

APPENDIX A
MEMORANDUM OF INCORPORATION

In this Memorandum of Incorporation –

- a) A reference to a section by number refers to the corresponding section of the Companies Act 2008;
- b) Words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as it does in that Act; and

The Schedules attached to this Memorandum are part of the Memorandum

1. Article 1- Incorporation and Nature of the Company

Incorporation

- 1) The Company is incorporated as a Non-Profit Company, as defined in the Companies Act, 2008.
- 2) The Company is incorporated and governed by-
 - a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies;
 - b) the alterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - c) the provisions of this Memorandum of Incorporation.

1.1 Objects of the Company

The objects of the Company are:

- a) To foster evidence based HIV related education for healthcare practitioners;
- b) To produce HIV related evidence based prevention, diagnosis, treatment, care, etc guidelines;
- c) To publish a journal and other relevant publications on the above themes.
- d) To foster interaction amongst HIV healthcare professionals and societies;

- e) To establish and support local Company meetings in Southern Africa; and
- f) Advocacy for HIV treatment, care and prevention;

Except to the extent necessarily implied by the stated objects the purpose and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii).

The Company is not subject to provisions contemplated in section 15(2)(b) or (c).

Upon dissolution of the Company, it's net assets must be distributed in the manner determined in accordance with:

Item 1(4)(b) of Schedule 1 of the Companies Act, 2008;

1.2 Memorandum of Incorporation and Company Rules

- 1) The Memorandum of Incorporation of the Company may be altered or amended in the manner set out in section 16, 17 or 152(6)(b), subject to the provisions contemplated in section 16(1), and set out in Part D of Schedule 1 of this Memorandum.
- 2) The authority of the Company's Board of Directors to make rules for the Company as contemplated in section 15(3) to (5) is not limited or restricted in any manner by this Memorandum.
- 3) The Board must publish any rules made in terms of section 15(3) to (5) by delivering a copy of those rules to each director by ordinary mail.
- 4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules made in terms of section 17(1) by delivering a copy of those rules to each director by ordinary mail.

1.3 Optional provisions of the Companies Act, 2008

- 1) Save for the requirement to appoint an audit Committee in terms of the provisions of section 94, Audit Committees, the Company does not elect, in terms of section

34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act 2008.

- 2) Notwithstanding the provisions of Article 1.3 1) and irrespective of whether the Company is required to have its Annual Financial Statements Audited in terms of the Companies Act, the Company shall have its financial statements audited every year provided that the Company is in a financial position to do so. For the avoidance of doubt, nothing contained in the Memorandum of Incorporation shall detract from an obligation of the Company to have its financial statements audited in terms of the Companies Act.

1.4 Members of the Company

- 1) As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has members who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.
- 2) The Terms and conditions of membership in the Company are as set out in Part E of Schedule 1 to this Memorandum.

2. ARTICLE 2 – RIGHTS OF MEMBERS

2.1 Members Authority to Act

If, at any time, every member of the Company who is also a director of the Company, as contemplated in section 57 (4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 Members' rights to Information

In addition to the rights to access to information set out in section 26(1), a member of the Company has the further rights to information, if any set out in Part B of Schedule 2 of this Memorandum of Incorporation.

2.3 Representation by concurrent proxies

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a) is limited restricted or varied to the extent set out in Part C of Schedule 2.

2.4 Authority of proxy to delegate

The authority of a members proxy to delegate the proxy's power to another person, as set out in section 58(3)(b) is limited, restricted or varied to the extent set out in Part C of Schedule 2.

2.5 Requirement to deliver proxy instrument to the Company

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the members rights at a members meeting, as set out in section 58(3)(c) is varied to the extent set out in Part C of Schedule 2.

2.6 Deliberative authority of proxy

The authority of a members proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member are as set out in section 58 (7) without variation.

2.7 Record Date for exercise of member rights

If, at any time, the Company's Board of Directors fails to determine a record date as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

3. ARTICLE 3 MEMBERS MEETINGS

3.1 Requirement to hold meetings

The Company is not required to hold any members meetings other than those specifically required by the Companies Act, 2008.

3.2 Members rights to requisition a meeting

The right of Members to requisition a meeting, as set out in section 61(3), maybe exercised by at least **10%** of the voting members.

3.3 Location of member meetings

The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is not limited or restricted by this Memorandum of Incorporation.

3.4 Notice of Members meetings

The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62(1) is **5** business days before the meeting is to begin.

3.5 Electronic participation in members meetings

The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.

3.6 Quorum members meetings

- 1) The quorum requirements for a members meeting to begin, or for a matter to be considered are as set out in section 64(1) without variation.
- 2) The time periods allowed in section 64(4) and (5) apply to the Company without variation.
- 3) The authority of a meeting to continue to consider a matter, as set out section 64(9) is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of members meetings

The maximum period allowed for an adjournment of a members meeting is as set out in section 64 (13) without variation.

3.8 Members resolutions

- 1) For an ordinary resolution to be adopted at a Members Meeting, it must be supported by at least 50% of the members who voted on the resolution, as provided in section 65(7).
- 2) For a special resolution to be adopted at a Members Meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65(9).
- 3) A special resolution adopted at a Members Meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11).

4. ARTICLE 4 DIRECTORS AND OFFICERS

4.1 Composition of the Board of Directors

- 1) The Board of Directors of the company comprises of a minimum of 3 (three) directors and a maximum of 14 directors, a maximum of 8 of whom shall be elected –
 - a) In the manner set out in Part A of Schedule 4; and
 - b) Serves for a term of 2 (two) years, provided that a director shall be eligible for re-election after expiry of his/her term.
 - c) Notwithstanding the provisions of 4.1)b) no director shall be entitled to serve as a director for a consecutive period exceeding 6 (six) years
- 2) In addition to the elected directors, and the Board of Directors of the Company may directly appoint a maximum of 6 (six) directors but always provided that the number of directly appointed directors as contemplated in this article 4.1 2) shall be less than the number of elected directors. There shall be no ex officio directors of the Company as contemplated in section 66(4).
- 3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director of the Company a person need not satisfy any further eligibility requirements or qualifications.

4.2 Authority of the Board of Directors

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation.

4.3 Board of Directors Meetings

- 1) The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation.
- 2) The right of the Company's Directors to requisition a meeting of the Board as set out in section 73(1) may be exercised by at least 25% of the directors, as provided in that section
- 3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- 4) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) is not limited or restricted by this Memorandum of Incorporation.
- 5) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are, as set out in section 73(5).

4.4 Indemnification of Directors

- 1) The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(3) and/or 78(4) is not limited or restricted by this Memorandum of Incorporation.

- 2) The authority of the Company's Board of Directors to indemnify a director, in respect of a liability, as set out in section 78(5) is not limited or restricted by this Memorandum of Incorporation.
- 3) The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78(7) is not limited or restricted by this Memorandum of Incorporation.

4.5 Officers and Committees

- 1) The Board of Directors may appoint any officers it considers necessary to better achieve the objectives of the Company.
- 2) The authority of the Company's Board of Directors to appoint committees of directors and to delegate to such committee any of the authority of the Board as set out in section 72(1), or to include in any such committee persons who are not directors as set out in section 73(2)(a) is not limited or restricted by this Memorandum of Incorporation.
- 3) The authority of a committee appointed by the Company's Board, as set out in section 73(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

5. ARTICLE 5 GENERAL PROVISIONS

5.1 ACCOUNTING RECORDS, FINANCIAL STATEMENTS AND AUDITOR

- 1) The Directors shall cause such accounting records as are prescribed by Section 29 of the Act to be kept and as are necessary to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.
- 2) The Directors shall have the annual financial statements of the company audited in accordance with the provisions of section 30 of the Act —
 - a. In each instance where the Company is required in terms of the provisions of Section 30 of the Act read together with Regulation 30 to do so; or
 - b. In instances where the Company is not required in terms of the Act to have the

- financial statements of the Company audited but the Company has adequate funding available to have the financial statements audited.
- c. In the event that annual financial statements of the Company are to be audited, whether in terms of article 5.1 2)a or 5.1 2)b, an auditor shall be appointed at the annual general meeting of the Company, in accordance with the provisions of section 90(2) of the Act.
 - d. The Directors shall from time to time lay before the Company in annual general meeting, such annual financial statements or audited annual financial statements as are required in terms of the Act.

5.2 **NOTICES**

A notice may be given by the Company to any Member either by advertisement or personally, or by sending it by post in a prepaid registered letter addressed to such Member at his registered address or (if he has no registered address in the Republic) by telefax to the telefax number or by email to the email address (if any) within the Republic supplied by him to the Company for the giving of notices to him.

Schedule 1 - Incorporation and Nature of the Company

Part A

There are no provisions limiting the powers of the Company, as contemplated in section 19 (1) b of the Act.

Part B

There are no provisions 'ring fencing' provisions, as contemplated in section 15(2) b of the Act.

Part C

Prohibition on Distribution of Income and Property

- a) The Company shall use all of its assets and income, however derived, to advance its

objects as set out in article 1 above;

b) The Company may not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether 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—

1. as reasonable remuneration for goods delivered or
2. services rendered;
3. as payment or reimbursement for, expenses incurred to advance a stated object of the Company;
4. as a payment of an amount due in terms of a bona fide agreement between the Company and that person;
5. 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
6. in respect of any legal obligation binding on the Company

c) Upon the winding-up or dissolution of the Company—

1. no past or present member or director or person appointing a director is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
2. the entire net value of the Company must be distributed to one or more non-profit companies, external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
3. having objects similar to the main object of the Company; and
4. as determined in the Memorandum of Incorporation, or by the members or directors as provided for in the Memorandum of Incorporation;

Part D

- a) The authority of the Company to amend its Memorandum of Incorporation as set out in section 16(1)(c) is not limited or restricted by this Memorandum of Incorporation.
- b) The authority of the Company's Board of Directors to make rules for the Company as contemplated in section 15(3) to (5) is not limited or restricted in any manner by this Memorandum.

Part E

1) MEMBERSHIP

- a) The first Members of the Company shall be the subscribers to the Company's Memorandum of Association.
- b) Any person meeting the criteria set out in Article 2 of Part E, who has applied in writing to become a Member in the prescribed manner and who has paid the annual subscription fee as determined by the Board from time to time, shall be and become a Member of the Company until his/her resignation or until his/her membership is terminated in accordance with article 7 of Part E.
- c) The Board may award life-time membership to a natural person for service to the Company, or to the public benefit objects of the Company as set out in Article 1.1, provided that the consent of that natural person, to become a life time Member shall have been obtained in writing prior to the award of such life time Membership.
- d) The Company shall have a minimum of 3 (three) Members at all times.
- e) If at any time the number of Members remaining should fall below the stipulated minimum, it shall be incumbent upon the Directors to take such steps as may be necessary to fill the relevant vacancy/ies within a period of 30 (thirty) days of the need therefore arising.

2) QUALIFICATIONS FOR MEMBERSHIP OF THE COMPANY

- a) Membership of the Company is limited to natural persons who qualify for Membership as follows:
 - 1. Individuals who subscribe to the Mission and Values of the Company; and

2. Who support the objectives of the Company;
 - b) Members shall be obliged to show a continued interest in the activities and main purpose and objects of the Company.
 - c) Members are bound to pay initial fees and annual subscription fees as determined by the Board and published by the Board from time, to the Company.
 - d) The suspension or termination of membership shall not, ipso facto, release a Member from an obligation undertaken prior to the cessation of such Membership, whether arising from or in the form of:
 - i. the provisions of article 2a) of Part E; or
 - ii. any outstanding fees, donation, or any other, commitment, or obligation which such Member may have undertaken, or for which such Member may have become liable to the Company.

3) PROCESS FOR APPLYING FOR MEMBERSHIP

- a) Any natural person who wishes to become a Member of the Company shall complete a Membership application form, as approved by the Board from time to time;
- b) Membership shall commence upon confirmation by the Board that the applicant qualifies for Membership on the basis set out in Article 2) of Part E and upon acceptance by the Board of a duly completed membership application form;
- c) Upon receipt of payment of the initial fees as determined by the Board from time to time as per article 4) of Part E;
- d) Membership shall endure indefinitely subject to the provisions of Article 6) and 7) of Part E.

4) MEMBERSHIP FEES

- a) All Members shall pay such initial fees and annual subscription fees as are prescribed by the Board of Directors, in its absolute discretion and which shall be published from time to time;
- b) Annual subscription fees as prescribed by the Board of Directors , in its absolute discretion and which shall be published from time to time shall be payable on or

before 28 February of each year.

5) MEMBERSHIP REGISTER

- a) The Company shall maintain a Membership register.
- b) The Membership Register as per article 5) a) of Part E shall contain the names and addresses of each of the Members, the date on which they became Members and any other prescribed information.

6) SUSPENSION OF MEMBERSHIP

- a) If any Member shall leave his subscription fees unpaid, for a period of 3 (three) months after it becomes due, his/her Membership shall be suspended, automatically without notice, up to and including the date of payment of any unpaid, outstanding and/or due subscription fees.
- b) If the Board has issued a notice contemplated in article 7)c) of part E to a Member, the Board shall have the power, in their sole and absolute discretion, to suspend a Member's membership pending a decision contemplated in article 7)b) of Part E.
- c) The Board shall advise any Member of his/her suspension in writing.

7) TERMINATION OF MEMBERSHIP

- a) A Member shall automatically cease to be a Member of the Company:
 - 1. upon receipt by the Company of his written notice of resignation, provided that he/she shall remain liable for his annual subscriptions, if any, due at the time he/she ceases to be a Member and if the resignation is received after the 28th of February in any year, he/she shall remain liable for his/her annual subscription for the ensuing year, together with and in addition to any other financial obligations;
 - 2. upon his death;
 - 3. upon the disbandment and final liquidation of the Company.
- b) The Directors shall have the power, in their sole and absolute discretion, to terminate a Member's membership if:
 - 1. he/she is guilty of conduct inimical to the interests and/or objects of the

Company;

2. the Member acted wilfully in contravention of the Memorandum of Incorporation or any Rules made by the Board of Directors as contemplated in article 1.2;
 3. the Member is sequestrated, surrenders his estate, or dies; or
 4. it is detrimental to the interests of the Company that the Member should continue to be a Member of the Company.
- c) Before taking a decision contemplated in article 7 b) of Part E, the Board of Directors shall on not less than 14 (fourteen days) written notice:
1. Advise the Member of the intention of the Board to consider the matter; and
 2. Invite the Member to be present in order to make such representations and advance such facts as maybe relevant to the matter to be considered.
 3. The Directors shall furnish their reasons for terminating a Member's membership to that Member in writing.
 4. A Member, whose membership has been terminated, shall remain liable for all sums that may at the date of termination of his membership be due by him to the Company and shall not be entitled to any refund of any monies already paid nor have any claim against the Company.

Schedule 2 – Rights of Members

Part A

N/A

Part B

N/A

Part C - PROXIES

- a. The right of a member of the Company to appoint persons as proxies is limited to the appointment of a single proxy per Member per meeting and a member of the Company shall not be entitled to appoint persons concurrently

as proxies as contemplated in section 58(3)(b).

- b. A proxy appointed by a member of the Company shall not be entitled to delegate the proxies powers to another person as contemplated in section 58(3)(b).
- c. The instrument appointing a proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing. 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 Registered Office of the Company 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.
- d. A proxy need not be a Member of the Company.
- e. 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.
- f. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) 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.
- g. The instrument appointing a proxy shall, subject to the provisions of Section 58 of the Act, be in the following form or as near thereto as circumstances permit:

SOUTHERN AFRICAN HIV/AIDS CLINICIANS COMPANY NPC

(Incorporated as a Non-profit Company in terms of the Companies Act, 71 of 2008)

(the "Company")

I _____, being a Member of the Company hereby appoint _____ as my proxy to attend and speak and vote on a poll for me and on my behalf at the annual general meeting or general meeting (as the case may be) of the Company to be held on the _____ day of _____ 2___ 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).

This proxy appointment remains valid only until the end of the general meeting or annual general meeting any adjournment thereof, stipulated herein.

Signed at _____ on this the _____ day of _____ 2_____.

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 need not also be a member of the Company)

Part D

N/A

Schedule 3 – Members Meetings

Part A

N/A

Part B

N/A

Part C

N/A

Part D

N/A

Part E

N/A

Part F

a) N/A

b) N/A

c) N/A

Schedule 4 – DIRECTORS OF THE COMPANY

Part A - ELECTION OF DIRECTORS

- 1.1 A maximum number of 8 and a minimum number of 3 directors of the Company, must be elected by Members entitled to exercise voting rights in such an election, to serve for a term as set out in article 4.1 1 b).
- 1.2 In any election of directors—
- 1.2.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and
 - 1.2.2 in each vote to fill a vacancy—
 - 1.2.3 each voting right entitled to be exercised may be exercised once; and
 - 1.2.4 the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 1.3 Notwithstanding the provisions of this Part A the Board of the Company may appoint any person who satisfies the requirements for election as a director to fill any

vacancy and serve as a director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Part A, and during that period any person so appointed has all of the powers, functions of a director.

Part B

The Board of Directors of the Company shall be entitled to directly appoint a maximum of 6 Directors, provided that the number of directors so appointed shall always be less than the number of directors elected as contemplated in paragraph 1.1 of this Schedule 4 Part A.

Part C

N/A

Part D

N/A

Part E

N/A

Part F

N/A

Part G

N/A

Part H

N/A

