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**Companies and Intellectual Property Commission**

**Republic of South Africa**

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**Memorandum of Incorporation**

**Of**

**DANIE DU PLESSIS - ACFE SA FOUNDATION NPC**

**Registration Number: 2020/082007/08**

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This Memorandum was adopted by the incorporators of the company in accordance with section 13(1) of the Act as evidenced by the following signatures made by the incorporators or on their behalf. The Memorandum is in a form unique to the company as contemplated in section 13(1)(a)(ii) of the Act and no prescribed form contemplated in section 13(1)(a)(i) shall apply to the company.

1. Interpretation

In this Memorandum, unless the context otherwise requires:

- 1.1 "Act" means the Companies Act 71 of 2008, as amended;
- 1.2 "Member" means a person who holds membership in and specified rights in respect of the company, as contemplated in Schedule 1 of the Act;
- 1.3 "Memorandum" means this Memorandum of Incorporation;
- 1.4 'present at a meeting' means to be present in person, or able to participate by electronic communication, or to be represented by a proxy or any other duly authorised representative admitted to participate and vote in terms of section 63(1) of the Act or otherwise in terms of this

Memorandum, who is present in person or able to participate by electronic communication;

- 1.5 "regulation" means a means a regulation contained in the Companies Regulations, 2011, published under Government Notice R351 in Government Gazette 34239 of 26 April 2011, as amended.
- 1.6 Expressions defined in the Act in force at the date on which this Memorandum becomes binding on the company, shall have the meanings so defined.
- 1.7 Words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

## 2. Preliminary

- 2.1 If the provisions of this Memorandum are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and this Memorandum shall be read in all respects subject to the Act.
- 2.2 The company is constituted in accordance with the provisions of this Memorandum, the alterable provisions of the Act subject to the limitations, extensions, variations and substitutions set out in this Memorandum and the unalterable provisions of the Act subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum.

## 3. Non-profit company

- 3.1 The company is a non-profit company with members.
- 3.2 The object of the company is to carry on one or more public benefit activities (PBA's).

3.2.1 PRINCIPLE OBJECT FUNDING TO ENSURE FURTHER EDUCATION OF THE PREVIOUS DISADVANTAGE in a non-profit manner and with an altruistic or philanthropic intent as prescribed in section 30(1) of the Income Tax Act (the Act).

3.3 The public benefit activities include:

3.3.1 welfare and Humanitarian Work

3.3.2 Health Care

3.3.3 Education and Development

3.3.4 Providing funds, assets and other resources

3.4 The activities will be carried on for the benefit of relatives, widow's, widowers and children or orphans of living, disabled or deceased members of the South African Police Services or any other similar Police Forces and Law Enforcement Agencies in the Republic of South Africa, including but not limited to the South African National Defence Force's Military Police Division.

3.5 The provision of financial assistance will be in the form of funding, assets or any other means to the beneficiaries.

4. Powers of the company

4.1 The company is a juristic person which has all of the legal powers and capacity of an individual except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, or to the extent that this Memorandum or the Act places restrictions on the powers of the company.

4.2 The company:

4.2.1 must apply all of its assets and income, however derived, to advance its object;

4.2.2 subject to article 4.2.1, may acquire and hold securities issued by a profit company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its object;

4.2.3 must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a director, or person appointing a director, of the company, except:

4.2.3.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the company;

4.2.3.2 as reasonable payment of, or reimbursement for, expenses incurred to advance the object of the company;

4.2.3.3 as 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;

4.2.3.4 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 the object of the company; or

4.2.3.5 in respect of any legal obligation binding on the company; and

4.2.4 must 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 of a related or inter-related

company, or to a person related to any such director, unless it is a transaction contemplated in item 5(4) of Schedule 1 to the Act.

4.3 In addition to observing the limitations set out in article 4.2, the company:

4.3.1 must carry out its activities in a non-profit manner and with an altruistic or philanthropic intent;

4.3.2 must refrain from carrying on any activity which is intended to directly or indirectly promote the economic self-interest of any director or employee other than by way of reasonable remuneration;

4.3.3 must utilise its funds solely for the object for which it has been established;

4.3.4 is prohibited from directly or indirectly distributing any of its funds to any person otherwise than in the course of undertaking any activity in furtherance of its object;

4.3.5 is 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 of the donation in terms of section 18A of the Income Tax Act 58 of 1962 ("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.

5. Elections

5.1 The company elects to have its annual financial statements audited, as contemplated in section 30(2)(b)(ii)(aa) of the Act.

5.2 The company does not elect to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Act in respect of an auditor, audit committee and company secretary but will comply with the requirements of Part C of Chapter 3 to the extent applicable by operation of the Act.

6. Alteration and amendments of the Memorandum

6.1 This Memorandum may be amended by the board to the extent necessary to comply with an order of court by a business rescue practitioner as permitted in term of the Act or by the members by way of a special resolution passed in accordance with the

6.2 This Memorandum may be altered by the board or an individual authorised by the board, in order to correct a patent error in spelling, punctuation, reference, grammar or similar defects by sending a notice of the alterations to every director and filing a notice of the alteration with the Commission.

7. Directors

7.1 The number of directors shall not be less than 3 nor more than 7, with the proviso that the company will always have an uneven number of directors.

7.2 The incorporators of the company shall be its first directors. New directors shall be elected and vacancies on the board shall be filled by election by the existing board members.

7.3 In any election of directors the election is to be conducted as a series of votes each of which is on the candidacy of a single

individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled. In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.

7.4 A director elected by the board may be removed by majority vote of the remaining board members at any time.

## 8. Qualification of directors

8.1 There are no grounds of eligibility or qualification to be met by a person to serve as a director of the company, in addition to those set out in section 69 of the Act.

8.2 A person is not obliged to be a member of the Company to qualify for election as a director.

## 9. Alternate directors

9.1 Any director shall have the power to nominate another person approved by the board to act as alternate director in his place during his absence or inability to act as such director, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms and conditions existing with reference to the other directors of the company. A person may be appointed as alternate to more than one director. If a person is alternate to more than one director or where an alternate director is a director, he shall have a separate vote, on behalf of each director that he is representing in addition to his own vote, if any.

9.2 The alternate directors, whilst acting in the place of the directors who appointed them, shall exercise and discharge all the duties and functions of the directors they represent. The

appointment of an alternate director shall cease on the happening of any event which, if he were a director, would cause him to cease to hold office in terms of this Memorandum or if the director who appointed him ceases to be a director, or gives notice to the company that the alternate director representing him shall have ceased to do so. An alternate director shall look to the director who appointed him for his remuneration.

10. General powers and duties of directors

10.1 The business and affairs of the company shall be managed by or under the direction of the board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Memorandum or the Act provides otherwise.

10.2 The directors may delegate any of their powers to committees which may include persons who are not directors of the company provided that any such person must not be ineligible or disqualified to be a director and no such person shall have a vote on any matter to be decided by the committee. The meetings and proceedings of a board committee consisting of more than one member shall be governed by the provisions of this Memorandum regulating the meetings and proceedings of directors, read with the necessary changes.

10.3 The board may make, amend or repeal rules relating to the governance of the company, provided that those rules may not be inconsistent with the Act or this Memorandum. Rules made by the board, published by delivering a copy to each director and to the company and filed with the Commission shall be binding between the company and each director, prescribed

officer and board committee member in the exercise of their respective functions.

11. Vacancies of the office of director

11.1 Subject to section 70(2) of the Act where the board has resolved to remove a director, a person ceases to be a director, and a vacancy arises on the board if the person's term of office expires or if the person:

11.1.1 resigns or dies;

11.1.2 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, subject to removal by the board in terms of section 71(3) of the Act;

11.1.3 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company, in terms of section 162 of the Act;

11.1.4 becomes ineligible or disqualified in terms of section 69 of the Act or this Memorandum, subject to removal by the board in terms of section 71(3) of the Act;

11.1.5 is removed by resolution of the board in terms of section 71(3) of the Act;

11.1.6 is removed by order of the court in terms of section 71(5) or (6) of the Act; or

11.1.7 is otherwise removed as provided for in this Memorandum.

12. Proceedings of directors

- 12.1 A director authorised by the board to do so may and shall on the requisition of any two directors, at any time summon a meeting of the directors.
- 12.2 Unless otherwise resolved by the directors, all their meetings shall be held in the city or town where the company's registered office is for the time being situated.
- 12.3 The directors may determine what period of notice shall be given of board meetings and may determine the means of giving such notice which may include any means contemplated in the regulations.
- 12.4 If all of the directors acknowledge receipt of notice of a meeting, are present at a meeting or waive notice of a meeting, the meeting may proceed even if there was a failure to provide the required notice or if notice was defective in any way.
- 12.5 A quorum shall consist of a majority of the directors then in office. Each director whose alternate is present at a meeting (even if the latter is alternate to more than one director) shall be deemed to be so present.
- 12.6 If within thirty minutes of the appointed time for a meeting a quorum is not present the meeting will automatically be postponed for one week. In such event it shall not be necessary to give further notice of the meeting unless the location for the meeting is different from the location of the postponed meeting. If at the appointed time for a postponed meeting to begin a quorum is not present the directors present shall be deemed to constitute a quorum.
- 12.7 Each director has one vote on a matter before the board and questions arising shall be decided by a majority of votes. The chairman shall not have a second or casting vote.

- 12.8 A meeting of the board may be conducted by electronic communication or one or more of the directors may participate in a meeting by electronic communication, provided that 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.
- 12.9 A decision that could be voted on at a meeting of the board may instead be adopted by written consent of the majority of the directors given in person or by electronic communication provided each of the directors 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 board meeting. Each such resolution shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last director required to sign it and where it states a date as being the date of its signature by any director that document shall be prima facie evidence that it was signed by that director on that date. Resolutions may be signed by making use of secure electronic signatures.
- 12.10 The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding it, the meeting will be postponed and rescheduled.
- 12.11 Subject to articles 12.1 to 12.10 above, the directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
13. Validity of acts of directors and company

13.1 A failure by the company to have the minimum number of directors required by the Act or this Memorandum does not limit or negate the authority of the board or invalidate anything done by the board or the company.

14. Notices

14.1 Notices contemplated in this Memorandum shall be delivered and deemed to be delivered as provided for in the regulations.

14.2 When a given number of days' notice or notice extending over any period is required to be given, unless the period is calculated in business days, neither the day of service nor, if the notice is one convening a meeting, the date of the meeting, shall be counted in such number of days or period.

15. Indemnity and insurance

15.1 Every director, alternate director and prescribed officer of the company and each board committee member who is not a director shall be indemnified out of the funds of the company against all liability incurred by him in that capacity by reason of any contract entered into or act or deed done by him in that capacity or in any way in the discharge of his duties, provided that no such person shall be indemnified in respect of:

15.1.1 liability arising in terms of section 77(3)(a) of the Act which relates to the taking of actions without authority to do so;

15.1.2 liability arising in terms of section 77(3)(b) of the Act which relates to acquiescing to the carrying on of the company's business in a manner which is reckless, grossly negligent or fraudulent;

15.1.3 liability arising in terms of section 77(3)(c) of the Act which relates to being a party to an act or omission of the Company which had a fraudulent purpose;

15.1.4 wilful misconduct or wilful breach of trust on the part of the director; or

15.1.5 a fine imposed as a consequence of the conviction of an offence, unless the offence was based on strict liability.

15.2 The company may purchase insurance in respect of the permitted indemnities contemplated above.

## 16. Winding up

Upon the winding up or dissolution of the company:

16.1 no past or present director of the company or person appointing a director is entitled to any part of the net value of the company after its obligations and liabilities have been satisfied; and

16.2 the entire net value of the company must be distributed to one or more non-profit companies, registered external non-profit companies, voluntary associations or nonprofit trusts having objects similar to its main object and as determined by the directors at or immediately before the time of the company's dissolution.