

**REPUBLIC OF SOUTH AFRICA COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY**

Name of Company: **SOUTH AFRICAN TISSUE BANK ASSOCIATION NPC**

(a non-profit company incorporated for a public benefit)

Registration Number: **2015/247837/08**

("the Company")

This Memorandum was adopted in accordance with a Board meeting held on 18 March 2015 and voting members will be requested to confirm it by special resolution at the first general meeting of the Company, to be held on 17 September 2015

The Memorandum of Incorporation contained in Form CoR 15.1E of the Companies Act Regulations, 2011 shall not apply to the Company.

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## 1. INTERPRETATION

In the interpretation of this Memorandum and unless contrary to or excluded by the subject or context:

- 1.1. any word herein signifying:
  - 1.1.1. the singular shall include the plural and vice versa;
  - 1.1.2. the masculine shall include the feminine and the neuter;
- 1.2. any word herein which is defined in the Act and is not defined in Article 1.5 shall bear that statutory meaning in this Memorandum;
- 1.3. any word, phrase or sentence herein which is not defined in the Act or in Article 1.5 shall bear its usual meaning;
- 1.4. each term, power or authority herein shall be given the widest possible interpretation;
- 1.5. each of the following words and expressions herein shall have the meaning stated opposite it and, where applicable, shall include the word or expression stated opposite it:

"**associate member**" – an entity or individual not involved primarily in the business of procurement, processing, manufacturing, storage, selling, marketing and/or as distributors of human tissue as its main business focus and admitted to the Company as such a member;

"**auditors**" – such firm of chartered accountants or process auditors as may from time to time hold office as financial or process auditors of the Company;

"**board**" – the board of directors of the Company as duly appointed in terms of this Memorandum;

"**director**" – a natural person who serves as a member of the board of directors, elected or appointed to the board and serving to represent the interests of the Company as an organisation;

"**business day**" – any day other than a Saturday, Sunday or public holiday in terms of the laws of the Republic;

"**chairperson**" – the chairperson of the board elected in terms of these articles;

"**company secretary**" – the secretary of the Company, appointed by the directors or a person authorised by the directors to carry out any of the duties of company secretary;

"**general meeting**" – a annual general meeting or a general meeting of the Company;

"**honorary member**" – a natural person who, in the opinion of the board, has rendered exceptionally valuable or exemplary services to the Company or the human tissue industry / community and has been granted honorary membership by the board on the proviso that they do not fulfil any membership role within the Company and are entitled to attend an annual general meeting, but not entitled to vote at any the Company meeting, to receive

general communications and be, at the discretion of the board, invited to the Company activities and functions;

"**member**" – a member of the Company as defined in Article 7 and "membership" has a corresponding meaning, which member is an entity active in, or associated with the human tissue industry;

"**membership category**" – the membership categories as listed in Article 7.2;

"**Memorandum**" – this Memorandum of Incorporation and any annexures and or amendments hereto, from time to time;

"**natural person**" – a human being and not a legal person or juristic person;

"**ordinary member**" – a company or division of a company or other legal entity carrying on business in the Republic of South Africa whose primary business is the procurement, processing, manufacturing, storage, selling, marketing and/or is a distributor of human tissue;

"**person**" – a natural person, company, body corporate, statutory body, partnership or an association of persons;

"**principal representatives**" – natural persons designated by a member to represent it on the Company during any of the activities or affairs or in the structures of the Company;

"**registered office**" – is the principal place of business of the Company;

"**the Company**" – the South African Tissue Banking Association NPC, a not for profit association incorporated under the Act;

"**the Republic**" – the Republic of South Africa;

"**sign**" – the reproduction of a signature by lithography, printing or any kind of stamp or any other mechanical or electronic process (or by a combination of any two or more of the said processes), and "signature" has the corresponding meaning;

"**vacancy**" – is an unfilled or unoccupied position or office held in terms of these articles, which comes in existence upon the date of resignation, death, serious disability, termination, restructuring or similar event and excludes instances where a term of office comes of a board member comes to an end and "vacant" has the corresponding meaning;

"**vice-chairperson**" – the vice-chairperson of the board elected in terms of these articles;

- 1.6 References to members represented by proxy shall include members represented by an agent appointed under a general or special power in the manner prescribed in the Act.
- 1.7 Any word or expression that is defined in the Act and which is not otherwise defined in this Memorandum shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the Company.
- 1.8 Where any number of business days is to be calculated after a particular day, such number of business days shall be calculated as excluding such particular day and commencing on the next day or business day (as the case may be).

- 1.9 Any reference to months or years shall be a reference to calendar months or years, as the case may be.
- 1.10 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.
- 1.11 This Memorandum shall be deemed to authorise the Company to do anything which the Act empowers a company to do if so authorised by this Memorandum, unless that authority is expressly excluded.

## **PART A: INTRODUCTION**

### **2. NON-PROFIT COMPANY**

- 2.1. The Company is incorporated as a non-profit company, as defined in the Act.
- 2.2. The Company will not carry on any profit making activities; or participate in any business, profession or occupation carried on by any of its members, or provide any financial assistance, premises, continuous services, or facilities to its members for the purpose of carrying on any business, profession or occupation by them.

### **3. PURPOSE AND OBJECTIVES OF THE COMPANY**

- 3.1. The Company shall ensure that the activities of the Company represents the best interests of its members as the primary objective, within applicable legal frameworks and provided that such shall not conflict with the legal rights of tissue donors nor unreasonably detract from the needs and rights of tissue donors, the next of kin of donors or patients;
- 3.2. The Company shall provide a forum for discussion on matters affecting the procurement organisations, processors, manufacturers, providers of storage facilities and distributors of human tissue in South Africa, provided that such discussions are permitted by South African competition legislation;
- 3.3. The Company shall promote and encourage among its members ethical principles and practices, and to this end, shall publish, update and/or participate in any related Code or Codes of Practice. The Company shall at all times have a documented Code of Practice which shall be distributed to all members and which Code of Practice shall be binding on all members;
- 3.4. The Company shall communicate and represent, through elected, appointed or designated persons and/or structures, the human tissue industry's standpoint on relevant matters and offer advice or make recommendations, within the confines of the law, when the need arises to anybody or institution whose decisions and policies might affect the industry;
- 3.5. Interact and engage with governments and regulatory authorities, whether national or

international, through its officials and structures, as appropriate;

- 3.6. work towards harmonisation of standards and regulatory requirements relating to human tissue; and
- 3.7. promote a spirit of interaction, engagement and shared responsibility among role-players in the public and private health care sectors, within the context of achieving effective, efficient and transparent health care delivery;
- 3.8. the Company shall issue statements, commentary or similar public information from time to time through the offices of a spokesperson specifically mandated by the board. No other board member shall engage with the media or press on any matter unless expressly authorized by the board to do so.

#### **4. POWERS AND CAPACITY OF THE COMPANY**

The Company has the powers and capacity of an individual.

#### **5. CONDITIONS**

- 5.1. The Company shall ensure that substantially the whole of its activities are directed to the furtherance of its principal objects and not for the specific benefit of an individual member or minority group.
- 5.2. The Company is prohibited from having a share or other interest in any business, profession or occupation which is carried on by the members.
- 5.3. The Company shall 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 member or director, or person appointing a director, of the Company, except as:
  - 5.3.1. reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
  - 5.3.2. payment of, or reimbursement for, expenses incurred to advance a stated object of the Company; or
  - 5.3.3. 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; or
  - 5.3.4. 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 a stated object of the Company; or
  - 5.3.5. in respect of any legal obligation binding on the Company.
- 5.4. The Company shall utilise substantially the whole of its funds for the object for which it has been established.
- 5.5. The Company may not, directly or indirectly, distribute any of its funds or assets to

any person other than in the furtherance of its objectives.

- 5.6. The Company shall not become a party to and will not permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

## **6. MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- 6.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors in the Memorandum (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects), which the board is empowered to do, all other amendments of the Memorandum shall be effected in accordance with section 16(1) of the Act.
- 6.2. This Memorandum does not restrict, limit or qualify the power of the board to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum, in accordance with the provisions of sections 15(3) to 15(5) of the Act.
- 6.3. In the event that the Company is approved as an association in terms of section 30B of the Income Tax Act:
  - 6.3.1. any amendments to this Memorandum shall be submitted to the Commissioner: South African Revenue Services within 30 (thirty) days from such amendment; and
  - 6.3.2. the Company shall comply with such reporting requirements as may be determined by the Commissioner: South African Revenue Service from time to time.
- 6.4. If the board makes any rules, it must file a copy of those rules in the manner prescribed in the Act and must publish them by sending a copy of those rules electronically to each member and by publishing them on the Company's website.
- 6.5. If the board, or any individual authorised by the board, alters this Memorandum or any rules made by it in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, it must publish a notice of such alteration by sending a copy of the altered rules or Memorandum, as the case may be, electronically to each member and by publishing them on the Company's website, and must file a notice of alteration in the manner prescribed by the Act.

## **PART B: MEMBERS AND MEMBERSHIP**

### **7. APPLICATION FOR MEMBERSHIP**

- 7.1. The Company shall have a minimum of 7 (seven) ordinary members at all times. There is no limitation on the number of members of the Company.
- 7.2. The membership categories of the Company shall consist of –
  - 7.2.1. ordinary members;
  - 7.2.2. associate members;
  - 7.2.3. honorary members.
- 7.3. The founding members of the Company are –
  - 7.3.1. Dr Eduard Sevenster;
  - 7.3.2. Mrs Sandra van den Berg
  - 7.3.3. Prof Michael Pepper
- 7.4. The board may, in its sole discretion, admit any person as a member into the appropriate membership category who supports the objectives of the Company and subject to such terms and conditions as may be prescribed by the board from time to time. The board shall determine and publish minimum criteria for membership, and shall be entitled to amend same from time to time.
- 7.5. The members shall establish the criteria for membership and shall amend such criteria as may become necessary from time to time. These criteria are as defined under clause 1.5 above. Membership application shall be made to the board in such manner and on such application form as the board shall from time to time prescribe. The board shall admit to membership all applicants who comply with the membership criteria as applicable at the time of the application.
- 7.6. Honorary members may be admitted by the board to the Company as members after receipt of a nomination, after –
  - 7.6.1. Evaluation of such nominee has been made according to the Company policy relating to honorary members and found as compliant with such policy; and
  - 7.6.2. Such finding that such nomination complies with all procedural requirements set by the policy and forms.
- 7.7. Membership shall commence upon:
  - 7.7.1. written confirmation by the Company of the directors' approval;
  - 7.7.2. payment of the prescribed admission and annual membership fees in such manner as prescribed by the Company from time to time; and
  - 7.7.3. written acceptance of the Company's code of conduct
- 7.8. The Company shall maintain at its registered office a register of members of the Company.

## **8. MEMBERSHIP FEES**

- 8.1. The annual membership fees for membership of the Company, subscriptions and/or other fees in the various membership categories as set out in Article 7.2, shall be determined by the board, and shall be communicated to the members by way of invoice, effective 1<sup>st</sup> January of the following year.
- 8.2. Any categorisation of members in bands for purposes of fees and voting for the board of directors shall not influence any other rights or entitlements awarded to members or categories of members in terms of these articles.
- 8.3. Annual fees and/or subscriptions shall –
  - 8.3.1. be payable by 31<sup>st</sup> March, each year for existing members; and
  - 8.3.2. be invoiced on acceptance of new membership and be payable pro rata, when such membership is accepted anytime during the course of a year.
- 8.4. Honorary members shall be exempt from the payment of membership fees and annual subscriptions; however, this does not exempt an ordinary member who employs the honorary member, from fees or subscriptions.
- 8.5. Failure by a member to pay the whole or any part of its fees and/or subscriptions by 31 March in any year shall automatically result in–
  - 8.5.1. suspension of the benefits of membership of such member until such fees and/or subscriptions are paid in full; or
  - 8.5.2. cancellation of the membership of such member, in accordance with Article 9.
- 8.6. Any disputes of members concerning the payment of fees and/or subscriptions shall be referred to a board committee set up for this purpose, whose decision in this regard shall be final. Official receipts shall be prima face proof of payment.
- 8.7. Any member intending to terminate its membership shall notify the secretary 20 (twenty) business days prior to the last day of December in each year; failing which such member shall be liable for payment of its fees and/or subscriptions for the whole of the ensuing year.
- 8.8. Notwithstanding anything else contained in these articles, the board may recommend, in cases where the needs of the Company so dictate, the approval of extra-ordinary fees to be payable, which fees shall be approved at a general or special general meeting of members, in order to defray costs to be incurred in order to fulfil the specific needs identified by the board.

## **9. TERMINATION OF MEMBERSHIP**

A member shall immediately and automatically cease to be a member of the Company –

- 9.1 in the case of a natural person–
  - 9.1.1 on such member's death;
  - 9.1.2 if such member becomes mentally incapacitated or of unsound mind;

- 9.1.3 if such member's estate is surrendered or sequestrated, whether voluntarily or compulsorily;
  - 9.1.4 if such member commits any act of insolvency;
  - 9.1.5 if such member is convicted of a criminal offence or commits a fraud; or
  - 9.1.6 if such member resigns as a member of the Company
- 9.2 in the case of a member which is not a natural person (i.e. ordinary members) –
- 9.2.1 if such member is liquidated, wound-up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily;
  - 9.2.2 if such member commits any act of insolvency;
  - 9.2.3 if the member's parent company withdraws from the South African market; or
  - 9.2.4 if such member resigns as a member of the Company.
- 9.3 The board shall have the right to, in its discretion suspend or terminate the membership of any member which has -
- 9.3.1 not complied with the provisions of this Memorandum; and/or
  - 9.3.2 acted in any manner that is inimical to the interests of the Company; and/or
  - 9.3.3 brought the Company into disrepute; and/or
  - 9.3.4 failed to pay its membership fees, subscription and/or any other amount due to the Company within 3 (three) months of the due date or within such further period as may be determined by the board in its discretion, without such member having had made any arrangements to the satisfaction of the board.
- 9.4 If any decision to suspend or terminate the membership of a member is made by the board, such member shall be entitled, within 20 (twenty) business days of such decision -
- 9.4.1 to dispute the correctness of such decision; and
  - 9.4.2 to refer such dispute for determination by a practising senior counsel agreed upon in writing by the member concerned and the board within 7 (seven) business days of the member disputing such decision or, failing such agreement, appointed, at the instance of any member, by the President of the Johannesburg Bar Council (or his successor in title) 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 15 (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.
- 9.5 The board shall report on any suspension or termination of membership at the following annual general meeting of the Company.
- 9.6 A member whose membership has been terminated or who has resigned shall remain liable for any outstanding subscription, fees or other amount due to the Company and all

subscriptions, fees or other amounts paid to the Company shall not be reimbursable and no such member shall have any claim against the Company for such payments made during its membership.

- 9.7 Each member shall, after joining the Company, nominate a principal representative to, where required, serve as the contact point between the Company and the member, and to potentially, when thus elected, serve as director (although directors may also be nominated from amongst other natural persons employed by a member of the Company), or as chair of a sub-committee of the board.
- 9.8 Each member shall receive a letter of membership to confirm its membership to the Company, and such member's name shall be entered into the Company membership register, or removed from the register of members as the case may be.

## **10. RE-ADMISSION OF MEMBERSHIP**

No person who shall have been a member of the Company and shall have ceased to be a member shall be eligible for re-admission until he shall have paid all arrears of subscriptions and/or levies (if any) due by him to the Company as at the date when his former membership ceased, and no person whose former membership shall have been terminated by reason of his expulsion, shall be re-admitted into membership without the prior approval of the members following the recommendation of the board.

## **PART C: GENERAL MEETINGS**

### **11. FREQUENCY**

- 11.1 The Company shall hold its first annual general meeting within 18 (eighteen) months after the date of its incorporation and shall thereafter in each year hold an annual general meeting:
- 11.1.1 Provided that not more than 15 (fifteen) months shall elapse between the date of one annual general meeting and that of the Company the next, and
- 11.1.2 The annual general meeting of the Company shall be held not later than the last day of the month of May in each year.
- 11.1.3 The directors shall have the power to convene other general meeting of the Company at such time and place as the directors determine.
- 11.1.4 Annual general meetings and other general meetings shall be held at such time and place as the board shall determine. General meetings convened under Sections 179(4), 181, 182 or 183 of the Act shall be held at such time and at such place as is determined in terms of those Sections.
- 11.1.5 Notice of every general meeting shall be given to every member including honorary members, and to the auditor for the time being of the Company.

## **12. NOTICES**

A notice by the Company to any member and entitled person / auditor shall be regarded as validly given if it:

- 12.1 is delivered personally to the member; or
  - 12.1.1 is sent by prepaid or normal post to his registered address or, if he has no registered address in the Republic, to the address in the Republic supplied by him to the Institute for the giving of notices to him; or
  - 12.1.2 is sent by telefax, e-mail or other electronic method by which notice can be given to a telefax, email or other electronic address provided to the Company in writing by the member or on behalf of the member.
- 12.2 every such notice shall be deemed, until the contrary is proved, to have been received-
  - 12.2.1 if it is delivered, telefaxed or e-mailed, on the date on which it is so delivered;
  - 12.2.2 if it is sent by post, on the date of posting
- 12.3 Subject to the provisions of the Act:
  - 12.3.1 not less than 10 (ten) business days' notice in writing of an annual general meeting or of a general meeting shall be given to all members;
  - 12.3.2 The notice period as provided for in Article 12.3.1 shall be exclusive of the day on which the notice is served or deemed to be served and exclusive of the date of the meeting.
- 12.4 The notice of a general meeting shall state -
  - 12.4.1 the place, day and hour of that meeting; and
  - 12.4.2 the matters which will be considered at such meeting.
- 12.5 A meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than 95% (ninety-five per centum) of the total voting rights of all the members.

## **13. PROCEEDINGS AT MEETINGS OF MEMBERS**

- 13.1 All business that is transacted at a general meeting, and all business that is transacted at the annual general meeting, with the exception of -
  - 13.1.1 The consideration of the audited financial statements and the election of auditors;
  - 13.1.2 To confirm the minutes of the previous annual general meeting and any special general meetings which may have been held during the year under review;

- 13.1.3 To receive the report of the chairperson on behalf of the board covering the activities of the Company during their period of office, including that of sub-committees established by the board;
- 13.1.4 To elect directors as provided for in these articles;  
shall be deemed to be special business.
- 13.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual audited financial statements, the election of directors and the appointment of an auditor and may deal with any other business laid before it.
- 13.3 If the chairperson so decides, all motions at the general meetings shall be reduced to writing and shall be delivered to the presiding officers to read to the meeting. No motion shall be considered unless seconded.
- 13.4 All matters forming the subject of motions shall, unless otherwise provided herein, be voted upon by show of hands and shall, unless otherwise provided herein, be decided by the votes of a majority of those present and entitled to vote except in the case of elections, when the candidates up to the required number receiving the highest number of votes, shall be declared elected. In the case of election of the board, the processes and voting mechanism, as set out in Article 20, are to be followed.
- 13.5 All matters of procedure on which these articles are silent shall be decided on motion by a majority vote of members present at a general meeting and entitled to vote at such meeting.
- 13.6 Business may be transacted at any meeting of members only while a quorum is present.
- 13.7 Save as otherwise provided in the Memorandum, the quorum at a meeting of members shall be thirty-five percent of total members entitled to vote, personally present or if a member is a juristic person, by authorised representative, or written nominated proxy.
- 13.8 If within 30 (thirty) minutes from the time appointed for a general meeting or a special general meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any case it shall stand adjourned to the same day in the next week, at the same time and place, or, if that day be a public holiday, to the next succeeding business day other than a public holiday. If at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for such adjourned meeting then, subject to the Act, the members present shall be a quorum.
- 13.9 The chairperson or, failing him or her, the vice-chairperson, if any, of the board shall preside as chairperson at every meeting of members of the Company. If there is no such chairperson, or if at any meeting neither the chairperson nor the vice-chairperson is present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall choose some director, or if no director be present, or if all the directors present decline to take the chair, they shall elect a member present to be chairperson of the meeting.

- 13.10 The chairperson may, with the consent of the members of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned as a result of a direction given in terms of any applicable provisions in the Act, notice of the adjourned meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of the business to be transacted at an adjourned meeting.
- 13.11 At any meeting of members a resolution shall be put to the vote of the meeting and shall be decided by majority of members entitled to vote on a show of hands -
- 13.11.1 by the chairperson of the meeting, or
  - 13.11.2 by not less than 1 (one) member having the right to vote at such a meeting.
- 13.12 No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 13.13 If a poll is demanded at a general meeting -
- 13.13.1 on the election of a chairperson 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 at such time and in such manner as the chairperson of the general meeting directs;
  - 13.13.2 the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded;
  - 13.13.3 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;
  - 13.13.4 the demand may be withdrawn at any time.
- 13.14 In the case of an equality of votes, the chairperson of the meeting shall have a second or casting vote.
- 13.15 At every annual general meeting the minutes of the preceding annual general meeting shall be circulated to all members by the secretary not later than with the notice of the particular annual general meeting, and shall be considered read by the members present at the meeting. After approval of the minutes by the majority of the members present, it shall be signed by the chairperson of the annual general meeting.
- 13.16 Subject to the provision of the Act, a resolution in writing signed by the requisite majority of the Members being entitled to vote on such a resolution at meetings of members or by duly authorised representatives on their behalf shall be as valid and effectual as if it has been passed at a meeting of the Company duly convened and held.

## **14. VOTES OF MEMBERS**

14.1. Save for the election of the board of directors -

14.1.1 each ordinary member present in person or by proxy, if a member is a juristic person, duly represented at any meeting of the Company, shall have one vote;1

14.1.2 no associate member or honorary member present in person or by proxy, duly represented at any meeting of the Company, shall be entitled to a vote.

14.2 Honorary members and associate members shall have the right to –

14.2.1 receive any information which may be competently provided by officers of the Company;

14.2.2 receive, at the discretion of the Company, such assistance in any matter as may be rendered in terms of these provisions; and

14.2.3 take part in any discussion on any matter at any general or special meeting of the Company.

14.3 The chairperson at the general meeting shall have a casting vote.

14.4 Every member who is entitled to vote shall be entitled to appoint another person, who shall, subject to the requirements in these articles on proxies, be a member of the Company as its proxy to attend, speak and vote in its stead at any general meeting of the Company. Where any member 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.

## **15. EXERCISE OF VOTES**

15.1 Save for the chairperson, any person present and entitled to vote, as a member or as a proxy, at any meeting of the Company, shall have only 1 (one) vote.

## **16. PROXIES**

16.1 The instrument appointing a proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing or, if the appointer is a body corporate, signed by an officer or agent authorised by the body corporate.

16.2 Any proxy needs to be a member of the Company.

16.3 The holder of a general or special power of attorney, whether he is himself a member or not, given by a member, shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meetings.

16.4 No member shall be entitled to hold more than 3 (three) proxies at any meeting of the Company.

- 16.5 The instrument appointing a proxy to vote at a meeting of the Company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Section 198(1) of the Act, a demand by a proxy shall be the same as a demand by a member.
- 16.6 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarial certified copy of such power or authority, shall be deposited at the office not less than 48 (forty-eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default of complying herewith, the instrument of proxy shall not be treated as valid.
- 16.7 No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date when it was signed, unless so specifically stated in the proxy itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 16.8 The instrument appointing a proxy shall, subject to the provisions of Section 189 of the Act, be in the following form or as near thereto as circumstances permit:

**SOUTH AFRICAN TISSUE BANK ASSOCIATION NPC** (Association incorporated as a Non Profit Company ("the Company"))

I/We, .....  
of .....  
being a member of the Company, hereby appoint .....  
.....  
of .....  
or failing him .....  
of .....  
as my/our proxy to attend and speak and vote on a poll for me/us and on my/our behalf at the annual general meeting or general meeting (as the case may be) of the Company to be held on the ..... day of ..... 20..... and at any adjournment thereof, as follows:

In favour of	Against	Abstain
Resolution No. ....		
Resolution No. .... Resolution No. ....		

(If columns 1, 2 or 3 are not completed, then my proxy may vote or abstain from voting as he deems fit.)

(Indicate instruction to proxy by way of a cross in space provided above.)

SIGNED this ..... day of ..... 20.....

.....  
Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy needs to be a member of the Company)

## **17. RESOLUTION PASSED BY SIGNATURE OF ALL MEMBERS**

- 17.1 Subject to the provisions of the Act, a resolution in writing signed by the requisite majority of the members being entitled to vote on such a resolution at meetings of members or by duly authorised representatives on their behalf, shall be as valid and effective as if it had been passed at a general meeting properly held on the date on which the last signature is affixed.
- 17.2 Such resolution may consist of several documents in the same form, each of which is signed in terms of this article, by one or more members and shall be deemed (unless a statement to the contrary is made on that resolution) to have been passed on the date on which it was signed by the last member doing so.

## **18. RECORDS OF GENERAL MEETINGS**

- 18.1 The directors shall cause a record to be made of the proceedings at every general meeting, including all resolutions passed at such meetings and shall cause such record and all resolutions passed to be stored electronically in a secure format provided for that purpose.
- 18.2 Any copy of any record or resolution referred to in Article 18.1, which purports to be signed by any director or the Executive Officer, shall be *prima facie* evidence of the matters stated therein.

## **19. DIRECTORS**

- 19.1 Number of directors:
- 19.1.1 Unless otherwise determined by a meeting of members, the number of directors shall not be less than 3 (three) and no more than 10 (ten) persons from whom the chairperson and vice-chairperson shall be elected.
- 19.1.2 The Company may from time to time at any meeting of members increase or reduce the number of directors, by a majority vote of members entitled to vote at such meeting.
- 19.1.3 The members, at a general meeting of members shall have power to, at any time, elect any person as a director according to this Memorandum; provided that the total number of directors shall not at any time exceed the maximum number.

## **20. ELECTION OF THE BOARD OF DIRECTORS**

- 20.1 Directors shall be elected to the board in accordance with the following procedures –
- 20.1.1 at every annual general meeting, one third of the directors, comprising the directors who have held office for the longest period and appointed from the representatives of ordinary members, shall step down and the same number of new directors, from amongst ordinary members, shall be elected to the board. The election shall be effected by secret ballot for a period of 2 (two) years, with a broad representation as far as is possible of all disciplines involved;
  - 20.1.2 all directors of the board shall be eligible for re-election on termination of their period of office;
- 20.2 at the same time, if required, directors to fill other vacant board positions shall be elected to the board by secret ballot for the period up until the next annual general meeting; in cases of dispute, the board will consider the matter, attempt to reach consensus and if required, invoke the provisions of Article 9.4.2. All candidate directors, whether they had been directors of the Company previously or not, have to be nominated prior to election to the board.
- 20.3 The nomination process shall be conducted by means of forms calling for the nomination of the requisite number of board members referred to in this clause and shall be circulated to members not less than 10 (ten) business days before each annual general meeting; provided that only those natural persons nominated as principal representatives to the Company and full time employees of a member shall be eligible for nomination to serve on the board. The completed nomination forms shall be lodged with the secretary not less than 5 (five) business days before each annual general meeting.
- 20.4 No nominations for the board shall be made at any annual general meeting.
- 20.5 Any person nominated to serve on the board shall in writing indicate and lodge with the Company secretary his/her willingness to accept such nomination not less than 2 (two) business days before each annual general meeting. Any failure by any nominee to lodge such acceptance within the stipulated time period shall automatically invalidate the nomination of such nominee and the name of such nominee shall not appear on the ballot form in respect of such election.
- 20.6 Each member shall have one vote save for proxies who may carry the vote of other members;
- 20.7 The election of the board shall be on the basis of the nominees receiving the highest number of votes.
- 20.8 Subject to being elected to the board, each nominee shall sign a confidentiality agreement between the Company and such nominee; provided that if such nominee has previously signed such a confidentiality agreement with the Company such nominee shall not be required to sign a new agreement.

- 20.9 The standing and elected directors of the board shall, at the meeting of the board immediately following every annual general meeting, elect a chairperson, vice-chairperson and treasurer from amongst themselves.
- 20.10 The chairperson and vice-chairperson shall serve for a term of 2 (two) years provided that no person shall be elected chairperson or vice-chairperson for more than 4 (four) consecutive years.
- 20.11 Vacancies occurring on the board, other than vacancies occurring as a result of the expiry of a term of office shall be filled by the board at the first ensuing meeting of the board on nomination duly seconded and by a majority of votes, provided that -
- 20.11.1 Where a vacancy occurs subsequent to the date on which the notice of that meeting was issued, it shall be filled at the next ensuing board meeting;
- 20.11.2 Nominations for the vacancy shall be submitted to the secretary in writing at any time before the meeting; and
- 20.11.3 A member appointed to fill a vacancy shall only hold office for the unexpired portion of the period of office of his or her predecessor.

## **21. REMUNERATION AND REIMBURSEMENT OF DIRECTORS**

- 21.1. No director shall be paid any remuneration for his or her services as a director.
- 21.2. Reimbursement of reasonable costs incurred on behalf of SATiBA may be considered by the board.

## **22. DIRECTORS QUALIFICATIONS**

- 22.1. A person needs to be an appointed representative of a member of the Company to qualify for the appointment as director of the Company.

## **23. OFFICERS**

- 23.1. The directors shall at their first meeting from amongst their number elect a chairperson and deputy chairperson.
- 23.2. The chairperson and deputy chairperson shall cease to be an officer of the Company if they cease to be a director.
- 23.3. Within 30 (thirty) days of an officer ceasing to hold that office either because he resigns from that office or for any other reason, a replacement shall be elected in terms of this Memorandum.
- 23.4. The directors may from time to time confer upon any officer such of the powers and authority vested in them as they may think fit, for such time, for such purposes, upon such terms and conditions and with such restrictions as they may think fit and the directors may from time to time revoke or vary all or any of such powers and authorities.

## **24. APPOINTMENT OF REPRESENTATIVES**

- 24.1. The directors may at any time appoint any third party, whether or not they are a member of the Company and including any retired director or chairperson who is not eligible for re-election in terms of Article 20, to represent certain industries and to contribute their expertise to the meetings of the board.
- 24.2. The appointment of a representative shall be based on such person's expertise obtained in an industry, such as clinical, operational, financial and marketing.
- 24.3. For the avoidance of doubt it is specifically recorded that the appointment of a representative as aforesaid shall only be valid for such period or for the performance of such task as the directors in their sole discretion may require, after which period or fulfilment of the particular task the representative's appointment will terminate.

## **25. ALTERNATE DIRECTORS**

- 25.1. Whenever a director is absent or unable to act; the person who received the next most votes in that segment at the annual general meeting shall be obliged to act as an alternate director in his place during his absence or inability to act, unless otherwise agreed to by the remaining directors.
- 25.2. The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and discharge all powers, duties and functions of the directors they represent but only for such period as the director he represents is absent or unable to act.
- 25.3. An alternate director shall be seen as a representative of the director he represents and not as a director permanently appointed.
- 25.4. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him ceases to be a director.

## **26. BORROWING POWERS OF THE DIRECTORS**

- 26.1. The board may in its discretion, from time to time, raise or borrow from the members or other persons any sums of money for the purposes of conducting the business of the Company without limitation, and repayment of such monies may be recovered from members in the form of membership or subscription fees or levies, and a member shall remain liable for any such fees or guarantees even after termination of membership.
- 26.2. The directors may secure the payment or repayment of any sums of money borrowed or raised in terms of Article 26.1 or the payment of any debt, liability or obligation whatsoever of the Company or of a third party, in such manner and upon such terms and conditions in all respects as they deem fit.

## **27. GENERAL POWER AND DUTIES OF THE BOARD**

27.1. The board shall be responsible for –

- 27.1.1. managing the affairs of the Company between annual general meetings specifically in order to achieve the objectives as contemplated in this Memorandum or as may be determined by the member in a general meeting;
- 27.1.2. making a final decision on any dispute concerning the interpretation of this Memorandum after seeking the advice of the company secretary and/or external legal counsel;
- 27.1.3. establishing board committees as may be required by good corporate governance principles from time to time;
- 27.1.4. formulating policies and guidelines to give effect to good corporate governance principles;
- 27.1.5. setting and/or subscribing to any Code or Codes of Practices on behalf of the Company and its members;
- 27.1.6. membership affairs, including –
  - 27.1.6.1. the raising of funds by way of membership fees and/or levies and/or sponsorships, donations and grants;
  - 27.1.6.2. setting policies and procedures for the handling of membership queries and member interests; and
  - 27.1.6.3. providing feedback to members from time to time on the achievement of the objectives of the Company, including any special projects or programmes.
- 27.1.7. meeting the objectives of the Company through –
  - 27.1.7.1. the setting of strategic direction on an annual basis;
  - 27.1.7.2. the allocation of resources and the setting and approval of budgets;
  - 27.1.7.3. the creation of sub-committees and ad hoc teams or committees;
- 27.1.8. delegating responsibilities for any activities it may choose, to sub-committee(s) which it will appoint in terms of Article 34.3; and
- 27.1.9. communicating resolutions, opinions or guidance to the membership of the Company and/or to outside bodies.

27.2. The directors of the board shall have the power from time to time to delegate, or to allocate, to any one of their members or to any other person, whether in the Republic or not, such of the powers as are vested in the director pursuant to the Act or in terms of this Memorandum, as they may deem fit.

- 27.3. The board may delegate, or allocate any of its powers to committees consisting of such member or members of its body as it thinks fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any resolutions that may be imposed on it by the board. Save as aforesaid, the meetings and proceedings of a committee consisting of more than 1 (one) member shall be governed by the provisions of this Memorandum regulating the meetings and proceedings of the board.
- 27.4. Without detracting from the provisions contained in any Code or Codes of Conduct applicable to the Company's Board of directors, individual directors and office-bearers shall -
- 27.4.1. Always act in the best interest of the Company and in good faith;
  - 27.4.2. Declare any conflict of interest at the beginning of each meeting, and recuse him/herself when such matter is discussed;
  - 27.4.3. Refrain from using the Company as a mechanism to procure or attempt to procure commercial gain or advantage for the member s/he belongs to and refrain from using the Company to address matters competing entities should address individually;
  - 27.4.4. Declare the nature and value of any gifts or consideration received whilst acting on behalf of the Company;
  - 27.4.5. Make no public announcements relating to the Company or its affairs, unless properly and in writing mandated by the board to do so;
  - 27.4.6. Discuss matters inside board meetings and in the presence of other directors in attendance at such meetings, thus refraining from off-line and one-on-one discussions pertaining to matters before the board;
  - 27.4.7. Resolve disputes and conflicts in a constructive manner within the board –
    - 27.4.7.1. under the leadership of the chairperson, or if the chairperson is involved in the conflict or dispute, the vice chairperson; and
    - 27.4.7.2. the chairperson or vice chairperson, as the case may be, may seek expert assistance if required, in order to assist in the resolution of the matter; and
  - 27.4.8. failing which, the provisions of Article 9.4.2 shall be invoked.

## **28. DISQUALIFICATION AND PRIVILEGES OF DIRECTORS**

- 28.1. A director shall cease to hold office as such if –
- 28.1.1. he or she is prohibited from being or is removed as or is disqualified from acting as a director of a company in terms of the Act;
  - 28.1.2. his or her estate is sequestrated or he or she files an application for the surrender of his or her estate or an application for an administration order, or if he

or she commits an act of insolvency, or if he or she makes any arrangement or composition with his or her creditors generally;

- 28.1.3. he or she abandons or discontinues to be an employee and/or principal representative of an ordinary the Company member or if s/he, in the case of associate members abandons or discontinues the business or interests which entitled him or her to membership of the Company, unless the board decides that the person may, in the interest of the Company, remain on the board until his or her term expires;
  - 28.1.4. the member to which he or she belongs as an employee or representative, is removed as a member of the Company;
  - 28.1.5. the annual subscription or any other sum due by the member to which he or she belongs, or represents, to the Company is 3 (three) months in arrears;
  - 28.1.6. in the sole discretion of the board, he or she is guilty of conduct adverse and prejudicial to the interests, objectives or objects of the Company;
  - 28.1.7. at the sole discretion of the board, it is adverse or prejudicial to the interests of the Company that he or she should continue as a director of the Company;
  - 28.1.8. at the sole discretion of the board, such a director has contravened any Code of Practice applicable to the Company members or the Board Code of Conduct as adopted by the board and fails to remedy such contravention despite having been requested in writing to remedy such contravention;
  - 28.1.9. he or she is found to be mentally incapacitated or becomes of unsound mind;
  - 28.1.10. he or she is removed by a resolution of the Company as provided in the Act;
  - 28.1.11. he or she resigns from his or her office, which resignation shall take effect on the date at which such resignation is made to the secretary;
  - 28.1.12. he or she absents him or herself from 3 (three) consecutive board meetings without tendering an apology for his or her absence which is acceptable to the board. Such non-attendance shall include meetings which are adjourned due to the lack of a quorum;
- 28.2. The board shall furnish its reasons for terminating a director's membership to the board in terms of above to that director in writing and that director shall have the right, exercisable by notice in writing to the chairperson of the Company within 5 (five) business days of receipt of those reasons, to be heard by the board within a period of 20 (twenty) business days of receipt by the chairperson of the Company of such notice. Within 5 (five) calendar days of hearing the board may, upon such terms if any, as it may deem appropriate and without any obligation to give reasons, rescind or confirm the suspension or expulsion, or amend it, and until such rescission or confirmation or amendment is made, no public announcement within or outside the Company of such suspension or expulsion, shall be made.
- 28.3. A director, whose appointment to the board has been terminated or expired, shall

immediately return to the Company any certificate of membership and any the Company property and shall cease to incorporate in its commercial documentation, advertising material, letterheads and any other documentation or communications media to which members of the public may have access, any reference to his or her directorship of the Company and she or he shall under no circumstances have any claim on the Company or its officers, its property or its funds.

## **29. MEETINGS OF THE BOARD OF DIRECTORS**

- 29.1. The board shall ordinarily meet at least once every 3 (three) months on a date to be fixed by the chairperson in conjunction with the company secretary.
- 29.2. Special meetings of the board shall be called by the chairperson upon the request of not less than one-third of the directors of the board, in which event the meetings shall be called within 10 (ten) business days of receipt of the requisition by the secretary.
- 29.3. Directors of the board shall be notified in writing of the time and place of meetings of the board by the secretary at least 10 (ten) business days before the dates of such meetings; An agenda shall be attached to every notice of a meeting.
- 29.4. The directors may determine what period of notice shall be given of meetings of directors and may determine the means of giving such notice, which may include telephone, telegrams, telex, telefax or e-mail. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the Republic.
- 29.5. All matters where agreement is not reached by the board shall be decided on a majority by a motion duly seconded and voted upon by show of hands.
- 29.6. Each director entitled to vote shall have 1 (one) vote. The chairperson shall have a second or casting vote, in the event of equality of votes.
- 29.7. The quorum necessary for the transaction of business at a meeting of the board shall be half the number of directors plus 1 (one).
- 29.8. If within 15 (fifteen) minutes of the fixed time for any board meeting a quorum is not present, the meeting shall stand adjourned to such date and place as the chairperson of the meeting shall decide giving due notice as contemplated in Article 29.3 above.
- 29.9. At every board meeting the minutes of the preceding board meeting shall be circulated to the directors not later than 10 (ten) business days before the meeting and shall be considered as read and shall be signed by the chairperson after approval by the directors present.
- 29.10. Subject to the Act –
  - 29.10.1. a resolution in writing signed by all the directors for the time being present in the Republic and being not less than the requisite majority of the directors being entitled to vote on such a resolution at meetings of the board or by duly authorised representatives on their behalf shall be as valid and effectual as if it was passed at a board meeting duly called and constituted. The resolution may

consist of several documents, each signed by one or more directors in terms of these articles; in the case of matters requiring urgent resolution or, if for any reason it is impracticable to meet or pass a resolution, the meeting may be conducted and a resolution may be passed utilising conference telephone facilities, provided that the required quorum is met.

- 29.11. A director unable to attend a board meeting may authorize any other director to vote for him or her at that meeting. In that event the director so authorised, shall have a vote for each director by whom he or she is so authorised, in addition to his or her own vote.
- 29.12. If at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the directors present may choose one of their members to be chairperson of the meeting.
- 29.13. Without in any way derogating from the generality of the duties of the directors, the directors shall in particular be obliged to:
- 29.13.1. administer subscription funding and any donations accepted in Article 31 and shall accept any donations which may be made by testamentary bequests or by donations *inter vivos* or by any other means, subject to the conditions set out in this Memorandum.
  - 29.13.2. from time to time open and/or hold a banking or similar account with an accredited financial institution in the name of the Company and to deposit in such account all moneys which are due to the Company in the first instance;
  - 29.13.3. administer the funds of the Company and income accruing to the Company in order to achieve the main object of the Company;
  - 29.13.4. keep proper and comprehensive account books of account and records;
  - 29.13.5. retain any records or other documents in respect of the Company for a period of 5 (five) years;
  - 29.13.6. utilise the funds of the Company solely for the main object of the Company or to invest funds available for investment only in accordance with the provisions of section 30 of the Income Tax Act, 58 of 1962, as amended from time to time.
  - 29.13.7. remain informed and updated with regards to the current minutes, policies and codes of business of the Company, and to keep themselves updated by attending the required meetings.
- 29.14. The directors shall not have the power to use the funds of the Company for the carrying on of any business or trading activity in the name of the Company otherwise than to the extent permitted in terms of section 30 of the Income Tax Act, 58 of 1962, as amended from time to time.

### **30. POWERS OF DIRECTORS**

- 30.1. The board of directors shall manage the Company and shall carry out the objects of the Company in such manner as it may deem fit and proper subject, however, to:
- 30.1.1. the general policy of the Company; and
  - 30.1.2. any special instructions as may be laid down or given by the members in general meeting from time to time; and
  - 30.1.3. the provisions of section 30, read together with section 18A, of the Income Tax Act, 58 of 1962, as amended from time to time.
- 30.2. The directors may exercise all such powers as are not prohibited or limited by the Act or any amendment thereof, and subject to such regulations not inconsistent with this Memorandum or provisions as may be prescribed by the Company in a general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.
- 30.3. The board of directors may delegate any of its powers to committees consisting of such persons as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the Board.

### **31. DONATIONS TO THE COMPANY**

- 31.1. Provided the Company has been approved as a public benefit organisation, the directors shall, in respect of every donation received, furnish to the donor in each case a receipt of which the following particulars are given:
- 31.1.1. the reference number of the Company issued by the Commissioner for the South African Revenue Service for the purposes of section 18A of the Act;
  - 31.1.2. the date of receipt of the donation;
  - 31.1.3. the name of the Company, together with an address to which enquiries may be directed in connection therewith;
  - 31.1.4. the name and address of the donor;
  - 31.1.5. the amount or nature of the donation; and
  - 31.1.6. a certificate to the effect that the receipt is issued for purposes of Section 18A of the Act, and that the donation has been or will be used exclusively for the main object of the Company.
- 31.2. The directors shall not accept any donations to the Company unless they are irrevocable and subject to the terms and conditions of this Memorandum.

### **32. RECORDS OF DIRECTORS' MEETINGS**

- 32.1. The directors shall cause minutes to be made of all appointments of officers made by

the directors, the names of the directors present at each general meeting of the directors and all resolutions passed by the directors at all meetings of the directors.

- 32.2. Minutes of any resolutions and proceedings mentioned in Article 29.9 appearing in one of the minute books of the Company shall be proof of the facts therein stated if signed by-
- 32.2.1. the chairperson of the meeting to which it relates; or
  - 32.2.2. any person present at the meeting and appointed by the directors to sign in the chairperson's place; or
  - 32.2.3. the chairperson of a subsequent meeting of the directors.
- 32.3. Any extracts from or copy of those minutes purporting to be signed by the chairperson of that meeting, any director or the Executive Officer shall be *prima facie* proof of the facts therein stated.

### **33. OFFICE STAFF**

- 33.1. The board may appoint permanent staff, or authorise the appointment of such staff, reasonably required in order to ensure the effective operation of the Company.

### **34. OPERATION OF SUBCOMMITTEES**

- 34.1. The board may appoint subcommittees for the improved efficiency of the affairs of the Company and such subcommittees shall act in accordance with these articles and general principles prescribed by the board from time to time.
- 34.2. Subcommittees shall –
- 34.2.1. Establish its annual programme of action in line with the strategic direction set by the board, which annual programme of each committee shall be approved by the board;
  - 34.2.2. Act only in an advisory capacity to the board;
  - 34.2.3. Always remain accountable to the board;
  - 34.2.4. Meet at least quarterly, but more frequently should the subject-matter of the mandate of the committee so dictate;
  - 34.2.5. Not be entitled to take action on any matter or recommendation until approval has been granted therefore in writing by the board; and
  - 34.2.6. Authority in terms of this article must be in writing, which may take the form of a telegram, cable, telefax, telex or e-mail and must be handed to the person presiding at the meeting at which it is to be used.
  - 34.2.7. Shall, through the chairperson, report back to the board from time to time in any manner prescribed by the board.

### 34.3. Subcommittee members shall –

- 34.3.1. Be nominated by the board and/or the Principal Representative of an ordinary member and any member shall be free to nominate a person to participate in the activities of any subcommittee, provided that the board may, at its sole discretion, limit the number of participants in the interest of committee efficiency and effectiveness;
- 34.3.2. Not be entitled to any remuneration or reimbursement for any services rendered, or any participation in any subcommittee activity;
- 34.3.3. Always meet in the presence of a person delegated by the board to attend such meeting(s) and who shall be responsible for the taking of minutes and all administrative arrangements associated with subcommittee activities;
- 34.3.4. Unless so nominated by the board, elect a chairperson from amongst its members, who shall take responsibility for setting agendas for committee meetings with the board and who shall ensure that the committee fulfils its mandate, with the assistance of the various committee members.

## **35. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES**

- 35.1. As regards all persons dealing in good faith with the Company, all acts done by any meeting of directors or of a committee of directors or of any executives or by a person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of such directors or persons acting as aforesaid or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a director or was entitled to vote, as the case may be.

## **36. FINANCIAL MATTERS**

- 36.1. The board shall cause true accounts to be kept of:
  - 36.1.1. the sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure took place;
  - 36.1.2. all sales and purchases of goods by the Company; and
  - 36.1.3. the assets and liabilities of the Company.
- 36.2. The books and accounts shall be kept at the registered office of the Company or at such other place or places as the board may think fit and shall always be open for inspection by the members and the directors of the board.
- 36.3. A copy of the financial statements as applied, which are to be placed before the membership at an annual general meeting, and the board and auditor's report shall, not

less than 10 (ten) business days before the date of the meeting, be made available on request to all members entitled to vote at an annual general meeting.

- 36.4. All payments made by the Company are to be authorised by the board or the chairperson, according to the financial policy and procedure as adopted by the board from time to time.
- 36.5. The financial year of the Company shall be from 1 March to the last day in February of the following year.
- 36.6. Any arrear subscriptions or any levies owing by members to the Company may be recovered by action in a court of competent jurisdiction.
- 36.7. Auditors shall be appointed at every annual general meeting and their duties regulated by the board in accordance with the Act.

### **37. STANDARDS**

- 37.1. The members shall draft comprehensive Standards for each category of tissue banking in terms of this article, and may amend and add to such Standards from time to time.
- 37.2. The standards as contemplated in this Memorandum, and as amended from time to time, shall be binding upon all members of the Company.
- 37.3. The rules and procedures for the resolution of complaints pertaining to the standards, as determined by the board, shall be kept at the Company's registered office and shall be available for inspection by members and the board on request once approved by a majority of the board.
- 37.4. The board may also participate in-, and/or subscribe to any other standards, whether relating to marketing and sales practices of health products or otherwise, and such Standards shall be binding on the members of the Company and any enforcement mechanisms that form part of such Standards, upon the Company signing up to such standards.
- 37.5. The Company shall engage Government and other regulatory bodies in the pursuance of the objectives of the Company as contemplated in this Memorandum.

### **38. ACCOUNTS**

- 38.1 The Company shall open and operate such bank accounts as may be necessary to conduct its business, save that such accounts shall be opened only in its own name at a registered commercial bank.

### **39. SIGNATURE OF DOCUMENTS**

- 39.1 All powers of attorney, bonds, deeds and other instruments shall be signed and executed on behalf of the Company by such director(s) of the board or by such employee(s) or office bearer(s) of the Company as the board shall decide.

#### **40. INDEMNITY AND LIMITATION OF LIABILITY**

40.1. Every director, manager, secretary, auditor, employee and officer of the Company shall be indemnified out of the funds of the Company against the following provided the claim has not arisen from their negligence, dishonesty or fraud –

40.1.1. all liabilities incurred by him or her in that capacity;

40.1.2. expenditure in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour, or in which he or she is acquitted;

40.2. It shall be the duty of the directors to pay out of the funds of the Company all costs, losses and expenses for which any such person is indemnified by the Company and for which such person may become liable by reason of –

40.2.1. any contract entered into; or

40.2.2. any act done by him or her,

40.2.3. in his or her capacity as director, secretary, manager, auditor or officer of the Company or in any way in the discharge of his or her duties.

40.2.4. Subject to the provisions of the Act, no director, manager, secretary, auditor, officer or employee of the Company shall be liable for –

40.2.4.1. any act, receipt, neglect or fault of any other such officer or employee of the Company, or

40.2.4.2. joining in any receipt or other act; or

40.2.4.3. loss or expense suffered by the Company through the insufficiency or deficiency of title to any property acquired by order of the board for and on behalf of the Company; or

40.2.4.4. the insufficiency or deficiency of any security in or upon which any of the monies of the Company have been invested; or

40.2.4.5. any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited; or

40.2.4.6. any loss or damage occasioned by any error of judgement or oversight on his or her part; or

40.2.4.7. any other loss, damage or misfortune whatsoever incurred in the execution of his or her duties of office or in relation thereto, unless the same occurs through his or her own dishonesty.

#### **41. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY**

- 41.1 The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main and ancillary objectives and objects as stated in the Memorandum and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the members of the Company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any full-time officer, contractor or employee of the Company in return for any services actually rendered to the Company.

## **42. WINDING UP**

- 42.1. Upon the winding-up of the Company, the assets and liabilities of the Company shall not be distributed to the members or any other person, but shall be transferred to a similar organization with goals similar to those of the Company.
- 42.2. The Company, in the annual general meeting and at the time of resolving the winding-up of the Company, shall identify the other similar association(s) to be beneficiaries in terms of this provision and, in the event of the Company failing to identify the beneficiary as herein provided, a nominated third party shall be entitled to determine such beneficiary.
- 42.3. The Company may be wound up if at a special general meeting, called for this purpose or at a ballot conducted in a manner prescribed in these articles, not less than 75% (seventy five percent) of the total number of members of the Company entitled to vote, vote in favour of a resolution that the Company be wound up.

## **43. SAFE CUSTODY OF DOCUMENTS**

- 43.1 Any mortgage bond, title deed or other security belonging to or held by the Company shall be registered in the name of the Company and no such security may be transferred, disposed of or otherwise alienated except with the approval of the members and as contemplated in the Act. All such securities shall be kept in safe custody in safes or strong rooms at the office or with a bank, as the board may determine.