



STELLENBOSCH HOSPICE

MEMORANDUM OF INCORPORATION

TABLE OF CONTENTS

A. MAIN OBJECTIVES	1
B. ADOPTION OF MEMORANDUM OF INCORPORATION	2
1.. ARTICLE 1 – INCORPORATION AND NATURE OF COMPANY	3
1.1 INCORPORATION	3
1.2 OBJECTS AND POWERS OF THE COMPANY	3
1.3 MEMORANDUM OF INCORPORATION AND COMPANY RULES	4
1.4 APPLICATION OF OPTIONAL PROVISIONS OF COMPANIES ACT, 2008	5
1.5 MEMBERS OF THE COMPANY	5
2. ARTICLE 2 – DIRECTORS AND OFFICERS	
2.1 COMPOSITION OF THE BOARD OF DIRECTORS	5
2.2 AUTHORITY OF THE BOARD OF DIRECTORS	6
2.3 DIRECTORS’ MEETINGS	6
2.4 INDEMNIFICATION OF DIRECTORS	7
2.5 OFFICERS AND COMMITTEES OF THE BOARD	8
3. ARTICLE 3 – GENERAL PROVISIONS	8
3.1 FINANCES	8
3.2 ANNUAL GENERAL MEETINGS	9
3.3 DISSOLUTION OF THE COMPANY	9

STELLENBOSCH HOSPICE NPC is a Non Profit Company without members, with the following objectives, and is referred to in the rest of this Memorandum of Incorporation as the “Company”.

The **MAIN OBJECTIVES** of the Company are:

1. To promote quality of health and holistic wellness by providing care, support and health services to all persons regardless of race, creed or financial status, living in the greater Stellenbosch area, including farms, through the services of staff and volunteers.
2. To provide a range of holistic health related services to both terminal, palliative and chronic patients and their families which include:
 - 2.1. Home based care;
 - 2.2. Intermediate Care Facility operating 24/7;
 - 2.3. Psycho-social care and support.
3. To create empowerment and capacity building development opportunities for patients and their families and community members and volunteers through health related advocacy and health preventative training focussing on holistic wellness for all.
4. To focus on health system strengthening by working in partnerships and networks with government departments (especially Department of Health, Department of Social Development and Department of Local Government at local and regional level) as well as with Non Profit Organizations, Non Government Organizations, Faith Based Organizations and businesses and all who are committed to improve the quality of holistic wellness and patient care in order to create a more integrated resource based effective service for the communities we serve.
5. To fundraise and manage income generation activities which will enable us to implement the objectives as stated above.

ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the Directors of the Company, as evidenced by the following signatures made by each of them, or on their behalf.

NAME	IDENTITY NUMBER	SIGNATURE	DATE
EUGÉNIE SMITH	460401 0073 083		
OLGA BASSON	580429 0105 089		
WILFRED FREDERICK PIETERSEN	631227 5173 089		
THOZAMA CONSTANCE WITBOOI	660209 0442 085		
ANNA WILLEMINA DE WET	630117 0119 081		
SANDILE NGOBENI	770914 5517 081		
CORNELIA RENETTE HANEKOM	541029 0114 087		
JOHANNES HUBERTUS LOUBSER	500601 5065 081		

In this Memorandum of Incorporation –

- (a) All references not specifically related to another ACT, refer to the corresponding section of the Companies Act, Act 71 of 2008, as amended,
- (b) words that are defined in the Companies Act, Act 71 of 2008 bear the same meaning in this Memorandum of Incorporation as in that Act.
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

1. **ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY**

1. **Incorporation**

1. The Company is incorporated as a Non Profit Company, as defined in the Companies Act, 2008, as amended.
- 1.1.2 The Company is, pursuant to section 19(1)(a) of the Companies Act, a body corporate with its own legal identity which is separate from its individual office-bearers and/or directors. The Company shall continue to exist even if the directors change. The Company my own property, enter into contracts and sue or be sued in its own name.
3. The Company has, pursuant to section 19(1)(b) of the Companies Act, all the powers and capacity of an individual, unless otherwise provided in terms of the Companies Act.
4. The Company is incorporated in accordance with, and governed by:
 - 4.1. the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit Companies;
 - 4.2. 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
 - 4.3. the provisions of this Memorandum of Incorporation.

1.2. **Objects and Powers of the Company**

- 1.2.1. The Objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are, as contemplated in section 19(1)(b)(ii) of the Act, subject to the conditions in this sub-paragraph.
- 1.2.2. The powers of the Company, as an approved public benefit organisation, are limited by the tax conditions as contemplated in terms of section 30 of the Income Tax Act of 1962. In terms thereof the Company will:
 - 1.2.2.1. Be required to have at least 4 (four) persons, who are not connected persons in relation to each other, to be the directors of the Company.
 - 1.2.2.2. Ensure that no single person directly or indirectly controls the decision making powers relating to the Company.

- 1.2.2.3. Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for
- 1.2.2.4. the object for which the Company has been established.
- 1.2.2.5. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 1.2.2.6. Submit to the Commissioner for the South African Revenue Service a copy of any amendment to the Memorandum of Incorporation of the Company.
- 1.2.2.7. Not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 1.2.2.8. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.
- 1.2.2.9. Comply with such reporting requirements as may be determined by the Commissioner for the South African Revenue Service.
- 1.2.3. Directors and office-bearers have no rights in the property or other assets of the Company solely by virtue of their being directors or office-bearers.
- 1.2.4. The Company is subject to any provision contemplated in section 15 (2) (b) or (c) to the extent that it is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the Object for which the Company has been established.
- 1.2.5. The income and property of the Company shall be used solely for the promotion of its stated Object and shall not be paid or distributed directly or indirectly to any person, or to any director of the Company or office-bearers, except in accordance with paragraph 3 of Schedule 1 of the Companies Act.
- 1.2.6. Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 2 of the Companies Act, 2008; and should the Company be an approved public benefit organisation to a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act.

1.3. Memorandum of Incorporation and Company rules

1.3.1. This 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)(c), provided that:

4

1.3.2. The Memorandum of Incorporation may be amended, or the name of the Company may be changed, by a special resolution passed at a meeting of the directors convened for that purpose and supported by two-thirds of the directors.

1.3.3. At least fourteen (14) days' notice must be given to all the directors stating the nature of the resolution to be proposed, provided that all the directors may agree to waive this notice requirement.

1.3.4. The authority of the Company's Board of Directors to make and publish rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted and the Company may publish rules by having it delivered personally, or sent by prepaid post or addressed by e-mail transmission, to the last address notified by each Director or in any other manner as the Board may determine.

4. Application of optional provisions of Companies Act, 2008

The Company elects, in terms of section 34 (2), to comply voluntarily with the following provisions of Chapter 3 of the Companies Act, 2008 -

- i) the organization will hold an annual audit;
- ii) The organization will have an audit committee.

5. Members of the Company

The Company has no Members.

2. ARTICLE 2 – DIRECTORS AND OFFICERS

2.1. Composition of the Board of Directors

2.1.1. The Board of Directors comprises of at least seven (7).

2.1.2. The Board of Directors shall be entitled to appoint such additional directors as it deems necessary for such period as it may determine.

2.1.3. The directors shall hold office until such time as they become disqualified in terms of the Companies Act.

2.1.4. The Board, from time to time appoint a Managing Director and may:

- (a) entrust to or confer upon any Managing Director all or any of the

powers and authorities vested in them for such purposes and objects and upon such terms and conditions as they may deem fit;

- (b) while holding office, the Managing Director shall be a member of the Board *ex officio* and shall not be subject to the provisions relating to retirement or retirement by rotation of directors.

2.1.5. 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 requirements⁵ qualifications.

2.2 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) of the Company Act, is limited or restricted to the extent that:

1. The directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of seven [7] directors required to act as such for the time being, the continuing director/s may act only for the purpose of increasing the number of directors to the required minimum and to protect the interests of the Company.
2. Each director has the power to nominate any person, possessing the necessary qualifications of a director, to act as an alternate director in his/her place for a specified period not exceeding one year during his/her absence or inability to act as such director, provided that the appointment of the alternative director must be confirmed by the Board of Directors and on such appointment being made, the alternate director shall, in all respects, be subject to the qualifications, duties and legal obligations existing with reference to the other directors of the Company.
3. Alternate directors must exercise and discharge all the powers, duties and functions of the directors they represent.

3. Directors' Meetings

2.3.1 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 limited to the extent that only a resolution consented to in person, or electronically, by all voting directors shall be valid as if it had been passed at a duly convened meeting of the board.

3.1. 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.

3.2. 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.

3.3. The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) is limited or restricted to the extent that:

3.3.1. At all meetings of directors, the quorum necessary for the transaction of business shall be a majority of the directors appointed at the relevant time. If there is no quorum at the start of the meeting, those present will wait 15 (fifteen) minutes and then reconvene the meeting which will then be considered a formal board meeting where decisions can be made and actions ratified and those present will constitute a quorum.

3.3.2. Any two (2) directors may at any time, and the secretary upon the request of any two (2) directors must, convene a meeting of the directors.

3.3.3. Each director present or represented at a meeting shall be entitled to exercise one (1) vote.

3.3.4. Questions arising at any meeting of directors shall be decided by a majority of votes, provided that in the case of an equality of votes the Chairperson shall be entitled to a casting vote.

3.3.5. The directors must elect a Chairperson and may elect further office-bearers, who shall hold office until the next annual general meeting.

3.3.6. The Chairperson shall be entitled to preside over all meetings of directors. If no Chairperson is so elected, or if at any meeting neither is present or willing to act within fifteen (15) minutes of the time appointed for the commencement of such meeting, the directors present shall choose any other of their number to be Chairperson of such meeting.

3.3.7. The Chairperson and other elected office-bearers may be removed from their respective offices by a resolution of the Board supported by at least two-thirds of the Board members at a board meeting.

2.3.5 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.

3. Indemnification of Directors

2.4.1 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), is limited by this Memorandum

of Incorporation to the extent that:

7

1. Every director and other officer of the Company shall be indemnified out of the funds of the Company for any reasonable and necessary costs and expenses properly incurred at the request, and with the authority, and in the course of the business of the Company and for all acts done by them in good faith on its behalf.
2. No director of the Company or member of a sub-committee duly appointed by the board, shall be liable for the acts, receipts, neglects or defaults of any other director or office bearer, or for any loss, damage or expense suffered by the Company, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her own dishonesty, breach of duty, or failure to exercise the degree of care, diligence and skill required by law.
2. The authority of the Company's Board of Directors to indemnify a director in respect of 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 (6) is not limited or restricted by this Memorandum of Incorporation.

5. Officers and Committees of the Board

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

3. ARTICLE 3 – GENERAL PROVISIONS

3.1. Finances

- 3.1.1. The financial year of the Company will be from 1 April to 31 March..
- 3.1.2. Financial transactions shall be conducted by means of a banking account.

3.2. Annual General Meetings

- 3.2.1. Annual General Meetings shall voluntarily be held by the Company within six (6) months of the end of each financial year. The business of each Annual General Meeting shall include the following:
- 3.2.1.1. The presentation and adoption of the Annual Narrative and Financial Report;
 - 3.2.1.2. The (re-)appointment of the Auditor;
 - 3.2.1.3. Appointment of directors and officers, where applicable; and
 - 3.2.1.4. Such other matters as may be considered appropriate by the meeting.
- 3.2.2. Annual General Meetings of the Company shall be conducted and regulated in accordance with the procedures provided for in terms of paragraph 3 of Article 2.

3.3. Dissolution of the Company

The Company may be dissolved pursuant to the provisions of the Companies Act.