

To Jeffry from Nicole

Dear

**Nicole Junkermann**

I have known Nicole since her time at Harvard and to my pleasure, despite our geographies, we keep bumping into each other across the world whilst involved in various humanitarian projects, most recently when Nicole and I were both involved in leading a mission to the president of Gabon.

Over the years I have delighted in seeing Nicole blossom.... both as a smart entrepreneur & investor and most admirably in what life is about - giving back and supporting others!

I believe access to your valued network will enable Nicole accelerate her work in the Not For Profit space and in particular her ongoing promotion of the Human Codes of Tolerance and Respect which is focussed on advancing acceptance and promotion of peaceful co-existence among diverse nationalities, ethnicities, and religions, on local, national and international levels – these are areas I know Nicole who loves travelling, different cultures and is a real peoples person is truly very passionate about. Her being enabled to reach more and more influential people through your network will no doubt be very positive and I fully expect will help multiple the impact she can make for the common good and promotion of diversity across the globe.

Thank you for considering Nicole and I hope you will make the right decision and be supportive of her admission and help her in giving back even more to Society at large.  
I also have no doubt that her becoming a member will be mutually supportive.

Regards,

**[Contributor]**

**[Foundation]**

**[Fund]**

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**CONTRIBUTION AGREEMENT**

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**THIS AGREEMENT** is made on ..... 2014 between :

- (1) ..... (the "**Contributor**");
- (2) ..... Foundation, a foundation established under the laws of Malta with registered office at ..... Malta and having .....registration number ..... (the "**Foundation**"); and
- (3) ..... a collective investment scheme established under the laws of Malta with its registered office at ..... Malta and having .....registration number ..... (the "**Fund**").

hereinafter at times also jointly referred to as the "**Parties**".

**WHEREAS :**

- (A) The Contributor is the founder of the Foundation, and the Foundation is in turn the sole investor with participation rights in the Fund;
- (B) The Contributor, in its capacity as the founder of the Foundation, wishes to make a further investment and endowment in the Foundation and has proposed to make a contribution to the Foundation of all the assets listed in Schedule A to this Agreement (the "**Assets**"). The Foundation has agreed to accept the aforesaid contribution under the terms and conditions set out in this Agreement (the "**First Contribution**").
- (C) Upon receipt of the assets following the First Contribution, the Foundation, in its capacity as the sole investor with participation rights in the Fund, shall make a further investment in the Fund through a contribution of all the Assets (the "**Second Contribution**").
- (D) The Foundation wishes to irrevocably instruct the Contributor to effect a transfer of the Assets in terms of the First Contribution directly to the Fund, and thereby effect the Second Contribution on behalf of the Foundation in fulfilment of the Foundation's obligation to transfer the Assets to the Fund in terms of the Second Contribution.
- (E) It was further noted that the entry by the Parties into the transaction contemplated above would be for their commercial benefit and is in the best interests of the Parties.

**NOW THEREFORE BY VIRTUE OF THIS AGREEMENT, THE PARTIES HAVE AGREED TO THE FOLLOWING:**

## **1. FIRST CONTRIBUTION**

1.1 The Contributor undertakes to make the First Contribution in favour of the Foundation within [.....] business days of the date hereof.

1.2 The Foundation hereby accepts to receive the First Contribution from the Contributor.

1.3 Upon receipt of the Assets following the First Contribution, the Foundation hereby undertakes to use the Assets received through the First Contribution in order to enter into the Second Contribution.

## **2. SECOND CONTRIBUTION**

2.1 The Foundation undertakes to make the Second Contribution in favour of the Fund within [.....] business days of the date on which it shall be in receipt of the Assets following the First Contribution.

2.2 The Fund hereby accepts to receive the Second Contribution from the Foundation.

## **3. DELEGATION**

3.1 The Foundation hereby directs and delegates the Contributor, who accepts, to transfer the Assets in terms of the First Contribution directly to the Fund, and thereby effect the Second Contribution on behalf of the Foundation in fulfilment of the Foundation's obligation to transfer the Assets to the Fund in terms of the Second Contribution. Such transfer shall be deemed to be made in full and final satisfaction of the First Contribution and the Second Contribution.

3.2 The Parties confirm that the transfer of the Assets by the Contributor to the Fund shall be deemed for all intents and purposes as constituting satisfaction of all obligations due by the Contributor to the Foundation as well as satisfaction of all obligations due by the Foundation to the Fund in accordance with Clauses 1 and 2 hereof respectively.

## **4. REPRESENTATIONS AND WARRANTIES**

4.1 Each of the Parties hereby warrant as and wherever applicable that:

4.1.1 she/it has full power, authority and legal right to enter into this Agreement and to make and/or receive the Contribution(s) made by virtue of this Agreement and has taken all necessary corporate and other action to duly authorise the entry into, execution, delivery and performance of the same;

4.1.2 the Contributions made by virtue of this Agreement will not (a) contravene any existing law, regulation or authorisation to which she/it is subject, (b) result in the breach of or default under any agreement or other instrument to which she/it is subject, or (c) contravene any provision of its deed, statute, memorandum and articles of incorporation, or other constitutional documents; and

4.1.3 she/it will indemnify the other Party/Parties in respect of any breach of warranty and in respect of any loss, liability, claim or expense incurred by other Party/Parties by reason (whether direct or indirect) of any warranty being untrue, incorrect or misleading.

4.1.4 she/it will execute and deliver or cause the execution and delivery of such further instruments and documents and will take such other actions as any other party to the Agreement may reasonably request in order to effectuate the purposes of this Agreement and to carry out the terms hereof.

## **5. CONFIDENTIALITY**

5.1 The Parties undertake to treat all matters relative to the provisions of this Agreement as secret and confidential and not to disclose any such information without obtaining the prior consent of the other party; provided that disclosure of information required in terms of law shall not constitute a violation of this provision.

## **6. NOTIFICATION**

6.1 Any notices to be sent in terms of this Agreement must be sent in writing by registered mail, at the addresses indicated above.

6.2 Any changes in the above details must be communicated immediately to the other party in writing.

## **7. SEVERABILITY**

7.1 In the event that any of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provisions which shall continue to be valid to the fullest extent permitted by law.

7.2 The Parties bind themselves to substitute any terms, conditions or provisions of this Agreement which may be deemed to be invalid, unlawful or unenforceable.

## **8. AMENDMENT**

8.1 The provisions of this Agreement may only be varied, amended or modified in any way by agreement reached in writing and signed by the Parties hereto.

**9. COSTS**

9.1 Each party shall bear their respective costs incurred or to be incurred in connection with this Agreement.

**10. ENTIRE AGREEMENT**

10.1 This Agreement constitutes and sets out the entire agreement between the Parties on the subject matter of this Agreement and supersedes any previous agreements, whether written or oral, which may have been entered into between the Parties hereto in relation to the subject matter of this Agreement.

**11. INTERPRETATION**

11.1 Headings used in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**12. COUNTERPARTS**

12.1 This Agreement may be executed in any number of counterparts, and this has the same effect as if signatures on the counterparts were on a single copy of this Agreement.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This Agreement shall be construed in accordance with, and this Agreement and all claims and causes of action arising out of the transactions contemplated hereby shall be governed by, the substantive laws of Malta, other than conflict of law rules that would require the application of the laws of any other jurisdiction.

13.2 The Courts of Malta shall have the exclusive jurisdiction to determine all disputes arising out of or in connection with this Agreement, including disputes relating to the validity or otherwise of the same agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement, as of the day and year first above written:

.....

.....

.....

## DEED OF A PRIVATE FOUNDATION

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Before me, Doctor of Laws [*Name, Surname*], a Notary Public, duly admitted and sworn, has personally appeared and identified himself in accordance with law by means of the hereunder mentioned official document:

[*Name of Founder*], daughter of [*Name of father and mother (including her maiden Surname and if one or both are deceased add the word 'late' in front of their name)*] born in [*name of town and Country/State if born in a country other than Malta*] and residing at [*name of town*], holder of passport number [...]

(in this Deed referred to as the "**Founder**").

Capitalised terms used in this Deed have the same meanings attributed to them in the Statute of the Foundation attached to this deed as a document marked with the letter 'A' (in this Deed referred to as the "**Statute**").

**WHEREAS** the Founder wishes to constitute and establish and register a private foundation, for the benefit of Beneficiaries.

**NOW THEREFORE**, by virtue of this Deed, the Founder hereby irrevocably constitutes and establishes a foundation to be called the [*NAME FOUNDATION*] (in this Deed referred to as the "**Foundation**") regulated by and in accordance with the Laws of Malta, in particular the Second Schedule to the Civil Code, Chapter sixteen (16) of the Laws of Malta, and in accordance with the rules contained in this Statute, which forms an integral part of the Deed.

The Foundation shall be registered with the Registrar for Legal Persons and shall be vested with separate legal personality.

The Foundation is being set up with an initial cash endowment in the amount of [*amount in letters*] ([*amount in figures*]).

The Founder hereby donates the said initial endowment by means of cheque number [*number in word and figures*] for the sum of [*amount in words*] ([*amount in figures*]) drawn on [*Insert name of credit institution*] and payable to [*insert name of Foundation*], a copy of which is hereto annexed as Document [...], and instruct/s Notary Doctor [*name*] to hold the funds and apply them in accordance with the written instructions of the Administrators.

Considering that the Administrators are authorised or not required to be authorized to act as administrators of a private foundation in terms of article forty three (43) of the Trusts and Trustees Act, Chapter three hundred and thirty one (331) of the Laws of Malta, the Founder appearing on this deed hereby exempts the undersigned Notary from the obligation of registering a note of enrolment in the Public Registry in terms of sub-article nine (9) of article fifty (50) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the Laws of Malta.

For all intents and purposes it is declared that this notarial deed creating a private foundation is *inter alia* regulated by Part IIIA (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the Laws of Malta, as well as by Articles sixty eight letter A (68A) and sixty eight letter B (68B) of the said law.

This deed has been done, read and published by me the undersigned Notary after having explained the contents thereof to the appearer in accordance to law in Malta at [*insert notary's address*].

## Document A

### STATUTE OF THE *[insert name of Foundation]* FOUNDATION

*(Constituted by Notarial Deed regulated by Part 111A (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the [INSERT DATE] published by [insert name of notary])*

#### ARTICLE 1 – INTERPRETATION AND DEFINITIONS

- a) Except where the context otherwise requires, the following words and expressions shall have the following meanings:

**“Administrator”** means any person appointed to the Board of Administrators in accordance with the Statute;

**“Assets”** means the assets described in Article 6 of the Statute;

**“Beneficiaries”** mean the members of the class of persons indicated as such in Annex 1 to this Statute and such other persons as may be added as a beneficiary in accordance with the provisions of the Statute and applicable law;

**“Board of Administrators”** means the board of administrators composed and established in accordance with Article 8 of the Statute;

**“Deed”** means the deed in the Records of Notary [•] of the [•] by virtue of which the Foundation is established;

**“Foundation”** means the '*[name]* Foundation' constituted and established by virtue of the Deed;

**“Founder”** means *[re-insert full details of founder so as to make identity clear when statute is extracted from deed]* and no person making an endowment subsequent to the constitution and establishment of the Foundation, even if the endowment is accepted by the Board of Administrators, shall be deemed to be a Founder;

**“Supervisory Council”** means the persons at any time appointed as members of the Supervisory Council in terms of Article 11 of the Statute.

"Statute" means this Statute;

The term "herein" and cognate expressions refer only to the Statute.

- b) No regard shall be had to the heading or title of any Article or other document (however called) annexed to the Statute in construing any of its provisions;
- c) Except where the context otherwise requires, words denoting the singular include the plural and the masculine include the feminine and vice versa;

#### **Article 2 – Name, Registered Office and Place of Management**

- a) The name of the Foundation is the "[name] Foundation".
- b) The place of administration and management of the Foundation shall be in Malta and the registered address of the Foundation is 171, Old Bakery Street, Valletta, VLT 1455 Malta or such other address in Malta as may be determined by the Board of Administrators from time to time.

#### **Article 3 – Purposes and objects**

- a) The Foundation is a private foundation which enjoys a separate legal [REDACTED] and is established for the benefit of the Beneficiaries.
- b) The purposes and/or objects for which the Foundation is being constituted and established are the following:
  - i. to subscribe for or otherwise acquire the maximum number as allowed by law (or such other number as may be decided) of the shares, debentures, debenture stock or securities of any company or organisation and to pay all or any expenses incurred in connection with the formation, promotion and incorporation of any such company or organisation;
  - ii. to exercise all and any rights vested in it by virtue of its holding of shares, debentures, debenture stocks or securities in a manner that is consistent with the purposes and objects of the Foundation;

- iii. to acquire, hold and administer the Assets in accordance with this Statute and applicable law;
  - iv. to acquire, own, hold and dispose of any other assets whether movable or immovable including shares, debentures, stock or other securities whether directly and in its own name or indirectly;
  - v. to receive, manage, invest, administer and distribute any and all royalties, proceeds, dividends or other gains from any patents, shares, trademarks or other assets that the Foundation owns in terms of this Statute or applicable law for the benefit of the Beneficiaries; and
  - vi. to carry out such activities as may be ancillary to the above or as may be necessary or desirable to achieve the above [REDACTED] objects.
- c) Nothing in this Statute shall impose any obligation on the Foundation, or the Board of Administrators, to enquire into, or take any action relative to or otherwise interfere or intervene in the management or conduct or business of any company in which the Foundation holds any shares, or to otherwise enquire into the performance of any company in which the Foundation holds any shares, PROVIDED THAT the Board of Administrators or the Foundation shall have the faculty to request from any person, including, without limitation, from the persons involved in the administration, management or conduct of a company in which the Foundation holds shares, the following documentation relevant to any company wherever resident or incorporated, to the extent that such documentation is required for the purposes of exercising the powers and duties in relation to the Foundation and its Assets, and is reasonably available:
- i. Copies of minutes and agenda of all Board of Directors' meetings and Director's reports of any company in which the Foundation holds shares and information as to how such company and the assets it directly or indirectly owns are being managed;
  - ii. Copies of minutes and agenda of all Shareholders' meetings of any company in which the Foundation holds shares;
  - iii. Copies of the accounts of any company in which the Foundation holds shares and of any of its subsidiaries;

and shall be entitled to rely thereon in taking any decisions as shareholder in any company in which the Foundation holds shares from time to time, or in otherwise exercising its rights as shareholder.

#### Article 4 - Legal Personality and Powers

- a) The Foundation has a separate legal personality. Its assets as well as its liabilities are distinct from those of its Founder, its Administrators and its Beneficiaries. Nothing in the Statute shall be construed or interpreted so as to hold or render the Founder, the Beneficiaries, the Supervisory Council or any of the Administrators personally liable for any debts or liabilities incurred or obligations assumed by the Foundation.
- b) The Foundation is a body corporate and is vested with all the powers that a legal person has in virtue of its legal personality. To enable the Foundation to fulfil its purposes and objects, it is hereby empowered, without limitation, but subject to the provisions of the Statute:
  - i. to manage and administer the Assets of the Foundation as may be determined by the Board of Administrators in accordance with the purposes and objects of the Foundation;
  - ii. to receive grants, subsidies, contributions, donations and other gifts and to utilise, invest, administer and distribute the same as the Board of Administrators deems fit;
  - iii. to purchase, take on lease, exchange, acquire by any title any property and any rights, privileges, hypothecs and easements over such property as is necessary to carry on its activities and to accept gifts on such terms and on such security as shall be deemed necessary by the Board of Administrators;
  - iv. to pay all or any expenses incurred in connection with the formation, promotion and incorporation of any company or organisation, or to contract with any person, firm or company to pay the same, and to subscribe for or otherwise acquire all or any part of the shares, debentures, debenture stock or securities of any such company or organization;

- v. to hold and retain or sell, or otherwise dispose of or mortgage any shares, debentures, debenture stock or securities acquired;
- vi. to draw, make, accept, endorse, negotiate, discount, execute and issue negotiable or transferable instruments as may be necessary for the attainment of the purposes and objects of the Foundation, it being understood that the Foundation is prohibited from trading and carrying out commercial activities;
- vii. to sell, let, grant rights and privileges, dispose of or turn to account all or any of the property or assets of the Foundation;
- viii. to obtain loans, overdrafts, credits and other financial and monetary facilities and to otherwise borrow and raise money in such manner as the Board of Administrators may deem fit and to secure the repayment of any money borrowed, raised or owing by privilege, hypothec or by any such charge over the property of the Foundation both present and future;
- ix. to enter into any guarantee, contract of indemnity or suretyship and to secure its obligations under such guarantee, indemnity or suretyship with hypothecs and/or privileges, general and special, over all its assets both present and future;
- x. to employ and pay any person or persons to supervise, organise and carry out the work of the Foundation;
- xi. to establish such segregated cells as necessary for the achievement of one or more defined purposes and which purposes are consistent with the aims and objects of the Foundation;
- xii. to convert into a trust;
- xiii. to meet all reasonable charges and expenses for the proper administration of the Foundation out of the disposable assets of the Foundation; and
- xiv. to generally do every act which is necessary or conducive to the foregoing or which is necessary in order to enable the Foundation to fulfil its aims and objects.

**PROVIDED THAT** notwithstanding any powers of the Foundation contained in this Statute, these powers are granted subject to the limitations in applicable law, and the Foundation may not trade and may only carry out commercial activities as are allowed by the Second Schedule to the Civil Code.

#### **Article 5 – Term**

Unless otherwise wound up in accordance with the terms of this Statute or applicable law, the Foundation is being established for the period of 100 (one hundred) years or such other greater number of years as applicable law may, from time to time permit.

#### **Article 6 - The Assets of the Foundation**

- a) The Assets of the Foundation include:
- i. the constitutive assets, namely the initial endowment made on the Deed;
  - ii. any other additional irrevocable endowments made to the Foundation by the Founder or by third parties **PROVIDED THAT** the latter are accepted by the Board of Administrators and made in accordance with the provisions of the Statute **AND PROVIDED FURTHER THAT** no person making an endowment subsequent to the constitution and establishment of the Foundation, even if the endowment is accepted by the Board of Administrators, shall be deemed to be a Founder or shall otherwise acquire any rights under this Statute;
  - iii. all other income of and acquisitions by the Foundation.
- b) Creditors, spouses, heirs or legatees of the Beneficiaries shall only have rights, where applicable, limitedly to the extent of any Beneficiary's entitlement under the Foundation and shall have absolutely no other rights in relation to the assets of the Foundation.
- c) The initial endowment and all other Assets shall be applied in accordance with this Statute for the attainment of the purpose for which the Foundation is constituted and established: **PROVIDED THAT** nothing herein contained shall prevent the payment or performance in good faith

of its reasonable obligations and undertakings or the repayment of reasonable out-of-pocket expenses out of the Assets.

- d) The Founder may make additional endowments to the Foundation at any time in terms of law.

#### Article 7 – Legal and Judicial Representation

- a) The legal and judicial representation of the Foundation shall vest in Member B of the Board of Administrator **PROVIDED THAT** in any matter which, in accordance with the provisions of this Statute, requires the decision of the Board of Administrators, acting jointly, the legal and judicial representation of the Foundation in relation to such matters as provided for in this Statute, shall vest jointly in Member A of the Board of Administrators and Member B of the Board of Administrators.
- b) The Administrators shall have the right to delegate any or all of such powers of representation either to any one (1) or more of the Administrators specifically or to a third party, by means of a power of attorney or a resolution or other document having like effect of the Board of Administrators: **AND PROVIDED FURTHER THAT** any resolution in writing signed by all the Administrators composing the Board of Administrators for the time being shall be as valid and effective as if the same had been passed at a meeting of the Board of Administrators duly convened and held.

#### Article 8 – Board of Administrators

- a) The administration and management of the Foundation is vested in the Board of Administrators who shall manage the Foundation in accordance with the purposes and objects of the Foundation, and subject to the terms of the Statute and applicable law.
- b) Meetings of the Board of Administrators shall be held at the registered office or principal place of business in Malta except as otherwise agreed by the Administrators at any other location in Malta. At least four (4) meetings of the Board of Administrators shall be held every year.

- c) A quorum shall be validly constituted at meetings of the Board of Administrators, if both Member A and Member B of the Board of Administrators are present, whether in person or through their duly appointed alternate or proxy, at each such meeting. If no quorum is present at a duly convened meeting, the meeting shall be adjourned to another date being not less than 7 days from the date of the adjourned meeting.
- d) In the rare and unlikely event of an urgent meeting which needs to be convened in the best interests of the Foundation and its Assets, members of the Board of Administrators may exceptionally participate at the meeting by means of a telephone conference call link provided that at least one of the members of the Board of Administrators is physically present at the Foundations' registered office in Malta.
- e) Subject to the other provisions of the Statute, the Board of Administrators shall have absolute discretion to determine, in accordance with the purposes and objects of the Foundation, how best to utilise the Assets.
- f) The Board of Administrators shall consist of one (1) Member A Administrator and one (1) Member B Administrator. The person who appoints the Administrators in accordance with Article 10 of the Statute shall, at the time of such appointment, determine whether such member is a Member A or a Member B.
- g) The first members of the Board of Administrators shall be - :
- (i) [insert name], holder of passport number [.....] - Member A of the Board of Administrators; and
  - (ii) Ganado Trustees & Fiduciaries Limited, company registration number C7880 - Member B of the Board of Administrators.
- h) The term of office of the Administrators shall end upon death, dissolution, resignation or removal from office in terms of this Statute, whichever is the earlier.
- i) The Administrators may resign from office at any time by notice in writing to the other Administrator and the Supervisory Council.

- j) Subject to the provisions of the Statute, the Administrators shall administer and manage as a *bonus pater familias*, exercise the highest standards of diligence, act honestly and with utmost good faith and exercise the powers conferred upon them and carry out such fiduciary duties incumbent upon them by virtue of this Statute and applicable law.
- k) The Board of Administrators and any sub-committee shall regulate their own procedure.
- l) Unless otherwise agreed by the Board of Administrators, an administrator is not entitled to participate at a meeting of the Board of Administrators by means of a telephone link or other electronic link.
- k) Subject to the provisions of paragraph l) below, the quorum necessary for the transaction of the business of the Board of Administrators shall be one (1) Member B of the Board of Administrators.
- l) Unless otherwise stated in the Statute, matters arising at any meeting or otherwise requiring a decision by the Board of Administrators shall be decided by Member B of the Board of Administrators.
- m) Decisions on the following matters shall be taken jointly by Member A and Member B of the Board of Administrators in form of a written Board resolution:
- the acquisition, encumbrance, or disposal of any shares or interests forming part of the Assets of the Foundation;
  - the exercise of any rights attached to any shares or interests acquired by and forming part of the Assets of the Foundation;
  - the transfer of any shares or interests forming part of the Assets of the Foundation;
  - the exercise of any power to amend the Statute of the Foundation;
  - the exercise of any power as to the addition of persons as a beneficiary or beneficiaries or the exclusion of any Beneficiary from benefitting;
  - the exercise of any power to convert the Foundation into a trust; and
  - the exercise of any power or discretion relating to the decision as to which Beneficiary is to benefit, the quantity of any benefit, at what time and in what manner Beneficiaries are to benefit including the distribution of all or any part of the Assets of the

Foundation to any one or more of the Beneficiaries, pursuant to Article 14 (b) of this Statute.

- n) The Board of Administrators shall have all the powers conferred by applicable law and by Statute.
- o) The Administrators shall be entitled to receive remuneration for the services they provide as Administrators as follows :

euro • to Member A of the Board of Administrators; and

euro • to Member B of the Board of Administrators, as may be adjusted from time to time in accordance with the standard applicable rates of Member B

in such amounts and in such manner as may be prescribed in the Statute or in any other agreement between the founder and the Administrator.

#### Article 9 – Duties of the Board of Administrators

- a) In the exercise of their duties, the Board of Administrators is considered to be bound by the fiduciary obligations in terms of Article 1124A (one thousand one hundred and twenty four letter 'A') of the Civil Code, Chapter 16 (sixteen) of the Laws of Malta.
- b) The duties of the Board of Administrators shall *inter alia* include the following:
  - i. to ensure that the Foundation fulfils its lawful purposes as stated in the Statute;
  - ii. the administration of the day to day affairs and smooth running of the Foundation and to maintain possession, retention, control and safe keeping of the Assets of the Foundation, as well as ensuring strict compliance with the Statute and the provisions of applicable law;

- iii. to acquire under any title whatsoever, by utilising any Assets of the Foundation, any additional assets as may be necessary for the fulfilment of the purposes and objects of the Foundation;
- iv. to establish and determine such norms of conduct and operation as may be necessary, from time to time, for the honest, lawful, efficient and optimal running of the Foundation, in terms of the purposes and objects of the Foundation set out in this Statute;
- v. to establish and determine the manner and extent that the Beneficiaries are to benefit, as well as to establish any requisites for qualification to such benefits, including the power to modify or revoke such requisites and make distributions from time to time from the Assets;
- vi. to keep proper books of accounts and other records which properly and fully reflect the operations and transactions of the Foundation;
- vii. to do all such acts as may be conducive towards the performance of its functions and the purposes of the Foundation;
- viii. to submit an account of their administration on relinquishing the administration and to deliver immediately all Assets of the Foundation which may be in his possession to the remaining and or successor Administrators, on behalf of the Foundation; and
- ix. to take all such corporate action and sign all such instruments and documents as may be necessary for the purpose of allowing or authorising the Foundation to exercise any act in the performance of its functions and purposes.

### Article 10 – Appointment and Removal of Administrators

- a) The Administrators, other than the first Administrators appointed in this Statute, shall be appointed by the Supervisory Council: **PROVIDED THAT** any obligation of a regulatory nature is complied with.
- b) An Administrator may be removed by the Supervisory Council by means of a notice in writing to the Administrator who:
- i. is no longer permitted to hold such office in terms of law;
  - ii. is convicted of any crime listed in titles V, VI and IX of Part II of Book First (1<sup>st</sup>) of the Criminal Code, Chapter Nine (9) of the Laws of Malta or similar crimes in other jurisdictions, where the Foundation may have transferred its seat;
  - iii. fails to declare a conflict of interest;
  - iv. is guilty of misconduct or gross misbehaviour;
  - v. commits a dereliction or breach of duty or fails to comply with any material provision of this Statute or with the applicable provisions of law; or
  - vi. in the opinion of the Supervisory Council is not performing to the standards expected or whose fees are considered excessive

In the case that action is intended to be taken in order to remove an Administrator in terms of the Statute, a notice in writing shall be sent to the Administrator whose removal is sought stating the alleged reasons for such removal and such Administrator shall be provided with a reasonable opportunity to defend himself and rebut the allegations and shall be afforded a fair means to conduct his defence.

The final decision shall be communicated in writing to the Administrator whose removal is sought, and the reasons for the decision taken shall be stated.

### Article 11 – Supervisory Council

- a) The Founder hereby nominates, subject to their written consent [*names and passport numbers*] to be the first members of Supervisory Council of the Foundation.

- b) The term of office of the members of the Supervisory Council shall be for the whole term of the Foundation unless they die or resign or are otherwise unable to continue to perform their functions prior to the lapse of such term.
- c) If any member of the Supervisory Council dies or resigns or is otherwise unable to continue to perform his functions prior to the lapse of the term of the Foundation, a new member of the Supervisory Council shall be appointed by the Founder if alive at the time. If the Founder is not alive or is incapable of acting due to interdiction or incapacitation, the remaining members of the Supervisory Council shall have the power to appoint a successor member, and where there are no remaining members of the Supervisory Council to appoint new members for any reason, within a period of one (1) month from when the vacancy in the office of the Supervisory Council, any person having a lawful interest in the Foundation may apply to the Maltese Courts for an order for the appointment of successor members of the Supervisory Council.
- d) The Supervisory Council shall have the full authority to inspect all and any documents and other matters relating to the Foundation and held or otherwise controlled by the Board of Administrators.
- e) The Board of Administrators shall require the Supervisory Council's consent before exercising any power or discretion granted to the Board of Administrators in terms of this Statute or applicable law.

#### **Article 12 – Records, Accounts and Reports**

- a) The Board of Administrators shall prepare and keep proper books of accounts and shall record therein:
- i. the details of all moneys received and payments made by the Foundation;
  - ii. the Assets held by the Foundation; and
  - iii. the liabilities of the Foundation.

- b) The accounts shall be closed once a year every year with effect from the end of the calendar year or such other period as may from time to time be determined by the Board of Administrators.
- c) The Board of Administrators shall prepare an annual report once a year, every year with effect from the end of the calendar year.

### Article 13 – Information

- a) The Board of Administrators shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the Foundation's Assets, including the accounts of the Foundation and the conduct of the administration to:
- the Supervisory Council;
  - subject to paragraph b) below, the Founder;
  - subject to paragraph c) below, the Beneficiaries; and
  - any competent court;
- b) Without prejudice to the rights of the Founder under applicable law, the Board of Administrators will use its best endeavours to provide all such information, including copies of documents, which may be needed by the Founder for the purpose of the personal tax filings of the Founder.
- c) The Beneficiaries shall not be informed that they may benefit under the Foundation and shall not be provided with full and accurate information as to the state and amount of the Foundation's Assets, including the accounts of the Foundation, until such time as the Board of Administrators shall have exercised their discretion in favour of any one of the Beneficiaries, provided that the right to information shall be limited to only such Beneficiaries in whose favour a discretion has been exercised from time to time as afore-said.
- d) Notwithstanding the provisions of paragraph letter (a) and (c) of this Article, the Board of Administrators, or any other person, shall not be required to disclose to any person any document or information relating to the Foundation which discloses the Administrator's deliberations as to the manner in which a discretion has been exercised or a duty was

performed, or which discloses the reasons for any particular exercise of a power, discretion or duty, or the material upon which such reasons might have been based and any information relating to the exercise or proposed exercise of such power, discretion or performance or proposed performance of duty.

#### Article 14 - Beneficiary Entitlement and Related Provisions

- a) A Beneficiary may not alienate, transfer (*inter vivos* or *causa mortis*) or otherwise assign or deal in his beneficial interest under this Foundation and a Beneficiary may not disclaim his interest, or part of his interest, under this Foundation.
- b) The Board of Administrators acting jointly shall have absolute discretion to determine which Beneficiaries are to benefit, the quantity of any benefit, at what time and in what manner Beneficiaries are to benefit. The following restrictions and conditions shall apply in this context:
- Beneficiaries of class A shall receive up to [5] % of the annual post-tax profits of the Foundation, or such higher amount as may be decided by the Board of Administrators from time to time. The determination of the Beneficiaries within class A who are to receive such distributions, as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators;
  - If the Founder has any future issue, the Founder as a Beneficiary of class D, may only benefit if there is a demonstrable, material and detrimental impact on the Founder's specific liquidity position and/or relative lifestyle at any time which is accepted as such by the co-administrators (in this clause 14 referred to as the "Hardship Causes");
  - If the Founder does not have any future issue during the first fifteen (15) years from the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may only benefit during such term in the event of any Hardship Causes.

- During the period running between :
  - (i) the lapse of fifteen (15) years and
  - (ii) up to thirty (30) yearsfrom the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may benefit as long as :
  - (i) no future issue of the Founder would have been born from the date of establishment of this Foundation up to the time when a benefit is to be allocated; AND
  - (ii) at least 15 % of the assets (calculated as at the date when a benefit is to be allocated) shall remain in the Foundation for a period of thirty (30) years from its date of establishment.
  
- During the period running between :
  - (i) the lapse of thirty (30) years and
  - (ii) up to one hundred (100) yearsfrom the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may benefit as long as no future issue of the Founder would have been born from the date of establishment of this Foundation up to the time when a benefit is to be allocated.
  
- If the Founder dies without any issue having been born prior to her death, the Beneficiaries of class A shall receive all benefits. The determination of the Beneficiaries within class A who are to receive such distributions, the time as to when they shall receive such benefits as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators.
  
- If the Founder has any issue who were born prior to the time of her death, the Beneficiaries of class B shall receive all benefits upon her death. The determination of the Beneficiaries within class B who are to receive such distributions, the time as to when they shall receive such benefits as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators.

- c) The Board of Administrators acting jointly shall have the power to add persons as beneficiaries or to exclude Beneficiaries from benefitting, in accordance with applicable law.
- d) The Founder shall not have the power to substitute, add or remove persons as beneficiaries having hereby irrevocably delegated these powers to the Board of Administrators.

#### **Article 15 – Indemnity**

- a) The Administrators on the Board of Administrators and any such person or persons employed for the administration of the Foundation, shall be indemnified by the Foundation against all liabilities and expenses incurred by them in or about the discharge of their respective functions and duties except such as may arise from their own willful misconduct or negligence or breach of duty.

#### **Article 16 - Amendments to the Deed of Foundation**

- a) Any amendments to the Statute shall be recorded in a public deed (*namely a Notarial Deed regulated by Part 111A (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (550).*)
- b) No amendment shall affect the validity of anything lawfully done by the Board of Administrators prior to the date of such amendment, nor shall it affect or interrupt lawful acts in progress or lawful commitments made and not yet fulfilled by the Board of Administrators.
- c) The Board of Administrators with the prior written consent of the Supervisory Council is hereby empowered to make any amendments to this Statute. If such amendments are required by the Registrar for Legal Persons or in terms of law for the purpose of registering the Foundation with the Registrar for Legal Persons or for the purposes of correcting any typographical or other errors in the Deed or the Statute, the consent of the Supervisory Council shall not be required.

- d) The Founder shall not have the power to amend this Statute having hereby irrevocably delegated the power to amend this Statute to the Board of Administrators acting jointly.
- e) Whenever any amendments are made to this Statute, the Statute shall be restated in such a manner so as to consolidate all amendments that would have been made up to that date and the restated Statute shall be attached to the public deed mentioned in paragraph (a) above.

#### **Article 17 – Termination, Dissolution and Winding up**

- a) Where the period fixed for the duration of the Foundation expires, the Foundation shall be wound up without undue delay by the Board of Administrators.
- b) Where the Foundation is wound up, any residual assets after the satisfaction of any proper [REDACTED] liabilities shall be distributed to any one or more of the Beneficiaries of the Foundation in such shares as the Board of Administrators shall, in its absolute discretion determine but subject to the restrictions indicated in article 14(b) hereof.

#### **Article 18 – Applicable Law and Jurisdiction**

- a) The Foundation shall be subject to the laws of Malta.
- b) Should any litigation or dispute between any Beneficiary, Founder, member of the Supervisory Council, the Foundation or any Administrator thereof arise, the parties to the dispute shall make every reasonable effort to resolve the dispute amicably by conducting negotiations in good faith. If the dispute is not resolved to the satisfaction of all parties, any such dispute shall be decided solely by the competent courts of Malta in terms of applicable law.

## ANNEX 1

The Beneficiaries of the [name] Foundation are:

- Foundations, or corporations, or trusts, or other entities recognized by the laws at their place of incorporation or domicile as charitable (charitable organisations) (class A); [tbd]
- the Founder's future issue, whether now living or born hereafter and their descendants (class B)
- the Founder's mother, nephews and nieces, whether now living or born hereafter and their descendants (class C);
- the Founder (class D)

Provided that Beneficiaries shall not include any person who is born hereafter through a Medically Assisted Procreation as defined below.

For the purposes of this Annex:

"Embryo" means the [redacted] organism that results from the fertilisation of a human egg cell by a human sperm cell which is capable of developing and shall further include each totipotent cell removed from a human embryo or otherwise produced, that is assumed to be able to divide and to develop as a human being under the appropriate conditions.

"Medically Assisted Procreation" means that process whereby an Embryo would develop following the bringing together of gametes, which process would have been aided or assisted by means which go beyond the workings of the natural process, and which includes all types of intervention, be they intracorporeal or extracorporeal that help the bringing together of gametes, and their implanting or the implanting of the Embryo that could have developed from this intervention within the reproductive system of the female.

## DEED OF A PRIVATE FOUNDATION

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Before me, Doctor of Laws [*Name, Surname*], a Notary Public, duly admitted and sworn, has personally appeared and identified himself in accordance with law by means of the hereunder mentioned official document:

[*Name of Founder*], daughter of [*Name of father and mother (including her maiden Surname and if one or both are deceased add the word 'late' in front of their name)*] born in [*name of town and Country/State if born in a country other than Malta*] and residing at [*name of town*], holder of passport number [...]

(in this Deed referred to as the "**Founder**").

Capitalised terms used in this Deed have the same meanings attributed to them in the Statute of the Foundation attached to this deed as a document marked with the letter 'A' (in this Deed referred to as the "**Statute**").

**WHEREAS** the Founder wishes to constitute and establish and register a private foundation, for the benefit of Beneficiaries.

**NOW THEREFORE**, by virtue of this Deed, the Founder hereby irrevocably constitutes and establishes a foundation to be called the [**NAME FOUNDATION**] (in this Deed referred to as the "**Foundation**") regulated by and in accordance with the Laws of Malta, in particular the Second Schedule to the Civil Code, Chapter sixteen (16) of the Laws of Malta, and in accordance with the rules contained in this Statute, which forms an integral part of the Deed.

The Foundation shall be registered with the Registrar for Legal Persons and shall be vested with separate legal personality.

The Foundation is being set up with an initial cash endowment in the amount of [*amount in letters*] ([*amount in figures*]).

The Founder hereby donates the said initial endowment by means of cheque number [*number in word and figures*] for the sum of [*amount in words*] ([*amount in figures*]) drawn on [*Insert name of credit institution*] and payable to [*insert name of Foundation*], a copy of which is hereto annexed as Document [...], and instruct/s Notary Doctor [*name*] to hold the funds and apply them in accordance with the written instructions of the Administrators.

Considering that the Administrators are authorised or not required to be authorized to act as administrators of a private foundation in terms of article forty three (43) of the Trusts and Trustees Act, Chapter three hundred and thirty one (331) of the Laws of Malta, the Founder appearing on this deed hereby exempts the undersigned Notary from the obligation of registering a note of enrolment in the Public Registry in terms of sub-article nine (9) of article fifty (50) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the Laws of Malta.

For all intents and purposes it is declared that this notarial deed creating a private foundation is *inter alia* regulated by Part IIIA (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the Laws of Malta, as well as by Articles sixty eight letter A (68A) and sixty eight letter B (68B) of the said law.

This deed has been done, read and published by me the undersigned Notary after having explained the contents thereof to the appearer in accordance to law in Malta at [*insert notary's address*].

## Document A

### STATUTE OF THE [insert name of Foundation] FOUNDATION

(Constituted by Notarial Deed regulated by Part 111A (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (55) of the [INSERT DATE] published by [insert name of notary])

#### ARTICLE 1 – INTERPRETATION AND DEFINITIONS

- a) Except where the context otherwise requires, the following words and expressions shall have the following meanings:

**“Administrator”** means any person appointed to the Board of Administrators in accordance with the Statute;

**“Assets”** means the assets described in Article 6 of the Statute;

**“Beneficiaries”** mean the members of the class of persons indicated as such in Annex 1 to this Statute and such other persons as may be added as a beneficiary in accordance with the provisions of the Statute and applicable law;

**“Board of Administrators”** means the board of administrators composed and established in accordance with Article 8 of the Statute;

**“Deed”** means the deed in the Records of Notary [•] of the [•] by virtue of which the Foundation is established;

**“Foundation”** means the ‘[name] Foundation’ constituted and established by virtue of the Deed;

**“Founder”** means [re-insert full details of founder so as to make identity clear when statute is extracted from deed] and no person making an endowment subsequent to the constitution and establishment of the Foundation, even if the endowment is accepted by the Board of Administrators, shall be deemed to be a Founder;

~~["Protector" / "Supervisory Council"]~~ means the persons at any time appointed as ~~a [Protector / as a members]~~ of the Supervisory Council in terms of Article 11 of the Statute.

"Statute" means this Statute;

The term "herein" and cognate expressions refer only to the Statute.

- b) No regard shall be had to the heading or title of any Article or other document (however called) annexed to the Statute in construing any of its provisions;
- c) Except where the context otherwise requires, words denoting the singular include the plural and the masculine include the feminine [REDACTED] versa;

#### **Article 2 – Name, Registered Office and Place of Management**

- a) The name of the Foundation is the "[name] Foundation".
- b) The place of administration and management of the Foundation shall be in Malta and the registered address of the Foundation is 171, Old Bakery Street, Valletta, VLT 1455 Malta or such other address in Malta as may be determined by the Board of Administrators from time to time.

#### **Article 3 – Purposes and objects**

- a) The Foundation is a private foundation which enjoys a separate legal personality and is established for the benefit of the Beneficiaries.
- b) The purposes and/or objects for which the Foundation is being constituted and established are the following:
  - i. to subscribe for or otherwise acquire the maximum number as allowed by law (or such other number as may be decided) of the shares, debentures, debenture stock or securities of any company or organisation and to pay all or any expenses incurred in connection with the formation, promotion and incorporation of any such company or organisation;

- ii. to exercise all and any rights vested in it by virtue of its holding of shares, debentures, debenture stocks or securities in a manner that is consistent with the purposes and objects of the Foundation;
  - iii. to acquire, hold and administer the Assets in accordance with this Statute and applicable law;
  - iv. to acquire, own, hold and dispose of any other assets whether movable or immovable including shares, debentures, stock or other securities whether directly and in its own name or indirectly;
  - v. to receive, manage, invest, administer and distribute any and all royalties, proceeds, dividends or other gains from any patents, shares, trademarks or other assets that the Foundation owns in terms of this Statute or applicable law for the benefit of the Beneficiaries; and
  - vi. to carry out such activities as may be ancillary to the above or as may be necessary or desirable to achieve the above aims and objects.
- c) Nothing in this Statute shall impose any obligation on the Foundation, or the Board of Administrators, to enquire into, or take any action relative to or otherwise interfere or intervene in the management or conduct or business of any company in which the Foundation holds any shares, or to otherwise enquire into the performance of any company in which the Foundation holds any shares, PROVIDED THAT the Board of Administrators or the Foundation shall have the faculty to request from any person, including, without limitation, from the persons involved in the administration, management or conduct of a company in which the Foundation holds shares, the following documentation relevant to any company wherever resident or incorporated, to the extent that such documentation is required for the purposes of exercising the powers and duties in relation to the Foundation and its Assets, and is reasonably available:
- i. Copies of minutes and agendae of all Board of Directors' meetings and Director's reports of any company in which the Foundation holds shares and information as to how such company and the assets it directly or indirectly owns are being managed;
  - ii. Copies of minutes and agendae of all Shareholders' meetings of any company in which the Foundation holds shares;

- iii. Copies of the accounts of any company in which the Foundation holds shares and of any of its subsidiaries; and shall be entitled to rely thereon in taking any decisions as shareholder in any company in which the Foundation holds shares from time to time, or in otherwise exercising its rights as shareholder.

#### Article 4 - Legal Personality and Powers

- a) The Foundation has a separate legal personality. Its assets as well as its liabilities are distinct from those of its Founder, its Administrators and its Beneficiaries. Nothing in the Statute shall be construed or interpreted so as to hold or render the Founder, the Beneficiaries, the ~~Protector-Supervisory Council~~ or any of the Administrators personally liable for any debts or liabilities incurred or obligations assumed by the Foundation.
- b) The Foundation is a body corporate and is vested with all the powers that a legal person has in virtue of its legal [REDACTED]. To enable the Foundation to fulfil its purposes and objects, it is hereby empowered, without limitation, but subject to the provisions of the Statute:
- i. to manage and administer the Assets of the Foundation as may be determined by the Board of Administrators in accordance with the purposes and objects of the Foundation;
  - ii. to receive grants, subsidies, contributions, donations and other gifts and to utilise, invest, administer and distribute the same as the Board of Administrators deems fit;
  - iii. to purchase, take on lease, exchange, acquire by any title any property and any rights, privileges, hypothecs and easements over such property as is necessary to carry on its activities and to accept gifts on such terms and on such security as shall be deemed necessary by the Board of Administrators;
  - iv. to pay all or any expenses incurred in connection with the formation, promotion and incorporation of any company or organisation, or to contract with any person, firm or company to pay the same, and to subscribe for or otherwise acquire all or any part of the shares, debentures, debenture stock or securities of any such company or organization;

- v. to hold and retain or sell, or otherwise dispose of or mortgage any shares, debentures, debenture stock or securities acquired;
- vi. to draw, make, accept, endorse, negotiate, discount, execute and issue negotiable or transferable instruments as may be necessary for the attainment of the purposes and objects of the Foundation, it being understood that the Foundation is prohibited from trading and carrying out commercial activities;
- vii. to sell, let, grant rights and privileges, dispose of or turn to account all or any of the property or assets of the Foundation;
- viii. to obtain loans, overdrafts, credits and other financial and monetary facilities and to otherwise borrow and raise money in such manner as the Board of Administrators may deem fit and to secure the repayment of any money borrowed, raised or owing by privilege, hypothec or by any such charge over the property of the Foundation both present and future;
- ix. to enter into any guarantee, contract of indemnity or suretyship and to secure its obligations under such guarantee, indemnity or suretyship with hypothecs and/or privileges, general and special, over all its assets both present and future;
- x. to employ and pay any person or persons to supervise, organise and carry out the work of the Foundation;
- xi. to establish such segregated cells as necessary for the achievement of one or more defined purposes and which purposes are consistent with the aims and objects of the Foundation;
- xii. to convert into a trust;
- xiii. to meet all reasonable charges and expenses for the proper administration of the Foundation out of the disposable assets of the Foundation; and
- xiv. to generally do every act which is necessary or conducive to the foregoing or which is necessary in order to enable the Foundation to fulfil its aims and objects.

**PROVIDED THAT** notwithstanding any powers of the Foundation contained in this Statute, these powers are granted subject to the limitations in applicable law, and the Foundation may not trade and may only carry out commercial activities as are allowed by the Second Schedule to the Civil Code.

#### **Article 5 - Term**

Unless otherwise wound up in accordance with the terms of this Statute or applicable law, the Foundation is being established for the period of 100 (one hundred) years or such other greater number of years as applicable law may, from time to time permit.

#### **Article 6 - The Assets of the Foundation**

- a) The Assets of the Foundation include:
- i. the constitutive assets, namely the initial endowment made on the Deed;
  - ii. any other additional irrevocable endowments made to the Foundation by the Founder or by third parties **PROVIDED THAT** the latter are accepted by the Board of Administrators and made in accordance with the provisions of the Statute **AND PROVIDED FURTHER THAT** no person making an endowment subsequent to the constitution and establishment of the Foundation, even if the endowment is accepted by the Board of Administrators, shall be deemed to be a Founder or shall otherwise acquire any rights under this Statute;
  - iii. all other income of and acquisitions by the Foundation.
- b) Creditors, spouses, heirs or legatees of the Beneficiaries shall only have rights, where applicable, limitedly to the extent of any Beneficiary's entitlement under the Foundation and shall have absolutely no other rights in relation to the assets of the Foundation.
- c) The initial endowment and all other Assets shall be applied in accordance with this Statute for the attainment of the purpose for which the Foundation is constituted and established: **PROVIDED THAT** nothing herein contained shall prevent the payment or performance in good faith

of its reasonable obligations and undertakings or the repayment of reasonable out-of-pocket expenses out of the Assets.

- d) The Founder may make additional endowments to the Foundation at any time in terms of law.

#### Article 7 – Legal and Judicial Representation

- a) The legal and judicial representation of the Foundation shall vest in Member B of the Board of Administrator **PROVIDED THAT** in any matter which, in accordance with the provisions of this Statute, requires the decision of the Board of Administrators acting jointly, the legal and judicial representation of the Foundation in relation to such matters as provided for in this Statute, shall vest jointly in Member A of the Board of Administrators and Member B of the Board of Administrators.
- b) The Administrators shall have the right to delegate any or all of such powers of representation either to any one (1) or more of the Administrators specifically or to a third party by means of a power of attorney or a resolution or other document having like effect of the Board of Administrators: **AND PROVIDED FURTHER THAT** any resolution in writing [REDACTED] by all the Administrators composing the Board of Administrators for the time being shall be as valid and effective as if the same had been passed at a meeting of the Board of Administrators duly convened and held.

#### Article 8 – Board of Administrators

- a) The administration and management of the Foundation is vested in the Board of Administrators who shall manage the Foundation in accordance with the purposes and objects of the Foundation, and subject to the terms of the Statute and applicable law.
- b) Meetings of the Board of Administrators shall be held at the registered office or principal place of business in Malta except as otherwise agreed by

the Administrators at any other location in Malta. At least four (4) meetings of the Board of Administrators shall be held every year.

- c) A quorum shall be validly constituted at meetings of the Board of Administrators, if both Member A and Member B of the Board of Administrators are present, whether in person or through their duly appointed alternate or proxy, at each such meeting. If no quorum is present at a duly convened meeting, the meeting shall be adjourned to another date being not less than 7 days from the date of the adjourned meeting.
- d) In the rare and unlikely event of an urgent meeting which needs to be convened in the best interests of the Foundation and its Assets, members of the Board of Administrators may exceptionally participate at the meeting by means of a telephone conference call link [REDACTED] that at least one of the members of the Board of Administrators is physically present at the Foundations' registered office in Malta.
- e) Subject to the other provisions of the Statute, the Board of Administrators shall have absolute discretion to determine, in accordance with the purposes and objects of the Foundation, how best to utilise the Assets.
- f) The Board of Administrators shall consist of one (1) Member A Administrator and one (1) Member B Administrator. The person who appoints the Administrators in accordance with Article 10 of the Statute shall, at the time of such appointment, determine whether such member is a Member A or a Member B.
- g) The first members of the Board of Administrators shall be – :
- (i) [insert name] holder of passport number [.....] – Member A of the Board of Administrators; and
  - (ii) Ganado Trustees & Fiduciaries Limited, company registration number C7880 – Member B of the Board of Administrators.
- h) The term of office of the Administrators shall end upon death, dissolution, resignation or removal from office in terms of this Statute, whichever is the earlier.

- i) The Administrators may resign from office at any time by notice in writing to the other Administrator and the ~~Protector~~/Supervisory Council}.
- j) Subject to the provisions of the Statute, the Administrators shall administer and manage as a *bonus pater familias*, exercise the highest standards of diligence, act honestly and with utmost good faith and exercise the powers conferred upon them and carry out such fiduciary duties incumbent upon them by virtue of this Statute and applicable law.
- k) The Board of Administrators and any sub-committee shall regulate their own procedure.
- l) Unless otherwise agreed by the Board of Administrators, an administrator is not entitled to participate at a meeting of the Board of Administrators by means of a telephone link or other electronic link.
- k) Subject to the provisions of paragraph l) below, the quorum necessary for the transaction of the business of the Board of Administrators shall be one (1) Member B of the Board of Administrators.
- l) Unless otherwise stated in the Statute, matters arising at any meeting or otherwise requiring a decision by the Board of Administrators shall be decided by Member B of the Board of Administrators.
- m) Decisions on the following matters shall be taken jointly by Member A and Member B of the Board of Administrators in form of a written Board resolution:
- the acquisition, encumbrance, or disposal of any shares or interests forming part of the Assets of the Foundation;
  - the exercise of any rights attached to any shares or interests acquired by and forming part of the Assets of the Foundation;
  - the transfer of any shares or interests forming part of the Assets of the Foundation;
  - the exercise of any power to amend the Statute of the Foundation;
  - the exercise of any power as to the addition of persons as a beneficiary or beneficiaries or the exclusion of any Beneficiary from benefitting;
  - the exercise of any power to convert the Foundation into a trust; and

- the exercise of any power or discretion relating to the decision as to which Beneficiary is to benefit, the quantity of any benefit, at what time and in what manner Beneficiaries are to benefit including the distribution of all or any part of the Assets of the Foundation to any one or more of the Beneficiaries, pursuant to **Article 14 (b)** of this Statute.

~~A resolution in writing signed by Member A and Member B of the Board of Administrators shall be valid and effectual as if it had been passed at a meeting of the Board of Administrators duly convened and held.~~

- n) The Board of Administrators shall have all the powers conferred by applicable law and by Statute.
- o) The Administrators shall be entitled to receive remuneration for the services they provide as Administrators as follows:

euro • to Member A of the Board of Administrators; and

euro • to Member B of the Board of Administrators, as may be adjusted from time to time in accordance with the standard applicable rates of Member B

in such amounts and in such manner as may be prescribed in the Statute or in any other agreement between the founder and the Administrator.

#### **Article 9 – Duties of the Board of Administrators**

- a) In the exercise of their duties, the Board of Administrators is considered to be bound by the fiduciary obligations in terms of Article 1124A (one thousand one hundred and twenty four letter 'A') of the Civil Code, Chapter 16 (sixteen) of the Laws of Malta.
- b) The duties of the Board of Administrators shall *inter alia* include the following:
  - i. to ensure that the Foundation fulfils its lawful purposes as stated in the Statute;

- ii. the administration of the day to day affairs and smooth running of the Foundation and to maintain possession, retention, control and safe keeping of the Assets of the Foundation, as well as ensuring strict compliance with the Statute and the provisions of applicable law;
- iii. to acquire under any title whatsoever, by utilising any Assets of the Foundation, any additional assets as may be necessary for the fulfilment of the purposes and objects of the Foundation;
- iv. to establish and determine such norms of conduct and operation as may be necessary, from time to time, for the honest, lawful, efficient and optimal running of the Foundation, in terms of the purposes and objects of the Foundation set out in this Statute;
- v. to establish and determine the manner and extent that the Beneficiaries are to benefit, as well as to establish any requisites for qualification to such benefits, including the power to modify or revoke such requisites and make distributions from time to time from the Assets;
- vi. to keep proper books of accounts and other records which properly and fully reflect the operations and transactions of the Foundation;
- vii. to do all such acts as may be conducive towards the performance of its functions and the purposes of the Foundation;
- viii. to submit an account of their administration on relinquishing the administration and to deliver immediately all Assets of the Foundation which may be in his possession to the remaining and or successor Administrators, on behalf of the Foundation; and
- ix. to take all such corporate action and sign all such instruments and documents as may be necessary for the purpose of allowing or authorising the Foundation to exercise any act in the performance of its functions and purposes.

## Article 10 – Appointment and Removal of Administrators

- a) The Administrators, other than the first Administrators appointed in this Statute, shall be appointed by the {Supervisory Council/Protector}; **PROVIDED THAT** any obligation of a regulatory nature is complied with.
- b) An Administrator may be removed by the Supervisory Council/Protector by means of a notice in writing to the Administrator who:
- i. is no longer permitted to hold such office in terms of law;
  - ii. is convicted of any crime listed in titles V, VI and IX of Part II of Book First (1<sup>st</sup>) of the Criminal Code, Chapter Nine (9) of the Laws of Malta or similar crimes in other jurisdictions where the Foundation may have transferred its seat;
  - iii. fails to declare a conflict of interest;
  - iv. is guilty of misconduct or gross misbehaviour;
  - v. commits a dereliction or breach of duty or fails to comply with any material provision of this Statute or with the applicable provisions of law; or
  - vi. in the opinion of the {Supervisory Council/Protector} is not performing to the standards expected or whose fees are considered excessive

In the case that action is intended to be taken in order to remove an Administrator in terms of the Statute, a notice in writing shall be sent to the Administrator whose removal is sought stating the alleged reasons for such removal and such Administrator shall be provided with a reasonable opportunity to defend himself and rebut the allegations and shall be afforded a fair means to conduct his defence.

The final decision shall be communicated in writing to the Administrator whose removal is sought, and the reasons for the decision taken shall be stated.

#### Article 11 — ~~Protector~~/Supervisory Council

- a) The Founder hereby nominates, subject to ~~its~~ their written consent [~~names and passport numbers of entity / registration number~~] to be the ~~Protector~~/first members of Supervisory Council of the Foundation.
- b) The term of office of the members of the Supervisory Council shall be for the whole term of the Foundation unless they die or resign or are otherwise unable to continue to perform their functions prior to the lapse of such term.
- c) If any member of the Supervisory Council ~~the Protector~~ dies or resigns or is otherwise unable to continue to perform his ~~its~~ functions prior to the lapse of the term of the Foundation, a new member of the Supervisory Council ~~Protector~~ shall be appointed by the Founder if alive at the time. If the Founder is not alive or is incapable of acting due to interdiction or incapacitation, the remaining members of the Supervisory Council ~~last appointed Protector~~ shall have the power to appoint a successor member, and where there are no remaining members of the Supervisory Council ~~it is not possible for the last appointed Protector to appoint new members a successor Protector~~ for any reason, within a period of one (1) month from when the vacancy in the office of the Supervisory Council ~~Protector~~ ~~first arose~~, any person having a lawful interest in the Foundation may apply to the Maltese Courts for an order for the appointment of a ~~successor members of the Supervisory Council~~ ~~Protector~~.
- d) The ~~Protector~~/Supervisory Council shall have the full authority to inspect all and any documents and other matters relating to the Foundation and held or otherwise controlled by the Board of Administrators.

- e) The Board of Administrators shall require the ~~Protector's~~/Supervisory Council's consent before exercising any power or discretion granted to the Board of Administrators in terms of this Statute or applicable law.

#### Article 12 – Records, Accounts and Reports

- a) The Board of Administrators shall prepare and keep proper books of accounts ~~in accordance with Maltese GAAP [tbd]~~ and shall record therein:
- i. the details of all moneys received and payments made by the Foundation;
  - ii. the Assets held by the Foundation; and
  - iii. the liabilities of the Foundation.
- b) The accounts shall be closed once a year every year with effect from the end of the calendar year or such other period as may from time to time be determined by the Board of Administrators. ~~[tbd]~~
- c) The Board of Administrators shall prepare an annual report once a year, every year with effect from the end of the calendar year. ~~[tbd]~~

#### Article 13 – Information

- b)a) The Board of Administrators shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the Foundation's Assets, including the accounts of the Foundation and the conduct of the administration to:

- the ~~Protector's~~/Supervisory Council;
- subject to paragraph b) below, the Founder;
- subject to paragraph c) below, the Beneficiaries; and
- any competent court;

- b) Without prejudice to the rights of the Founder under applicable law, the Board of Administrators will use its best endeavours to provide all such information, including copies of documents, which may be needed by the Founder for the purpose of the personal tax filings of the Founder.
- c) The Beneficiaries shall not be informed that they may benefit under the Foundation and shall not be provided with full and accurate information as to the state and amount of the Foundation's Assets, including the accounts of the Foundation, until such time as the Board of Administrators shall have exercised their discretion in favour of any one of the Beneficiaries, provided that the right to information shall be limited to only such Beneficiaries in whose favour a discretion has been exercised from time to time as afore-said.
- d) Notwithstanding the provisions of paragraph letter (a) and (c) of this Article, the Board of Administrators, or any other person, shall not be required to disclose to any person any document or information relating to the Foundation which discloses the Administrator's deliberations as to the manner in which a discretion has been exercised or a duty was performed, or which discloses the reasons for any particular exercise of a power, discretion or duty, or the material upon which such reasons might have been based, and any information relating to the exercise or proposed exercise of such power, discretion or performance or proposed performance of duty.

#### **Article 14 - Beneficiary Entitlement and Related Provisions**

- a) A Beneficiary may not alienate, transfer (*inter vivos* or *causa mortis*) or otherwise assign or deal in his beneficial interest under this Foundation and a Beneficiary may not disclaim his interest, or part of his interest, under this Foundation.
- b) The Board of Administrators acting jointly shall have absolute discretion to determine which Beneficiaries are to benefit, the quantity of any benefit, at what time and in what manner Beneficiaries are to

benefit. The following restrictions and conditions shall apply in this context:

- Beneficiaries of class A shall receive up to [5] % of the annual post-tax profits of the Foundation, or such higher amount as may be decided by the Board of Administrators from time to time. The determination of the Beneficiaries within class A who are to receive such distributions, as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators;
- If the Founder has any future issue, the Founder as a Beneficiary of class D, may only benefit if there is a demonstrable, material and detrimental impact on the Founder's specific liquidity position and/or relative lifestyle at any time which is accepted as such by the co-administrators (in this clause 14 referred to as the "Hardship Causes");
- If the Founder does not have any future issue during the first fifteen (15) years from the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may only benefit during such term in the event of any Hardship Causes.
- During the period running between :
  - (i) the lapse of fifteen (15) years and
  - (ii) up to thirty (30) yearsfrom the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may benefit as long as :
  - (i) no future issue of the Founder would have been born from the date of establishment of this Foundation up to the time when a benefit is to be allocated; AND
  - (ii) at least {15} % of the assets (calculated as at the date when a benefit is to be allocated) shall remain in the Foundation for a period of thirty (30) years from its date of establishment.
- During the period running between :
  - (i) the lapse of thirty (30) years and
  - (ii) up to one hundred (100) years

from the date of establishment of this Foundation, the Founder as a Beneficiary of class D, may benefit as long as no future issue of the Founder would have been born from the date of establishment of this Foundation up to the time when a benefit is to be allocated.

- If the Founder dies without any issue having been born prior to her death, the Beneficiaries of class A shall receive all benefits. The determination of the Beneficiaries within class A who are to receive such distributions, the time as to when they shall receive such benefits as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators.
  - If the Founder has any issue who were born prior to the time of her death, the Beneficiaries of class B shall receive all benefits upon her death. The determination of the Beneficiaries within class B who are to receive such distributions, the time as to when they shall receive such benefits as well as the respective allocations amongst them, shall be subject to the discretion of the Board of Administrators.
- c) The Board of Administrators acting jointly shall have the power to add persons as beneficiaries or to exclude Beneficiaries from benefitting, in accordance with applicable law.
- d) The Founder shall not have the power to substitute, add or remove persons as beneficiaries having hereby irrevocably delegated these powers to the Board of Administrators.

#### **Article 15 – Indemnity**

- a) The Administrators on the Board of Administrators and any such person or persons employed for the administration of the Foundation, shall be indemnified by the Foundation against all liabilities and expenses incurred by them in or about the discharge of their respective functions and duties except such as may arise from their own willful misconduct or negligence or breach of duty.

#### Article 16 - Amendments to the Deed of Foundation

- a) Any amendments to the Statute shall be recorded in a public deed (*namely a Notarial Deed regulated by Part 111A (three A) of the Notarial Profession and Notarial Archives Act, Chapter fifty five (550)*).
- b) No amendment shall affect the validity of anything lawfully done by the Board of Administrators prior to the date of such amendment, nor shall it affect or interrupt lawful acts in progress or lawful commitments made and not yet fulfilled by the Board of Administrators.
- c) The Board of Administrators with the prior written consent of the ~~Protector~~/Supervisory Council is hereby empowered to make any amendments to this Statute. If such amendments are required by the Registrar for Legal Persons or in terms of law for the purpose of registering the Foundation with the Registrar for Legal Persons or for the purposes of correcting any typographical or other errors in the Deed or the Statute, the consent of the ~~Protector~~/Supervisory Council shall not be required.
- d) The Founder shall not have the power to amend this Statute having hereby irrevocably delegated the power to amend this Statute to the Board of Administrators acting jointly.
- e) Whenever any amendments are made to this Statute, the Statute shall be restated in such a manner so as to consolidate all amendments that would have been made up to that date and the restated Statute shall be attached to the public deed mentioned in paragraph (a) above.

#### Article 17 – Termination, Dissolution and Winding up

- a) Where the period fixed for the duration of the Foundation expires, the Foundation shall be wound up without undue delay by the Board of Administrators.

- b) Where the Foundation is wound up, any residual assets after the satisfaction of any proper debts and liabilities shall be distributed to any one or more of the Beneficiaries of the Foundation in such shares as the Board of Administrators shall in its absolute discretion determine but subject to the restrictions indicated in article 14(b) hereof.

#### Article 18 - Applicable Law and Jurisdiction

- a) The Foundation shall be subject to the laws of Malta.
- b) Should any litigation or dispute between any Beneficiary, Founder, ~~member of the Supervisory Council/Protector~~, the Foundation or any Administrator thereof arise, the parties to the dispute shall make every reasonable effort to resolve the dispute amicably by conducting negotiations in good faith. If the dispute is not resolved to the satisfaction of all parties, any such dispute shall be decided solely by the competent courts of Malta in terms of applicable law.

#### ANNEX 1

The Beneficiaries of the [name] Foundation are: ~~{still subject to discussions}~~

- Foundations, or corporations, or trusts, or other entities recognized by the laws at their place of incorporation or domicile as charitable (charitable organisations) (class A); [tbd]
- the Founder's future issue, whether now living or born hereafter and their descendants (class B)
- the Founder's mother, nephews and nieces, whether now living or born hereafter and their descendants (class C);
- the Founder (class D)

Provided that Beneficiaries shall not include any person who is born hereafter through a Medically Assisted Procreation as defined below.

For the purposes of this Annex:

"Embryo" means the human organism that results from the fertilisation of a human egg cell by a human sperm cell which is capable of developing and shall further include each totipotent cell removed from a human embryo or otherwise produced, that is assumed to be able to divide and to develop as a human being under the appropriate conditions.

"Medically Assisted Procreation" means that process whereby an Embryo would develop following the bringing together of gametes, which process would have been aided or assisted by means which go beyond the workings of the natural process, and which includes all types of intervention, be they intracorporeal or extracorporeal that help the bringing together of gametes, and their implanting or the implanting of the Embryo that could have developed from this intervention within the reproductive system of the female.

[Contributor]

[Foundation]

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**CONTRIBUTION AGREEMENT**

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**THIS AGREEMENT** is made on ..... 2014 between :

- (1) ..... (the "**Contributor**"); and
- (2) ..... Foundation, a foundation established under the laws of Malta with registered office at ..... Malta and having .....registration number ..... (the "**Foundation**").

hereinafter at times also jointly referred to as the "**Parties**".

**WHEREAS :**

- (A) The Contributor is the founder of the Foundation;
- (B) The Contributor, in its capacity as the founder of the Foundation, wishes to make a further investment and endowment in the Foundation and has proposed to make a contribution to the Foundation of all the assets listed in Schedule A to this Agreement (the "**Assets**"). The Foundation has agreed to accept the aforesaid contribution under the terms and conditions set out in this Agreement (the "**Contribution**").
- (C) It was noted that the entry by the Parties into the transaction contemplated above would be for their commercial benefit and is in the best interests of the Parties.

**NOW THEREFORE BY VIRTUE OF THIS AGREEMENT, THE PARTIES HAVE AGREED TO THE FOLLOWING:**

**1. CONTRIBUTION**

1.1 The Contributor undertakes to make the Contribution in favour of the Foundation within [.....] business days of the date hereof.

1.2 The Foundation hereby accepts to receive the Contribution from the Contributor.

**4. REPRESENTATIONS AND WARRANTIES**

4.1 Each of the Parties hereby warrant as and wherever applicable that:

4.1.1 she/it has full power, authority and legal right to enter into this Agreement and to make and/or receive the Contribution(s) made by virtue of this Agreement and has taken all necessary corporate and other action to duly authorise the entry into, execution, delivery and performance of the same;

4.1.2 the Contributions made by virtue of this Agreement will not (a) contravene any existing law, regulation or authorisation to which she/it is subject, (b) result in the breach of or default under any agreement or other instrument to which she/it is subject, or (c) contravene any provision of its deed, statute, memorandum and articles of incorporation, or other constitutional documents; and

4.1.3 she/it will indemnify the other Party/Parties in respect of any breach of warranty and in respect of any loss, liability, claim or expense incurred by other Party/Parties by reason (whether direct or indirect) of any warranty being untrue, incorrect or misleading.

4.1.4 she/it will execute and deliver or cause the execution and delivery of such further instruments and documents and will take such other actions as any other party to the Agreement may reasonably request in order to effectuate the purposes of this Agreement and to carry out the terms hereof.

## **5. CONFIDENTIALITY**

5.1 The Parties undertake to treat all matters relative to the provisions of this Agreement as secret and confidential and not to disclose any such information without obtaining the prior consent of the other party; provided that disclosure of information required in terms of law shall not constitute a violation of this provision.

## **6. NOTIFICATION**

6.1 Any notices to be sent in terms of this Agreement must be sent in writing by registered mail, at the addresses indicated above.

6.2 Any changes in the above details must be communicated immediately to the other party in writing.

## **7. SEVERABILITY**

7.1 In the event that any of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provisions which shall continue to be valid to the fullest extent permitted by law.

7.2 The Parties bind themselves to substitute any terms, conditions or provisions of this Agreement which may be deemed to be invalid, unlawful or unenforceable.

**8. AMENDMENT**

8.1 The provisions of this Agreement may only be varied, amended or modified in any way by agreement reached in writing and signed by the Parties hereto.

**9. COSTS**

9.1 Each party shall bear their respective costs incurred or to be incurred in connection with this Agreement.

**10. ENTIRE AGREEMENT**

10.1 This Agreement constitutes and sets out the entire agreement between the Parties on the subject matter of this Agreement and supersedes any previous agreements, whether written or oral, which may have been entered into between the Parties hereto in relation to the subject matter of this Agreement.

**11. INTERPRETATION**

11.1 Headings used in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**12. COUNTERPARTS**

12.1 This Agreement may be executed in any number of counterparts, and this has the same effect as if signatures on the counterparts were on a single copy of this Agreement.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This Agreement shall be construed in accordance with, and this Agreement and all claims and causes of action arising out of the transactions contemplated hereby shall be governed by, the substantive laws of Malta, other than conflict of law rules that would require the application of the laws of any other jurisdiction.

13.2 The Courts of Malta shall have the exclusive jurisdiction to determine all disputes arising out of or in connection with this Agreement, including disputes relating to the validity or otherwise of the same agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement, as of the day and year first above written:

.....

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