

**CONSTITUTION OF THE VOLUNTARY ASSOCIATION
KNOWN AS
THE UNITED HERZLIA SCHOOLS**



As adopted on 04 March 2020 at Cape Town

Table of Contents

1.	NAME AND LEGAL CAPACITY	3
2.	DEFINITIONS AND INTERPRETATION	3
3.	PURPOSE AND OBJECT	4
4.	INCOME AND PROPERTY OF THE UHS	4
5.	POWERS OF ASSOCIATION	5
6.	RIGHTS AND DUTIES OF MEMBERS.....	7
7.	BOARD OF GOVERNORS	7
8.	TRUSTEES AND HONORARY LIFE MEMBERS	9
9.	MEETINGS OF THE BOARD.....	10
10.	GENERAL MEETINGS INCLUDING AGM.....	10
11.	PROXIES.....	12
12.	MEETINGS BY ELECTRONIC PARTICIPATION PROCESS	12
13.	CONSULTATIVE FORUMS	13
14.	SUB-COMMITTEES AND TASK TEAMS	13
15.	MINUTES	13
16.	CONFLICTS OF INTEREST.....	13
17.	ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT & ANNUAL FINANCIAL STATEMENTS.....	14
18.	BANKING ACCOUNT AND SIGNATURES.....	14
19.	PARENT ASSOCIATIONS	14
20.	AMENDMENTS AND DISSOLUTION.....	14
21.	INDEMNITY.....	15
22.	DISPUTES AND DISPUTE RESOLUTION.....	15
	SCHEDULE "A" PRINCIPLES OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS.....	16
	SCHEDULE "B" PRESCRIBED FISCAL CONDITIONS	17
	SCHEDULE "C" PRESCRIBED NPO PROVISIONS	20
	SCHEDULE "D" – CONDITIONS REGARDING THE PROVISION OF BURSARIES AND SCHOLARSHIPS.....	22

PREAMBLE

- A The UHS was established in Cape Town for the purposes set out in clause 3 in terms of a Constitution, the most recent version of which was adopted by the Members at the UHS AGM held on 23 May 2019 ("**Former Constitution**").
- B To ensure ongoing conformity with the statutory requirements prescribed *inter alia* in the Income Tax Act with respect to "public benefit organisations" eligible for tax exemption and Section 18A status, and updated corporate governance guidelines, it has become necessary to amend the Former Constitution.
- C Accordingly, the Former Constitution is amended on the basis set out in this Constitution

1. NAME AND LEGAL CAPACITY

- 1.1 The name of the Voluntary Association is **THE UNITED HERZLIA SCHOOLS** and will continue to exist following the adoption of this Constitution. This Constitution supersedes the Former Constitution. All acts that were performed by the Board under the Former Constitution shall be valid.
- 1.2 The UHS shall be deemed to be a juristic person, separate and distinct from its Members and officers and shall continue to exist even if its Members or officers change.

2. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context otherwise indicates:

- 2.1 "**AGM**" means Annual General Meeting;
- 2.2 "**Board**" means the body vested with executive responsibility for the conduct of the affairs of the UHS, and the exercise of its powers and duties, constituted in terms of clause 7;
- 2.3 "**Business Day**" means any day other than a Saturday, Sunday or official South African public holiday;
- 2.4 "**Commissioner**" means the Commissioner for the South African Revenue Service appointed in terms of the Income Tax Act;
- 2.5 "**Directors**" means the Directors of the UHS as appointed by the Board from time to time;
- 2.6 "**Elected Governors**" means Members who are elected as Governors to the Board as set out in 7.3.1;
- 2.7 "**Ex Officio Governors**" means the Governors referred to in 7.3.4;
- 2.8 "**Electronic Participation Process**" means a method of connecting meeting attendees electronically which ensures and allows all meeting participants to participate in the meeting and to communicate concurrently with each other without an intermediary;
- 2.9 "**Governor(s)**" means the persons who are elected, co-opted and appointed to the Board as set out in clause 7.3;
- 2.10 "**Honorary Life Members**" means persons upon whom such position has been conferred by the Board in recognition of services rendered by such persons to the UHS;
- 2.11 "**Income Tax Act**" or "**The Act**" means the Income Tax Act No. 58 of 1962 (as amended) and all regulations promulgated thereunder from time to time;
- 2.12 "**Members**" means -
- 2.12.1 (i) a Parent who has submitted an application to enrol a Pupil in the UHS; and (ii) such Pupil

is subsequently enrolled at the UHS and is entitled to attend School;

- 2.12.2 UHS Alumni;
- 2.12.3 Trustees and Honorary Life Members;
- 2.12.4 Donors to the UHS who have been verified as donors to the satisfaction of the Board;
- 2.12.5 Donors to the Herzlia Foundation Trust who have been verified as donors to the satisfaction of the Board;
- 2.13 **“Object”** means the object of the UHS as set out in clause 3;
- 2.14 **“Parent”** means (a) the parent or guardian of a Pupil; or (b) the person legally entitled to custody of a Pupil;
- 2.15 **“Prescribed Fiscal Provisions”** means the Prescribed Fiscal Provisions concerning approved PBO’s as set out in Schedule “B” hereto;
- 2.16 **“PA”** – Parent Association;
- 2.17 **“Public Benefit Organisation”** or **“PBO”** means an Organisation approved as such by the Commissioner in terms of Section 30 of the Income Tax Act;
- 2.18 **“School(s)”** means the schools established and operated by the UHS from time to time;
- 2.19 **“Trustees”** means persons appointed as such by the Board to fulfil the functions in clause 8.1;
- 2.20 **“UHS”** means the Voluntary Association known as the “The United Herzlia Schools”, a registered Non-Profit Organization (019-713-NPO) and a registered PBO (130002292).
- 2.21 Interpretation:
 - 2.21.1 Where any number of days is prescribed or must be calculated in terms of this Constitution, such number will exclude the first day and include the last day, unless the last day fall on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
 - 2.21.2 Reference to days shall be a reference to calendar days.
 - 2.21.3 The masculine includes the feminine; the singular include the plural; and reference to persons shall include juristic persons; and *vice versa*.
 - 2.21.4 References to any Act or Regulations promulgated thereunder, shall be deemed to refer to such Act or Regulations, as amended from time to time, including any re-enactment or substitution thereof.

3. PURPOSE AND OBJECT

- 3.1 The UHS is constituted on a non-profit basis to establish and conduct day schools and educational institutions of all kinds and to provide and assist in the advancement of education and learning in the Republic of South Africa and elsewhere.
- 3.2 The UHS shall promote Jewish learning and education based on Jewish national traditional lines and in accordance with the UHS Ideological Policy from time to time, ensuring that no Pupil shall be barred from such education by reason of race or gender.

4. INCOME AND PROPERTY OF THE UHS

- 4.1 Members, Governors and office bearers have no rights in the property or other assets of the UHS.
- 4.2 The income and property of the UHS shall be applied solely towards the promotion of the Object,

and shall not be paid or transferred, directly or indirectly to Members, Governors and/or Trustees; provided that nothing herein shall prevent -

- 4.2.1 the UHS from giving financial or other assistance to other approved PBO's in support of its public benefit activities where such assistance serves to advance the Object;
 - 4.2.2 payment in good faith by the UHS of reasonable remuneration (commensurate with services actually rendered) to any employee of the UHS, subject to compliance with the Prescribed Fiscal Conditions.
- 4.3 Immovable assets of the UHS purchased prior to the date of this Constitution are vested in the UHS and registered in the name of "the Trustee's for the time being of United Herzlia Schools".
- 4.4 With effect from the date of this Constitution, immovable assets purchased by the UHS will vest in the UHS and Deeds of Transfer of immovable property and bonds shall be registered in the name of "the Governors for the time being of United Herzlia Schools".

5. POWERS OF ASSOCIATION

- 5.1 The UHS shall have all powers necessary for the achievement of the Object including –
- 5.1.1 the power to govern, and develop the UHS and the Schools;
 - 5.1.2 the control and responsibility for policy, finances and general administration of the UHS, the Schools and any institutions set up by the UHS,
 - 5.1.3 the appointment, removal and suspension of Directors and delegation of functions to the Directors, whose duties shall be as defined by the Board from time to time;
 - 5.1.4 appointing sub-committees and task teams, delegating powers to and imposing duties on such sub-committees and task teams, monitoring fulfilment of their mandate and other matters associated therewith;
 - 5.1.5 maintenance and insurance of all buildings;
 - 5.1.6 to make, amend and repeal policies, codes, charters, regulations, procedures, and rules (collectively, "**the Ancillary Documents**") for the regulation of the UHS and the Schools and ensuring the UHS and the Schools function in accordance with the Ancillary Documents and all laws which may be applicable to the operation of the UHS and the Schools;
 - 5.1.7 to seek and receive grants in aid and other assistance for the purpose of the UHS from any person, local authority, municipality, provincial or government authority;
 - 5.1.8 to canvass for, and accept donations, bequests, endowments and other benefits for the UHS;
 - 5.1.9 to establish, control, manage and administer funds for various purposes related to the UHS and the Schools including funds for bursaries and other financial assistance, capital funds and endowments;
 - 5.1.10 to change conditions regarding the provision of scholarships and bursaries as set out in Schedule 4;
 - 5.1.11 to promote the formation of a fund/s for providing pensions for teaching staff and/or other personnel of the UHS and to contribute thereto and to invest, manage, or assist in managing the same;
 - 5.1.12 to undertake to pay additional pensions and/or other benefits to past employees or persons who have rendered services to the UHS;

- 5.1.13 to provide at any educational institution controlled by the UHS shops including “tuck-shops” for the sale of food and refreshments, clothing, uniforms, and other items to Pupils, teachers and other personnel of such educational institution;
 - 5.1.14 to co-operate with any entity having objects similar to the UHS to carry out any project which would be to the benefit of both;
 - 5.1.15 to promote the formation of cultural, scientific, social, sports and other clubs and societies;
 - 5.1.16 to establish libraries and to prepare and publish textbooks and other publications;
 - 5.1.17 to nominate and appoint Governor’s, Trustees and Honorary Life Members;
 - 5.1.18 to determine duties, salaries, emoluments and pensions (if any) of employees of the UHS;
 - 5.1.19 to collect revenues and control expenditure;
 - 5.1.20 to determine and levy fees, levy’s and other charges;
 - 5.1.21 to grant concessions for payment of fees and levy’s;
 - 5.1.22 to open and close bank accounts in the name of the UHS and to operate them as authorised by the Board;
 - 5.1.23 to borrow money with or without security on such terms as the Board may determine and to encumber, pledge, mortgage and charge immovable and movable assets of the UHS as security therefor;
 - 5.1.24 to invest and/or lend funds of the UHS and to deal with such investments and loans by ceding and cancelling same;
 - 5.1.25 to grant or remove voting rights at General Meetings;
 - 5.1.26 to institute and defend legal proceedings and to settle any claim;
 - 5.1.27 to purchase, sell, exchange or lease immovable property or any right therein;
 - 5.1.28 improve and develop any property and asset of the UHS;
 - 5.1.29 to determine how and who will sign documents on behalf of the UHS;
 - 5.1.30 to accept gifts, donations and other benefits (collectively “**Benefits**”) on behalf of the UHS, save that if the UHS cannot comply with any conditions attached to such Benefits, the Board may use such Benefits for another purpose;
 - 5.1.31 to enter into, amend, terminate and cancel contracts;
 - 5.1.32 to provide administrative and managerial support to the Herzlia Foundation Trust and other organisations as may be approved by the Board; and
 - 5.1.33 generally, sign documents and do all such things on behalf of the UHS as the Board may consider necessary or expedient for carrying out the Object;
- 5.2 The powers and authority of the UHS are subject to: -
- 5.2.1 Principles of Governance for Non-profit Organisations (“**NPO’s**”) as set out in Schedule “A” hereto; and
 - 5.2.2 the Prescribed Fiscal Provisions; and
 - 5.2.3 the Prescribed NPO Provisions concerning Registered NPO’s as set out in Schedule “C” hereto.

6. RIGHTS AND DUTIES OF MEMBERS

- 6.1 In addition to the rights conferred by the South African Schools Act No.84 of 1996 -
- 6.1.1 only Members may elect Elected Governors;
 - 6.1.2 Members may receive notice of and attend all General Meetings.
- 6.2 Members may not assign or transfer his/her rights under this Constitution to any other person.
- 6.3 Members shall comply with the Codes of Conduct as approved by the Board from time to time and the Enrolment Agreement concluded between the Member and the UHS and all other codes, guidelines, charters, polices and rules of the UHS from time to time.

7. BOARD OF GOVERNORS

The UHS is administered by the Board as its highest decision-making body with overarching responsibility for and authority over the activities of the UHS. The responsibility for giving effect to the Object and authority for the exercise of the powers of the UHS shall vest in the Board.

7.1 **Ambit Of Discretions**

Where discretions are vested in the Board in terms of this Constitution, such discretions, except where expressly limited, shall be complete and absolute.

7.2 **Nomination Procedure for Elected Governors**

- 7.2.1 The Board shall call for nominations for Elected Governor positions at least twenty-one (21) days prior to the AGM.
- 7.2.2 Candidate's shall be nominated in writing by two (2) Members and such nomination shall be delivered to the address designated therefor by 4 p.m. seven (7) days before the AGM.
- 7.2.3 If the number of persons nominated -
 - 7.2.3.1 does not exceed the vacancies for Elected Governors, the persons nominated will be declared by the Chairperson to be duly elected;
 - 7.2.3.2 exceeds the number of vacancies, an election shall be held at the AGM and the declaration of the Chairperson as to the result of such election shall be final and binding upon all Members.
- 7.2.4 The Board may constitute a committee to consider the eligibility of candidates.

7.3 **Governors**

The Board shall consist of the following persons -

7.3.1 **Elected Governors:**

- 7.3.1.1 There shall be a maximum of eight (8) and a minimum of six (6) Elected Governors.
- 7.3.1.2 Elected by Members at the AGM for two (2) year terms.
- 7.3.1.3 Elected Governors have voting rights at Board meetings

7.3.2 **Co-Opted Governors:**

- 7.3.2.1 The Board may by majority vote co-opt not more than two (2) co-opted Members to serve as co-opted Governor for a maximum two (2) year term. A Member will be co-opted where necessary to -
 - 7.3.2.1.1 fulfil skills/expertise shortages;
 - 7.3.2.1.2 correct gender and community representation imbalances.

7.3.2.2 Co-opted Governors have voting rights at Board meetings.

7.3.2.3 Co-opted Governors must stand for election at the AGM following the end of his/her 2-year term. If not elected, he/she may not be co-opted again.

7.3.3 **Independent Governors**

7.3.3.1 The Board may by majority vote appoint not more than two (2) persons to serve as Independent Governors for such period as determined by the Board. These will be persons who have relevant experience and skills in areas that will enhance the overall capability of the Board. These can be paid positions.

7.3.3.2 Independent Governors have voting rights at Board meetings.

7.3.4 **Ex-Officio Governors:**

7.3.4.1 Executive Director, Director of Finance and Administration and the Director of Education will remain as Ex-Officio Governors for so long as they are such Directors of the UHS.

7.3.4.2 **Immediate past chairperson of the Board:** Will hold office as Ex-Officio Governor for two (2) years following the end of the last year of his/her Chairmanship. The role of the Immediate past chairperson shall be to ensure implementation of strategy.

7.3.4.3 Ex-Officio Governors have voting rights at Board meetings

7.3.5 **Maximum Period to Serve as Elected Governor:** Elected Governors may only serve in such position for a consecutive period of eight (8) years; provided that after an intervening period of at least two (2) years during which such person does not serve as an Elected Governor, the person is again eligible for reappointment, whether by election or co-option.

7.3.6 **Chairperson, Vice Chairperson and Treasurer:** The Board will elect from its body one Chairperson, one Vice Chairperson and a Treasurer each for a two (2) year term in such position. Such persons may stand for election in such positions only three (3) times (thus serving the maximum of six (6) years in each of the positions), save that a Chairperson, Vice Chairperson and Treasurer may only serve for the balance of the term for which he is elected to the Board. Thereafter he/she would have to stand for re-election and if re-elected, would then continue as Chairperson, Vice Chairperson or Treasurer as the case may be.

7.3.7 **Employees of the UHS** may not be elected to the Board. Employees invited to Board meetings will not have voting rights.

7.3.8 **Validity of Decisions:** All actions taken and decisions made in good faith by the Board and any actions taken by a Governor in good faith shall, notwithstanding that it is subsequently discovered that there was a defect in the appointment of the Board, or a Governor, be as valid and effective as if such Board, or Governor had been duly constituted or appointed.

7.3.9 **Act in Best Interest:** Governors will always act in the best interests of the UHS and not with a view to representing or advancing the interests of a particular Member or individual School.

7.4 **Vacation or Termination**

- 7.4.1 The Board may by way of resolution passed in accordance with clause 9.4, remove a Governor on any of the following grounds -
- 7.4.1.1 repeated failure to perform his/her functions to the satisfaction of the Board;
 - 7.4.1.2 gross misconduct;
 - 7.4.1.3 bringing the UHS into disrepute;
 - 7.4.1.4 if there are unpaid School fees for two or more consecutive School terms and such Governor has not made a payment arrangement with the UHS;
 - 7.4.1.5 is absent, without the consent of the Chairperson or without adequate reason, from three (3) consecutive meetings of the Board.
- 7.4.2 A Governor shall vacate his/her office as Governor-
- 7.4.2.1 following his/her resignation from the Board;
 - 7.4.2.2 once he/she completes the term for which he/she is appointed, without subsequent re-election or co-option;
 - 7.4.2.3 becomes of unsound mind or otherwise unfit or incapable of performing his/her functions as Governor;
 - 7.4.2.4 in the case of a Director once he/she –
 - 7.4.2.4.1. is no longer a Director; or
 - 7.4.2.4.2. is no longer employed by the UHS.
 - 7.4.2.5 if there is a fundamental conflict of interest relating to his/her position as a Governor or there has been a finding of impropriety;
 - 7.4.2.6 if he/she becomes insolvent or compromising with his/her creditors.
- 7.4.3 Immediately upon termination or vacation from his/her position as Governor, the Governor (or his/her executor) shall return all documentation in the possession of the Governor in respect of the UHS, to the UHS.

7.5 Temporary Vacancies

- 7.5.1 The Chairperson must by no later than fourteen (14) days after the resignation or removal of an Elected Governor fill such vacancy on the Board but only to serve out the balance of the term for which the Governor in question had left to serve.
- 7.5.2 If the number of Elected Governors falls below six (6), then by no later than twenty-one (21) days thereafter a Special General Meeting shall be called to procure the election of the required number of Elected Governors.
- 7.5.3 During such temporary vacancy, the remaining Governors shall continue acting as if duly constituted and empowered to the extent necessary to secure and promote the interests of the UHS, and ensure the continuity of its operations and service.

8. TRUSTEES AND HONORARY LIFE MEMBERS

- 8.1 **Role:** Trustees are an advisory body to the UHS and have no decision-making powers.
- 8.2 **Appointment:** existing Trustees will nominate any new Trustees and submit his/her nomination to the Board. If approved, the appointment of the new Trustee will be ratified by the Board, whereupon it becomes effective.
- 8.3 There shall not be less than three (3) or more than ten (10) Trustees.

- 8.4 Immediately upon termination or vacation from his/her position as Trustee, the Trustee (or his/her executor) shall return all documentation in the possession of the Trustee in respect of the UHS, to the UHS.
- 8.5 Trustees may not sell, purchase, donate, mortgage or otherwise deal with the assets of UHS except upon direction of the Board.
- 8.6 **Chairperson:** Trustees will elect from amongst themselves a Chairperson who will conduct meetings of the Trustees. The Chairperson of the Board shall ensure that there are at least two (2) meetings per year between the Trustees and the Board Chairperson, Vice Chairperson, Treasurer, the Executive Director and any other invitees.
- 8.7 **Honorary Life Member:** On completion of his/her term as Chairperson of the Board, such person shall unless otherwise unanimously agreed by the Board, be appointed as an Honorary Life Member. The Board may award Honorary Life Membership to any other person.
- 8.8 **Minutes:** Minutes of meetings of the Trustees shall be kept.

8.9 **Vacation or Termination**

A Trustee and Honorary Life Member positions as such shall terminate in the event of -

- 8.9.1 death;
- 8.9.2 resignation from such position;
- 8.9.3 him/her becoming insolvent or compromising with his/her creditors;
- 8.9.4 being of unsound mind;
- 8.9.5 a resolution passed by the Board in accordance with clause 9.4, calling for removal from such position.

9. **MEETINGS OF THE BOARD**

- 9.1 **Meetings:** The Board shall meet at least once (1) per term, i.e. at least four (4) times per year. The Chairperson may call additional meetings.
- 9.2 **Chairing of meetings:** The Chairperson shall chair all meetings. If the Chairperson is not present or requests that another Chairperson be appointed, the Governor's present shall elect another of their number to act as Chairperson at that meeting.
- 9.3 **Quorum:** 75% of all Governors at the time of the meeting provided that 5 (five) must be Elected Governors.
- 9.4 **Majority:** Decisions shall be made by majority vote. If there is an equality of votes, the Chairperson shall have a second or casting vote. Unless otherwise resolved by the Board each Governor shall have a single vote.
- 9.5 **Round Robin** A "round robin" resolution shall be as valid as if passed at a duly convened meeting of the Board; and, unless stated to the contrary, shall be deemed to have been passed at the date of the last signature.

10. **GENERAL MEETINGS INCLUDING AGM**

- 10.1 The UHS shall hold an AGM once a year; provided that no more than fifteen (15) months shall elapse between the date of one AGM and that of the next; and the AGM shall be held within six (6) months after the expiration of the financial year.
- 10.2 AGM's and other General Meetings shall be held at times and places determined by the Board.
- 10.3 A General Meeting shall be convened by the Governors if requested by not less than seventy-five

(75) Members.

10.4 **Notice of General Meetings**

10.4.1 An AGM, a General Meeting and a meeting called for the passing of a Special Resolution, shall be called on not less than twenty-one (21) days' notice in writing.

10.4.2 Notices of General Meetings must be in writing, and must include:

10.4.2.1 the date, time and place for the meeting,

10.4.2.2 the general purpose of the meeting and any specific purpose contemplated by those requisitioning the meeting, if applicable;

10.4.2.3 if voting by proxy is allowed; and

10.4.2.4 if voting by proxy is allowed, that the notice of proxy must be received by the UHS by no later than two (2) Business Days before the AGM.

10.4.3 In addition, in the case of an AGM:

10.4.3.1 the full or summarised form of the Annual Financial Statements to be presented and if summarised, where a full copy can be obtained; and

10.4.3.2 a statement that a Member entitled to vote at the meeting appoint a proxy to vote at the meeting in the place of the Member concerned.

10.4.4 Notices of General Meetings shall be delivered (physically or electronically) to the Member at the last address recorded with the UHS.

10.4.5 The accidental omission to address notices to any Member shall not invalidate the proceedings of any meeting.

10.5 **Proceedings At General Meetings**

10.5.1 AGM's shall deal with all statutory matters, including:

10.5.1.1 consideration of the Annual Financial Statements;

10.5.1.2 election of Elected Governors;

10.5.1.3 the appointment of Auditors;

10.5.1.4 any other business that is laid before it.

10.5.2 No business shall be transacted at any General Meeting unless a quorum of Members is present and remains in attendance, at the time when the meeting proceeds to business.

10.5.3 A quorum shall be shall be constituted if there is personally present, by proxy or in the case of an Electronic Participation Process, deemed to be present (throughout the duration of the meeting) at least thirty (30) Members.

10.5.4 If within forty-five (45) minutes after the time appointed for the meeting, a quorum is not present, the meeting, if convened at the request of the Members, shall be dissolved. In any other case the Chairperson of the meeting may extend the period of adjournment for a further period not exceeding forty-five (45) minutes.

10.5.5 Thereafter, if a quorum is still not present, or cannot be maintained, the meeting shall stand adjourned to such time and date as the Chairperson of the meeting may decide, provided that it shall be within twenty-one (21) days of the date of the original meeting; and if at such adjourned meeting a quorum is still not present within forty-five (45) minutes after the time appointed for such meeting, the Members then present in person,

participating via Electronic Participation Process or by proxy, shall be deemed to constitute a quorum.

10.5.6 The UHS shall only be required to give further notice of a meeting if the location for the meeting is different from:

10.5.6.1 the location of the postponed or adjourned meeting; or

10.5.6.2 the location announced at the time of adjournment.

10.5.7 The chair at all General Meetings shall be the Chairperson of the Board, or in his/her absence the Vice Chairperson. Should both not be present within forty-five (45) minutes after the time for the meeting, or unwilling to act as Chairperson, the Members present shall elect one of their number to act as Chairperson for that meeting.

10.5.8 The Chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

10.5.9 The Chairperson may acting reasonably condone non-compliance with formalities in respect of General Meetings in this clause 10, clauses 11 and 12. In the event of an objection to such condonation and a dispute arising in respect of condonation, such dispute will be referred for determination in terms of 22.

10.6 **Voting**

10.6.1 Only Members can vote at General Meetings; Members who are in arrears with School fees for more than two (2) terms and have not made a payment arrangement with the UHS may not vote.

10.6.2 A Resolution put to the vote shall be decided on a show of hands, unless a secret ballot is demanded by the Chairperson or the Members. Each Member (including proxies) shall have one (1) vote. A declaration by the Chairperson of the result of the vote, shall be entered in the Minute book and shall be conclusive evidence of the votes recorded in favour of or against such Resolution.

10.6.3 Decisions shall be by majority vote. If there is an equality of votes, the Chairperson shall have a second or casting vote.

11. **PROXIES**

11.1 Where proxy voting has been approved by the Board, a Member may appoint a proxy to attend, speak and vote in his/her stead. Such proxy must also be a Member of the UHS.

11.2 The instrument appointing a proxy shall be signed by the appointer or his/her agent duly authorised in writing. The holder of a General or Special Power of Attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.

11.3 Each Member may only represent two other Members by holding one (1) proxy per Member.

12. **MEETINGS BY ELECTRONIC PARTICIPATION PROCESS**

12.1 Meetings of the Board and General Meetings of Members may be held wholly or partially by way of an Electronic Participation Process.

12.2 If applicable, the Notice of a General Meeting shall inform Members of the ability to participate by way of Electronic Participation Process and shall provide the information to enable them to

participate in the meeting via such process.

13. CONSULTATIVE FORUMS

- 13.1 The Board and/or Chairperson may convene a meeting on any matter for which purpose the Board and/or Chairperson may invite any such persons who the Board and/or Chairperson believe may contribute to the meeting.
- 13.2 The Consultative Forum has no decision-making powers and merely informs the Board on any particular issue debated before it.

14. SUB-COMMITTEES AND TASK TEAMS

- 14.1 The Board may appoint sub-committees and task teams consisting of one (1) or more Governors and any other person/s, and may delegate to and revoke any of its powers from such sub-committees and task teams. Sub-committees and task teams shall comply with any regulations and instructions imposed upon it by the Board.
- 14.2 Sub-committees must have a governance or strategic purpose
- 14.3 Task teams will be set up for specific projects and will be in place for a fixed period of time. They must be disbanded once they have achieved the goals set.
- 14.4 Sub-committees and task teams will report back to the Board and have no decision-making powers unless mandated specifically by the Board.
- 14.5 Minutes of meetings of the sub-committees and task teams shall be kept.
- 14.6 The Chairperson may invite any member of a sub-committee or task team to attend a Board meeting.

15. MINUTES

- 15.1 Governors shall cause Minutes to be kept:
 - 15.1.1 of the names of all Members present or represented at every General Meeting; and
 - 15.1.2 of the proceedings of General Meetings and of the Board including a record of those present at each meeting.
- 15.2 The Minutes shall be signed by the Chairperson of the meeting, or in his/her absence by the Chairperson of the next succeeding meeting.
- 15.3 The Minutes of every General Meeting, including an AGM may be inspected and copied by any Member upon request thereof.

16. CONFLICTS OF INTEREST

No transaction involving the UHS shall be void or voidable merely by reason of a conflict of interest between the UHS, any of the Governors, employees, stakeholders or one (1) or more of its Members serving in a fiduciary capacity, provided that:

- 16.1 any person having a conflict of interest must promptly declare such interest;
- 16.2 such person must make full disclosure in good faith of all relevant facts and circumstances affecting such interest;
- 16.3 following such disclosure, the person concerned must be recused from any further part in the discussion or consideration of the affected transaction;
- 16.4 approval of the transaction shall require a resolution to be passed unanimously by all other

Governors;

- 16.5 all material details of the transaction, and of the discussions leading up to the vote, must be minuted.

17. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT & ANNUAL FINANCIAL STATEMENTS

- 17.1 The Annual Financial Year of the UHS shall be from 1 January in each year to 31 December.
- 17.2 The Board must ensure that proper records and books of account which fairly reflect the affairs of the UHS are kept, and that within six (6) months of its financial year end a report is compiled by an independent practicing auditor registered in terms of the Auditing Profession Act stating whether or not the financial statements of the UHS are consistent with its accounting records, the accounting policies are appropriate and have been appropriately applied in preparing the financial statements and the UHS has complied with the financial provisions of the Constitution.

18. BANKING ACCOUNT AND SIGNATURES

The UHS's financial affairs shall be conducted by means of a banking account. All cheques, promissory notes, and other documents requiring signature on behalf of the UHS shall be signed only by persons duly authorised by the Board.

19. PARENT ASSOCIATIONS

- 19.1 Each School must form a PA. Each PA must adopt a constitution.
- 19.2 The PA Constitution must be substantially the same as the pro forma PA Constitution approved by the Board. Once the PA has prepared its Constitution, it must be submitted to the Director of Finance and Administration for approval.
- 19.3 PA's shall play no role in the governance of the UHS and shall comply with all rules prescribed by the UHS in respect of PA's from time to time.

20. AMENDMENTS AND DISSOLUTION

- 20.1 By decision of the Members at a Special General Meeting:

- 20.1.1 the Constitution may be rescinded or amended;
- 20.1.2 the name of the UHS may be changed; and
- 20.1.3 the UHS may ultimately be dissolved,

provided that written notice of the proposed resolution is given to all Members not less than twenty-one (21) days prior to the date of the meeting and that such notice states the nature of the resolution to be proposed.

- 20.2 Any such resolution shall be deemed to have been adopted if supported by 75% of Members present and voting at such meeting
- 20.3 A copy of any amending Deed, or resolution, as the case may be, shall following its adoption, be sent to the Commissioner and such other relevant registration body.
- 20.4 Upon dissolution of the UHS, any net residue of funds remaining after the payment of all committed grants and awards, and after provision for all liabilities and expenses, shall be transferred to the successor to the UHS or another organisation having objects similar to the Objects, or to a Jewish educational or Jewish charitable organisation as resolved by 75% of Members present and voting at a Special General Meeting, provided that such successor or other organization is a registered PBO.
- 20.5 Any portion of the net residue as may arise in consequence of donations made by taxpayers to whom receipts have been issued in terms of section 18A of the Income Tax Act, must be given or

transferred to some other beneficiary eligible for purposes of section 18A, as may be approved by the Commissioner in terms of the Income Tax Act.

- 20.6 Written notice of the proposed resolution in clause 20.4 must be given to all Members not less than twenty- one (21) days prior to the date of the meeting and such notice must state the nature of the resolution to be proposed.

21. INDEMNITY

Each Governor, Trustee, Honorary Life Member and other office bearer is indemnified against any loss, liability, damage and expense of whatsoever nature (“**Losses**”) which may arise in the discharge of his/her duties as Governor, Trustee, Honorary Life Member and office bearer respectively; save that such indemnity will not apply where -

- 21.1 such person has acted outside the course and scope of his/her duties and authority as set out in the Constitution;
- 21.2 such Losses are due to the gross negligence, fraud or dishonesty on the part of the Governor, Trustee, Honorary Life Member and/or other office bearer, as the case may be

22. DISPUTES AND DISPUTE RESOLUTION

- 22.1 Any dispute which arises out of or in connection with this Constitution shall first be referred to the Board for resolution.
- 22.2 Should the Board fail to resolve such dispute within 15 (fifteen) days of such dispute being referred to it, the dispute will by no later than 15 (fifteen) days thereafter be referred to an independent mediator (“**Mediator**”).
- 22.3 If the Parties accept the Mediator’s recommendations or otherwise agree on the resolution of the dispute, such recommendation or agreement, as the case may be will be reduced to writing and will be binding on the Parties to the dispute.
- 22.4 Failing agreement on a mediator or should mediation not resolve the dispute, the dispute shall by no later than 60 (sixty) days following the date on which the dispute was first referred to the Board in terms of clause 22.1, be referred to arbitration to the Arbitration Foundation of South Africa (“**AFSA**”) in terms of AFSA's arbitration rules.
- 22.5 The arbitration shall be held in Cape Town.
- 22.6 This clause shall constitute irrevocable consent to the arbitration proceedings.
- 22.7 The Parties agree that the decision of the arbitrator (i) shall be final and binding on them; and (ii) will be carried into effect; and (iii) be made an order of any court to whose jurisdiction the Parties are subject.
- 22.8 Notwithstanding the foregoing, nothing in this clause shall be construed as precluding a Party from applying to court for a temporary interdict or other relief of an urgent nature, pending the decision of the arbitrator. For such purposes the parties’ consent and submit to the non-exclusive jurisdiction of the High Court of South Africa Western Cape Division, Cape Town.

**DULY ADOPTED BY THE MEMBERS OF THE UHS AT CAPE TOWN, ON THIS
THE DAY OF 2020**

SCHEDULE “A” PRINCIPLES OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS

Subject to the limitations set forth in the Prescribed Fiscal Conditions (Schedule “B”), the Board should take into account the management principles suggested in the King IV supplement for non-profit organisations:

The Board should:

- lead ethically and effectively;
- administer the ethics of the UHS in a way that supports the establishment of an ethical culture;
- ensure that the UHS is and is seen to be a responsible corporate citizen;
- appreciate that the UHS’s core purpose, its risks and opportunities, strategy, business model performance and sustainable development are all inseparable elements of the value creation process;
- ensure that reports issued by the UHS enable stakeholders to make informed assessments of the UHS’s performance and its short, medium- and long-term prospects;
- serve as the focal point and custodian of the corporate governance of the UHS;
- comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively;
- ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with the balance of power and the effective discharge of duties;
- ensure that the evaluation of its own performance and that of its committees, its chair and its individual Governors support continued improvement in its performance and effectiveness;
- ensure that the appointment of and delegation to, management contribute to role clarity and the effective exercise of authority and responsibility;
- govern risk in a way that supports the UHS in setting and achieving strategic objectives;
- govern technology and information in a way that supports the UHS setting and achieving its strategic objectives;
- govern compliance with applicable laws and adopted non-binding rules, codes and standards in a way that supports the UHS being ethical and a good corporate citizen;
- ensure that the UHS remunerates fairly, responsibly, and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term;
- ensure that assurance services and functions enable an effective control environment and that these support the integrity of information for internal decision making and of the UHS external reports.

In the execution of its governance role and responsibilities, the Board should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the UHS over time.

SCHEDULE “B” PRESCRIBED FISCAL CONDITIONS
[In terms of sections 18A and 30 of the Income Tax Act]

THE UHS exists to perform public benefit activities listed in Part II of the Ninth Schedule, namely (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).

In accordance with the approval by the Commissioner for purposes of the undermentioned provisions of the Income Tax Act, the UHS shall be bound to conform to the conditions prescribed from time to time in terms of the relevant fiscal legislation, including any amendments thereto as may be enacted or prescribed from time to time. Such Prescribed Fiscal Conditions, as are presently applicable to the UHS as at the date of adoption of this amended Constitution, are as follows:

1. As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, the Board shall, insofar as this may be applicable:

- 1.1 Ensure that any eligible donations actually paid or transferred to the UHS, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiaries to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term “Eligible Beneficiaries” shall include any agency referred to in section 18A(1)(bA) of the Income Tax Act; and any department of government of the Republic in the national, provincial or local sphere, as contemplated in section 10(1)(a) of the Act.
- 1.2 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Income Tax Act.
- 1.3 Ensure that an audit certificate is obtained and retained by the UHS, confirming that all donations received or accrued by the UHS in that year, in respect of which section 18A receipts were issued by the UHS, were utilised in the manner contemplated in subsection 2(A) of the Income Tax Act.

2. Since the UHS is approved by the Commissioner as a “Public Benefit Organisation” in terms of Section 30 of the Act, it shall:

- 2.1 Carry on the Public Benefit Activities of the UHS in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the UHS, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Ensure that each such activity is carried on by the UHS for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 2.4 Comply with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of the UHS are directed in the furtherance of its Object.
- 2.5 Submit to the Commissioner a copy of the document under which it is established and

constituted.

- 2.6 Be required in terms of such constituting document, to have at least three (3) persons, who are not “connected persons” in relation to each other, to accept the fiduciary responsibility of the UHS; and that no single person directly or indirectly controls the decision-making powers of the UHS.
- 2.7 Be 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 be required to utilise its funds solely for the Object for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to:
 - 2.8.1 any Public Benefit Organisation which has been approved in terms of the relevant provision of the Income Tax Act; or
 - 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1) (cA)(i) of that Act, which has as its sole or Principal Object the carrying on of any Public Benefit Activity; or
 - 2.8.3 the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Act, which is required to use those assets solely for purposes of carrying on one (1) or more Public Benefit Activities.
- 2.9 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 (other than a donor which is an approved Public Benefit Organisation or an institution, board or body which is 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) 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.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the documentation under which it is established and constituted.
- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, 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; and has not and will not economically benefit any person in a manner which is not consistent with its Object.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that any funds, which it may provide to an association of

persons as contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule, have been utilised for the purpose for which they have been provided.

- 2.15 Not use its resources directly or indirectly to support, advance, or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the UHS, for a period of four (4) years after the date of the last entry in any such book; or
 - 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the UHS, for a period of four (4) years after the completion of the transactions, acts or operations to which they relate.

SCHEDULE "C" PRESCRIBED NPO PROVISIONS
CONCERNING REGISTERED NONPROFIT ORGANISATIONS (NPO'S) REGISTERED IN TERMS OF THE
NONPROFIT ORGANISATIONS ACT, NO. 71 OF 1997, AS AMENDED.
(NPO NO. 014-801 NPO)

Having been registered in terms of the Nonprofit Organisations Act, No. 71 of 1997, as amended, this Constitution includes provision for the eligibility requirements prescribed in terms of section 12(2) of that Act, as follows:

1. The UHS's name is stated on the Cover Page and in clause 1 of this Constitution
2. The UHS's main and ancillary objectives are stated in clause 3 of this Constitution.
3. The UHS's income and property shall not be distributable to its Members, or to the Trustees or other office-bearers, except as reasonable compensation for services rendered, as stated in clause 4.2 and 4.2.2 of this Constitution and clause 2.7 of Schedule "B".
4. The UHS is a juristic entity and shall have an identity and existence distinct from its Members, Governor's, and other office-bearers.
5. The UHS shall continue to exist notwithstanding changes that may occur in the composition of its Members, Governors and other office-bearers, and as envisaged by clause 1.2 of the Constitution.
6. Members, Governors and office bearers do not have rights in the property or other assets the UHS solely by virtue of their being Members, Governors or office-bearers, as contemplated in clause 4.1 of this Constitution.
7. The powers of the UHS are referred to in clause 5 of this Constitution, as read with the South African Schools Act.
8. The organisational structures and mechanisms for its governance are set forth in clauses 7 of this Constitution.
9. The rules for convening and conducting meetings, including quorums required for, and the minutes to be kept of those meetings, are stated in clauses 9, 10, 11 and 12 of this Constitution.
10. The manner in which decisions are to be made shall be as stated in clauses 9.4 and 10.6 of this Constitution.
11. The UHS's financial transactions must be conducted by means of a banking account, as stated in clause 18 of this Constitution.
12. The date for the end of the UHS's financial year is as stated in clause 17.1 of this Constitution.
13. The procedure for changing the provisions of this Constitution is as stated in clause 20 of this Constitution.

14. The procedure by which the UHS may be wound up or dissolved shall be according to the provisions of clause 20 of this Constitution, and clause 2.8 of Schedule "B".
15. When the UHS is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another Nonprofit Organisation which is an approved Public Benefit Organisation, as stated in clause 20.4 of this Constitution and clause 2.8 of Schedule "B".

SCHEDULE "D" – CONDITIONS REGARDING THE PROVISION OF BURSARIES AND SCHOLARSHIPS

1. All scholarships and bursaries granted by the UHS shall be bona fide and shall be granted to an individual on grounds of objective merit or need.
2. No scholarship or bursary granted by the UHS may be:
 - 2.1 revocable, other than due to a material failure by the recipient to comply with the terms and conditions of that scholarship or bursary;
 - 2.2 subject to conditions which would enable the donor of the funds of that scholarship or bursary or any connected person in relation to that donor, to derive some direct benefit from the grant of the scholarship or bursary;
 - 2.3 be granted to any person who is or will become an employee of the donor of the funds of that scholarship or bursary or the UHS (or any associated institution in relation to that donor or the UHS) or any relative of that person, unless circumstances indicate that the scholarship or bursary would have been granted to that person or his/her or her relative, even if that person had not been an employee of the donor, the UHS or the associated institution.
3. All decisions regarding the granting of scholarships and bursaries must be made by a duly constituted committee of at least three (3) persons who are not connected persons in relation to the donor or the person to whom the scholarship or bursary is granted.
4. All scholarships or bursaries granted by the UHS in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship or bursary is granted:
 - 4.1.1 to apply the knowledge obtained from the scholarship or bursary immediately after completion thereof, in the Republic of South Africa for a period of at least the period that the scholarship or bursary was funded by the UHS; or
 - 4.1.2 to refund the full amount of the scholarship or bursary should he or she decide not to apply the knowledge as contemplated above.



Signed by UHS Chairperson (Matthew Gruzd)

4 MARCH 2020

Date