



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

MEMORANDUM OF INCORPORATION OF A NON PROFIT COMPANY WITHOUT MEMBERS

OF

**THE INSTITUTION OF CERTIFICATED MECHANICAL AND ELECTRICAL ENGINEERS, SOUTH AFRICA
(ICMEESA)**

A NON-PROFIT COMPANY

REGISTRATION NUMBER: _____

REGISTRATION DATE: _____

The Company is a Non Profit Company without Members, with the following objects:

Objects:

- 1. To develop the Institution as the professional home for engineering general practitioners adequately qualified by education and experience to take full responsibilities for persons and machinery in both electrical and mechanical branches of engineering.**
- 2. To promote the general advancement of the electrical and mechanical engineering sciences and in particular the application thereof to the design, installation, maintenance, operation and control of fixed or mobile plant and equipment; to provide facilities for the exchange of information on these subjects amongst members of the institution; to hold meetings and to place on record the proceedings of such meetings.**
- 3. To uphold the status of the electrical and mechanical engineering profession particularly in so far as they affect those members of the profession engaged in the design, installation, maintenance, operation and control of fixed or mobile plant and equipment.**
- 4. To support the efficient administration of the existing laws pertaining to the Mechanical and Electrical Engineering professions and recommend amendments thereto as and when considered desirable.**
- 5. To award study grants and bursaries to assist in meeting the objects.**
- 6. To do all things incidental or conducive for the attainment of any or all of these objectives.**

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MEMORANDUM OF INCORPORATION

1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**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;
- 1.1.2 "**Board**" means the board of Directors from time to time of the Company;
- 1.1.3 "**Commission**" means the Companies and Intellectual Property Commission established by section 185; of the act
- 1.1.4 "**Company**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.5 "**Director**" means a member of the Board as contemplated in section 66 of the act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.6 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.7 "**ICMEESA**" means the Institution of Certificated Mechanical and Electrical Engineers South Africa, a registered Non-Profit Company incorporated in South Africa.
- 1.1.8 "**Income Tax Act**" means the Income Tax Act No. 58 of 1962, as amended and including the regulations prescribed thereunder;
- 1.1.9 "**Members**" means members as defined in the Constitution of ICMEESA;
- 1.1.10 "**Members meetings**" means those meetings governed by the Constitution of ICMEESA
- 1.1.11 "**Regulations**" means the regulations published in terms of the Act from time to time;

- 1.1.12 "Republic" means the Republic of South Africa;
- 1.1.13 "Rules" means any rules made in respect of the Company or Constitutional documents of the Company (including the Institution from which it is derived) from time to time as contemplated in sections 15(3) to (5) and clause 16 hereof;
- 1.1.14 "Specially Protected Matters" means each matter set out in Schedule 2 to this Memorandum of Incorporation.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
 - 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
 - 1.2.2 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;
 - 1.2.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.2.3.1 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
 - 1.2.3.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.4 clause headings are for convenience only and are not to be used in its interpretation;
 - 1.2.5 an expression which denotes -
 - 1.2.5.1 any gender includes the other genders;
 - 1.2.5.2 a natural person includes a juristic person and *vice versa*; and

- 1.2.5.3 the singular includes the plural and *vice versa*;
- 1.2.6 if the due date for performance of any obligation in terms of this Memorandum of Incorporation 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;
- 1.2.7 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 of Incorporation;
- 1.2.8 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 permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –
- 1.3.1 "**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;
- 1.3.2 "**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;
- 1.3.3 "**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 permitted in terms of the Act and/or the Regulations.
- 1.4 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.

- 1.5 Unless otherwise provided in this Memorandum of Incorporation 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.
- 1.6 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.
- 1.7 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.
- 1.8 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 JURISTIC PERSONALITY

- 2.1 The Company is a Non Profit Company incorporated and registered in terms of the Act as contemplated in item 2 of the Fifth Schedule to 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; and
- 2.2.2 the alterable provisions of the Act that are applicable to Non Profit Companies;
- 2.2.3 the other provisions of this Memorandum of Incorporation; and
- 2.2.4 its Rules, if any.

3 OBJECTS AND POWERS OF THE COMPANY

- 3.1 The objects of the Company are as set out on the cover sheet of this Memorandum of Incorporation and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to the restrictions, limitations or qualifications contemplated in section 19(1)(b)(ii), as set out in Part A of Schedule 1.
- 3.2 The Company is subject to the provisions contemplated in section 15(2)(b) or (c).

3.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with –

3.3.1 Item 1(4)(b) of Schedule 1 of the Act; and

3.3.2 the provisions, if any, set out in Part B of Schedule 1 of this Memorandum of Incorporation.

4 LIMITATION OF LIABILITY

No person shall, solely by reason of being an incorporator, Member or Director of the Company, be liable for any liabilities or obligations of the Company.

5 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

The Company does not elect, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.

6 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

6.1 The Board shall at all times be at least 7 (seven) directors, each of whom is to be elected and whom –

6.1.1 is to be appointed by the ICMEESA Members entitled to exercise voting rights, as contemplated in the Constitution; and

6.1.2 at least one third of the directors by the voting Members are to be elected each year.

6.2 The Board shall not comprise more than 14 (fourteen) directors.

6.3 In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a Director of the Company a person need not satisfy any further eligibility requirements or qualifications.

6.4 Each appointed Director serves for an finite term.

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

- 6.4.2 To regularise the term of office of the Directors, for a period of 3 (three) years after the adoption of this MOI:
- 6.4.2.1 at the Board meeting immediately preceding the second AGM following the adoption of this MOI, one-third of the Directors (chosen by lot, or volunteering to do so) shall retire from office;
- 6.4.2.2 in the third year after the adoption of this MOI, the remaining Directors from those that were in office at the time of adoption of this MOI (excluding those contemplated in paragraph 6.4.2.1 above) shall retire in the manner set forth above;
- 6.4.2.3 following the period of 3 (three) years after the adoption of this MOI at the Board meeting immediately preceding 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 Director 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).
- 6.4.3 The Chairperson shall not serve in office for a period exceeding 3 (three) years.
- 6.4.4 Ensure that no single person directly or indirectly controls the decision making powers relating to the Company.

7 AUTHORITY OF THE BOARD OF DIRECTORS

The authority of the Board to manage and direct the business and affairs of the Company as set out in section 66(1) is not limited or restricted by this Memorandum of Incorporation.

8 DIRECTORS' MEETINGS

- 8.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 8.2 The Directors shall nominate and appoint the Chairperson, and may at their discretion also nominate and appoint a deputy Chairperson, who shall hold office until the next annual general meeting. The Chairperson, or in his absence, the deputy Chairperson, shall preside at all meetings of Directors. If no Chairperson or deputy Chairperson is so nominated, or if at any meeting neither is present or willing to act within 15

(fifteen) minutes of the time appointed for the commencement of such Directors' meeting, the Directors present shall choose any one other of their number to be Chairperson of such meeting.

8.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.

8.4 The Board has the power to –

8.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;

8.4.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;

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

8.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 (seven) days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the Chairperson of the Board, or failing the Chairperson for any reason, the decision of any 2 (two) directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the directors;

8.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 8.4.3.1;

- 8.4.3.3 no meeting may be held if notice thereof and the agenda therefor is not given in accordance with clauses 8.4.3.1 and 8.4.3.2; and
- 8.4.3.4 no matter may be discussed at a meeting unless the particular matter has been expressly included in the agenda given in terms of clause 8.4.3.2; and
- 8.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5),

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.
- 8.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting is 2 (two) Directors, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clause 8.5.5, and accordingly –
 - 8.5.1 if all of the Directors of the Company or their alternates, if applicable –
 - 8.5.1.1 acknowledge actual receipt of the notice convening a meeting; or
 - 8.5.1.2 are present at a meeting; or
 - 8.5.1.3 waive notice of a meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
 - 8.5.2 a majority of the Directors or their alternates, if applicable, must be present at a meeting before a vote may be called at any meeting of the Directors;
 - 8.5.3 each Director or such Director's alternate, if applicable, has 1 (one) vote on a matter before the Board;
 - 8.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;
 - 8.5.5 in the case of a tied vote –
 - 8.5.5.1 the Chairperson may cast a deciding vote in addition to any deliberative vote; and

8.5.5.2 the matter being voted on fails.

8.6 Resolutions adopted by the Board –

8.6.1 must be dated and sequentially numbered; and

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

8.6.3 For an ordinary Resolution to be adopted at a Directors meeting, it must be supported by the holders of at least 50% of the voting rights exercised on the Resolution, as provided in Section 65(7).

8.6.4 Special Resolutions shall require approval at a Directors meeting of 75% of voting rights present at such meeting, or by written approval of 75% of members entitled to attend and vote at such a meeting.

8.6.5 A Special Resolution adopted at a Directors meeting is not required for a matter to be determined by the Company, except those matters set out in Section 65(11), or elsewhere in the Act.

8.7 Any minutes of a meeting, or a resolution, signed by the Chairperson of the meeting, or by the Chairperson of the next meeting of the Board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

8.8 Directors Representation by Proxies

8.8.1 The right of a Director of the Company:

8.8.1.1 To appoint proxies, as set out in Section 58(3)(a) is limited to the appointment of one proxy;

8.8.1.2 To delegate the proxy's powers to another person, as set out in Section 58(3)(b) is not limited.

8.8.2 The requirement that a Director must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Director's right at a Board meeting, as set out in Section 58(3)(c) is varied by this Memorandum of Incorporation, and must be delivered to the registered office of the Company at least 48 (forty eight) hours before the time appointed for the meeting for which such proxy is appointed to begin.

- 8.8.3 The authority of a Directors' proxy to 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) is not limited or restricted by this Memorandum of Incorporation.

9 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 9.1 The Directors shall, save in the case of an Executive Director, not be entitled to remuneration for their services as Directors;
- 9.2 The Directors may also be paid all their reasonable and authorised travelling, subsistence and other expenses necessarily and properly incurred by them in connection with –
- 9.2.1 the business of the Company; and
- 9.2.2 attending meetings of the Directors or of committees of the Directors of the Company.

10 INDEMNIFICATION OF DIRECTORS

- 10.1 The Company may –
- 10.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defense of legal proceedings, as set out in section 78(4);
- 10.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or
- 10.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),
- and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.
- 10.2 The provisions of clause 10.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the members of an audit committee.

11 COMMITTEES OF THE BOARD

- 11.1 The Board may –

11.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or

11.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a),

and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

11.2 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

12 SPECIALLY PROTECTED MATTERS

Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the Company shall not engage in, agree to, perform or undertake any Specially Protected Matter unless Directors following consultation with the Members and holding at least 75% (seventy five percent) of the voting rights entitled to be exercised at a meeting of the Company shall have agreed thereto in writing in one or more written instruments signed by them or on their behalf.

13. ANNUAL GENERAL MEETINGS

13.1. Annual General Meetings shall voluntarily be held by the Company within 6 (six) months of the end of each financial year. The business of each Annual General Meeting shall include the following:

13.2. The presentation and adoption of the Annual Report and Financial Report;

13.2.1. The appointment or reappointment of the Auditor;

13.2.2. The appointment of Directors and Officers, where applicable; and

13.2.3. Such other matters as may be considered appropriate.

13.2.4. Annual General Meetings of the Company shall be conducted and regulated in accordance with the procedures provided for in terms of clause heading number 8.

14 ANNUAL FINANCIAL STATEMENTS

14.1 Notwithstanding the provisions of clause 5 –

- 14.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
 - 14.1.1.1 the Act;
 - 14.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;
 - 14.1.1.3 the Regulations; and
 - 14.1.1.4 this Memorandum of Incorporation; and
- 14.1.2 the Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year.
- 14.1.3 The financial year of the Company will be from 1 January to 31 December of each year.
- 14.2 In the event that the annual financial statements of the Company –
 - 14.2.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; or
 - 14.2.2 are required to be independently reviewed, as contemplated in section 30(2)(b)(ii)(bb), or as otherwise contemplated in the Act, the annual financial statements shall be so independently reviewed in accordance with the relevant provisions of the Act; or
 - 14.2.3 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.

- 14.3 In the event that the Company falls in the category of companies that may be exempted from having its annual financial statements independently reviewed, as contemplated in section 30(2A), or if the Company is otherwise exempted from having its annual financial statements either audited or independently reviewed, the Company shall concomitantly not be required to have its annual financial statements audited or independently reviewed.
- 14.4 Notwithstanding clauses 13.2 and 13.3, the Board or the Members may, either in respect of a particular financial year of the Company or for any other fixed or indefinite period, resolve that the annual financial statements shall be audited or independently reviewed, as the case may be, in which event such audit or independent review shall be conducted in accordance with the requirements and parameters set out in the relevant resolution.

15 ACCESS TO COMPANY RECORDS

- 15.1 Each Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
- 15.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof, and any Rules of the Company;
- 15.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
- 15.1.3 all –
- 15.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact, hold an annual general meeting; and
- 15.1.3.2 annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;

16 AMENDMENT OF MEMORANDUM OF INCORPORATION

- 16.1 Save for the amendments contemplated in clause 15.2, this Memorandum of Incorporation may only be altered or amended in the manner set out in sections 16 (other than 16(1)(b)), 17 or 152(6)(b), subject to the provision contemplated in section 16(1)(c).
- 16.2 The Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 16.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and
- 16.2.2 filing a notice of the alteration.
- 16.3 An amendment of this Memorandum of Incorporation will take effect from the later of –
- 16.3.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); and
- 16.3.2 the date, if any, set out in the said notice of amendment,
- save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

17 COMPANY RULES AND CONSTITUTION

- 17.1 The Board is authorised to make, amend or repeal any necessary or incidental rules, which shall include the Constitution of The Institution of Certificated Mechanical and Electrical Engineers, South Africa (ICMEESA), relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation by -
- 17.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each Member by ordinary mail, or by e-mail; and

17.1.2 filing a copy of those Rules.

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

17.3 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 –

17.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member and the Commissioner for SA Revenue Service and the Director: Nonprofit Organisations, immediately following its adoption, as required by law and by ordinary mail; and

17.3.2 filing a notice of the alteration.

18 RESOLUTION OF DISPUTES

18.1 In the event of there being any dispute or difference between any persons bound by this Memorandum of Incorporation, including any dispute or difference arising out of or in respect of –

18.1.1 any of the provisions of this Memorandum of Incorporation; and/or

18.1.2 any relationship between any 2 (two) or more persons in their capacities as Members; and/or

18.1.3 any relationship between any person, in its capacity as a Member, on the one hand, and the Company on the other hand; and/or

18.1.4 any relationship between any person, in his or her capacity as a Director, on the one hand, and the Company on the other hand; and/or

18.1.5 any relationship between any person, in his or her capacity as a prescribed officer of the Company, on the one hand, and the Company on the other hand; and/or

18.1.6 any relationship between any person, in his or her capacity as a member of a committee of the Board, on the one hand, and the Company on the other hand; and/or

- 18.1.7 any right and/or obligation of any Member, in its capacity as a Member, against or to the Company and/or any other Member; and/or
- 18.1.8 any right and/or obligation of the Company against or to any Member (in its capacity as a Member), and/or any Director (in his or her capacity as a Director), and/or any prescribed officer of the Company (in his or her capacity as a prescribed officer of the Company), and/or any other person serving the Company as a member of a committee of the Board with reference to such service; and/or
- 18.1.9 any right and/or obligation of any Director (in his or her capacity as Director) against or to the Company; and/or
- 18.1.10 any right and/or obligation of any prescribed officer of the Company (in his or her capacity as a prescribed officer of the Company) against or to the Company; and/or
- 18.1.11 any right or obligation of any other person serving the Company as a member of the committee of the Board with reference to such service,

such dispute or difference shall, except to the extent that provision is made elsewhere in this Memorandum of Incorporation for the final resolution of the dispute or difference in question, on written demand by any such person be submitted to arbitration in the city or town in which the registered office of the Company is situated before a single arbitrator in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**"), which arbitration shall be administered by AFSA.

- 18.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before a single arbitrator appointed by agreement between the parties to the dispute or difference or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute or difference shall be entitled to forthwith call upon the Chairperson of the Bar Council of the city or town in which the registered office of the Company is situated (or which is closest thereto) to nominate the arbitrator, provided that the person so nominated shall be an advocate or attorney of not less than 15 (fifteen) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute or difference. In the event of the

attorneys of the parties to the dispute or difference failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

- 18.3 Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 18.4 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 18.5 Any arbitration in terms of this clause 17.1 (including any appeal proceedings) shall be conducted *in camera* and the parties to the arbitration shall treat as confidential details of the dispute or difference submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 18.6 This clause 17.1 will continue to be binding notwithstanding any liquidation of the Company or the commencement of any business rescue proceedings in respect of the Company, to the extent that the implementation of the provisions of this clause will not give rise to any contravention of any provision of the Act or of any other applicable legislation.
- 18.7 The written demand by a party to the dispute in terms of clause 17.1 that the dispute or difference be submitted to arbitration, shall be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

ADOPTION

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

Signature of Incorporators	
Name	
Signature of Incorporators	
Name	
Signature of Incorporators	
Name	

SCHEDULE 1 – VARIOUS MATTERS

PART A

- 1 The Company's powers are subject to due compliance with the conditions stipulated in terms of section 30, and insofar as it may be applicable, in terms of section 18A of the Income Tax Act, as read with the Ninth Schedule thereto, in order thereby to facilitate the Company's eligibility for tax-exempt status in terms of section 10(1)(cN) and (to the extent that this may be applicable) its eligibility for the further fiscal benefit envisaged by section 18A of the Income Tax Act.
- 2 The income and property of the Company shall be applied solely towards the promotion of its objects as set out in this Memorandum of Incorporation, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise to the members or Directors of the Company or to its controlling or controlled Company; provided that nothing herein shall prevent the Company from giving financial or other assistance to approved Public Benefit Organisations, and in support of Public Benefit Activities, to the extent that such assistance serves to promote the objects of the Company; nor shall the foregoing prevent the payment in good faith by the Company of reasonable remuneration (commensurate with services rendered) to any officer or servant of the Company, including a Member or Director, in return for services actually rendered as aforesaid, but subject to due compliance with the other limitations set out in this Part A.
- 3 As approved Public Benefit Organisation by the Commissioner for SA Revenue Services for purposes of section 18(A)(1) of the Income Tax Act, the Directors shall:
 - 3.1 Ensure that any eligible donations actually paid for or transferred to the Organisation, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary Organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The terms 'Eligible Beneficiaries' shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.

- 3.2 Ensuring that during each year of assessment preceding the year of assessment of the Organisation during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Seventy-Five Percent (75%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Income Tax Act, and in that event, subject to any such conditions as the Commissioner may determine.
- 3.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18(A)(1) of the Income Tax Act, or as may be otherwise imposed by the Commissioner in terms of the Income Tax Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A of the Income Tax Act.
- 3.4 Ensure that an audit certificate is provided upon submission by the Organisation to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Organisation in that year, in respect of which section 18A receipts were issued by the Organisation, were utilised in the manner contemplated by that section.
- 4 As a Public Benefit Organisation to be approved by the Commissioner for purposes of section 30 of the Income Tax Act, the Directors shall:
- 4.1 Carry on the public benefit activities of the Organisation in a non-profit manner, and with an altruistic or philanthropic intent.
- 4.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 4.3 Procure that at least Eighty-Five Percent (85%) of such activities, measured as either cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister of Finance, having regard to the circumstances of the case, directs otherwise; provided that the cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by the Organisation from persons who are not resident in

the Republic, and receipts and accruals derived directly or indirectly therefrom, which donations, receipts, and accruals have not previously been taken into account for purposes of this proviso.

- 4.4 Take reasonable steps to ensure that:
 - 4.4.1 each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - 4.4.2 each such activity carried on by it is for the benefit of, or is readily accessible to, the poor and needy; or
 - 4.4.3 at least Eighty-Five Percent (85%) of its funds are derived from donations, grants from any organ of state, or foreign grants.
- 4.5 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.
- 4.6 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.
- 4.7 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation, and that no single person directly or indirectly controls the decision making powers of the organisation.
- 4.8 Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established, or to invest such funds:
 - 4.8.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); and/or
 - 4.8.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); and/or

- 4.8.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations;

provided that the provisions of this sub-paragraph do not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

- 4.9 Be required on dissolution to transfer its assets to:

- 4.9.1 any similar public benefit organisation which has been approved in terms of section 30(3) of the Income Tax Act;

- 4.9.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on or any public benefit activity; or

- 4.9.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act.

- 4.10 Be prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that:

- 4.10.1 the gross income derived from such business undertaking or trading activity does not exceed the greater of:

- 4.10.1.1 Fifteen percent (15%) of the gross receipts of such public benefit organisation; or

- 4.10.1.2 Twenty Five Thousand Rand (R25 000,00);

- 4.10.2 the undertaking or activity is:

- 4.10.2.1 integral and directly related to the sole object of such public benefit organisation; and

- 4.10.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost, and which would not result in unfair competition in relation to taxable entities;
- 4.11 the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as set out on the cover sheet of this Memorandum of Incorporation, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- 4.12 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to:
- 4.12.1.1 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
- 4.12.1.2 the profitability of the undertaking or activity; and
- 4.12.1.3 the level of economic distortion that may be caused by the tax-exempt status of the public benefit organisation carrying out the undertaking or activity.
- Provided that, notwithstanding the terms of clause 4.10 above, any business or trading activity acquired before 1 January 2001, may be retained or continued, as the case may be, in the form so acquired for a period of five years after that date.
- 4.13 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 4.14 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.

- 4.15 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 4.16 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 4.17 Comply with such reporting requirements as may be determined by the Commissioner.
- 4.18 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of “Public Benefit Activities” in section 30 of the Income Tax Act, are utilised for the purpose for which they are provided.
- 4.19 Take all necessary steps to procure that, within such period as the Commissioner may determine, it is registered in terms of section 13(5) of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), and complies with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs.
- 4.20 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 4.21 Ensure that any books of account, records and other documents relating to its affairs are:
 - 4.21.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of at least four years after the date of the last entry in any such book; or

- 4.21.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transaction, act or operation to which they relate.

PART B

Upon the winding-up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to one or more other Non-Profit Company and/or other Public Benefit Organisation having the same or similar objects to those of the Company, as may be determined by its Members at or before the time of such dissolution, or failing determination by them, then by the Court, and with the approval of the Commissioner for SA Revenue Service.