

Companies and Intellectual Property Commission
Republic of South Africa

MEMORANDUM OF INCORPORATION

of

Tawana Learnership Organisations

Registration number: 2019/429492/08

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1. Interpretation

1.1 In this MOI, capitalised words shall bear the same meanings as in the Companies Act and the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1.1 **"Annual General Meeting"** means a meeting to be initially held, no more than 18 months after the Company's date of incorporation, and thereafter once every calendar year, but no more than 15 months after the date of the previous annual general meeting;
- 1.1.2 **"Board"** means the board of Directors of the Company;
- 1.1.3 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.1.4 **"Bread-Based Black Economic Empowerment Act"** means the Bread-Based Black Economic Empowerment Act 53 of 2003 amended by the act 46 of 2013
- 1.1.5 **"Chairperson"** means the Chairperson of the Board of the Company;
- 1.1.6 **"Code of Conduct"** means the code of conduct of the Company approved by the Board from time to time;
- 1.1.7 **"Commission"** means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
- 1.1.8 **"Companies Act"** means the Companies Act No. 71 of 2008, as amended from time to time;
- 1.1.9 **"Companies Regulations"** means the Companies Regulations of 2011 promulgated by the Minister in terms of section 223 of the Companies Act, as amended from time to time;
- 1.1.10 **"Company"** means Tawana Learnership Organisation, registration number 2019/429492/08, a non-profit company incorporated in accordance with the laws of the Republic of South Africa;

- 1.1.11 **"Connected Person"** means
- 1.1.11.1 in relation to a natural person
- 1.1.11.1.1 any relative; and
- 1.1.11.1.2 any related party as defined in the Companies Act No. 71 of 2008
- 1.1.11.1.3 any trust and/or company (other than a portfolio of a collective investment scheme) of which such natural person or such relative is a beneficiary; and
- 1.1.12 **"Director"** means a Director of the Company;
- 1.1.13 **"Effective Date"** means the date on which this MOI is filed with the Commission;
- 1.1.14 **"File"**, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.1.15 **"Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 1.1.16 **"Member"** means a member of any committee created by the Company;
- 1.1.17 **"MOI"** means this Memorandum of Incorporation of the Company, which shall become binding on the company with effect from the date upon which the MOI is filed with the Commission;
- 1.1.18 **"Non-Profit Organisations Act"** means the Non-Profit Organisations Act No. 71 of 1997 as amended from time to time
- 1.1.19 **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution;
- 1.1.20 **"Rules"** means **"rules"** and **"rules of a company"** as defined in the Companies Act;
- 1.1.21 **"SARS Commissioner"** means the Commissioner of the South African Revenue Services; and

- 1.1.22 **"Special Resolution"** means a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution.
- 1.2 In this Memorandum:
- 1.2.1 a reference to a **"section"** by number refers to the corresponding section of the Companies Act;
- 1.2.2 a reference to a **"paragraph"** by number refers to the corresponding paragraph in this MOI;
- 1.2.3 a reference to a **"Regulation"** by number refers to the corresponding regulation in the Companies Regulations;
- 1.2.4 any reference to a **"person"** includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
- 1.2.5 references to a **"day"** shall be to any calendar day. Where any number of days or Business Days are prescribed in this MOI, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.6 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and *vice versa*;
- 1.2.7 any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;
- 1.2.8 words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this MOI in a similar context bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;

- 1.2.9 the provisions of this MOI shall be interpreted in the same way as the provisions of the Companies Act (which forms part of the constitution of the Company in terms of section 19(1)(c)) are interpreted; and
- 1.2.10 each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.
- 1.3 The long standard form of memorandum of incorporation for a Non-Profit Company with no members contained in the regulations published in terms of the Companies Act, as amended from time to time, shall not apply to the Company.

2. Adoption of Memorandum of Incorporation

- 2.1 This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii).
- 2.2 This MOI was proposed by the Board and adopted by a Special Resolution.

3. Incorporation and Nature of the Company

- 3.1 The Company is a Non-Profit Company, with no members, as defined in the Companies Act.
- 3.2 The Company is, in terms of section 19(1)(c) read with section 15(2), incorporated in accordance with, and governed by:
- 3.2.1 the unalterable provisions of the Companies Act, that are applicable to Non-Profit Companies;
- 3.2.2 the alterable provisions of the Companies Act, that are applicable to Non-Profit Companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 3.2.3 the provisions of this MOI.

- 3.3 This MOI does not necessarily refer to or address all of the provisions of the constitution of the Company as contemplated in paragraph 3.2. The persons bound by this MOI in terms of section 15(6), being for the time being the Company and each director and prescribed officer of the Company and each member of a Board committee, are required to familiarise themselves with the relevant provisions of the Companies Act, including those contemplated by paragraph 3.2 and the provisions of this MOI, as this MOI read together with the provisions of the Companies Act contemplated by paragraph 3.2 forms the constitution of the Company.

4. Conflicts with the Companies Act

4.1 Notification of conflicts

Any person bound by this MOI who has formed the view or forms the view or otherwise becomes aware that any provision of this MOI or any agreement entered into by the Company contravenes or is or has become inconsistent with any provision of the Companies Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2) or otherwise, shall within 10 Business Days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

4.2 No obligation to act inconsistently with the Companies Act

- 4.2.1 Notwithstanding anything to the contrary contained elsewhere in this MOI, no person bound by this MOI shall be required, obliged or entitled in terms of this MOI to do or omit to do something in terms of this MOI to the extent that it is inconsistent with or contravenes any provision of the Companies Act.

- 4.2.2 Any person bound by the MOI who has complied with paragraph 4.1 and has done something or has failed to do something to the extent necessary so as not to be inconsistent with or contravene any provision of the Companies Act or to avoid personal liability under section 218(2) or otherwise in terms of the Companies Act, but as a result thereof has contravened any provision of this MOI which is void or is declared void by a court in terms of section 218(1), shall not for that reason alone be liable or responsible therefor under or in terms of this MOI with respect to any claim by any person bound by this MOI and entitled

under or in terms of this MOI to do so, arising out of or in connection with any such act or omission.

4.3 Board must address inconsistencies

If any provision of the Companies Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Companies Act in terms of paragraph 4.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of this MOI or otherwise, the Board shall expeditiously:

- 4.3.1 assess that amendment to the Companies Act and/or that inconsistency or contravention; and
- 4.3.2 obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and
- 4.3.3 propose amendments to the agreement in question or propose the Special Resolutions required to appropriately amend the MOI, as the case may be, as is necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

5. Objects of the Company

5.1 The main objectives of the Company are to promote and support the follows activities:

5.1.1 Promotion of Education and Development Activities

- 5.1.1.1 The provision of educate or early childhood development services for pre-school children.
- 5.1.1.2 Training for unemployed persons with the purpose of enabling them to obtain employment.
- 5.1.1.3 Training for employed persons with the purpose of enabling them to better there circumstances.
- 5.1.1.4 The training or education of persons with a severe physical or mental disability.
- 5.1.1.5 The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities.

- 5.1.1.6 Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions.
- 5.1.1.7 Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- 5.1.1.8 Career guidance and counselling services provided to persons attending any school or higher education institution.
- 5.1.1.9 The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister of finance by way of regulation in the Gazette.
- 5.1.1.10 The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i) of the Tax Act
- 5.1.2 to obtain and secure donations, bequests and/or inheritances from all possible legal entities and Individuals and to distribute such donations, bequests and/or inheritances to charitable organisations that are registered Public Benefit Organisations in terms of Section 18A and Section 30 of the Income Tax Act and as Non-Profit Organisations in terms of the Non-Profit Organisations Act on behalf of the legal entity and main activities are within the actives noted in section 5.1.1;
- 5.1.3 to be of a benevolent nature having regard to the needs, interests and well-being of the general public; and
- 5.1.4 to investigate the nature of the charitable organisation and recipients to, and insofar as possible, ensure that the donations, bequests and/or inheritances are used primarily for worthy and valid charitable purposes; and
- 5.1.5 to provide the items stated in Clauses 5.1.1, 5.1.2 and 5.1.3, as well as any additional benevolent and charitable functions within the Republic of South Africa; and
- 5.1.6 subject to approval by the South African revenue Services, provide the donating legal entities with a Certificate envisaged in Section 18 of the Income Tax Act No. 58 of 1962 ; and

- 5.1.7 to maintain ethical and professional standards; and
- 5.1.8 to generally comply with such reporting requirements as may be determined by the SARS Commissioner from time to time;
- 5.1.9 to distribute no less than 85% (Eighty Five percent) of all donations received to “black people” as defined in Section 1 of the Broad-Based Black Economic Empowerment Act.
- 5.1.10 To insure that 100% (Hundred percent) of net donations after management fees (not exceeding 15% (fifteen percent)) from each donations will be distributed to beneficiaries
- 5.2 The legal powers and capacity of the Company are not subject to the restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii).
- 5.3 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c).

6. Bursaries

- 6.1 All scholarships, bursaries or awards granted by the organisation must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- 6.2 No scholarship , bursary or award granted by that organisation may –
 - 6.2.1 Be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award;
 - 6.2.2 subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or
 - 6.2.3 granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or the organisation (or any associated institution in relation to the donor or organisation) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to that person or his or her relative, even if that

person had not been an employee of the donor, organisation or associated institution;

- 6.3 All decisions regarding the granting of scholarships, bursaries and awards will be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.
- 6.4 All scholarships, bursaries and awards granted in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
- 6.4.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
- 6.4.2 to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in subparagraph 6.1 above.

7. Powers of the Company

The purposes and powers of the Company are subject to the following restrictions, limitations and qualifications:

7.1 Use of assets and funds

- 7.1.1 The income, property and assets of the Company, however derived, shall be applied solely towards the promotion of its stated objects as set out in this MOI, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever, to the Directors of the Company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Company, for any services rendered to, or expenses incurred on behalf of, the Company.
- 7.1.2 The Company shall not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to any Director or a Member of a related or inter-related company, or to a person related to any such Director. The foregoing shall not prohibit a transaction if it:
- 7.1.2.1 is in the ordinary course of the Company's business and for fair value;

- 7.1.2.2 constitutes an accountable advance to meet:
 - 7.1.2.2.1 legal expenses in relation to a matter concerning the Company; or
 - 7.1.2.2.2 anticipated expenses to be incurred by the person on behalf of the Company;
- 7.1.2.3 is to defray the person's expenses for removal at the Company's request; or
- 7.1.2.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 7.1.3 The Company is restricted to invest its funds:
 - 7.1.3.1 with a financial institution as defined in section 1 of the Financial Institutions Protection of Funds Act No. 28 of 2001; or
 - 7.1.3.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act No. 1 of 1985; or
 - 7.1.3.3 in such other prudent investments in financial instruments and assets as the SARS 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 paragraph 7.1.3 shall not prohibit the Company 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.
- 7.1.4 The Company shall not use its resources directly or indirectly to advance, support or oppose any political party.
- 7.1.5 No activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company otherwise than by way of reasonable remuneration.
- 7.1.6 No funds will be distributed to any person (other than in the course of undertaking any public benefit activity).

7.2 Activities

7.2.1 The Company is prohibited from carrying on any business, undertaking or trading activity, other than to the extent that:

7.2.1.1 the business, undertaking or trading activity:

7.2.1.1.1 is integral and directly related to the stated objects of the Company;
and

7.2.1.1.2 is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

7.2.1.1.3 would not result in unfair competition in relation to taxable entities,
or

7.2.1.2 the business, undertaking or trading activity, if not integral and directly related to the stated objects of the Company as contemplated in paragraph 7.2.1.1, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.

7.2.2 The Company may not have a share or other interest in any business, profession or occupation which is carried on by its Directors unless the interest of the Director /s has been disclosed to the Company, the remaining Director/s of the Company have unanimously consented to the conclusion of the transaction and such transaction is in the ordinary course of business of the company.

7.2.3 The Company does not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act. The Company will not be a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is 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 this Act or any other Act administered by the Commissioner.

7.3 **Payments by the Company**

The Company may not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Director, of the Company, except:

7.3.1 as reasonable:

7.3.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or

7.3.1.2 object of the Company, or

7.3.2 as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another; or

7.3.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or

7.3.4 in respect of any legal obligation binding on the Company;

7.3.5 The funds of the Company will be used solely for the objects for which it was established.

7.4 **Funding**

7.4.1 It is anticipated that a substantial part of the Company's funding shall be derived from donations, bequests and/or inheritances.

7.4.2 No donation will be accepted 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: 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), which has as its sole or principal object the carrying on of any public benefit activity) may not impose any 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.

8. Fundamental Transactions

The Company may not:

- 8.1 amalgamate or merge with, or convert to, a profit company; or
- 8.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

9. Amendment of the MOI

- 9.1 This MOI may be altered or amended only in the manner set out in section 16 or 17, of the Act being:
 - 9.1.1 in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
 - 9.1.1.1 publishing a notice of the alteration, in any manner required or permitted by this MOI or the Rules of the Company; and
 - 9.1.1.2 filing a notice of the alteration, or
 - 9.1.2 in compliance with a court order, effected by a resolution of the Board; or
 - 9.1.3 at any other time if a Special Resolution to amend the MOI is proposed and adopted unanimously by the Directors.
- 9.2 Any amendment of the Memorandum, save for an amendment contemplated in paragraph 9.1.1, may only be effected by a Special Resolution of the Directors.
- 9.3 The Company must publish a notice of any alteration of this MOI by delivering a copy of the amendment to each Director by email or ordinary mail.
- 9.4 A copy of all amendments to this MOI must be submitted to the SARS Commissioner within 30 days of its amendment.

10. Rules

- 10.1 The Company will ensure that it generally complies with such requirements set out by the SARS Commissioner, as may be necessary to obtain approval that the

Company is recognised for tax and other purposes as an association in terms of the provisions of section 30B of the Income Tax Act.

10.2 The Board shall not have the authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Companies Act or this MOI as contemplated in section 15(3) to 5(A), unless a Special Resolution has been acquired.

10.3 A Rule contemplated in paragraph 10.1:

10.3.1 must be consistent with the Companies Act and this MOI, and any such Rule that is inconsistent with the Companies Act or this MOI is void to the extent of the inconsistency; and

10.3.2 takes effect on a date that is the later of:

10.3.2.1 10 Business Days after the Rule is filed; or

10.3.2.2 the date, if any, specified in the Rule.

10.4 The Board must publish any Rules made, amended or repealed by delivering a copy of those rules to each Director by email, ordinary mail or fax.

11. Directors

11.1 Powers of Directors

The business of the Company shall be managed and supervised by the Board in accordance with the stated objects of the Company and as envisioned in terms of section 66(1). The Board may exercise all powers of the Company which are not excluded by a statute or this MOI.

11.2 Appointment

11.2.1 Subject to paragraph 10.2.5, the Company shall have a minimum of three and a maximum of 13 Directors. No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director. No single Director shall directly or indirectly control the decision-making powers relating to the Company.

11.2.2 Where a vacancy on the board arises, the remaining Directors shall each nominate a party of their choice and the vacancy shall be filled by one of the

parties so nominated by way of a general resolution. Should the vote achieve a deadlock then the parties agree that the vote shall be referred to an advocate or attorney to adjudicate, such advocate or attorney to be admitted for no less than 15 years in such capacity and have an understanding in Company Law. The duly appointed advocate or attorney will consider the resume of the nominees and make a decision with regard to the party to fill the vacancy, such decision being binding on the company.

- 11.2.3 Every Director must satisfy the qualification and eligibility requirements set out in section 69 to become or remain a Director.
- 11.2.4 The Directors may from time to time appoint one or more candidates to the office of executive director or chief executive officer on such terms and conditions as may be determined from time to time and may revoke such appointment. Such appointed chief executive officer shall be appointed to the Board.
- 11.2.5 The Board shall have the power at any time and from time to time to appoint any other person as a Director (in addition to the 13 Directors appointed in terms of paragraph 10.2.1) as an addition to the Board, provided that no more than three Directors so appointed shall be members of the Board at any one time. Any Director so appointed shall be entitled to vote and shall hold office only until the conclusion of the next following Annual General Meeting.
- 11.2.6 At least one third of the Directors who have served on the Board for more than 3 (three) years, must resign annually. Any such Director is eligible for re-election.
- 11.2.7 At least 50% (fifty percent) of directors must to be independent directors with no employment with or direct or indirect beneficial interest in the company in terms of the **Bread-Based Black Economic Empowerment Act**.
- 11.2.8 At least 50% (fifty percent) of directors must be black people and 25% (twenty five) must be black woman in terms of the **Bread-Based Black Economic Empowerment Act**.
- 11.2.9 The Chairperson shall be elected by the Board annually from amongst the Independent Directors at the first meeting of the Directors following the Annual

General Meeting of the Company, subject always to a maximum continuous term in office of three years.

11.2.10 The Chairperson shall preside at meetings of the Board. If the Chairperson is not present or willing to act within five minutes of the time appointed for the commencement of such meeting, the Directors then present shall choose any other Independent Chairperson of their number to be chairperson of such meeting.

11.2.11 The replacement of any or all the Directors shall in no way affect the continuation of the Company which will continue to exist notwithstanding the arising of any vacation of, or removal of, or ceasing to qualify of, any director.

11.3 **Vacation of office**

The office of the Director shall *ipso facto* be vacated if such Director:

11.3.1 dies;

11.3.2 resigns;

11.3.3 becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;

11.3.4 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;

11.3.5 holds any other office of profit under the Company, without the consent of the Company, except that of executive director or chief executive officer;

11.3.6 is absent from meetings of Directors for more than six months without permission of the Board;

11.3.7 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner contemplated in paragraph 11.7;

11.3.8 becomes ineligible or disqualified in terms of section 69; or

11.3.9 is removed in terms of paragraph 11.4.

11.4 Removal from office

- 11.4.1 The Company may in accordance with section 71 remove any Director before expiration of this period of office. Under these circumstances, a vacancy shall arise and the provisions of and the procedure set out in Clause 10.2.2 above shall apply.
- 11.4.2 A Director may further be removed from office by order of the court as contemplated in section 71(5) or (6).

11.5 Vacancies

- 11.5.1 The Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in paragraph 11.2.1 as the minimum number of Directors, then the remaining Directors may act for the purpose of increasing the number of Directors to that number, but for no other purpose.

11.6 Meetings

- 11.6.1 The Directors must meet together at least quarterly for the dispatch of the business of the Company.
- 11.6.2 The conduct of meetings shall generally be governed in terms of section 73. Notwithstanding the aforementioned, the Board may regulate their meeting as they think fit.
- 11.6.3 The chief executive officer of the company shall attend all Board meetings and shall not in his capacity as chief executive officer have a casting vote in addition to any vote he may have by virtue of being a Director of the Company.
- 11.6.4 Any three Directors may at any time convene a meeting of the Directors by requesting such a meeting from the Chairperson, who shall summon the meeting by no later than one month from receipt of the request. A Director while absent from the Republic of South Africa shall, during such absence, be entitled to notice of any meeting.
- 11.6.5 Notice of a Board meeting must be given to each Director in writing, whether by post, fax or email, not less than 14 days prior to the meeting.

- 11.6.6 Where the Chairperson has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Directors:
- 11.6.6.1 acknowledge actual receipt of the notice; or
 - 11.6.6.2 are present at the meeting; or
 - 11.6.6.3 waive notice of the meeting.
- 11.6.7 A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 11.6.8 The quorum necessary for the transaction of the business of the Directors shall at all times be at least three Directors.
- 11.6.9 Each Director shall be entitled to one vote in regard to all business brought before the Board.
- 11.6.10 The chairperson of the Board meeting shall have a casting vote in the event of a tie.
- 11.6.11 Unless otherwise provided in this MOI, a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 11.6.12 A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 11.6.13 Resolutions adopted by the Board:
- 11.6.13.1 must be dated and sequentially numbered; and
 - 11.6.13.2 are effective as of the date of the resolution, unless the resolution states otherwise.

11.6.14 The Company shall keep minutes of all Board meetings, and any of its committees, and include in the minutes:

11.6.14.1 any declaration of personal financial interest given by notice or made by a Director as required by section 75; and

11.6.14.2 every resolution adopted by the Board.

11.6.15 Any minutes of a Board meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next Board meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

11.7 **Personal Financial Interests**

If a Director has a personal financial interest, (or knows that a related person has such an interest) he must disclose in advance, in writing, to the Board the nature and extent of that interest. This disclosure must comply with the requirements of the Companies Act. If the personal financial interest (including that of a related person), arises after the matter has been approved by the Board then the Director or prescribed officer concerned must promptly, after the interest arises, disclose same to the Board in accordance with section 75.

11.8 **Indemnification**

11.8.1 Subject to a resolution of the Directors, the Board may:

11.8.1.1 advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Company; and

11.8.1.2 may directly or indirectly indemnify a Director for expenses contemplated in paragraph 11.8.1.1, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Company may indemnify the Director as provided in terms of sections 78(5) and (6).

11.8.2 Subject to the limitations imposed by section 78(6), the Company may indemnify a Director, committee member or officer of the Company.

11.8.3 The Company may purchase insurance to protect:

- 11.8.3.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with paragraph 11.8.2; or
- 11.8.3.2 the Company against any contingency including, but not limited to:
 - 11.8.3.2.1 any expenses that the Company is permitted to advance in accordance with paragraph 11.8.1.1; or
 - 11.8.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with paragraph 11.8.2.
- 11.8.4 The Company is entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this paragraph 11.8.

11.9 **Remuneration**

- 11.9.1 The Directors of the Company shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors (except as contemplated in this MOI).
- 11.9.2 Where a Director renders additional services to the Company, other than his/her services as a Director, such Director may be remunerated by the Company for such services, provided that such remuneration is fair and reasonable, and has been approved by Board resolution following the procedure set out in section 75(5) and supported by no less than 75% of the disinterested Directors of the Company.
- 11.9.3 No remuneration will be paid 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.

11.10 **Reimbursements**

A Director of the Company may be reimbursed by the Company for reasonable and necessary expenses incurred in the *bona fide* performance of his/her duties to the Company, provided that any reimbursement of any expense not of a category of expenses expressly budgeted for in the annual budget of the Company approved by

the Board or of an amount exceeding any limit with respect to any category of expenses specified in the annual budget of the Company approved by the Board shall be subject to the prior approval of a disinterested majority of the Directors of the Company by resolution.

11.11 Loans

The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company, or to a person related to any such director, unless it:

- 11.11.1 is in the ordinary course of the Company's business and for fair value and to advance one or more of the stated objects of the Company set out in this MOI; or
- 11.11.2 constitutes an accountable advance to meet:
 - 11.11.2.1 legal expenses in relation to a matter concerning the Company; or
 - 11.11.2.2 anticipated expenses to be incurred by the person on behalf of the Company, or
- 11.11.3 is to defray the person's expenses for removal at the Company's request; or
- 11.11.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

12. Officers

- 12.1 The Board may appoint any officers it considers necessary to better achieve the stated objects of the Company.
- 12.2 The Board may appoint any number of committees, and to delegate to any such committees any of the authority of the Board.
- 12.3 Any committee appointed by the Board:
 - 12.3.1 may include in any such committee/s persons who are not directors, provided that:
 - 12.3.1.1 any such person must not be ineligible or disqualified to be a director in terms of section 69; and

- 12.3.1.2 no such person has a vote on a matter to be decided by the committee,
- 12.3.2 may consult with or receive advice from any person; and
- 12.3.3 has the full authority of the Board in respect of a matter referred to it.

13. Registered office

The registered office of the Company from time to time shall be at such location within the Republic of South Africa as the Board may from time to time determine.

14. Company records and accounting records

- 14.1 All company records contemplated by section 24, and all accounting records contemplated by section 28 and Regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.
- 14.2 The Company shall cause a bank account at a recognised financial institution to be opened in the name of the Company and all deposits and payments shall be made through such account.

15. Financial year

The financial year of the Company shall end on 31 December of each year.

16. Annual Financial Statements

- 16.1 Each year, the Company must prepare annual financial statements within six months after the end of its financial year.
- 16.2 The Company elects, in terms of section 30(2)(b)(ii)(aa), that the annual financial statements of the Company be audited voluntarily.
- 16.3 The annual financial statements must:
 - 16.3.1 include an auditor's report;
 - 16.3.2 include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Company, including:
 - 16.3.2.1 any material matter relating to the Company's state of affairs; and

- 16.3.2.2 any prescribed information;
- 16.3.3 be approved by the Board and signed by an authorised Director; and
- 16.3.4 be submitted to the Directors in the first General Meeting, after such annual financial statements have been approved by the Board and signed by the authorised Director, within nine months of the end of the financial year.

17. Annual returns

- 17.1 Each year, the Company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period (currently being 30 days) after the end of the anniversary of the date of its incorporation, which return must:
 - 17.1.1 include a copy of the Company's annual financial statements;
 - 17.1.2 designate a Director, employee or other person who is responsible for the Company's compliance with the transparency, accountability and integrity requirements in terms of Part C of Chapter 2 of the Companies Act, and the requirements of Chapter 3 of the Companies Act, if these requirements apply to the Company; and
 - 17.1.3 any other prescribed information.

18. Enhanced Accountability and Transparency

- 18.1 The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act.
- 18.2 The Company may, but is not obliged to, appoint a person to serve as company secretary and/or appoint a person to serve as an auditor, and/or establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.
- 18.3 The Company elected to have its annual financial statements audited in terms of sections 30(2) and (7), read with Regulation 28 and Regulation 26(2), and therefore the Company shall comply to the extent necessary with the provisions of Chapter 3 of the Companies Act with which it is required to comply.

19. Reserves

The Directors shall set aside and carry to a reserve fund all the surplus funds of the Company, which may at their discretion be applied for any purpose for which such funds of the Company may properly be applied in such manner as the Directors deem fit.

20. Winding Up or Dissolution of the Company

20.1 The Company may be wound up voluntarily by the Board in passing a resolution supported by a majority of the directors. Any such voluntary winding up shall be affected in accordance with section 80.

20.2 Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act and section 30 of the Income Tax Act. For the avoidance of doubt this means:

20.2.1 On dissolution of the Company, the remaining assets will be transferred to –

20.2.1.1 A public benefit organisation, which has been approved in terms of section 30 of the Act, alternatively

20.2.1.2 Any institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity; or

20.2.1.3 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 the Act subject thereto that the activities of the organisation are carried on in a non-profit manner and with an altruistic or philanthropic intent; and

20.2.1.4 No past or present Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.

21. Compliance with Broad-Based Ownership Schemes

21.1 The management fee charged by the Company shall not exceed 15% (fifteen percent) of donations received by the Company;

21.2 The Chairman must be Independent;

- 21.3 At least 50% (fifty percent) of directors must to be independent directors with no employment with or direct or indirect beneficial interest in the company in terms of the Bread-Based Black Economic Empowerment Act.
- 21.4 At least 50% (fifty percent) of directors must be black people and 25% (twenty-five) must be black woman in terms of the Bread-Based Black Economic Empowerment Act.
- 21.5 to distribute no less than 85% (Eighty Five percent) of all donations received to “black people” as defined in Section 1 of the Broad-Based Black Economic Empowerment Act.
- 21.6 100% (Hundred percent) of net donations after management fees not exceeding 15% (fifteen percent)) from each donation will be distributed to beneficiaries
- 21.7 Read with Clause 8 of the MOI with exception to clause 20 of the MOI; No amendments to Section 20 of the MOI can be made except changes to clause 20 where Clause 20 is a conflict to the Bread-Based Black Economic Empowerment Act.