

TERMS OF REFERENCE
FOR
THE ASSOCIATION OF ALLAN GRAY FELLOWS

**AS ADOPTED BY RESOLUTION OF THE BOARD OF TRUSTEES OF
THE ALLAN GRAY ORBIS FOUNDATION
PASSED AT A MEETING HELD AT CAPE TOWN
ON [TO BE INSERTED].**

Contents

1.	BACKGROUND	3
2.	APPOINTMENT	3
3.	DEFINITIONS AND INTERPRETATION	4
4.	OBJECT AND PURPOSE	5
5.	MEMBERSHIP.....	6
6.	PREROGATIVES OF MEMBERS	7
7.	OBLIGATIONS OF MEMBERS	7
8.	OPERATIONAL PRINCIPLES OF THE ASSOCIATION	8
9.	REMUNERATION AND REIMBURSEMENT	10
10.	CONFLICTS OF INTEREST.....	11
11.	FINANCIAL RESOURCES	11
12.	LIMITATION OF LIABILITY AND INDEMNITY	12
13.	AMENDMENTS AND REVOKEMENT	12
14.	DISPUTE RESOLUTION.....	13

1. BACKGROUND

- 1.1 The Allan Gray Orbis Foundation ("The Foundation") is an Approved Public Benefit Organisation, established in order to implement and govern a Scholarship and Bursary Programme, described as The Allan Gray Fellowship Programme ("The Fellowship Programme"), whose primary object is *"to enable promising young South Africans - primarily from black and historically disadvantaged backgrounds - to acquire the necessary academic qualifications, business skills, and practical experience, to enable them to become future successful business entrepreneurs."*
- 1.2 In furtherance of The Fellowship Programme, The Foundation is empowered in terms of clause 13.7 of the Trust Deed to appoint operational substructures as it may deem appropriate and conducive to the achievement of its object, and to delegate to such substructures the specified functions and roles as the Trustees may determine from time to time.
- 1.3 The Trust Deed provides further that the operational substructure must at all times *"conform to any directions and procedures stipulated by the Board of Trustees from time to time; and the Board shall not be divested of its powers and duties by reason of any such delegation."*

ACCORDINGLY, IN PURSUANCE OF ITS AFORESAID POWERS AND DISCRETIONS, THE FOUNDATION HAS RESOLVED TO APPOINT THE FOLLOWING INFORMAL SUBSTRUCTURE OF THE FOUNDATION, UPON THE FOLLOWING TERMS AND CONDITIONS:-

2. APPOINTMENT

- 2.1 The informal substructure to be appointed as aforesaid shall be described as:-

THE ASSOCIATION OF ALLAN GRAY FELLOWS

("The Association")

which is hereby appointed for the purposes, and upon the terms and conditions, hereinafter set forth.

- 2.2 For the avoidance of doubt, it is expressly provided that The Association shall

not constitute a separate juristic person; nor shall it have a separate legal existence apart from that of The Foundation; nor shall it have separate legal capacity to acquire rights or incur obligations for its own benefit or account, except insofar as it may be authorised thereto in writing by The Foundation from time to time.

- 2.3 It is further recorded that these Terms of Reference may at any time be amended, qualified, or rescinded, at the sole and entire discretion of The Foundation, which shall be under no obligation to provide reasons or justification for such decisions.

3. DEFINITIONS AND INTERPRETATION

Unless the context clearly otherwise indicates, the following terms shall be deemed to have the meanings assigned to them hereunder, as follows:

- 3.1 "**Allan Gray Fellows**" means such of the students who are awarded Fellowships from time to time, as may be accorded the status of "Allan Gray Fellows", at the discretion of The Foundation, after having successfully graduated, and completed all requirements of the Fellowship Programme.
- 3.2 "**Fellowship(s)**" means a study award or awards granted pursuant to the Scholarship and Bursary programme "Programme" established and administered by the Foundation, described as the Allan Gray Fellowship Programme
- 3.3 "**The Association**" means the special-purpose sub-committee hereby appointed as an operational sub-structure of The Foundation pursuant to clause 13.7 of the Trust Deed.
- 3.4 "**The Board of Trustees**" means the Board of Trustees of The Foundation duly appointed and authorised as such from time to time by the Master of the High Court, as required by law.
- 3.5 "**Association Director**" means a person who has been employed by the Foundation to direct, oversee and manage the Association Programme and

related projects through strategic engagement with the Association Executive and relevant stakeholders.

- 3.6 **"Candidate Fellows"** means those students who have been awarded Fellowships by The Foundation, during the period of undergraduate study, and prior to their graduation and eligibility for the status of Allan Gray Fellows.
- 3.7 **"Executive Committee"** means the administering body of The Association, which is to be appointed by the Imbizo at two-year intervals, in accordance with the provisions of Clause 8.
- 3.8 **"E²"** means the independently constituted Trust known as E², which has been established and resourced by the Founder, Mr Allan Gray, primarily in order to assist Allan Gray Fellows to establish successful new business enterprises in South Africa.
- 3.9 **"The Imbizo"** means the biennial General Meeting of Members of The Association, which is to be convened at two-year intervals in accordance with the provisions of Clause 8.
- 3.10 **"Portfolio Committee/s"** means such one or more designated substructures as may be appointed or elected by The Imbizo from time to time, in accordance with the provisions of Clause 8.
- 3.11 **"Trust Deed"** means the Notarial Deed of Trust, in terms of which The Foundation has been established.

4. OBJECT AND PURPOSE

The Association has been appointed as an informal but integral part of The Foundation, in order to promote and facilitate a continuing and sustained relationship between The Foundation and the Allan Gray Fellows; and to promote and encourage synergies, reciprocal support, and collaboration between Allan Gray Fellows, with particular concern for the following complementary purposes:

- 4.1 To promote the Vision and Mission of Foundation as it relates to the Allan Gray Fellows;

- 4.2 To build commitment and support for the aspirations of Allan Gray Fellows to become future responsible entrepreneurs;
- 4.3 To identify and recommend opportunities for Allan Gray Fellows to benefit from lifelong learning, and further develop their knowledge and skills;
- 4.4 To encourage and enable the identification and development of resources, prospects and programmes; and to act as a hub that facilitates synergies, networking, collaboration, and the exchange of ideas and initiatives amongst and between Allan Gray Fellows;
- 4.5 To identify and recommend opportunities for the further development of personal skills and individual growth; specifically entrepreneurial development, with particular emphasis upon the values and ethos of The Fellowship Programme;
- 4.6 To facilitate and act as a catalyst for the formation of project or other special purpose groups, and to co-ordinate their activities;
- 4.7 To facilitate dialogue and communication within the community of Allan Gray Fellows; and to build their commitment and support for the activities of The Foundation;
- 4.8 To facilitate practical opportunities for the principle of “payback”, whereby other students and other sectors of society may also derive benefit from the social commitment of Allan Gray Fellows.

5. MEMBERSHIP

- 5.1 The formal graduation and conferment of the status of Allan Gray Fellows by The Foundation in accordance with The Fellowship Programme shall be a precondition for membership of The Association; provided that such membership may at any time be granted, suspended or terminated at the discretion of The Foundation as it deems appropriate from time to time.
- 5.2 Subject to the prerogatives of The Foundation, membership of The Association shall be granted on a lifetime basis, and shall not be either transferable or

delegable.

- 5.3 For the avoidance of doubt, there shall be no obligation upon The Foundation, or The Association, or any of their respective officers to provide reasons for, or to motivate and justify decisions made from time to time with respect to the admission, suspension, or termination of membership of The Association. Provided that a Member facing possible suspension or termination may be afforded an opportunity by the Foundation, it is absolute discretion, to address the Board of Trustees, an ad hoc committee or a delegated representative of the Foundation in such manner as may be prescribed by the Foundation; with reference to the reasons for the proposed suspension or termination.

6. PREROGATIVES OF MEMBERS

Membership of The Association shall, subject to any resolution issued by the Board of Trustees, confer the following prerogatives, viz:-

- 6.1 To participate in programmes and offerings deriving from membership of The Association.
- 6.2 To receive notice of, and to attend, speak, and vote at General Meetings of The Association (including the biennial Imbizo).
- 6.3 To serve, if so elected, on the Executive Committee, Portfolio Committee, and other sub-structures of The Association.

7. OBLIGATIONS OF MEMBERS

- 7.1 It shall be required of Members of The Association that they shall at all times uphold the values and ethos of The Foundation; that they shall project and protect the reputation and good name of The Foundation; and that shall at all times act in the best interests of The Foundation, and the associated entities involved with complementary aspects of the Programme, including the E² Trust.
- 7.2 In consultation with The Foundation, Members of The Association may in the

future be expected to contribute an annual levy or other periodic contribution, in order to implement the activities of The Association.

- 7.3 Any failure by a Member to remit payment of such levy or contribution within a period of Sixty (60) days of payment deadline as determined by the Executive Committee, in the absence of good and sufficient cause, may result in the exclusion of a Member from the opportunity to participate in the future activities, events and other benefits arising from membership, but subject to the overriding discretion of The Foundation.

8. OPERATIONAL PRINCIPLES OF THE ASSOCIATION

- 8.1 **Sub-structures:** The functions of the Association may, subject to the availability of funds allocated for that purpose, be performed through the following sub-structures, viz:-

8.1.1 The General Meeting of Members (including The Imbizo), as referred to in Clause 8.2.

8.1.2 The Executive Committee, as referred to in Clause 8.5.

8.1.3 The Portfolio Committee/s and other Special Purpose Committees, if any, as referred to in Clause 8.5.

- 8.2 **The Imbizo:** A Special General Meeting (to be styled "The Imbizo") should be convened at two-year intervals and the business of The Imbizo shall include, but shall not be restricted to, the following matters, viz:-

8.2.1 A report by the Executive Committee regarding The Association's activities and programmes during the preceding 2-year period; and a Review of its forward planning;

8.2.2 Any proposal for the institution of a Membership Levy or Contribution, or an amendment thereto;

8.2.3 The appointment of a President; Secretary General; and such other office bearers as may be deemed appropriate;

- 8.2.4 The election of all other Members to serve on the Executive Committee, and other applicable substructure, including the Portfolio Committee/s.
- 8.3 **Other General Meetings:** Other General Meetings of The Association (in addition to the biennial Imbizo) may be convened at any time at the request of The Foundation, or at the instance of the Executive Committee, as the case may be; provided that a General Meeting must be convened if at any time a written requisition therefor is received, which has been signed by at least Ten (10) % (percent) Members of The Association.
- 8.4 **The Executive Committee:** The delegated functions of the Association shall be performed by an Executive Committee to be elected biennially at The Imbizo which shall comprise not less than five and not more than ten members, including the President, Secretary General, and such other office bearers as may be elected at The Imbizo; and they shall hold office as such until the next-occurring Imbizo. The Executive Committee shall execute the functions as delegated by The Imbizo and The Foundation. A meeting of the Executive Committee must be convened by the President and upon request of at least two members of the Executive Committee
- 8.5 **Portfolio Committees:** In order to carry out certain designated tasks, projects, and programmes of The Association, The Imbizo may constitute one or more Portfolio Committees, each of which shall have specific delegated functions and responsibilities consistent to these Terms of Reference
- 8.6 **Meeting Principles:** All meetings of The Association, Executive Committee and, if any, Portfolio Committees should endeavour comply with the following principles:
- 8.6.1 Issue written notices reasonably in advance, but not less than five (5) Business Days, prior to a meeting to all those who are respectively entitled to attend and participate therein.
- 8.6.2 State, in broad terms, within the notices the business to be considered at the Meeting.
- 8.6.3 Strive to perform their functions on the basis of consensus, if not possible, resolutions should be decided by a show of hands, or by a poll, as may be

considered appropriate by the President. In the event of an equality of votes, the President or other person chairing the Meeting shall be entitled to exercise a second and casting vote.

- 8.6.4 Allow only those personally present at a meeting to exercise One (1) vote. Representation through a proxy must not be allowed.
 - 8.6.5 Encourage Members, elected officers and appointed sub-committee members to attend and actively participate in the relevant Meetings and activities of the Association.
 - 8.6.6 Keep written minutes of all resolutions and maintain an Attendance Register recording the names of the Members personally present at each Meeting.
 - 8.6.7 Have minutes signed by the chairperson of the Meeting, and a copy thereof shall be made available to each person who attended the meeting and each person who did not attend, but was entitled to do so.
 - 8.6.8 Obtain consensus through a 'round robin' resolution or a meeting through electronic means in the event that it is impractical for those entitled to attend and participate, to physically meet
- 8.7 **Foundation's discretion:** Notwithstanding the foregoing, any person elected to serve on the Executive Committee or a Portfolio Committee, may be suspended or removed from office after due consideration by a duly designated office bearer acting on behalf of the Executive Committee or a Portfolio Committee and thereafter by decision of The Foundation should it deem this appropriate and in the best interests of The Association. In the event of any such suspension or removal from office neither The Foundation nor The Association, nor any office bearer shall be under any obligation to furnish reasons for such decision/s.

9. REMUNERATION AND REIMBURSEMENT

- 9.1 Members who serve from time to time on the Executive Committee, Portfolio Committees and other substructures of The Association shall not be entitled to any remuneration for their services.

- 9.2 Notwithstanding the foregoing, members of the Executive Committee or such other Committees and substructures may be awarded reimbursement for travelling, subsistence or other expenses reasonably and necessarily incurred in the execution of their duties, subject to the availability of funding within The Association's Budget, and subject to the approval of The Foundation.

10. CONFLICTS OF INTEREST

No transaction involving The Association shall be void or voidable merely by reason of the existence of a conflict of interest between The Association and one or more of its Members who serve in a fiduciary capacity, on condition that:

- 10.1 Any person having a conflict of interest must promptly declare such interest;
- 10.2 The person concerned must make full disclosure in good faith of all relevant facts and circumstances affecting such interest;
- 10.3 Following such disclosure, the person concerned must be recused from any further part in the discussion or consideration of the matter under consideration;
- 10.4 Approval of the transaction shall require a resolution which is agreed to unanimously by all other Members of the Executive Committee;
- 10.5 All material details of the transaction, and of the discussions leading up to the vote, must be minuted and recorded in writing; and reported to the next-occurring Imbizo.

11. FINANCIAL RESOURCES

The operations of The Association shall be resourced from such funding or income streams as it may receive and accrue from time to time, with the approval of The Foundation. Such funding may include:-

- 11.1 Grants to be made available at the discretion of The Foundation;

- 11.2 Voluntary Contributions to be made by Members; and the proceeds of any required Membership Levy or Contribution which may be adopted from time to time.
- 11.3 Any other source or means of fundraising which the Executive Committee, with the prior approval of The Foundation, may authorise; on condition that The Association shall not at any time, directly or indirectly, in its own name or for its own benefit or account, engage in trading or income-generating activities, save to the extent permitted by the Income Tax Act, and with due regard to the constraints arising from The Foundation's fiscal status as an approved Public Benefit Organisation.

12. LIMITATION OF LIABILITY AND INDEMNITY

- 12.1 No person holding office as a member of the Executive Committee, or any other substructure of The Association, shall incur personal liability for its debts or obligations, by reason merely of such person having accepted appointment to that office.
- 12.2 Accordingly, each such office bearer shall be indemnified by The Foundation against costs and liabilities reasonably incurred on the instructions or with the delegated authority of the Executive Committee, and in the interests of The Foundation.
- 12.3 No office bearer of The Association shall be liable for the acts, receipts, neglects, or defaults of any other office bearer, unless attributable to that individual's personal wrongful act or gross negligence.

13. AMENDMENTS AND REVOKEMENT

- 13.1 The Foundation reserves the right at any time and from time to time, at its sole and entire discretion, to amend these Terms of Reference, or to revoke the delegated functions of The Association, the Executive Committee and/or any

Portfolio Committee, in such circumstances and for such reasons as it may deem appropriate, and in the best interests of The Fellowship Programme. The Foundation may, in its sole and entire discretion, consult with the Members and/or Executive Committee of The Association before revoking the delegated functions of The Association, the Executive Committee and/or any Portfolio Committee. The Association, the Executive Committee and/or any Portfolio Committee shall automatically cease to operate and/or exist if their delegated functions are revoked by the Foundation.

14. DISPUTE RESOLUTION

- 14.1 If any dispute arises out of these Terms of Reference, or related thereto, whether directly or indirectly, the Foundation may refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.
- 14.2 Within 10 (ten) business days following such notification, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute.