

ANNEXURE "A"

NATIONAL LEGISLATION ENFORCING SOUTH AFRICA'S CONVENTION ARTICLE 17 OBLIGATIONS

- 1 South Africa's duties under Convention Article 17 to take steps to ensure that children with disabilities are afforded equal protection and enjoyment of those rights that protect and are enjoyed by other children are incorporated into National Legislation, inter-alia, as follows:
 - 1.1 Section 9 of the Bill of Rights expressly lists disability as protected ground for promotion of equality and protection against discrimination.
 - 1.2 Section 29 of the Bill of Rights recognises that a child's best interests are of paramount importance in every matter concerning the child. It establishes that every child have the right to basic health care services and social services, and the right to be protected from maltreatment, neglect, abuse or degradation.
 - 1.3 Section 29 of the Bill of Rights provides that everyone has the right to a basic education.
 - 1.4 Section 6 of Children's Act 38 of 2005 ("the Children's Act") mandates the States to respect, promote and fulfil the child's rights set out in the Bill of rights; respect the child's inherent dignity; treat the child fairly and equitably; protect the child from unfair discrimination on the grounds of the health status or disability of the child or a family member of the child; recognise a child's need for development and to engage in appropriate recreational activities; and to recognise a child's disability and create an enabling environment to respond to the special needs of that child in all proceedings, actions or decisions concerning a child.
 - 1.5 Subsection 9 of the Children's Act provides that in all matters concerning the care, protection and well-being of a child, the standard that the child's best interest is of paramount importance must be applied.

- 1.6 Subsection 11 of the Children’s Act provides that in any matter concerning a child with a disability, due consideration must be given to providing the child with parental, family or special care when appropriate; enabling the child to participate in social, cultural, religious and educational activities, recognising the special needs of the child; facilitating conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and providing the child and the child’s caregiver with necessary support services.
- 1.7 Promotion Of Equality And Prevention Of Unfair Discrimination Act No.4 Of 2000 (“PEPUDA”) sets out that no person may unfairly discriminate against any person on the ground of disability “including (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society”;
- 1.8 Section 28 of PEPUDA specifically lists disability as one of the grounds which must be regarded in respect of special measures to promote equality. This includes the duty on the State and institutions performing public functions, to:
- “(i) audit laws, policies and practices with a view to eliminating all discriminatory aspects thereof;
 - (ii) enact appropriate laws, develop progressive policies and initiate codes of practice in order to eliminate discrimination on the grounds of race, gender and disability;
 - (iii) adopt viable action plans for the promotion and achievement of equality in respect of race, gender and disability; and
 - (iv) give priority to the elimination of unfair discrimination and the promotion of equality in respect of race, gender and disability.”
- 1.9 The South African Schools Act of 1996 requires that government-funded schools admit all pupils and provide for the special educational needs of pupils with disabilities.