at meetings of the shareholders, members or board of directors, as the case may be, of any company or organisation.

8.2. Nominations process

- 8.2.1. The Board shall, no later than sixty (60) days before the existing Directors are to vacate the office, give notice to Members to invite Members to propose to the Board individuals for nomination as Directors.
- 8.2.2. A Member wishing to nominate an individual to the Board shall submit to the Nominations Committee the details of the nominee in such form as may be prescribed by the Board from time to time. The said form shall, as a minimum, contain:
 - 8.2.2.1. the curriculum vitae of the nominee;

- 8.2.2.2. the names and signatures of the proposer;
 - 8.2.2.3. the names and signature of the seconder;
 - 8.2.2.4. the name, consent and signature of the individual proposed;
 - 8.2.2.5. a declaration by the nominee, stating they have no conflict of interest, neither any civil and / or criminal convictions;
 - 8.2.2.6. a declaration of past and current directorships; and
 - 8.2.2.7. a declaration by the Person nominating that, to the best of their knowledge, the nominee is eligible to be a Director;
- 8.2.3. Once the Nominations Committee has completed its work, the Board of Directors shall be presented with the approved list of nominees and shall determine the number of Board Directors before the election process starts.
- 8.2.4. The nominees receiving the most number of votes will be appointed in descending order for the positions that are available.
- 8.2.5. The Board may appoint an individual who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this MOI.

8.3. Directors' duties

- 8.3.1. A Director shall adhere to the standards of director conduct as contemplated in Section 76 of the Act, which require the Directors of the Company, when acting in that capacity, to exercise the powers and functions of a director:
- 8.3.1.1. in good faith and for proper purpose;
 - 8.3.1.2. in the best interests of the Company; and
 - 8.3.1.3. with the degree of care, skill and diligence that may reasonably be expected of an individual: –
 - 8.3.1.3.1. carrying out the same functions in relation to the Company as those carried out by that Director; and
 - 8.3.1.3.2. having the general knowledge, skill and experience of that Director.

8.4. Ineligibility and disqualification of individuals to be Directors or Prescribed Officers

8.4.1. No individual shall be elected as a Director if he/she is ineligible or disqualified in terms of the Act or in terms of this MOI, and any such election shall be a nullity. An individual who is ineligible or disqualified must not consent to be elected as a Director nor act as a Director. An individual placed under probation by a court must not serve as a director unless the order of court so permits. A Director or Alternate Director shall cease to hold office as a Director immediately if (and no Person shall be eligible to be appointed as a Director or an Alternate Director if) he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally.

8.4.1. In addition to the grounds of ineligibility and disqualification of Directors as contained in Section 69 of the Act, a Director shall cease to be eligible to continue acting as such if she/he is absent from three (3) consecutive meetings of the Board and all events arranged by the Company occurring within a period of six (6) consecutive months without the leave of the Board, and the Board resolves that his/her office shall be vacated.

8.5. **Directors' terms of office**

8.5.1. Save for the Executive Directors, the Directors shall retire every three (3) years by rotation, but a retiring Director shall be eligible for nomination and re-election; provided a Director shall not serve for more than three (3) consecutive terms of three (3) years each.

8.5.2. To regularise the terms of office of the Directors, for a period of three (3) years after the adoption of this MOI:

8.5.2.1. at the Board meeting immediately preceding the second AGM following the adoption of this MOI (provided such Board meeting is held at least more than twenty-one (21) calendar days prior to the AGM), one-third of the Directors (chosen by lot, or volunteering to do so) shall retire from office;

8.5.2.2. in the third year after the adoption of this MOI, the remaining Directors from those that were in office at the time of the adoption of this MOI (excluding those contemplated in paragraph 8.5.2.1 above) shall retire in the manner set forth above;

8.5.2.3. following the period of three (3) years after the adoption of this MOI at the Board meeting immediately preceding the AGM (provided that such meeting

is held at least more than twenty-one (21) calendar days prior to the AGM), one-third of the Directors (or if the number of Directors at any given time is not divisible by three, not less than one-third) shall retire from office on the basis that the Directors to retire in each year shall be those who shall have been the longest in office since their appointment or re-appointment (whichever is the later).

8.5.3. The CEO shall not have a prescribed term of office as a Member of the Board.

8.5.4. The Chairperson shall not serve in office for a period exceeding three (3) years.

8.6. **Nominations Committee**

8.6.1. The Nominations Committee shall comprise of at least two (2) Non-Executive Directors, the majority of whom should be independent. Members of the Nominations Committee must have the requisite knowledge, experience and skills to enable them to assume the responsibility for determining the eligibility and merit of the candidacy of individuals to be appointed to the Board and/or to obtain and retain Membership of the Company from time to time.

8.6.2. The Chairperson of the Board, the Chairperson of the Remuneration Committee and the President of the Company, must be members of the Nomination Committee.

8.6.3. The Nominations Committee shall only consider the proposals received from Members and vet the candidates against criteria outlined in the Act and in this MOI as well as confirmation from the CEO that the candidate is a Member in good standing. Thereafter the Nominations Committee shall prepare a list of duly vetted individuals nominated by the Membership for election as Directors by the Members and submit such a list to the Members before the Members' meeting is scheduled to elect Directors.

8.6.4. The Nominations Committee shall consider and review the composition, skills, experience and performance of the Board from time to time.

8.6.5. To facilitate and inform such consideration and review of the Board, the Nominations Committee shall, on an annual basis, first determine the number of new Directors who are to be appointed by the Members and thereafter cause a written notice to be addressed to all Voting Members of the Company, calling for nominations to the Board. Such Notice shall be addressed at least sixty (60) days prior to the date of the Members' meeting scheduled to appoint Directors.

- 8.6.6. Upon receipt of such notice, any Members may nominate any number of eligible individuals to be considered by the Nominations Committee for appointment to the Board, provided such nominations are in writing, and delivered to the registered office of the Company at least fourteen (14) days prior to the date of the forthcoming Member meeting. Any such nomination must also include:
- 8.6.6.1. the written consent of the individual/s so nominated; and
 - 8.6.6.2. a motivation indicating the reasons for any such proposal, including particulars as to the attributes, skills, and experience of the individual/s so proposed.
- 8.6.7. The Nominations Committee shall consider the candidacy of any eligible individuals who may have been duly proposed as aforesaid for appointment to the Board.
- 8.6.8. Upon completion of the review contemplated above, the Nominations Committee shall issue a further written notice to Members at least seven (7) days prior to the date of the relevant Members' meeting, stating the names of the individuals whom it proposes should be appointed to fill the relevant positions on the Board. Such notice shall also state that any Member who may be dissatisfied with the names of one or more of the candidates so proposed for appointment by the Nominations Committee, shall be entitled to challenge such appointment/s, provided any such challenge shall only be considered if it:
- 8.6.8.1. is in writing, duly signed by or on behalf of a Member; and delivered to the registered office of the Company not less than three (3) days prior to the date of the forthcoming Members' meeting;
 - 8.6.8.2. is supported by at least two (2) other Members (in addition to the Member who is the initiator of the challenge);
 - 8.6.8.3. incorporates substantive reasons and motivation for any such challenge;
 - 8.6.8.4. includes the name, and relevant particulars of an alternative candidate to be considered for appointment;
 - 8.6.8.5. includes the written consent of such alternative candidate to accept appointment, if so invited and subject to the appointment provisions contained in this MOI.
- 8.6.9. In addition to the requirements itemised above, a challenge shall only be considered as having been validly made at the relevant time if the Nominations Committee confirms that the proposed alternative candidate is in fact eligible and suitably qualified for appointment to the Board, having regard to, inter alia, such eligibility

guidelines contained in this MOI as well as the requirements of the Act. Any difference or dispute between the Member who initiated the challenge and the Nominations Committee as to the compliance with such conditions, including the eligibility and suitability of an alternative candidate, shall be referred for final determination by the Board, whose decision shall be final and binding.

8.6.10. If no valid challenge is made, the individuals proposed by the Nominations Committee for appointment as Directors shall be considered by the Members in the ordinary course.

8.6.11. If a challenge is validly made, the choice between the candidate proposed by the Nominations Committee and the alternative candidate proposed by the challenger shall be placed before the Member meeting, and the issue determined by majority vote of all Members present at the meeting.

8.7. Authority of the Board of Directors

8.7.1. The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in Section 66(1) of the Act is not limited or restricted by this MOI.

8.7.2. The Board may delegate any of its powers or functions to any Director, employee(s) and or to a Committee of the Board or the Company. The delegation shall be exercised lawfully within the prescribed powers and authorisation levels and in terms of the Company's policies, directives, and procedures.

8.7.3. The delegation:-

8.7.3.1. may be made on and subject to any conditions determined by the Board of Directors; and

8.7.3.2. may not be sub-delegated.

8.7.4. The Board may also from time to time revoke, withdraw or vary such powers as contemplated in clause 8.7.3.

8.7.5. Notwithstanding any delegation to any Director, employee(s) and or Committee of the Board, the Board remains accountable for the achievement of the objectives of the Company and for the execution of its responsibilities and duties.

- 8.7.6. The Board may from time to time appoint any person (whether being a duly appointed representative of a Member or not) as CEO of the Company provided such individual has suitable tertiary qualifications and a minimum of five (5) years of experience in managing and leading a non-profit organisation. The CEO may be appointed for such term and at such remuneration and generally on such terms as the Board may think fit, and (subject to any contract between the Board and such CEO) may remove him/her and appoint some other individual as CEO in his/her place. It may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office.
- 8.7.7. The Chairperson of the Board shall annually review the performance of the CEO against predetermined targets and objectives.
- 8.7.8. The Board shall, in accordance with the provisions of the Act, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.
- 8.7.9. Subject to the provisions of the Act and/or any restrictions contained in this MOI, the Board may from time to time borrow, raise or secure the payment of such sum or sums of money as it may deem necessary for the purposes of the objects of the Company.
- 8.7.10. Subject to the provisions of the Act and/or any restrictions contained in this MOI, the Board may issue guarantees, indemnities or securities or enter into any transactions that bind the Company to any future financial commitment.
- 8.7.11. No regulation made by the Members in general meeting shall invalidate any prior act of the Board which would have been valid in terms of the Act as well as the provisions of this MOI, if that regulation had not been made.
- 8.7.12. The Board shall approve a delegation of authority which clearly sets out the limitations on the powers of the Directors. It is the intention of the Board of Directors that it shall delegate certain of its powers and functions to certain Directors, Committees and management as contemplated in the delegation of authority.
- 8.7.13. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.

8.7.14. The Board must establish a succession plan for its membership (the Board) which should include the identification, mentorship and development of future board member candidates. The succession plan must include a succession plan for the position of CEO to provide for continuity of the executive leadership.

8.8. **Board Committees**

8.8.1. The Board may appoint any number of Board Committees and delegate to such Committees any authority of the Board, provided always that the Board shall appoint such Committees (if any) which it may be obliged to appoint in terms of the Act.

8.8.2. A Board Committee may include individuals who are not Directors provided they are not ineligible or disqualified to be Directors and provided no such individual shall have a vote on a matter to be decided by the Board Committee.

8.8.3. No individual shall be appointed as a Member of a Board Committee if he/she is ineligible or disqualified and any such appointment shall be a nullity, and any individual so appointed shall cease to hold office immediately after he/she becomes ineligible or disqualified in terms of the Act and/or this MOI.

8.8.4. An individual who is ineligible or disqualified must not consent to be appointed as a Member of a Board Committee nor act as such a Member. An individual placed under probation by a court must not serve as a Member of a Board Committee unless the order of the court so permits.

8.8.5. Subject to the provisions in relation to the Nominations Committee, there are no general qualifications prescribed by the Company for an individual to serve as a Member of a Board Committee, save for the requirements of the Act and this MOI, and the following specific conditions, namely that:

8.8.5.1. the Board shall determine the composition and membership of each Board Committee, and may review its own decisions with respect thereto;

8.8.5.2. the Board shall appoint a minimum of two (2) individuals who serve as Directors to serve on a Board Committee;

8.8.5.3. the Board may appoint individuals who are not Directors to serve on a Board Committee; and

- 8.8.5.4. the Chairperson of such Board Committee must be a designated Non-Executive Director of the Company;
- 8.8.5.5. each such Board Committee shall at all times remain accountable to the Board for the performance of its delegated functions and the Board shall not be divested of its overriding substantive powers by reason of any such delegation.
- 8.8.6. Any written reports and/or recommendations issued by any such Board Committee must record any dissenting minority views in relation to the subject matter thereof.
- 8.8.7. Any such Board Committee shall, in the exercise of its powers and functions conform to all rules, restrictions or procedures imposed upon it by the Board, including such that may relate to quorum, voting, frequency of meetings, and notices.
- 8.8.8. The Board shall be entitled, should it deem this necessary, to vary its directions, and to disestablish any such Committee at any time, without being required to give prior notice, or to give reasons for its decisions.
- 8.8.9. Without derogating from the generality of the foregoing, the Board has elected as a minimum to appoint the following Board Committees (which committees' names may be changed from time to time, as the circumstances or the context may require):
 - 8.8.9.1. a Nominations Committee;
 - 8.8.9.2. an Audit & Risk Committee;
 - 8.8.9.3. a Social and Ethics Committee;
 - 8.8.9.4. a Remuneration Committee;
 - 8.8.9.5. a Research Committee; and
 - 8.8.9.6. an Investment Committee.

8.9. **Board of Directors' meetings**

- 8.9.1. The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in Section 74 of the Act is not limited or restricted by this MOI.
- 8.9.2. The right of the Company's Directors to request a meeting of the Board, as set out in Section 73(1) of the Act, may be exercised by at least one (1) Director.
- 8.9.3. The Chairperson of the Board may call a meeting at any time, but must call such meetings at least four (4) times a year.

- 8.9.4. The authority of the Company's Board of Directors to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in Section 73(3), is not limited or restricted by this MOI.
- 8.9.5. The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in Section 73(4) of the Act, is not limited or restricted by this MOI.
- 8.9.6. The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in Section 73(5) of Act, is not limited or restricted by this MOI.
- 8.9.7. The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are set out in Section 73(5) of the Act, namely:
 - 8.9.7.1. if all the Directors of the Company acknowledge actual receipt of the notice; are present at a meeting; or waive notice of the meeting; the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
 - 8.9.7.2. a majority of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;
 - 8.9.7.3. each Director has one (1) vote on a matter before the Board;
 - 8.9.7.4. a majority of the votes cast on a resolution is sufficient to approve that resolution;
 - 8.9.7.5. in the case of a tied vote the matter being voted on shall fail.

8.10. **Minutes and minute books**

- 8.10.1. The Board shall, in accordance with the provisions of Sections 24(3)(d), 24(3)(f) and 73(6) of the Act, cause Minutes to be kept of, inter alia:
 - 8.10.1.1. the appointments of Prescribed Officers;
 - 8.10.1.2. names of Members and/or their duly appointed representatives present at every General Meeting of the Company, and of Directors present at every meeting of the Board; and
 - 8.10.1.3. all proceedings at all general meetings of the Company, and of the Board.
- 8.10.2. Such minutes shall be signed by the Chairperson of the meeting at which the proceedings took place, or by the Chairperson of the next succeeding meeting.

8.11. **Indemnification of Directors**

- 8.11.1. The authority of the Company's Board of Directors to 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, is not limited or restricted by this MOI; provided such expenses so advanced are recoverable from insurance purchased in terms of paragraph 8.11.3.
- 8.11.2. The authority of the Company's Board of Directors to indemnify a Director in respect of liability, as set out in Section 78(5) of the Act is not limited or restricted by this MOI.
- 8.11.3. The authority of the Company's Board of Directors to 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 MOI.

8.12. **Cessation of office as a Director**

- 8.12.1. A Director shall cease to hold office as such:
 - 8.12.1.1. immediately when he/she becomes ineligible or disqualified in term of the Act, or the Board resolves to remove him/her on such basis, and in the latter case the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he/she shall be suspended);
 - 8.12.1.2. when he/she dies;
 - 8.12.1.3. when he/she resigns by written notice to the Company;
 - 8.12.1.4. if the Board determines that he/she has become incapacitated to the extent that the individual is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such application but the court has not yet confirmed the removal (during which period he/she shall be suspended);
 - 8.12.1.5. if he/she is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director;
 - 8.12.1.6. if he/she is removed by the Nominations Committee for being negligent or derelict in performing the functions of a Director, and the Director has not

within the permitted period filed an application for review or has filed such an application, but the court has not yet confirmed the removal (during which period he/she shall be suspended);

- 8.12.1.7. if he/she files a petition for the surrender of his/her estate or an application for any administration order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or if he/she makes any arrangement or composition with his/her creditors generally;
 - 8.12.1.8. if he/she is otherwise removed in accordance with any other provisions contained in this MOI;
 - 8.12.1.9. if the Director, without special leave of absence from the Board, absents himself/herself from three (3) consecutive meetings of the Board and all events arranged by the Company occurring within a period of six (6) consecutive months;
 - 8.12.1.10. if the Director is found to be in breach of the Company's Code of Conduct and Ethics Policy, or other key policies approved by the Board;
 - 8.12.1.11. when his/her term of office expires.
- 8.12.2. A Director's removal may be approved by an ordinary resolution of the Members or by way of a resolution of the Board of Directors as contemplated in terms of Section 71 of the Act.

8.13. **Remuneration and expenses of Directors and Members of Board Committees**

- 8.13.1. The Directors of the Board or Members of Board Committees shall at the discretion and approval of the Board, be remunerated for their services as Directors or Members of Board Committees.
- 8.13.2. The Directors of the Board and Members of Board Committees shall be entitled to any reasonable expenses for travelling (including expenses incurred in respect of accommodation) to and from meetings of the Board or Board Committees.

8.14. **Financial assistance for Directors and their related and inter-related parties**

- 8.14.1. The Company shall not be entitled to provide financial assistance to any Directors or Prescribed Officers, as contemplated in Section 45 of the Act.

8.15. **Prescribed Officers**

- 8.15.1. The onus is on the CEO to determine, within the structures of the Company, which positions fulfil the requirements of a Prescribed Officer and to make such appointments to these positions as he/she considers necessary to better achieve the objects of the Company. The CEO must provide feedback to the Board of Directors on all such appointments.
- 8.15.2. The terms of engagement, or any amendments thereto, of such Prescribed Officers shall be set out in appropriate letters of appointment.
- 8.15.3. No individual shall hold office as a Prescribed Officer, if he/she is ineligible or disqualified in terms of the Act.
- 8.15.4. An individual who is ineligible or disqualified in terms of the Act, must not consent to being appointed to an office or undertake any functions which would result in him/her being a Prescribed Officer, nor act in such office nor undertake any such functions.
- 8.15.5. An individual placed under probation by a court must not consent to being appointed to an office or undertake any functions which would result in him/her being a Prescribed Officer, nor act in such office nor undertake any such functions unless the court order so permits.
- 8.15.6. A Prescribed Officer shall cease to hold office as such immediately he/she becomes ineligible or disqualified in terms of the Act.

8.16. **Company Secretary**

- 8.16.1. In terms of S43(2) the Company has elected not to appoint a Company Secretary.

9. AUDITORS

9.1. **Auditor**

- 9.1.1. Every year at its AGM, the Company shall appoint a registered auditor, in the manner and for the purposes set out in Part C of the Act.
- 9.1.2. If the Company appoints a firm as an auditor, the individual determined by that firm, in terms of Section 44(1) of the Auditing Professions Act, No. 26 of 2005 is responsible for performing the functions of the auditor.

9.1.3. The auditor shall hold office until the conclusion of the following AGM of the Company.

9.2. **Rotation of auditors**

9.2.1. The Company shall adhere to the provisions of Section 92 of the Act in respect of the rotation of auditors, such that:

9.2.1.1. the same individual may not serve as the auditor or designated auditor of the Company for more than five (5) consecutive financial years;

9.2.1.2. if an individual has served as the auditor or designated auditor of the Company for two (2) or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of the Company until after the expiry of at least two (2) further financial years.

9.2.2. If the Company has appointed two (2) or more persons as joint auditors, the Company must manage the rotation required by this section in such a manner that all the joint auditors do not relinquish office in the same year.

10. **GENERAL PROVISIONS**

10.1. **Protected disclosures**

10.1.1. The Company shall, in terms of Section 159(7) of the Act, establish and maintain a system to receive disclosures contemplated in Section 159 of the Act and will publicise the availability of that whistle-blowing system by conspicuously displaying a notice to that effect, setting out the contact details of the person responsible for receiving any such disclosure:

10.1.1.1. at the registered office of the Company, the principal places of conducting the business activities of the Company, and at any workplace where employees of the Company are employed; and

10.1.1.2. on the Company's website that is maintained by the Company and intended to be accessible by the categories of persons enumerated in Section 159(4) of the Act.

10.2. **Financial year-end**

- 10.2.1. The financial year-end of the Company shall be 31 (thirty-one) March, or such other date as may be determined by the Board from time to time.

10.3. **Accounting records and annual financial statements**

- 10.3.1. The Company must keep accurate and complete accounting records as necessary to enable it to satisfy its obligations in terms of the Act or any other law with respect to the preparation of financial statements, including any prescribed accounting records, which must be kept in a prescribed manner and form.
- 10.3.2. The financial statements must be prepared in accordance with the International Financial Reporting Standards which are appropriate for the size of the Company and relevant at the time of preparation.
- 10.3.3. The accounting records must be kept at, or be accessible from, the registered office of the Company.
- 10.3.4. Each year, the Company shall prepare Annual Financial Statements within six (6) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of the AGM in terms of Section 61(7) of the Act.

10.4. **Winding up or dissolution**

- 10.4.1. Despite any provision in law or agreement to the contrary, upon the winding-up or dissolution of the Company:-

10.4.1.1. no past or present Member or 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

10.4.1.2. the entire net asset 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 of South Africa, voluntary associations or non-profit trusts:-

10.4.1.2.1. having objectives similar to those of the Company; and

10.4.1.2.2. as determined:

- 10.4.1.2.2.1. in terms of clause 1 of this MOI;
- 10.4.1.2.2.2. by the Members or Directors at, or immediately before the time of its dissolution; or
- 10.4.1.2.2.3. by the court if this MOI, or the Members or Directors fail to make such a determination.

10.4.2. The Companies and Intellectual Properties Commission may apply to the court on behalf of the Company for a determination contemplated in 10.4.1.2.2.3 if the Company has:

- 10.4.2.1. no remaining Members or Directors; and
- 10.4.2.2. failed to:
 - 10.4.2.2.1. make a determination contemplated in 10.4.1.2.2.2; or
 - 10.4.2.2.2. apply to court for such a determination.

10.4.3. Any resolution for the winding up or deregistration of the Company must be approved by the Commissioner of the South African Revenue Service.