

**THE COMPANIES ACT, NO. 71 OF 2008  
(AS AMENDED)**

**MEMORANDUM OF INCORPORATION**

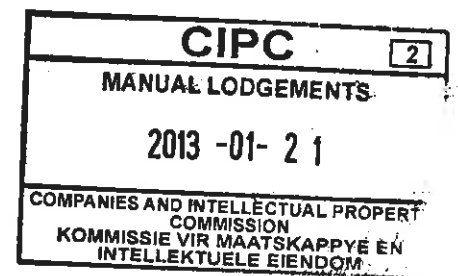
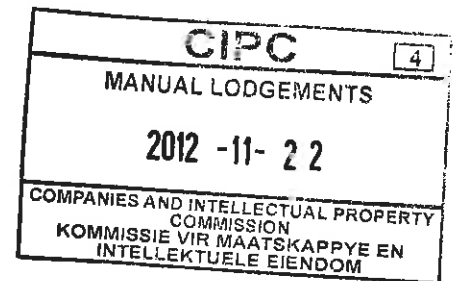
**OF**

**Qhubeka the Motive Power Movement NPC**

**A NON-PROFIT COMPANY WITHOUT MEMBERS**

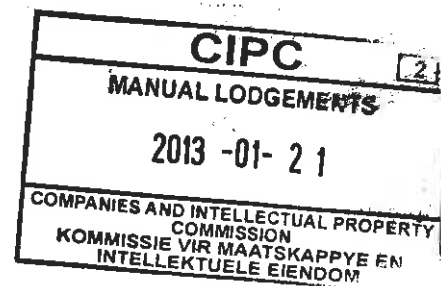
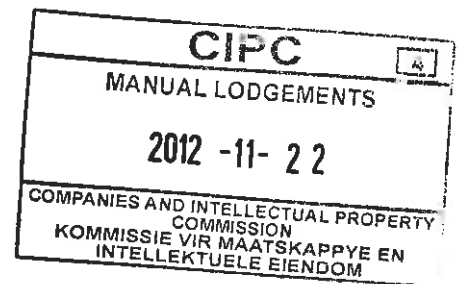
**REGISTRATION NUMBER: 2005/012333/08**

**REGISTRATION DATE: 26 April 2005**



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## 1 INTERPRETATION

1.1 In this MoI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.1.1 "Act" means the Companies Act, No 71 of 2008;

1.1.2 "Beneficiaries" means the beneficiaries of the Public Benefit Activities to be carried on by the Company, which shall at all times constitute at least 85% Black People of which at least 40% must be black women;

1.1.3 "Black People" means African, Coloured and Indian natural persons who are citizens of the Republic of South Africa by birth or descent or are citizens of the Republic of South Africa by naturalization (i) occurring before the commencement date of the Constitution of the Republic of South Africa Act of 1993 or (ii) occurring after the commencement date Constitution of the Republic of South Africa Act of 1993 but who, without the Apartheid policy, would have qualified for naturalization before 1993, and "Black Person" and "Black" shall bear the same meaning;

1.1.4 "Board" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;

1.1.5 "Broad-Based Ownership Scheme" means an ownership scheme which satisfies the requirements set out in Annexe 100 (B) of the Code of Good Practices;

1.1.6 "Business Day" means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;

1.1.7 "Codes of Good Practice" means the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Department of Trade and Industry on 9 February 2007 in terms of the Broad Based Black Economic Empowerment Act, No 53 of 2003;

1.1.8 "Commission" means the Companies and Intellectual Property

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- Commission established by section 185;
- 1.1.9 **"Commissioner"** means the Commissioner for the South African Revenue Service;
- 1.1.10 **"Company"** means the company named on the first page of this Mol, duly incorporated under the registration number endorsed thereon;
- 1.1.11 **"Companies Act"** means the Companies Act 71 of 2008;
- 1.1.12 **"Director"** means a member of the board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.13 **"Director of Nonprofit Organisations"** means the person appointed as such in terms of section 8 of the Nonprofit Organisations Act;
- 1.1.14 **"Economic Interest"** means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right;
- 1.1.15 **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.16 **"IFRS"** means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.17 **"Income Tax Act"** means the Income Tax Act, No. 58 of 1962;
- 1.1.18 **"Mol"** means this memorandum of incorporation of the Company, as amended from time to time;
- 1.1.19 **"Minister"** means the Minister of Finance;
- 1.1.20 **"Nonprofit Organisation"** means a nonprofit organisation as defined in the Nonprofit Organisations Act;
- 1.1.21 **"Nonprofit Organisations Act"** means the Nonprofit Organisations Act,

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No. 71 of 1997;

- 1.1.22 **"Public Benefit Activity"** means a public benefit activity as defined in section 30(1) of the Income Tax Act;
- 1.1.23 **"Public Benefit Organisation"** means a public benefit organisation as defined in section 30(1) of the Income Tax Act;
- 1.1.24 **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.25 **"Republic"** means the Republic of South Africa; and
- 1.1.26 **"WBR USA"** means World Bicycle Relief, NFP, a corporation incorporated in the United States of America and which is organized and operated exclusively for charitable and educational purposes in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (or a corresponding provision of any future United States Internal Revenue law).
- 1.2 In this MoI, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to a **"section"** by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.3 a reference to a **"clause"** refers to a clause of this MoI;
- 1.2.4 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses;
- 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MoI and –
- 1.2.5.1 an alterable or elective provision of the Act, the provision of this MoI shall prevail to the extent of the conflict; and

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- 1.2.5.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the MoI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MoI shall prevail to the extent of the conflict;
- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes -
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.8 if the due date for performance of any obligation in terms of this MoI is a day which is not a Business Day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding Business Day;
- 1.2.9 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MoI;
- 1.2.10 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this MoI to -
- 1.3.1 "**days**" shall be construed as calendar days;
- 1.3.2 "**law**" means any law of general application in the Republic and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative

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measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;

- 1.3.3 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.3.4 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided in this Mol or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.
- 1.6 Where a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Mol, then –
- 1.8.1 the determination of the expert shall (in the absence of manifest error) be final and binding;



- 1.8.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.8.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.8.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.8.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

## **2 JURISTIC PERSONALITY**

- 2.1 The Company is incorporated as a non-profit company without members, as defined in the Act, and has juristic personality from the date and time that the incorporation of the Company is registered, as stated in its registration certificate and as contemplated in section 19(1).
- 2.2 The Company is incorporated in accordance with and governed by –
- 2.2.1 the unalterable provisions of the Act, subject to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements imposed by this Mol on the Company in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Mol; and
- 2.2.3 the other provisions of this Mol.

## **3 OBJECTS**

- 3.1 The principal object of the Company is to carry on the following Public

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**Benefit Activities -**

- 3.1.1 the provision of poverty relief;
- 3.1.2 community development for poor and needy persons and anti-poverty initiatives, including—
- (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
  - (ii) the provision of training, support or assistance to community-based projects;
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans;
- 3.1.3 Activities relating to conservation, Environment and Animal Welfare, including –
- (a) engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere;
  - (b) the care of animals, including the rehabilitation, or prevention of the ill-treatment of animals;
  - (c) the promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects;
  - (d) the establishment and management of a transfrontier area, involving two or more countries, which—
    - (i) is or will fall under a unified or co-ordinated system of management without compromising national sovereignty;and

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- (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

all as set out in paragraph(s) 1 (f), 1 (p) and 7 of Part II of the Ninth Schedule of the Income Tax Act, and where all such activities of the Company are carried on in a non-profit manner and with an altruistic or philanthropic intent, and no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

- 3.2 In addition, the Company will have as its secondary objective the manufacture, assembly and distribution of bicycles and any other activities that are ancillary to the manufacture, assembly and distribution of bicycles.
- 3.3 In addition, in pursuit of the principal object specified in clause 3.1, the Company shall function as and comply with all the requirements of a Public Benefit Organisation as envisaged in section 18A(1) of the Income Tax Act, which includes the provision of funds or assets to other Public Benefit Organisations that carry on public benefit activities as envisaged in Part II of the Ninth Schedule to the Income Tax Act.
- 3.4 Each such activity carried on by the Company must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 3.5 The provisions of this MoI are consistent with the principles set out in item 1(2) to item 1(9) of Schedule 1 to the Act in so far as such principles are applicable to the Company and no amendment of this MoI shall be competent to the extent that it is contrary to or negates any of such principles.

#### 4 NON-PROFIT COMPANY PROVISIONS

- 4.1 The Company is a non-profit company, and accordingly the Company —

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- 4.1.1 must apply all of its assets and income, however derived, to advance its stated objects set out in clauses 3.1 and 3.2; and
- 4.1.2 subject to clause 4.1.1, may –
  - 4.1.2.1 acquire and hold securities issued by a profit company; or
  - 4.1.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.2 The Company, as a non-profit company, must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless as to how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Director, or person appointing a Director, except –
  - 4.2.1 as reasonable –
    - 4.2.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or
    - 4.2.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - 4.2.2 as 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;
  - 4.2.3 as 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
  - 4.2.4 in respect of any legal obligation binding on the Company.
- 4.3 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company —
  - 4.3.1 no past or present member of the Company or any past or present Director, or any person appointing a Director, is entitled to any part of

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- the net value of the Company after its obligations and liabilities have been satisfied; and
- 4.3.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts —
- 4.3.2.1 having objects similar to the Company's main object; and
- 4.3.2.2 which are Public Benefit Organisations approved as such in terms of and for the purpose of the Income Tax Act; and
- 4.3.2.3 as determined—
- 4.3.2.3.1 in terms of this Mol; or
- 4.3.2.3.2 by the Directors, at or immediately before the time of its dissolution; or
- 4.3.2.3.3 by the court, if no such determination is made in this Mol or by the Directors.
- 4.4 Incorporation of the Company as a non-profit company in terms of the Act and compliance with the provisions of the Act does not necessarily qualify the Company for any particular status, category, classification or treatment in terms of the Income Tax Act or any other legislation, except to the extent that any such legislation provides otherwise.
- 4.5 The Company, as a non-profit company, may not –
- 4.5.1 amalgamate or merge with, or convert to, a profit company; or
- 4.5.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such disposition of an asset occurs in the ordinary course of the activities of the Company.
- 4.6 As envisaged in clause 10.8, the incorporators of the Company are its first directors.

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- 4.7 The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director or a director of a related or inter-related company, or to any person related to any such Director or director.
- 4.8 Notwithstanding the provisions of clause 4.7, a transaction shall not be prohibited if it –
- 4.8.1 is in the ordinary course of the Company's business and for fair value;
  - 4.8.2 constitutes an accountable advance to meet –
    - 4.8.2.1 legal expenses in relation to a matter concerning the Company; or
    - 4.8.2.2 anticipated expenses to be incurred by the person on behalf of the Company; or
  - 4.8.3 is to defray the person's expenses for removal at the Company's request; or
  - 4.8.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

## **5 COMPANY NOT TO HAVE MEMBERS**

As contemplated in item 4(1) of Schedule 1 to the Act, the Company has no members.

## **6 LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator of the Company or a Director, be liable for any liabilities or obligations of the Company.

## **7 POWERS OF THE COMPANY**

- 7.1 Subject to the restrictions, limitations and qualifications referred to in clause 7.2, the Company has all of the legal powers and capacity of an individual for purposes of carrying out its objects, including the power to engage others (whether as employees or as independent contractors) to provide services and/or goods, including management services, in connection with

the pursuit by the Company of the objects referred to in clause 3, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, and no provision of this MoI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

- 7.2 The legal powers and capacity of the Company are, in terms of section 19(1)(b)(ii), restricted, limited and qualified as follows –
- 7.2.1 the Company must comply with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in furtherance of its object;
- 7.2.2 the Company is required to have at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person may directly or indirectly control the decision making powers relating to the Company;
- 7.2.3 the Company is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any Public Benefit Activity), and is required to use its funds solely for the objects for which it has been established;
- 7.2.4 as envisaged in clause 4.3.2.2, the Company is required on dissolution to transfer its assets to a Public Benefit Organisation approved as such in terms of and for the purpose of the Income Tax Act which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities;
- 7.2.5 the Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of the Income Tax Act;
- 7.2.6 the Company is prohibited from accepting any donation from a donor (other than a donor which is an approved Public Benefit Organisation in terms of the Income Tax Act or an institution, board or body which is

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exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any Public Benefit Activity) if such donor imposes conditions which could enable it or any connected person (as defined in the Income Tax Act) in relation to such donor to derive some direct or indirect benefit from the application of such donation;

- 7.2.7 the Company is required to submit to the Commissioner a copy of any amendments to this Mol;
- 7.2.8 the Company may not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, to any employee, office bearer, member or other person which, in terms of section 30(3)(d) of the Income Tax Act, is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and may not economically benefit any person in a manner which is not consistent with its objects; and
- 7.2.9 the Company must comply with such reporting requirements as may be determined by the Commissioner; and
- 7.2.10 the Company may not use any of its resources directly or indirectly to support, advance or oppose any political party.
- 7.3 Notwithstanding the provisions of the exceptions referred to in clause 4.2, no income or property of the Company shall be distributed to any of the Company's office-bearers, except as permitted in terms of section 12(2)(c) of the Nonprofit Organisations Act.
- 7.4 No office-bearer of the Company shall, solely by virtue of being an office-bearer, have any rights in the property or other assets of the Company.

## **8 SPECIAL CONDITIONS**

- 8.1 None of the provisions of this Mol, including this clause 8, shall be capable of being amended or deleted without the prior written consent of WBR USA (which consent may not be unreasonably withheld), provided that this restriction shall not apply to any amendment made in terms of section 16(4)



in compliance with a court order if it is not competent in terms of the law for such restriction to apply in such circumstances.

- 8.2 In the event that there is a dispute on the question of whether or not the consent referred to in clause 8.1 has been unreasonably withheld, no such amendment or deletion shall be made until it is determined, in accordance with the provisions of clause 8.3, that the withholding of the consent is unreasonable.
- 8.3 If there is such a dispute it shall be referred for determination to a practising commercial attorney of at least 15 (fifteen) years' experience as such, acting as an expert and not as an arbitrator, agreed to in writing by the Board, on the one hand, and WBR USA, on the other hand or, failing such agreement within 7 (seven) days of the Board or WBR USA in writing calling for agreement, an independent practising commercial attorney of at least 15 (fifteen) years' experience as such appointed, at the request of either the Board or WBR USA, by the President for the time being of the Law Society of the Northern Provinces or its successor.
- 8.4 Management fees paid by the Company, if any, must not exceed 15%, as contemplated in the Codes of Good Practise.

## **9 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

The Company elects, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in sections 84(4)(b), 84(6) and 85 of Part A, as well as Part C, of Chapter 3 of the Act.

## **10 COMPOSITION OF THE BOARD**

- 10.1 The number of Directors shall be at least 3 (three) but not more than 5 (five), and in the case of at least 3 (three) Directors, no Director (of such 3 (three)) shall be a connected person in relation to any other Director, as contemplated in section 30(3)(b) of the Income Tax Act.

[Note: Please consider the definition of "connected person" in terms of the Income Tax Act as provided.]

- 10.2 At all times, at least 50% of the Directors of the Company shall be

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independent persons;

- 10.3 At all times, at least 50% of the Directors of the Company shall be Black People and at least 25% shall be Black women.
- 10.4 In addition, the chairman of the board shall be an independent person.
- 10.5 The appointment of a Director or alternate Director or the removal of a Director or the termination of the appointment of an alternate Director in terms of any of the provisions of this clause 10 shall be effected by notice –
- 10.5.1 to the Company; and
- 10.5.2 to any Director which is being removed as a Director and to any alternate Director whose appointment as an alternate Director is being terminated,

on the basis that such notice (a) in the case of the removal of any Director or the termination of the appointment of any alternate Director will be operative immediately upon its receipt by the Director or alternate Director in question, as the case may be, and (b) in the case of an appointment of a Director or alternate Director will not be effective until the Company has been provided with the following –

- 10.5.3 a written consent by such person to serve as a Director as contemplated in section 66(7)(b); and
- 10.5.4 a written acknowledgement by such person in favour of the Company, in terms of which he (a) acknowledges that he shall be deemed to have resigned as a Director or alternate Director, as the case may be, forthwith upon receipt by him of a notice of his removal as a Director or of the termination of his appointment as an alternate Director, as the case may be, given in terms of any provision of this clause 10, and (b) irrevocably appoints the auditors of the Company as his agent to sign all such documents and to do all such things as are necessary or required to give effect to and implement his resignation, and (c) confirms that he will have no claims against either the Company or WBR USA, arising from or relating to such removal or termination, and (d) confirms that he

has read and understood this Mol and undertakes not to act contrary to any of its provisions.

- 10.6 In the event that the number of Directors should, for any reason, fall below 3 (three), the remaining Directors shall, pending any additional Director appointments, have power to exercise all the functions and powers of the Directors under this Mol for a period not exceeding 60 (sixty) days.
- 10.7 Each of the incorporators of the Company will in terms of item 3(a) in Schedule 1 to the Act be deemed to be Directors. In light thereof, and for the purpose of applying the provisions of this clause 10 the incorporators listed first, second and third respectively under the "Adoption" provisions appearing at the end of this Mol shall (notwithstanding any provisions to the contrary in this Mol) be deemed to be Directors validly appointed by the WBR USA in terms of its entitlement to make Director appointments pursuant to the provisions of this clause 10.
- 10.8 The Company shall only have the Directors and alternate Directors contemplated in the earlier provisions of this clause 10 and there shall be no Directors or alternate Directors appointed by any other person or *ex officio* Directors as contemplated in section 66(4).
- 10.9 In addition to satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or an alternate Director or a prescribed officer of the Company.
- 10.10 Unless the terms upon which any Director or alternate Director is appointed provide otherwise, each Director or alternate Director of the Company shall serve for an indefinite term and a vacancy in the number of Directors shall only arise in the event of –
- 10.10.1 any Director ceasing to hold office or becoming disqualified from holding office as such for any reason; and/or
- 10.10.2 any of the other circumstances contemplated in section 70(1) arising.
- 10.11 A Director or alternate Director may hold any other office under the

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Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director or alternate Director, for such period and, subject to the provisions of clauses 7.2.8 and 7.3, on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.

- 10.12 Subject always to the provisions of clause 4.2 to the contrary, the Company may, notwithstanding the fact that any particular person is a Director or alternate Director, nevertheless engage the Director or alternate Director, or any entity in which such Director or alternate Director has any direct or indirect interest, to provide any services and/or goods which the Company may from time to time require, in return for reasonable consideration.
- 10.13 A Director or alternate Director of the Company may be or become a director or other officer of, or otherwise interested in, any company or other juristic person promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company or juristic person.
- 10.14 No remuneration shall be payable by the Company to any Director or alternate Director for services as a Director, provided that the Company may pay an honourarium to any Director in accordance with the policies of the Company determined by the Board from time to time in this regard. In addition, the Company may reimburse any Director for any reasonable direct costs or any reasonable out-of-pocket expenses incurred by such Director on behalf of the Company, provided that such costs or expenses have been incurred in accordance with the policies of the Company determined by the Board from time to time in this regard.

## **11 POWERS OF THE BOARD**

- 11.1 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) as read with the restrictions, limitations and qualifications referred to in clause 7, and the

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powers of the Board in this regard are not otherwise limited or restricted by this MoI.

- 11.2 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MoI) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 11.3 The Directors shall ensure that at least 1 (one) bank account is opened and maintained in the name of the Company and that all financial transactions to which the Company is a party are conducted through such account provided that (a) subject to the provisions of (b) in this clause, no bank account shall be opened, maintained and/or operated in the name of the Company except on a basis which requires the authority of no less than 2 (two) Directors to operate on such account, (b) the Board may grant authority to any manager appointed by the Company for the purpose of managing its affairs, to operate such bank account on such terms and conditions as the Board may from time to time determine.
- 11.4 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine, provided that any such execution, signature, acceptance or endorsement shall be effected by no less than 2 (two) Directors.

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- 11.5 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

## 12 DIRECTORS' MEETINGS

- 12.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 12.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairperson of such meeting.
- 12.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 12.4 The Board has the power to –
- 12.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 12.4.2 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), provided that, as required by such section, the Electronic

- 12.8 A majority of the votes cast on a resolution is sufficient to approve that resolution.
- 12.9 In the case of a tied vote, the chair may not cast a deciding vote in addition to any deliberative vote, and the matter being voted on fails.
- 12.10 Resolutions adopted by the Board –
- 12.10.1 must be dated and sequentially numbered; and
- 12.10.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 12.11 Proper and complete minutes shall be kept in respect of all Board meetings.
- 12.12 Minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 12.13 If –
- 12.13.1 a Director has a personal financial interest, as contemplated in section 75(5), in respect of a matter to be considered at a meeting of the Board, or knows that a related person (as defined in the Act) has such a personal financial interest in the matter; or
- 12.13.2 a Director acquires such a personal financial interest in an agreement or other matter in which the Company has a material interest, or knows that such a related person has acquired such a personal financial interest in the matter, after the agreement or other matter has been approved by the Company,

the Director must comply with the provisions of section 75(5) or section 75(6), as the case may be, and due regard shall be had by the Company and the Board to all the applicable provisions of section 75 in this regard.

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### 13 INDEMNIFICATION OF DIRECTORS

13.1 The Company may –

13.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

13.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or

13.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this Mol.

13.2 The provisions of clause 13.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee, if any.

### 14 COMMITTEES OF THE BOARD

14.1 The Board may –

14.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or

14.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a),

and the power of the Board in this regard is not limited or restricted by this Mol.

14.2 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this Mol.

### 15 ANNUAL FINANCIAL STATEMENTS

15.1 Without derogating from the provisions of clause 7-

15.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –

15.1.1.1 the Act;

15.1.1.2 any other law with respect to the preparation of the financial statements to which the Company may be subject;

15.1.1.3 the Regulations; and

15.1.1.4 this Mol; and

15.1.2 the Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year.

15.2 The financial year end of the Company shall be 30 June.

15.3 The Company shall in particular, in order to satisfy its obligations in Regulation 27(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any party, to the extent applicable.

15.4 The Company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at the first meeting of the Board following its financial year end. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.

15.5 For purposes of the affairs of the Company, with regard to and/or relating to the auditor of the Company, the provisions of sections 90(2)(a) and (b), 90(3), 90(6)(a)(i) to (iii), 90(6)(c), 91(2), and 93(1) are incorporated, mutatis mutandis, into this Mol.

15.6 In the event that the annual financial statements of the Company –

15.6.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so

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- audited in accordance with the relevant provisions of the Act; and
- 15.6.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 15.7 Subject to clause 15.6, and notwithstanding any contrary provision in the Act, the annual financial statements shall be audited as set out in clause 15.8.
- 15.8 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 15.7, the annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
- 15.8.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 15.8.2 subject to and in accordance with IFRS –
- 15.8.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 15.8.2.2 show the Company's assets and liabilities, as well as its income and expenses;
- 15.8.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 15.8.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

## **16 PUBLIC BENEFIT ORGANISATION STATUS**

- 16.1 Following the incorporation of the Company, the Company shall apply to the Commissioner for approval as a Public Benefit Organisation as

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envisaged in section 30 of the Income Tax Act.

- 16.2 If the Company is granted approval as a Public Benefit Organisation, the Company shall, unless the Board determines otherwise, maintain its status as a Public Benefit Organisation.

## **17 NONPROFIT ORGANISATION STATUS**

- 17.1 Following the incorporation of the Company, the Company shall apply to the Director of Nonprofit Organisations for registration as envisaged in section 13 of the Nonprofit Organisations Act.
- 17.2 If the Company is granted registration as a Nonprofit Organisation, the Company shall, unless the Board determines otherwise, maintain its status as a Nonprofit Organisation.

## **18 AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 18.1 This Mol may, subject to clauses 3.4 and 8, only be altered or amended in the manner set out in (a) section 16(1)(a) as read with section 16(4), or (b) section 16(3) as read with sections 16(1)(c)(i)(aa) and 16(5), or (c) section 16(4), or (d) section 17.
- 18.2 As contemplated in section 17, the Board, or any individual authorised by the Board, may alter this Mol in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 18.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Director by ordinary mail; and
- 18.2.2 filing a notice of the alteration.
- 18.3 It is recorded that, as envisaged in clauses 16 and 17, following the incorporation of the Company, the Company will apply to be registered in terms of the Nonprofit Organisations Act as a non-profit organisation and to be approved in terms of the Income Tax Act as a Public Benefit Organisation. To the extent that it is necessary to amend this Mol in any particular respects in order to obtain, and thereafter to maintain, such

registration and/or approval, the Directors, acting in terms of section 16(3)(a) of the Act, shall amend this Memorandum accordingly, provided that such amendment is consented to in a manner contemplated in clause 8.

- 18.4 An amendment of this Mol will take effect from the later of –
  - 18.4.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); or
  - 18.4.2 the date, if any, set out in the said notice of amendment.
- 18.5 As envisaged in clause 7.2.7, the Company shall submit to the Commissioner for the South African Revenue Service a copy of any amendment to this Mol.

**19 WINDING UP**

- 19.1 The Company may only be wound up in accordance with the provisions of the Act.
- 19.2 Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, as follows:

19.2.1 no past or present Member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

19.2.2 the entire net value of the Company and all accumulated Economic Interest must be distributed to one or more non-profit companies or non-profit trusts:

19.2.3 having objects similar to its stated object;




19.2.4 having a black economic empowerment status equal to or better than the Company;

<b>CIPC</b>	2	<b>CIPC</b>
MANUAL LODGEMENTS		MANUAL LODGEMENTS
2013 -01- 21		2012 -11- 22
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION KOMMISSIE VIR MAATSKAPPE EN INTELLEKTUELE EIENDOM		COMPANIES AND INTELLECTUAL PROPERTY COMMISSION KOMMISSIE VIR MAATSKAPPE EN INTELLEKTUELE EIENDOM

19.2.5

## ADOPTION

This Mol was adopted by the incorporators of the Company in accordance with section 13(1) as evidenced by the following signature made on behalf of the incorporators –

Signature of a director	
Name of Incorporator	[•] CRAIG JOHN BRUNSEN
Identification/passport number	[•] 7208215158082 
Name of Incorporator	[•] Chun Yin Li
Identification/passport number	[•] 7209185457082 
Name of Incorporator	[•] ANTHONY FITZHENRY
Identification/passport number	[•] 590912 5299 088
Date	5 NOVEMBER 2012

