

I certify that these are the new memorandum of incorporation which were adopted in terms of a special resolution passed at a general meeting of the company on

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 71 OF 2008

MEMORANDUM OF INCORPORATION  
(Section 15(1))

Registration No. of Company

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA  
(NON-PROFIT COMPANY)

("the company")

The articles of the company are as follows -

## INTERPRETATION

- 1 In the interpretation of these memorandum of incorporation and unless the subject or context otherwise requires -
  - 1.1 the following words and expressions shall have the following meanings -
    - 1.1.1 "administrator" – an administrator accredited as such in terms of the Medical Schemes Act;
    - 1.1.2 "administrators' constituency – the constituency comprising administrator members;
    - 1.1.3 "administrator member" – an administrator who is a member of BHF;
    - 1.1.4 "associate member" – a member which is an external representative body;
    - 1.1.5 "authorised representative" - a person authorised, in the manner prescribed by the Companies Act, to act as the representative of a member at any general meeting of the company;
    - 1.1.6 "BHF" - the Board of Healthcare Funders of Southern Africa, a voluntary association not for gain;
    - 1.1.7 "board" - the board of directors of the company for the time being;
    - 1.1.8 "business day" - any day other than a Saturday, Sunday or public holiday in terms of the laws of the Republic of South Africa;

"calendar quarter" - each of the three month periods ending 31 March, 30 June, 30 September and 31 December, respectively;

- 1.1.9 "Companies Act" - the Companies Act, No 71 of 2008, including any regulations framed thereunder and for the time being in force;
- 1.1.10 "constituency" – shall refer to the administrators' constituency, the open membership schemes' constituency or the restricted membership schemes' constituency, as the context may indicate;
- 1.1.11 "historically disadvantaged individual" – as defined in section 1 of the National Empowerment Fund Act No 105 of 1998, provided that for the purposes of these articles, the definition contained in this clause 1.1.11 only includes natural persons;
- 1.1.12 "employee" – a person who is permanently employed;
- 1.1.13 "executive committee" - the executive committee of the company referred to in 66;
- 1.1.14 "external administrator" - an entity, organisation or association which is not registered as an administrator in terms of the Medical Schemes Act but which carries on a business which is substantially the same as the business of an administrator, as defined in section 1(1) of the Medical Schemes Act, outside of the Republic of South Africa, but within any country forming part of SADC;
- 1.1.15 "external scheme" - an entity, organisation or association which is not registered as a medical scheme in terms of the Medical Schemes Act but which carries on a business which is substantially the same as the business of a medical scheme, as defined in section 1(1) of the Medical Schemes Act, outside of the Republic of South Africa, but within any country forming part of SADC;

- 1.1.16 "external representative body" – an entity, organisation or association which acts as a representative body of external schemes outside the Republic of South Africa but within any country forming part of SADC;
- 1.1.17 "managed health care organisation" – a managed health care organisation accredited as such in terms of the Medical Schemes Act and that is not involved in health care service provision or is not affiliated to or has no relationship with any health care service provider;
- 1.1.18 "managed health care constituency" – the constituency comprising members which are managed health care organisations;
- 1.1.19 "management bodies" - collectively and individually, the executive committee and the board;
- 1.1.20 "managing director" - the managing director appointed in terms of 89;
- 1.1.21 "Medical Schemes Act" - the Medical Schemes Act No 131 of 1998, including any regulations framed thereunder and for the time being in force;
- 1.1.22 "medical scheme" - a medical scheme registered in terms of the Medical Schemes Act;
- 1.1.23 "member" - an administrator, open membership scheme, restricted membership scheme, managed health care organisation, external scheme or external administrator that is a member of BHF, or an associate member;
- 1.1.24 "memorandum" - the memorandum of incorporation for the time being of the company;
- 1.1.25 "office" - the registered office for the time being of the company;
- 1.1.26 "official" - includes an officer as defined in the Medical Schemes Act No 131 of 1998;

- 1.1.27 "open membership scheme" - a scheme that is not a restricted membership scheme;
- 1.1.28 "open membership schemes' constituency" - the constituency comprising members which are open membership schemes;
- 1.1.29 "person" - includes any body of persons, whether or not incorporated under any law of any country;
- 1.1.30 "regions" - the regions determined by the board in terms of 32;
- 1.1.31 "regional meeting" - a meeting convened by the board in terms of 33;
- 1.1.32 "restricted membership scheme"- a restricted membership scheme as defined in the Medical Schemes Act;
- 1.1.33 "restricted membership schemes' constituency" - the constituency comprising members which are restricted membership schemes;
- 1.1.34 "SADC" – the Southern African Development Community, as constituted from time to time;
- 1.1.35 "scheme member" – a member which is a medical scheme or an external scheme;
- 1.1.36 "sign" - includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical process, and "signature" has the corresponding meaning;
- 1.1.37 "subscribing member" - a person who, in terms of the rules of a medical scheme or external scheme is a member of such medical scheme or external scheme (as the case may be);
- 1.1.38 words importing any gender include the other genders and words importing the singular number include the plural, and vice versa;

- 1.1.39 any reference to any statute or regulations shall be a reference to that statute or those regulations as at the date of adoption of these memorandum, and as amended or re-enacted from time to time;
- 1.1.40 any word or expression which is defined in the Companies Act and which is not otherwise defined in these memorandum shall, unless the context otherwise requires, have the meaning assigned thereto in the Companies Act;
- 1.1.41 where any number of days or business days is to be calculated after a particular day, such number of days or business days shall be calculated as excluding such particular day and commencing on the next day or business day (as the case may be);
- 1.1.42 any provision requiring notice to be given or an act to be performed not less than a specified number of clear business days before an event shall be complied with only if the total number of business days elapsed between the day on which such notice is given or act is performed and the day of the event (excluding both such days) is at least the specified number;
- 1.1.43 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.1.44 these memorandum shall be deemed to authorise the company to do anything which the Companies Act empowers a company to do if so authorised by its memorandum, unless that authority is expressly excluded.

## **HEADINGS AND REFERENCES**

- 2 These memorandum are to be construed as not including -
- 2.1 the headings to memorandum;

which are for information only.

### **MEMBERSHIP**

- 3 The first members of the company shall be the subscribers to the memorandum.
- 4 Application may be made to the board by any medical scheme, external scheme, administrator, external administrator, managed health care organisation or external representative body for membership of the company. The board shall consider such application and may, in its sole discretion, admit any medical scheme, external scheme, administrator, external administrator, managed health care organisation or external representative body which supports the objects of the company, as a member provided that persons other than medical schemes, external schemes, managed health care organisations, administrators and external administrators may only be admitted as associate members.
- 5 No medical scheme, external scheme, administrator, external administrator, managed health care organisation or external representative body shall become a member unless it complies with the admission criteria laid down by the board from time to time.
- 6 No member may directly or indirectly have any personal or private interest in the company.
- 7 Membership fees determined in accordance with the provisions of 92 to 95 inclusive shall be payable on an annual basis; provided that a member may be permitted to join during the course of any year, in which case the membership fee applicable shall be determined by the board.

### **TERMINATION OF MEMBERSHIP**

- 8 A member may terminate its membership of the company by giving the board written notice of such termination provided that such notice of termination of

membership shall be given on or before 30 September of any year and such termination shall be effective on 1 January of the following year, provided further that the termination of membership shall not affect the liability of any member for full membership fees and any other amount due to the company and arising out of its activities for any period prior to the date on which its membership terminates.

9 A member shall immediately cease to be a member -

9.1 if such member ceases to be registered as a medical scheme or accredited as an administrator or as a managed health care organisation (as the case may be) in terms of the Medical Schemes Act;

9.2 if the board resolves that such member has ceased to be an external scheme or an external representative body; or

9.3 if such member is liquidated, wound up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily.

10 The board shall have the right to suspend or terminate the membership of any member which has -

10.1 not complied with the provisions of these memorandum; and/or

10.2 ceased to comply with the admission criteria contemplated in 5; and/or

10.3 failed to pay its membership fees and/or any other amount due to the company within three months of the due date or within such further period as may be determined by the board in its discretion.

11 If any decision to suspend or terminate the membership of a member is made by the board, such member shall be entitled, within twenty business days of such decision -

11.1 to dispute the correctness of such decision; and



- 11.2 to refer such dispute for determination by a practising senior counsel agreed upon by the member concerned and the board within seven business days of the member disputing such decision or, failing agreement, appointed by the President of the Johannesburg Bar Council, which senior counsel shall act as an expert and not as an arbitrator and shall decide the matter in a summary manner, with a view to it being decided within fifteen business days after such dispute is referred to him or her in writing. Such senior counsel's decision (including his or her decision as to who is liable for the costs of such determination) shall be final and binding on all the parties.
- 12 The board shall report on any suspension or termination of membership at the annual general meeting of the company following the suspension or termination.

#### **CERTIFICATES**

- 13 Subject to the provisions of the Companies Act, certificates of membership may be issued under the authority of the directors in such manner and form as the directors may determine from time to time.

#### **GENERAL MEETINGS**

- 14 General meetings shall be held, in accordance with the provisions of the Companies Act, at such times and places as may be determined by the directors. The notice of a general meeting shall state the place, day and hour of, and the nature of the business to be transacted at the general meeting.
- 15 A member shall be entitled to appoint a proxy to attend, speak and vote (whether on a show of hands or on a poll) in its stead at any general meeting in accordance with the Companies Act.

## PROCEEDINGS AT GENERAL MEETINGS

- 16 Unless a general meeting determines that there shall be a greater quorum, a quorum for a general meeting shall be that number of members which is nearest to, but not less than, 30% of the aggregate number of members, by authorised representative or by proxy, provided that a quorum shall not be constituted unless at least three members are present by authorised representative.
- 17 Should a quorum not be present within forty-five minutes after the appointed time for a general meeting, the general meeting, if convened by or on a requisition of members, shall be dissolved and in any other case shall stand adjourned to a business day not earlier than seven days and not later than twenty-one days after the date of the meeting and a quorum at the resumption of a general meeting shall be the minimum number required by the Companies Act.
- 18 Where a meeting has been adjourned as aforesaid, the company shall, upon a date not later than three days after the adjournment, send a written notice by registered post stating -
- 18.1 the date, time and place to which the meeting has been adjourned;
- 18.2 the matter before the meeting at the time when it was adjourned; and
- 18.3 the grounds for the adjournment,
- to each member and shall publish such notice in a newspaper circulating in the province where the office is situated.
- 19 The chairman or, failing him or her, a deputy chairman of the board shall be the chairman of each general meeting, provided that if neither the chairman nor the deputy chairman are present and willing to act, the members present by authorised representative or by proxy shall elect one of the directors or, if no director is present and willing to act, a scheme member, to be chairman of that general meeting.

20 The chairman of a general meeting shall, if obliged to do so in terms of the Companies Act, and may, in his or her discretion in any other circumstance, adjourn that general meeting from time to time. When a meeting is adjourned in terms of this 20, the provisions of 17 and 18 shall mutatis mutandis apply to such adjournment.

21 No business shall be transacted at the resumption of any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

### **VOTING**

22 At any general meeting -

22.1 each member, save for associate members who are dealt with in accordance with clause 22.3, which is present, whether by authorised representative or by proxy, shall -

22.1.1 have one vote on a show of hands;

22.1.2 on a poll, have that number of votes as is equal to the number of subscribing members of such member as have been utilised for the calculation of membership levies payable.

22.2 in the event of a poll, no member shall have more than ten votes provided that no member shall have more than 10% of the total number of votes taken at a meeting.

22.3 each associate member who is present, whether by authorised representative or by proxy, shall have one vote, whether on a show of hands or on a poll.

23 At any general meeting a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (on or before the declaration of the result of a show of hands) -

- 23.1 by the chairman of the meeting, or
- S198 23.2 by not less than five members having the right to vote at such a meeting; or
- 23.3 by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
- S199(4)  
S204  
S205 24 On a show of hands at a general meeting a declaration by the chairman as to the result of the voting on any particular resolution and an entry to that effect in the minutes shall be conclusive proof of that result, without proof of the number or proportions of votes recorded in favour of, against and as abstaining from such resolution.
- 25 If a poll is demanded at a general meeting -
- 25.1 on the election of a chairman or on an adjournment, the poll shall be taken immediately and in such manner as the general meeting determines, and a poll on any other question shall be taken within an hour during the meeting at which it was demanded;
- 25.2 the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded;
- 25.3 the demand shall not preclude the general meeting from considering any question other than that on which the poll has been demanded unless the general meeting decides otherwise;
- 25.4 the demand may be withdrawn at any time.
- 26 No objection shall be taken to the admission or rejection of any vote except at the general meeting at which the vote in dispute is cast, or, if it is adjourned, the resumption thereof. The chairman of that general meeting or resumed general meeting shall determine any issue raised by such objection and his/her determination shall be final and binding.

## PROXIES

- 27 Every member shall be entitled to appoint another person as its proxy to attend, speak and vote in its stead at any general meeting of the company.
- 28 Any person may be appointed as a proxy, and where that person also represents another member, he or she shall be entitled to exercise the votes of all members for whom he or she is present at the general meeting.
- 29 A proxy form, or other authority in respect of a general meeting shall be in writing and signed by or on behalf of the grantor.
- 30 Subject to the provisions of the Companies Act, a proxy form shall -
- 30.1 be in such form as is approved or accepted by the directors;
- 30.2 be deposited at the office not less than twenty-four hours before the time appointed for the holding of the general meeting, or resumption of an adjourned general meeting at which the person named therein proposes to vote;
- 30.3 in addition to the authority conferred by the Companies Act, except insofar as it provides otherwise, be deemed to confer the power generally to act at the general meeting in question, subject to any specific direction as to the manner of voting;
- 30.4 be valid at every resumption of an adjourned meeting to which it relates, unless the contrary is stated thereon;
- 30.5 not be used at the resumption of an adjourned general meeting if it could not have been used at the general meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place;
- 30.6 not be valid after the expiry of two months after the date when it was signed unless it specifically provides otherwise.

31 A vote cast or act done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding -

31.1 the legal disability of the person appointing the proxy; or

31.2 the revocation of the proxy,

unless notice as to any of the abovementioned matters shall have been received by the company at the office or by the chairman of the meeting at the place of the general meeting if not held at the office, before the commencement or resumption (if adjourned) of the general meeting at which the vote was cast or the act was done or before the poll on which the vote was cast.

#### **REGIONAL MEETINGS**

32 The board shall -

32.1.1 for the purposes of convening regional meetings of the members from time to time, determine the number and geographical demarcation of regions in which the members are situated;

32.1.2 in respect of each region, appoint a member of the board ("convenor") to act as chairman as contemplated in 36.

33 The board shall -

33.1 convene at least twice per annum, a regional meeting in each of the regions and shall ensure that at any such meeting, at least one director shall be present. The purpose of such regional meetings shall be to facilitate communication between members and the board, and shall include, without limitation, reporting back to members on pertinent matters relating to the company and discussing current issues of regional, national or international importance relating to healthcare funding;

- 33.2 be entitled to convene such additional regional meetings as the board may, from time to time, resolve to convene.
- 34 All members shall be given notice, in terms of 35, of any regional meeting and shall be entitled to attend any such regional meeting. In addition, any director shall be entitled to attend any regional meeting.
- 35 The board shall give not less than ten clear business days' written notice to all members, of a regional meeting which notice shall state the place, day and hour of, and the nature of the business to be transacted at, the relevant regional meeting. Any further items of business shall be included on the agenda for the regional meeting if the company receives written notification of such item from a member by no later than seven days prior to the regional meeting, provided that any business that is not included on the agenda may, with the consent of the chairman of the relevant meeting, be dealt with at the meeting.
- 36 The convenor appointed in respect of a region shall be the chairman of the regional meetings held in such region, provided that if the convenor is not present and willing to act as chairman at any such regional meeting, the members attending that regional meeting ("specified members") shall be entitled to elect an authorised representative of a specified member to act as chairman of that regional meeting.
- 37 The chairman of a regional meeting may, with the consent of a regional meeting (and shall, if so directed by the meeting), adjourn the regional meeting from time to time and from place to place provided that, subject to 35, no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 38 Where a regional meeting has been adjourned, the company shall, upon a date not later than three days after such adjournment, send a written notice to all members stating -
- 38.1 the date, time and place to which the regional meeting has been adjourned;

38.2 the matter before the regional meeting at the time when it was adjourned; and

38.3 the grounds for the adjournment.

39 Minutes of all regional meetings shall be kept and distributed to the board and all members.

40 Decisions of a regional meeting shall not be binding on the company but shall, if so resolved at that regional meeting, constitute recommendations to the board on the basis that the board, in its discretion, may -

40.1 refer any such decision to the members in a general meeting for ratification and approval; or

40.2 act upon any such decision without referring such decision to the members in a general meeting for ratification and approval, provided that it has the power to so act in terms of the Companies Act.

41 In addition to regional meetings held, individual meetings shall be held with representatives of at least 30% of membership, per annum, at which at least one director shall be present.

## **DIRECTORS**

42 Subject to the provisions of the Companies Act -

42.1 unless otherwise determined by a general meeting, the number of directors shall be no more than twenty four and no less than eleven including the managing director.—

42.1.1 no more than six must be elected by members comprising the administrators' and managed health care organisations constituencies;

42.1.2 no more than seven must be elected by members comprising the open membership schemes' constituency;



42.1.3 no more than six must be elected by members comprising the restricted membership schemes' constituency;

42.1.4 four must be appointed by the elected directors on the board on the basis of nominations from external schemes and external administrators in respect of each of the countries Botswana, Lesotho, Namibia and Zimbabwe.

provided that no more than one official or employee of any member shall occupy a seat on the board at any time.

43 At each annual general meeting of the company, three directors from each constituency (excluding the managing director and any director referred to in 58) and two directors appointed by the elected directors on the board on the basis of nominations from external schemes and external administrators shall retire from office. The eleven directors who retire in terms of this 43 shall be those who have been longest in office since the date of their last appointment, provided that if more than one of them were appointed directors on the same day, those who retire shall be determined by lot unless those directors agree otherwise between themselves.

44 A retiring member of the board shall be eligible for re-election and, if re-elected, shall be deemed not to have vacated his or her office.

45 Prior to the first general meeting and prior to every subsequent annual general meeting ("forthcoming meeting"), the company shall, by notice in writing to the members not less than forty-five clear business days before the forthcoming meeting, call for nominations of candidates for the board and shall in such notice specify -

45.1 the eleven directors who shall be retiring at the conclusion of the forthcoming meeting in accordance with the provisions of 43; and

45.2 which directors will be retiring at the conclusion of the forthcoming meeting in accordance with the provisions of 58; and

- 45.3                    how many vacancies must be filled at the conclusion of the forthcoming meeting to constitute a board of up to twenty four directors ("annual vacancies").
- 46                      Any nomination shall be by a member entitled in terms of these memorandum to nominate a candidate for a vacancy in that member's constituency, shall be seconded by any other member from the same constituency, entitled in terms of these memorandum to nominate a candidate for that same seat, provided that the nominated candidate is not an official or employee of any member already represented on the board.
- 47                      The nomination shall be submitted to the company not less than thirty five clear business days before the forthcoming meeting, together with a curriculum vitae of the nominee, and shall be signed by the proposer and seconder and accepted by the nominee in writing.
- 48                      Should the nominees, together with the directors who are not retiring, who are -
- 48.1                    officials or employees of administrator or managed health care organisation members who are fewer in number than six; and/or
- 48.2                    officials or employees of open membership schemes members who are fewer than seven; and/or
- 48.3                    officials or employees of restricted membership schemes members who are fewer than six; and/or
- 48.4                    historically disadvantaged individuals who are fewer in number than one per constituency; and/or
- 48.5                    women be fewer in number than one per constituency; and/or
- 48.6                    persons nominated by the members that are external schemes or administrators be fewer in number than two,

the company shall, by notice in writing to the relevant constituency members not less than 30 (thirty) clear business days before the forthcoming meeting, call for further nominations from the category of persons stipulated in this 48 in order to make up the requisite numbers referred to in this 48.

- 49 The members shall submit such further nominations, *mutatis mutandis* in accordance with the provisions of 46, to the company not less than twenty clear business days before the forthcoming meeting.
- 50 The company shall procure that a list for each constituency ("nomination list") shall be compiled by the company secretary or, if the managing director so determines, a firm of auditors registered in terms of the Public Accountants' and Auditors' Act, No 80 of 1991 ("independent auditing firm") selected by the managing director upon which nomination list there shall appear the names of all nominees nominated in terms of 46 and 49 ("nominees") in alphabetical order but shall contain no reference to the member who nominated or seconded each nominee.
- 51 The company shall send each member the relevant constituency nomination list together with the curriculum vitae of each nominee not less than ten clear business days before the forthcoming meeting.
- 52 Each member shall be entitled to select from the nomination list no fewer and no more nominees than the number of annual vacancies, failing which the selection of that member shall not be taken into account for the purposes of 53 and 54. Nomination lists shall be deposited at the office not less than twenty-four hours before the forthcoming meeting.
- 53 Each nominee who has been selected by a member ("specified member") in accordance with the provisions of 52 shall be awarded a number of points equal to the number of votes to which the specified member is entitled in terms of 22, as the case may be.

- 54 The company shall procure that the company secretary or, if the managing director so determines, an independent auditing firm selected by the managing director, shall count the aggregate number of points awarded to each nominee in terms of 53.
- 55 Following the counting of points in terms of 54, the annual vacancies shall be filled by the appointment of directors in accordance with the following -
- 55.1 the annual vacancies shall be filled by nominees who have been awarded the highest number of points per constituency in terms of 53, provided that, to the extent that two or more nominees receive an equal number of votes, their eligibility to fill an annual vacancy in terms of this 55 shall be determined by lot.
- 56 The nominees referred to in 55 shall be appointed directors with effect from the date of the general meeting at which their election is announced. Notwithstanding the provisions of 50 to 56, if the number of nominees per constituency for election is less than the number of vacancies per constituency to be filled in terms of 55, all such nominees shall be appointed as directors with effect from the date of the next general meeting and the directors in office after such appointment shall appoint such further directors as may be necessary to fill the remaining relevant constituency vacancies, provided that the provisions of 58 shall apply, mutatis mutandis, to a director appointed by the board in terms of this 56, provided that no more than one official or employee of any member shall occupy a seat on the board at any time.
- 57 The board shall after the first general meeting of the company and after each annual general meeting elect a chairman and deputy-chairman from the directors by a show of hands, or if any director so requires, by a secret ballot.
- S210  
S211  
S212 58 The relevant directors shall have the power, from time to time, to appoint an appropriate person as a director, to fill a vacancy on the board provided that -
- 58.1 the total number of directors shall not at any time exceed the maximum number fixed by or in accordance with these articles and no more than one official or employee of any member shall occupy a seat on the board at any time.;

- 58.2 each director appointed in terms of this 58 shall, in addition to the directors retiring in terms of 43, retire from office at the conclusion of the next annual general meeting, unless such director is the managing director, in which case the provisions of 58.3 shall apply;
- 58.3 if such director is the managing director, such director shall not retire at the conclusion of the next annual general meeting but his/her appointment as a director shall cease when he/she ceases to be managing director for any reason.
- 58.4 notwithstanding the provisions of this 58 (but subject to 58.3), if a vacancy arises after the notice referred to in 45 is issued which, unless filled in terms of this 58, will result in the number of annual vacancies exceeding that specified in such notice in terms of 45.3, a director appointed in terms of this 58 to fill such vacancy before the forthcoming meeting referred to in 45 shall not retire at the conclusion of such forthcoming meeting but shall retire at the first annual general meeting following such meeting;
- 59 The continuing directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below eleven, the continuing directors may act only to increase the number of directors to eleven.
- 60 No director other than the managing director shall be paid any remuneration for his or her services as such.
- 61 The directors may be paid any travelling, subsistence and other expenses properly incurred by them in the execution of their duties in or about the business of the company and which are authorised or ratified by a disinterested quorum of directors.

## POWERS AND DUTIES OF THE DIRECTORS

- 62 Subject to any limitation imposed by these memorandum, the management of the business and the control of the company shall be vested in the board of directors who, in addition to and without limitation of the powers expressly conferred upon them by the Companies Act or these memorandum, -
- 62.1 may constitute committees in terms of 66 and 73 and appoint chairmen for such committees;
- 62.2 may exercise or delegate to any one or more persons all such powers and do or delegate to any one or more persons or the committees referred to in 62.1 the doing of all such acts (including the right to sub-delegate) as may be exercised or done by the company and are not in terms of the Companies Act or by these memorandum expressly directed or required to be exercised or done by a general meeting, subject, nevertheless, to that management and control -
- 62.2.1 not being inconsistent with; and
- 62.2.2 being in compliance with,
- any resolution passed by a general meeting. No such resolution passed by a general meeting shall invalidate any prior act of the directors or any delegatee;
- 62.3 ensure the integrity, credibility and sustainability of the company;
- 62.4 ensure that its functions in terms of these memorandum are carried out in a manner that equally serves the interests of all of its members and associate members;
- 62.5 implement and effect corporate governance of the company;

- 62.6 make determinations in respect of policies and processes relating to the structuring, financing and staffing of the company.

### **INTEREST OF DIRECTORS**

- 63 Subject to compliance with the provisions of the Companies Act, a director shall not be liable (in the absence of any agreement to the contrary) to account to the company for any profit or other benefit arising out of any contract entered into by the company in which he or she is directly or indirectly interested.

- 64 A director shall, if he or she has, in accordance with the Companies Act, disclosed his or her interest (if it is material) in the relevant contract or arrangement -

- 64.1 be counted in a quorum for the purpose of a meeting of directors at which he or she is present to consider any matter; and

- 64.2 recuse himself or herself from discussions or voting relating to the matter

relating to any existing or proposed contract or arrangement in which he or she is interested, other than a contract or arrangement regulating his or her holding of an office or place of profit under the company or a subsidiary of the company.

### **DISQUALIFICATION OF DIRECTORS**

- 65 A director shall cease to hold office as such if he -

- 65.1 is prohibited from being or is removed as or is disqualified from acting as a director of a company in terms of the Companies Act;

- 65.2 gives notice to the company of his or her resignation as a director with effect from the date of, or such later date as is provided for in, such notice;

- 65.3 absents himself from meetings of directors for two or more consecutive meetings of the board, without the leave of the other directors, and they resolve that his office shall be vacated;

- 65.4 occupies a seat on the board that has been allocated either to the restricted membership schemes' constituency, open membership schemes' constituency or administrators' or managed health care organisation constituencies and ceases to be an official or employee of a member of the relevant constituency;
- 65.5 is given notice, signed by members holding in the aggregate more than 50% of the total voting rights on a poll of all members then entitled to vote on a poll at a general meeting, of the termination of his appointment.

### **EXECUTIVE COMMITTEE**

- 66 The executive committee shall comprise -
- 66.1 four directors (one of which shall be the managing director) who shall be appointed by the board; and
- 66.2 the chairperson and deputy-chairperson of the board from time to time who shall also be the chairperson and deputy-chairperson of the executive committee.
- 67 The term of office of each executive committee member shall commence on the appointment by the board of such executive committee member, with the exception of one director (excluding the managing director) who is not retiring from office and shall, subject to 69 terminate at the next annual general meeting, provided that should the appointment of an executive committee member terminate prior to the next annual general meeting, the remainder of such executive committee member's term of office shall be served by another board member appointed by the board.
- 68 Any executive committee member may, for so long as he or she remains a director, be re-appointed by the board at the end of his or her term of office.



69 The appointment of an executive committee member shall terminate if he or she -

69.1 ceases to be a director; or

69.2 resigns or is removed from office on the executive committee by the board.

70 The executive committee shall be responsible for the day to day management of the business of the company within the policy determined by the board of directors and shall have all such powers as may be delegated to it by the board and/or may be necessary to carry out its duties in terms of 72.

71 No member of the executive committee, other than the managing director, shall be entitled to any remuneration in respect of any service(s) rendered by that member in his or her capacity as a member of the executive committee.

#### **DUTIES OF THE EXECUTIVE COMMITTEE**

72 Unless otherwise determined by the board, the executive committee shall have the following duties -

72.1 to cause budgets to be prepared for approval by the board;

72.2 to determine the manner in which applications for membership of the company by prospective members shall be submitted to it;

72.3 to consider applications for new membership of the company and make recommendations thereon to the board;

72.4 to recommend to the board annual subscriptions to be paid by members from time to time;

72.5 at the request of the board, to make recommendations to the board regarding the appointment of an auditor or auditors;

- 72.6 to invest all moneys of the company which are not required to meet current charges upon the company;
- 72.7 to prepare, for approval by the directors, the annual directors report in accordance with the provisions of the Companies Act;
- 72.8 at the request of the board, to make recommendations to the board on guidelines on benefits, revise and/or amend those guidelines in accordance with any mandate given by the board, investigate queries received by the company on and give interpretations of the guidelines in force from time to time, and co-ordinate consultations with suppliers of healthcare services;
- 72.9 to always act within the mandate of the board; and
- 72.10 to do all other things as may be delegated to it by the board.

#### **SPECIAL AND STANDING COMMITTEES**

- 73 The board shall, in consultation with the managing director, appoint whatever standing and/or special committees it deems necessary, which committees shall have the powers given and duties delegated to it by the board. Such committees shall consist of such persons as the board thinks fit.
- 74 The chairperson of each committee shall be appointed by the board.
- 75 Each standing committee shall be entitled to appoint any person as an additional member of such committee.
- 75.1 The appointment of a committee member shall terminate if he/she -
- 75.1.1 being a director, ceases to be a director; or
- 75.1.2 resigns or is removed from such committee by the board.
- 76 Each special committee shall terminate upon completion of the task delegated to it, to the satisfaction of the board.

77 No member of any committee shall be entitled to any remuneration in respect of any service(s) rendered by that member in his or her capacity as a member of that committee.

#### **PROCEEDINGS OF MANAGEMENT BODIES AND COMMITTEES**

78 Each of the management bodies shall meet as often as such body deems necessary, provided that meetings of the board shall occur at least twice a year and meetings of the executive committee shall occur as frequently as the board may from time to time prescribe.

79 The members of the respective management bodies may-

79.1 meet, adjourn and otherwise regulate their meetings as they think fit and any member of such management body shall be entitled to convene or require the managing director or secretary of the company to convene a meeting of such management body;

79.2 determine what notice shall be given of their meetings and the means of giving that notice, provided that any such prior determination may be varied, depending on the circumstances and reasons for the meeting in question.

80 The notice convening any meeting of a management body shall include an agenda.

81 Unless otherwise determined by the company in general meeting, or by a meeting of the relevant management body (at which all the members of such management body are present), the quorum necessary for the transaction of the business of the relevant management body shall be a majority of the members of such management body for the time being in office.

82 At any meeting of a management body, the chairman of the board of directors, or if he/she is not present or willing to act as such, the deputy chairman, shall act as chairman. If neither the chairman nor the deputy chairman is present,

the members of the management body present at the meeting shall choose one of their number to be chairman of the meeting.

83 Members of a management body may participate in and act at any meeting of such management body through the use of a conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other at approximately the same time. Such participation by members of the management body shall constitute attendance and presence in person at the meeting.

84 Any standing or special committee appointed by the board ("committee") shall meet at the times and places that it determines in consultation with the managing director, and shall determine its own provisions relating to its notices and agendas. A quorum for any meeting of any committee shall be determined by the board, from time to time.

#### **DECISIONS AND MINUTES OF THE MANAGEMENT BODIES AND COMMITTEES**

85 A decision on any matter by the management bodies shall be taken by a two-thirds majority of the votes of the members of such body present at the meeting concerned.

86 A decision by any standing or special committee on any matter shall be taken by a simple majority of the votes of the members of such committee present at the meeting concerned.

87 Subject to the provisions of the Companies Act, a resolution in writing and signed by all members of a management body or committee shall be as valid and effective as if it had been passed at a duly constituted meeting of that management body or committee. Any such resolution may consist of several documents, each of which may be signed by one or more of the members of the relevant management body or committee and shall be deemed to have been passed on the day on which it was signed by the last member of the management body or committee concerned who signed it (unless a statement to the contrary is made in that resolution).

88 Minutes of every meeting of each management body and committee shall be kept by the company, and each decision shall be reflected in those minutes.

### **MANAGING DIRECTOR**

89 The directors may from time to time appoint a person as a managing director of the company, on such terms and conditions as to remuneration and otherwise as may be determined from time to time by disinterested quorum of the directors, provided that the appointment of a managing director shall, without prejudice to any claim of any nature whatever which any such director may have against the company, cease if for any reason he or she ceases to be a director. A director so appointed shall not, while holding such office, be subject to retirement by rotation in terms of 43, or taken into account in determining the rotation of retirement of directors in terms of 43.

90 The managing director shall be responsible for the efficient administration of the affairs of the company and shall be directly accountable to the board.

91 In addition to such duties as the board may delegate to the managing director from time to time, the managing director shall be responsible for ensuring that -

91.1 minutes are kept of all meetings;

91.2 all documents and records relating to the affairs of the company are maintained and retained;

91.3 proper and adequate books of account are kept to record correctly the financial affairs of the company;

91.4 annual financial statements are drawn up, audited and approved by the company in accordance with the provisions of the Companies Act; and

91.5 copies of the audited annual financial statements are sent to each member together with a notice of each annual general meeting in accordance with the provisions of the Companies Act.

## FUNDING

- 92 The following membership fees shall be payable to the company -
- 92.1 a member, excluding an associate member shall pay an annual fee per subscribing member of that scheme member, or per subscribing member administered in the case of an administrator or managed health care organisation member, on the basis that the board -
- 92.1.1 shall, in accordance with the bands indicated in the table in 22.1, determine the fee per subscribing member or subscribing member administered, as the case may be, from time to time;
- 92.1.2 may fix a minimum fee payable per subscribing member or subscribing member administered;
- 92.1.3 shall be entitled to require a scheme member or administrator member to furnish the board with a certificate by the auditors of such scheme member or administrator member reflecting the underlying subscribing membership or subscribing membership administered of such scheme member or administrator as the case may be;
- 92.2 provided that for the purposes of calculating the aggregate membership fees payable in any year by a scheme member in terms of 92.1, the number of subscribing members of each scheme member and the number of subscribing members administered by each administrator member shall be determined as at 31 December of the previous year. In the event of an amalgamation with another scheme with effect after 31 December of the previous year, the number of subscribing members shall be increased by the amalgamated scheme's subscribing members; and
- 92.3 an associate member shall pay such annual membership fees as may be determined by the board from time to time.
- 93 The board shall be entitled, upon good cause shown by a member, to reduce or waive any membership fee payable by that member.

94 Each member shall pay its membership fees to the company at such time or times and on such terms as the board may determine.

95 The board may levy any additional contributions from members that it may deem necessary.

#### **DISTRIBUTION OF INCOME**

96 No part of the income or property of the company shall be distributed to its members, and the same shall be applied solely towards the pursuit of the company's objects, provided that this memorandum shall not be construed as prohibiting the payment of expenses to directors as provided for in 61 or the payment of the managing director's reasonable remuneration.

#### **WINDING UP OR LIQUIDATION**

97 If the company is wound up (whether voluntarily or compulsorily) or liquidated or deregistered or dissolved or, within six months of the withdrawal of its income tax exemption, transfer its assets remaining after the satisfaction of its liabilities to --

97.1 Another entity with similar objectives and which is approved in terms of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962; or

97.2 A public benefit organisation approved in terms of section 30 of the Income Tax Act, 1962; or

97.3 Any institution, board or body approved in terms of section 10(1)(cA)(i) of the Income Tax Act, 1962; or

97.4 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 Income Tax Act, 1962, which is required to use those

assets solely for purposes of carrying on one or more public benefit activities.

### **INDEMNITY**

98 Every director, manager, secretary and other officer of the company shall be indemnified out of the company's funds against all liability incurred by him or her in defending any proceedings (whether civil or criminal) arising out of any actual or alleged negligence, default, breach of duty or breach of trust on his/her part in relation to the company in which judgment is given in his/her favour or in which he/she is acquitted or in connection with any matter in which relief is granted to him/her by the Court in terms of the Act.

99 Without limiting any of the powers of the company in terms of its memorandum of incorporation or the Companies Act, it is recorded that the board shall be entitled from time to time to take out and maintain, at the company's cost, directors' and officers' insurance in respect of any director and/or officer of the company.

### **NOTICES**

100 Subject to the provisions of these memorandum, any notice which is required to be given to members or directors shall be in writing and may be given to any member or director -

100.1 who has notified the company of his electronic mail address or telefacsimile number for this purpose, by sending such notice by electronic mail or telefacsimile, as the case may be, to such address or telefacsimile number, as the case may be; or

100.2 by delivery to -

100.2.1 a member at its address shown in the register of members;

100.2.2 a director at his or her business address shown in the directors' register;



- 100.3 by sending it through the post, properly addressed, to -
- 100.3.1 a member at its address shown in the register of members;
- 100.3.2 a director at his or her postal address shown in the directors' register.
- 101 A member may by notice require the company to record its registered address (as it is constituted from time to time) which shall be deemed to be its address for the purpose of the service of notices.
- 102 Every such notice shall be deemed, until the contrary is proved, to have been received, if it is -
- 102.1 delivered, on the date on which it is so delivered;
- 102.2 sent by post, on the date on which it is posted;
- 102.3 sent by telefacsimile, on the date of successful transmission thereof;
- 102.4 sent by electronic mail, on the day on which it was so sent.
- 103 When a given number of days' notice or notice over any period is required to be given, the date on which it is deemed to be received shall not be counted in such number of days or period.
- 104 The omission to give notice of a general meeting, regional meeting or of a meeting of directors to or the non-receipt of, or delay in transmission through the post, by telefacsimile or by electronic mail of, any such notice by or to any member or director, as the case may be, shall not invalidate any resolution passed at any such meeting provided that there is unequivocal proof that due and proper notice of the meeting was given.