

MEMORANDUM OF INCORPORATION

OF

THE INGRID MOSTERT FOUNDATION NPC

(Hereinafter referred to as the "Company")

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SCHEDULES

SCHEDULE 1 - INTERPRETATION AND DEFINITIONS



1 ARTICLE 1 - INCORPORATION AND NATURE OF THE COMPANY

1.1 Incorporation

1.1.1 The **Company** is incorporated as a **Non-Profit Company** without members.

1.1.2 The **Company** is incorporated in accordance with, and governed by:

1.1.2.1 the unalterable provisions of the **Act** that are applicable to **Non-Profit Companies**;

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

1.1.2.3 the provisions of this **Memorandum**.

1.1.3 Public Benefit Organisation

1.1.3.1 In order for the **Company** to comply with the requirements relevant to a **Public Benefit Organisation** and for the period while it is so registered, it is expressly agreed that:

1.1.3.1.1 the sole object of the **Company**, as described in this **Memorandum**, shall at all times be to carry on one or more **Public Benefit Activity**;

1.1.3.1.2 the **Company** is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any **Public Benefit Activity** and in terms of article 1.4) and is required to utilise its funds solely for the object for which it has been established;

1.1.3.1.3 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;

1.1.3.1.4 at least 3 (three) **Directors** will not be connected persons in relation to each other and no single **Director** shall directly or indirectly control the decision making powers in the **Company**;

1.1.3.1.5 the **Company** 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 thereof;

1.1.3.1.6 the **Company** will comply with such reporting requirements as may be determined by the Commissioner of the South African Revenue Services;

1.1.3.1.7 no remuneration will be paid to employees, office bearers or other persons which, in the opinion of the **Board**, is excessive, having regard to what is reasonable in the sector in relation to the services rendered;

1.1.3.1.8 the **Company** will not economically benefit any person in any manner that is inconsistent with its **Objects** as described in this **Memorandum**; and

1.1.3.1.9 to the extent that the **Income Tax Act** is amended so as to delete, change or add any of the above requirements, the provisions of this article 1.1.3 shall be deemed to be altered to reflect such deletion, change or addition.

1.1.4 The income and property of the **Company** shall be applied towards the promotion of its **Objects**, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to its **Directors** and/or incorporators, except-

1.1.4.1 as reasonable remuneration for goods delivered or services rendered to, or at the discretion of the **Company**;

1.1.4.2 as a reasonable payment of, or reimbursement for, expenses incurred to advance a stated **Object** of the **Company**;

1.1.4.3 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;

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

1.1.4.5 in respect of any legal obligation binding on the **Company**.

1.2 **Objects of the Company**

1.2.1 Caring for people recovering from brain injuries and their families.



1.3 Powers of the Company

- 1.3.1 Except to the extent necessarily implied by the **Objects**, the **Company** 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. For avoidance of doubt, the purposes and powers of the **Company** are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the **Act**.
- 1.3.2 The **Company** is and shall continue to be a distinct and separate legal entity with the power to acquire, to hold and to alienate property of every description whatsoever and with the capacity to acquire rights and obligations and having perpetual succession.
- 1.3.3 The **Company** is not subject to any provision contemplated in section 15(2)(b) or (c) of the **Act**. For avoidance of doubt, this **Memorandum** does not-
- 1.3.3.1 contain any restrictive conditions applicable to the **Company**, and/or
- 1.3.3.2 prohibit the amendment of any particular provision of this **Memorandum**.
- 1.3.4 Upon 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 **Act**. For avoidance of doubt, upon the winding-up or dissolution of the **Company**, its entire net value must be distributed to:
- 1.3.4.1 one or more **Non-Profit Companies**, or
- 1.3.4.2 registered external non-profit companies carrying on activities within the **Republic**, or
- 1.3.4.3 voluntary associations, or
- 1.3.4.4 non-profit trusts;

having objects similar to the **Objects** and which is approved as a **Public Benefit Organisation**, as determined by the **Board**, at or immediately before the time of its dissolution. If the **Board** fails to make such a determination, the matter shall be referred to the appropriate court for determination.

1.4 Memorandum of Incorporation and Company Rules

- 1.4.1 This **Memorandum** may be altered or amended only in the manner set out in sections 16, 17 or 152(6)(b) of the **Act**. For avoidance of doubt this **Memorandum** may be amended:

- 1.4.1.1 in compliance with a court order, effected by a resolution of the **Board**; or
 - 1.4.1.2 pursuant to a resolution to amend it being proposed by the **Board**; which resolution is subsequently adopted at a **Board** meeting or in accordance with section 74 of the **Act**; or
 - 1.4.1.3 by the **Board**, or an individual authorised by the **Board**, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by: i) publishing a notice of the amendment in a manner required or permitted by this **Memorandum** or the **Rules**, and ii) filing such a notice.
- 1.4.2 Save as specifically provided for in 1.4.1, this **Memorandum** is not capable of amendment by any other method. Accordingly, the provision of section 16(1)(b) of the **Act** shall not apply, nor shall any other alterable provision of the **Act** that allows for the amendment of the **Memorandum** other than the methods contemplated in 1.4.1.
- 1.4.3 Notwithstanding anything to the contrary contained herein, to the extent that the **Company** has been approved as a **Public Benefit Organisation**, the **Company** must submit any amendment to the **Memorandum** to the Commissioner of the South African Revenue Services.
- 1.4.4 The authority of the **Board** to make **Rules** for the **Company**, as contemplated in section 15 (3) to (5) of the **Act**, is not limited or restricted in any manner by this **Memorandum**.
- 1.4.5 The **Board** must publish any **Rules** made in terms of section 15 (3) to (5) of the **Act**, by delivering a copy of those **Rules** to each **Director** by ordinary or electronic mail.
- 1.4.6 The **Company** must publish a notice of any alteration of the **Memorandum** or the **Rules**, made in terms of section 17(1) of the **Act**, by delivering a copy of the amendment to each **Director** by ordinary or electronic mail and thereafter filing a copy of such **Rules** with the **CIPC**.
- 1.5 **Optional provisions of Chapter 3 of the Act**
- 1.5.1 The **Company** does not elect, in terms of sections 34(2) and 84(1)(c)(ii) of the **Act**, to voluntarily submit its financial records to an annual audit. As such, the **Company** shall not appoint a person to serve as **Auditor**, in the manner and for the purposes set out in sections 90 to 93 of the **Act**.
- 1.5.2 To be appointed as an **Auditor** of the **Company** a person or firm—



- 1.5.2.1 must be a registered auditor;
- 1.5.2.2 must satisfy the requirements for directors (as set out in the Act and this Memorandum), and must not be—
 - 1.5.2.2.1 a Director or Prescribed Officer of the Company;
 - 1.5.2.2.2 an employee or consultant of the Company who was or has been engaged for more than 1 (one) year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;
 - 1.5.2.2.3 a director, officer or employee of a person appointed as company secretary;
 - 1.5.2.2.4 a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the Company;
 - 1.5.2.2.5 a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was a person contemplated in any of sub articles 1.5.2.2.1 to 1.5.2.2.4; or
 - 1.5.2.2.6 a person related to a person contemplated in sub articles 1.5.2.2.1 to 1.5.2.2.5.
- 1.5.3 The Company elects, in terms of sections 34 (2) and 84(1)(c)(ii) of the Act, not to comply voluntarily with the provisions of Part C of Chapter 3 of the Act. As such, the Company is not obliged appoint a company secretary.
- 1.5.4 If the Company is for whatsoever reason obliged to appoint a company secretary in the manner and for the purposes set out sections 86 to 89 of the Act, the company secretary will be accountable to the Board, and its duties will include, but not be restricted to:
 - 1.5.4.1 providing the Directors collectively and individually with guidance as to their duties, responsibilities and powers;
 - 1.5.4.2 making the Directors aware of any law relevant to or affecting the Company;
 - 1.5.4.3 reporting to the Board any failure on the part of the Company or a Director to comply with this Memorandum, with the rules or with the Act;
 - 1.5.4.4 ensuring that minutes of all Members' meetings, Board meetings and the meetings of any Committees are properly recorded in accordance with the Act;



- 1.5.4.5 certifying in the **Company's** annual financial statements whether the **Company** has filed all the required returns and notices in terms of the **Act**, and whether all such returns and notices appear to be true, correct and up to date;
- 1.5.4.6 ensuring that a copy of the **Company's** annual financial statements is sent, in accordance with the **Act**, to every person who is entitled to it; and
- 1.5.4.7 carrying out the functions of a person designated to be responsible for the **Company's** compliance with the filing of annual returns and the enhanced accountability and transparency requirements of Chapter 3 of the **Act** to the extent that they are applicable to the **Company**.
- 1.5.5 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the **Republic**.
- 1.5.6 The **Company** must maintain a record of its **Auditors** and, if applicable, company secretaries, including:
 - 1.5.6.1 in respect of each person so appointed: i) the name, including any former name, of each such person; and ii) the date of every such appointment, and
 - 1.5.6.2 if a firm or **Juristic Person** is appointed: i) the name, registration number and registered office address of that firm or **Juristic Person**; and ii) the name of any individual contemplated in section 90(3) of the **Act**, if that section applies; and
 - 1.5.6.3 any changes in the particulars referred to in 1.5.6.1 and 1.5.6.2 above, as they occur, with the date and nature of each such change.
- 1.5.7 Within 10 (ten) **Business Days** after making an appointment as contemplated in 1.5.1 and, if applicable, 1.5.3, or after termination of service of such appointment, the **Company** must file a notice of appointment or termination, as the case may be.
- 1.5.8 The **Company** elects, in terms of sections 34 (2) and 84(1)(c)(ii) of the **Act**, not to comply voluntarily with the provisions of Part D of Chapter 3 of the **Act**. As such the **Company** is not obliged to appoint an audit committee.



2 ARTICLE 2 - DIRECTORS AND OFFICERS

2.1 Composition of the Board of Directors

- 2.1.1 The **Board** comprises a minimum of 3 (three) **Directors**.
- 2.1.2 Notwithstanding anything to the contrary, for as long as the **Company** is a **Public Benefit Organisation**, at least 3 (three) of the **Directors** will not be connected persons.
- 2.1.3 Any **Director** may nominate a candidate for appointment as a **Director**.
- 2.1.4 All nominations will be reported to the next **Board** meeting, together with a recommendation for approval or not to approve and the reasons given.
- 2.1.5 **Directors** shall be nominated and elected from the nominees by the current **Directors** at that time at a **Board** meeting by an ordinary resolution.
- 2.1.6 An election of a **Director** that could be conducted at a **Board** meeting may instead be conducted by written resolution.
- 2.1.7 In addition to the elected **Directors**, there are no appointed or *ex officio* **Directors** of the **Company**, as contemplated in section 66(4) of the **Act**.
- 2.1.8 To become or remain a **Director** or a **Prescribed Officer** of the **Company**, a person needs to satisfy the qualifications and eligibility requirements set out in section 69 of the **Act**. For avoidance of doubt, the following persons will be ineligible or disqualified from serving as **Directors**:
 - 2.1.8.1 a **Juristic Person**;
 - 2.1.8.2 an unemancipated minor;
 - 2.1.8.3 a person prohibited by a court from serving as such, or having been declared to be delinquent in terms of the **Act**;
 - 2.1.8.4 an unrehabilitated insolvent;
 - 2.1.8.5 a person prohibited by public regulation from being a **Director**;
 - 2.1.8.6 a person removed from an office of trust, on the grounds of misconduct involving dishonesty;
 - 2.1.8.7 a person convicted of a crime and imprisoned without the option of a fine or fined more than the prescribed amount, for any offence involving theft, fraud, dishonesty, forgery, perjury, or in connection with the formation and management



of a company, or in terms of the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001, the Security Services Act, 2004 or the Prevention and Combating of Corruption Activities Act, 2004.

- 2.1.9 One-third of the **Directors** shall retire each year at the first **Board** meeting. The **Directors** to retire each year shall be those who have been longest in office since their last election. The **Directors** who form the **Board** at date of the meeting at which election is to take place, shall automatically be eligible for re-election without nomination being required.
- 2.1.10 Despite article 2.1.9, a **Director** shall cease to hold office as such:
- 2.1.10.1 if he/she becomes ineligible or disqualified in terms of the **Act** or this **Memorandum**;
 - 2.1.10.2 if he/she resigns;
 - 2.1.10.3 if he/she is removed in terms of a **Board** resolution as provided for in section 71(3) of the **Act**; or
 - 2.1.10.4 if he/she is absent from meetings of the **Directors** for 6 (six) consecutive months without leave of the **Directors** otherwise than on the business of the **Company** and is not represented at any such meeting during such 6 (six) consecutive months by an alternate directors, and the **Directors** resolve that his office be, by reason of such absence, vacated; provided that the **Directors** shall have the power to grant to any **Director** not resident in the **Republic** leave of absence for any or an indefinite period.
- 2.1.11 All acts done by any **Board** meeting or **Director** shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such **Director**, or that such **Director** were disqualified, be valid as every such **Director** had been duly appointed and was qualified to be a **Director**.
- 2.1.12 The **Directors** may from time to time appoint 1 (one) or more of their body to be Managing Director, Assistant Managing Director or General Manager of the **Company** or to any other executive office/position within the **Company** as the **Board** shall think fit, for a period not exceeding 5 (five) years, and may, subject to any contract between him or them and the **Company**, from time to time terminate his or their appointment and appoint another or others in his or their place or places.
- 2.1.12.1 Subject to any provisions in the contract under which he is appointed, any **Director** appointed to any position or executive office pursuant to 2.1.12 shall be subject to the same provisions as to removal as the other **Directors** of the **Company**.

2.1.12.2 A **Director** who is appointed in terms of the provisions of 2.1.12 to the office of Managing Director of the **Company** or to any other executive office in the **Company** may only be paid to the extent that is permitted in terms of article 1.1.4.

2.1.12.3 The **Board** may from time to time entrust and confer upon a Managing Director or other executive officer appointed under 2.1.12 for the time being such of the powers and authorities vested in them as they think fit, and may confer such powers and authorities for such time, and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may convert such powers and authorities either collaterally with, or to the exclusion of, or in substitution for, all or any of the powers and authorities of the **Directors** in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers and authorities.

2.2 **Alternate Directors**

The **Company** will not have alternate **Directors**.

2.3 **Authority of the Board of Directors**

The management and control of the affairs of the **Company** shall vest in the **Board** which shall have full power and authority to do or perform any act, function, matter or thing which could or might be done by the **Company**.

2.4 **Board meetings**

2.4.1 Meetings of the **Board** shall be held as often as may be determined by the **Board**.

2.4.2 A decision that could be voted on at a meeting of the **Board** may instead be adopted by written consent of a majority of the **Directors** of the **Board**, given in person, or by **Electronic Communication**, provided that each **Director** has received notice of the matter to be decided. Such a written or round-robin resolution shall be deemed to have been passed on the date that the last **Director** affixes his signature thereto.

2.4.3 A **Director** authorised by the **Board**:

2.4.3.1 may call a meeting of the **Board** at any time; and

2.4.3.2 must call such a meeting if required to do so by at least 25% (twenty five percent) of the **Directors**, in the case of the **Board** having at least 12 (twelve) members, or 2 (two) **Directors**, in any other case.

- 2.4.4 The authority of the **Board** to conduct a meeting entirely by **Electronic Communication**, or to provide for participation in a meeting by **Electronic Communication**, as set out in section 73(3) of the **Act**, is not limited or restricted by this **Memorandum**, 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.
- 2.4.5 The **Board** may determine the form and time for giving notice of its meetings, but:
- 2.4.5.1 such a determination must comply with any requirements set out in this **Memorandum**, or the rules; and
- 2.4.5.2 no meeting of the **Board** may be convened without notice to all of the **Directors**.
- 2.4.6 The authority of the **Board** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) of the **Act**, is not limited or restricted by this **Memorandum**. As such, if all of the **Directors** of the **Company** i) acknowledge actual receipt of the notice, ii) are present at the meeting, and iii) waive notice of the meeting, the meeting may proceed even if the **Company** failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 2.4.7 The **Directors** may elect a chairman / vice chairman of the meetings of the **Board**, and may determine a period for which they are to hold office, but if no such chairman or vice chairman is elected or if at any meeting neither of them is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the **Directors** present shall choose one of their number to be chairman of such meeting.
- 2.4.8 The authority of the **Board** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) of the **Act**, is not limited or restricted by this **Memorandum**.
- 2.4.9 A majority of the **Directors** must be present at a meeting before a vote may be called at a meeting of the **Board**.
- 2.4.10 If within 30 (thirty) minutes after the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day and time the following week. At such adjourned meeting the **Directors** present shall constitute a quorum.
- 2.4.11 Each **Director** has 1 (one) vote on a matter before the **Board**.
- 2.4.12 A majority of the votes cast on a resolution is sufficient to approve that resolution.
- 2.4.13 In the case of a tied vote the chairman shall not have a casting or second vote above his deliberative vote as a **Director**.



- 2.4.14 The **Board** shall meet at regular intervals, from time to time as required. For this purpose, an annual program of dates and times of meetings shall be circulated to all the **Directors** at the beginning of every calendar year.
- 2.4.15 Notice, confirmatory and otherwise, of any meeting of the **Board** shall be given to all **Directors** not less than 10 (ten) **Business Days** prior to the date of the meeting.
- 2.4.16 The chairman shall cause for minutes of **Board** meetings to be kept in the prescribed manner and format, and any such minutes or an extract therefrom, signed by the chairman, shall be prima facie evidence of the matters stated therein.

2.5 Financial assistance

- 2.5.1 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 of a **Related** or **Inter-Related** company, or to a person related to any such **Director**, unless -
- 2.5.1.1 it is in the ordinary course of the **Company's** business and for fair value;
- 2.5.1.2 constitutes an accountable advance to meet -
- 2.5.1.2.1 legal expenses in relation to a matter concerning the **Company**;
- 2.5.1.2.2 anticipated expenses to be incurred by the person on behalf of the **Company**;
- 2.5.1.3 is to defray the person's expenses for the removal at the **Company's** request; or
- 2.5.1.4 it is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 2.5.2 Any financial assistance as contemplated therein must in addition (i) be consistent with or connected to the **Company's Objects** and (ii) not in any way cause the **Company** to breach the requirements under section 30 of the **Income Tax Act**.
- ## 2.6 Indemnification of Directors
- 2.6.1 The **Company** may advance expenses to a **Director** to defend litigation in any proceedings arising out of the **Director's** service to the **Company**, and may further directly or indirectly indemnify a **Director** for such expenses if the proceedings are abandoned or exculpate the



Director, or if they arise in respect of any liability for which the **Company** is authorised to indemnify a **Director** in terms of 2.6.2 below.

2.6.2 The **Company** indemnifies every **Director** in respect of liability arising out of performance of his duties and actions taken as **Director** except to the extent that such liability arises from wilful misconduct or wilful breach of trust, or in the case of the **Director** having:

2.6.2.1 acted in the name of the **Company**, or performed any action on behalf of the **Company**, despite knowing that he or she lacked any and all authority to do so;

2.6.2.2 acted with gross negligence in such a manner that the **Company** is viewed to have conducted its business recklessly, with intent to defraud any person or for any fraudulent purpose; or

2.6.2.3 been party to any act or omission by the **Company** despite knowing that the act or omission was calculated to defraud a creditor, employee or member of the **Company**, or had another fraudulent purpose.

2.6.3 The **Company** is authorised to purchase insurance to protect:

2.6.3.1 a **Director** against any liability or expenses for which the **Company** is permitted to indemnify a **Director** in accordance with 2.6.2 above; or

2.6.3.2 the **Company** against any contingency including, but not limited to, any expenses or liability indemnification the **Company** is authorised to award to the **Directors**.

2.7 **Officers and Committees**

2.7.1 The **Board** may appoint any officers it considers necessary to better achieve the **Objects**;

2.7.2 The **Board** is authorised to appoint **Committees** of **Directors**, and to delegate to any such **Committee** any of the authority of the **Board**, as set out in section 72(1) of the **Act**, and to include in any such **Committee** persons who are not **Directors**, as set out in section 73(2)(a) of the **Act**, as long as such **Committee** members are not ineligible or disqualified from being directors in terms of the **Act** or this **Memorandum**.

2.7.3 A **Committee** appointed by the **Board** (refer 2.7.2 above) has the full authority of the **Board** in respect of a matter referred to it, and may consult with or receive advice from any person.

Schedule 1 to the Memorandum of Incorporation (the "Memorandum") of The Ingrid Mostert Foundation NPC.

1. Interpretation

- 1.1 In the **Memorandum**, unless the context clearly indicates a contrary intention -
 - 1.1.1 section and/or clause headings are for convenience only and are not to be used in its interpretation;
 - 1.1.2 an expression which denotes -
 - 1.1.2.1 any gender includes the other gender;
 - 1.1.2.2 a natural person includes a juristic person and vice versa;
 - 1.1.2.3 the singular includes the plural and vice versa;
 - 1.1.3 a reference to a document includes an amendment or supplement to, or replacement or notation of, that document;
 - 1.1.4 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
 - 1.1.5 when any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last, unless the last day is not a **Business Day**, in which case, the last day shall be the first **Business Day** thereafter;
 - 1.1.6 where the day on or by which anything is to be done, is not a **Business Day**, it shall be done on or by the first **Business Day** thereafter;
 - 1.1.7 if any provision is a definition (or under this heading "*Interpretation*" and/or any other heading in the **Memorandum**) and is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition (or such other clause), effect shall be given to it as if it were a substantive provision in the body of the **Memorandum**;
 - 1.1.8 the use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and general words that follow specific words in a list, shall not be construed as referring only to the types of things identified by the specific words;
 - 1.1.9 a reference to any statutory enactment shall be construed as a reference to that enactment as at the date of adoption of the **Memorandum** and as amended or substituted from time to time;
 - 1.1.10 a reference to the **Act** shall include a reference to the **Regulations**;
 - 1.1.11 a reference to a section by number refers to the corresponding section of the **Act**;
 - 1.1.12 a reference to an article by number refers to a corresponding provision of the **Memorandum**;
 - 1.1.13 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this **Memorandum** and -
 - 1.1.13.1 an alterable or elective provision of the **Act**, the provision of this **Memorandum** shall prevail to the extent of the conflict; and
 - 1.1.13.2 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** 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** shall prevail to the extent of the conflict.

- 1.2 The **Memorandum** includes the **Schedules** thereto.
- 1.3 Words and expressions defined in any article shall, unless the application of any such word or expression is specifically limited to that article or clause, bear the meaning assigned to such word or expression throughout the **Memorandum**.
- 1.4 In the **Memorandum**, unless the context clearly indicates a contrary intention, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings -
 - 1.4.1 "**Act**" means the Companies Act, Act 71 of 2008, as amended from time to time;
 - 1.4.2 "**Auditor**" means the auditor, elected and appointed by the **Board** from time to time;
 - 1.4.3 "**Board**" means the board of directors of the **Company** from time to time, as constituted in terms of the **Memorandum**;
 - 1.4.4 "**Business Day**" has the meaning assigned to it in section 5(3) of the **Act**, meaning specifically any day other than a Saturday, Sunday or official public holiday in the **Republic**;
 - 1.4.5 "**CIPC**" means the Companies and Intellectual Property Commission;
 - 1.4.6 "**Committee**" means a committee of **Directors**, which may include persons who are not **Directors**, tasked with a specific function and duty, having any authority of the **Board** delegated to it, as provided for in section 72 of the **Act** and the relevant provisions of the **Memorandum**;
 - 1.4.7 "**Company**" means The Ingrid Mostert Foundation NPC, a company duly incorporated in terms of the laws of the **Republic**;
 - 1.4.8 "**Director**" means a member of the **Board** or an alternate director and includes any person occupying the position of a director or alternate director by whatever name designated;
 - 1.4.9 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, Act 25 of 2002;
 - 1.4.10 "**Inter-related**" when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2 (1) of the **Act**, and one of them is related to the third in any such manner, and so forth in an unbroken series;

- 1.4.11 **"Juristic Person"** means an entity (such as a firm) other than a natural person (human being) created by law and recognized as a legal entity having distinct identity, legal personality, and duties and rights, and includes a foreign company and a trust;
- 1.4.12 **"Income Tax Act"** means the Income Tax Act, Act 58 of 1962, as amended from time to time;
- 1.4.13 **"Memorandum"** means the Memorandum of Incorporation of the **Company** as filed and registered with the Companies and Intellectual Property Commission from time to time;
- 1.4.14 **"Non-Profit Company"** means a company -
 - 1.4.14.1 incorporated for public benefit or other object as required by item 1(1) of Schedule 1 of the Act; and
 - 1.4.14.2 the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of schedule 1 of the Act;
- 1.4.15 **"Objectives"** means the objectives of the **Company** as stated in the **Memorandum**;
- 1.4.16 **"Prescribed Officer"** means a person who, within the **Company** and despite not being a **Director**, exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the **Company**, or regularly participates to a material degree in the exercise of such;
- 1.4.17 **"Profit Company"** means a company incorporated for the financial gain of the shareholders;
- 1.4.18 **"Public Benefit Activity"** means a public benefit activity as defined in section 30 of the **Income Tax Act**;
- 1.4.19 **"Public Benefit Organisation"** means a public benefit organisation as defined in the **Income Tax Act**;
- 1.4.20 **"Related"** when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2 (1) (a) to (c) of the Act;
- 1.4.21 **"Republic"** means the Republic of South Africa; and
- 1.4.22 **"Rules"** means any necessary or incidental rules relating to the governance of the **Company** in respect of matters that are not addressed in the Act or the **Memorandum**, as contemplated in section 15(3) to (5) of the Act.