

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

**MEMORANDUM OF INCORPORATION**

**OF**

**THE PIETERMARITZBURG CHAMBER OF BUSINESS NPC**

**A NON-PROFIT COMPANY WITH MEMBERS**

**REGISTRATION NUMBER: 2002/026810/08**

**REGISTRATION DATE: 23 October 2002**

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## 1. INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**Act**" means the Companies Act, No 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.1.2 "**Board**" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;
- 1.1.3 "**the CEO**" means the chief executive officer for the time being appointed in terms of clause 21;
- 1.1.4 "**CIPC**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.5 "**Commissioner**" means the Commissioner for the South African Revenue Service;
- 1.1.6 "**Company**" means the company named on the first page of this Memorandum of Incorporation, the Pietermaritzburg Chamber of Business, duly incorporated under the registration number endorsed thereon;
- 1.1.7 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.8 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.9 "**Executive Committee**" means the committee constituted on the basis as set out in clause 25;
- 1.1.10 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.11 "**Management Board**" means the Board of Directors of the Company;
- 1.1.12 "**Member**" means any natural or juristic person, including any profit company (whether corporate, individual, emerging, associate, honorary, country or reciprocal), admitted as a member of the Company in terms of the provisions of this Memorandum of Incorporation;
- 1.1.13 "**Membership Category**" means the groups of categories of members contemplated in clause 9.1;

- 1.1.14 "**Memorandum of Incorporation**" means this memorandum of incorporation of the Company, as amended from time to time;
- 1.1.15 "**Objects**" shall have the meaning ascribed thereto in Clause 3 below;
- 1.1.16 "**President,**" and "**Deputy President**" means the President and the Deputy President/s respectively for the time being elected in terms of clause 22.2;
- 1.1.17 "**Regulations**" means the regulations published in terms of the Act from time to time;
- 1.1.18 "**Republic**" means the Republic of South Africa; and
- 1.1.19 "**Rules**" means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and clause 33 hereof.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
- 1.2.3.1 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.3.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.4 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.5 an expression which denotes –
- 1.2.5.1 any gender includes the other genders;
- 1.2.5.2 a natural person includes a juristic person and vice versa; and
- 1.2.5.3 the singular includes the plural and *vice versa*;

- 1.2.6 any reference to members represented by proxy shall include members represented by an agent appointed under a general or special power of attorney, and references to members present or acting in person shall include corporations represented or acting in the manner prescribed in the statutes;
- 1.2.7 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.8 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –
- 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.3.3 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.
- 1.6 Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the

day on which the first event occurs and including the day on which or by which the second event is to occur.

- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to "this Memorandum of Incorporation" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

## **2. JURISTIC PERSONALITY**

- 2.1 The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 2.2 The Company is incorporated in accordance with and governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this Memorandum of Incorporation in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- 2.2.3 the other provisions of this Memorandum of Incorporation; and its rules, if any.

## **3 OBJECTS**

- 3.1 The object of the Company is to protect and promote the interests of business within Pietermaritzburg, Msunduzi, uMgungundlovu and the Midlands region of KwaZulu-Natal, and to facilitate business opportunities and to provide information and advocacy services to stimulate a business environment conducive to business growth and the development of the local economy.
- 3.2 The provisions of this Memorandum of Incorporation are consistent with the principles set out in item 1(2) to item 1(9) of Schedule 1 to the Act in so far as such principles are applicable to the Company and no amendment of this Memorandum of Incorporation shall be competent to the extent that it is contrary to or negates any of such principles.

## **4 NON-PROFIT COMPANY PROVISIONS**

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

- 4.1.1 must apply all of its assets and income, however derived, to advance its stated objects set out in clause 3.1; and
- 4.1.2 subject to clause 4.1.1, may –
  - 4.1.2.1 acquire and hold securities issued by a profit company; or
  - 4.1.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objectives.
- 4.2 The Company, as a non-profit company, must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless as to how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director of the Company, except –
  - 4.2.1 as reasonable –
    - 4.2.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or
    - 4.2.1.2 payment of, or reimbursement for, expenses incurred to advance a stated objective of the Company;
  - 4.2.2 as payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  - 4.2.3 as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated objective of the Company; or
  - 4.2.4 in respect of any legal obligation binding on the Company.
- 4.3 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company –
  - 4.3.1 no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
  - 4.3.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts –
    - 4.3.2.1 having objects similar to the Company's main objective;
    - 4.3.2.2 as determined –
      - 4.3.2.2.1 in terms of this Memorandum of Incorporation; or

4.3.2.2.2 by the Members, failing whom, the Directors, at or immediately before the time of its dissolution; or

4.3.2.2.3 by the court, if no such determination is made in this Memorandum of Incorporation or by the Members or Directors; and

## 5 **LIMITATION OF LIABILITY**

Subject to the Companies Act, no person shall, solely by reason of being an incorporator, office bearer, Director or Member of the Company, be liable for any liabilities or obligations of the Company.

## 6 **POWERS OF THE COMPANY**

6.1 The Company has all of the legal powers and capacity of an individual for purposes of carrying out its objectives, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

6.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1) (b) (ii).

## 7 **RESTRICTIVE CONDITIONS**

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2) (b) or (c).

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

The Company elects, in terms of section 34(2), to comply to a limited extent as contemplated in clause 29 voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.

## 9 **MEMBERS, ADMISSION TO MEMBERSHIP AND SUBSCRIPTIONS**

### 9.1 **Classification of Members & Admission**

9.1.1 The Members of the Company shall comprise of corporate members, individual members, emerging members, associate members, honorary members, country members and reciprocal members.

9.1.2 A Corporate Member of the Company shall be –

9.1.2.1 those Members who were Corporate Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.2.2 Any interested registered company, close corporation, partnership, sole proprietorship and/or other enterprise (whether public or private), established for the primary reason of conducting business that has been admitted into membership at a duly constituted meeting of the Management Board;



9.1.3 An Individual Member shall be –

9.1.3.1 those Members who were Individual Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.3.2 any individual interested in the work of the Pietermaritzburg Chamber of Business, but not engaged in a business occupation, and that has been admitted into membership at a duly constituted meeting of the Management Board;

9.1.4 An Emerging Member shall be –

9.1.4.1 those Members who were Emerging Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.4.2 any interested registered company, close corporation, partnership, sole proprietorship and/or other enterprise that has less than 10 (ten) employees and that has been in operation less than 1 (one) year and that has been admitted into membership at a duly constituted meeting of the Management Board;

9.1.5 An Associate Member shall be –

9.1.5.1 those Members who were Associate Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.5.2 any interested public benefit, non-government or education organisation that has been admitted into membership at a duly constituted meeting of the Management Board;

9.1.6 An Honorary Member of the Company shall be –

9.1.6 those Members who were Honorary Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.6.2 any individual who, by reason of rendering outstanding service to the Company, is admitted as an Honorary Member, by the Management Board at their discretion at a duly constituted meeting of the Management Board;

9.1.7 A Country Member of the Company shall be –

9.1.7.1 those Members who were Country Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;

9.1.7.2 Any interested registered company, close corporation, partnership, sole proprietorship and/or other enterprise established for the primary reason of conducting business, situated outside of the Msunduzi Municipal boundaries that has been approved as a Country member by the Management Board and admitted into membership at a duly constituted meeting of the Management Board;

9.1.8 A Reciprocal Member of the company shall be-

- 9.1.8.1 those Members who were Reciprocal Members of the Company prior to the Act coming into being in accordance with Item 11 of Schedule 5 of the Act;
- 9.1.8.2 any membership based organisation admitted as a Reciprocal Member, by the Management Board at their discretion at a duly constituted meeting of the Management Board;
- 9.1.9 Applicants for membership, who apply for membership in a manner prescribed by the Board from time to time, and who –
- subscribe to the Objects of the Company; and
  - endorse the Rules,
  - shall be eligible for membership.
- 9.1.10 Applicants for membership of the Company, shall be admitted by a two-thirds majority vote (of those present) at a duly constituted meeting of the Management Board.
- 9.1.11 Any admission to membership shall only become effective when the applicant for membership has paid in full the prescribed subscription fee, or the first of its instalments, if so agreed, and any other amounts which may be payable on becoming a Member, as determined from time to time by the Management Board.
- 9.1.12 Nothing in this Memorandum of Incorporation shall derogate from the autonomy of all Members and, as such, all Members shall have the right to disassociate themselves from or disagree with any majority or other decisions of the Company, and shall further have the right to state or disseminate any views or representations at variance with such majority or other decisions of the Company. Members should strive however to protect the integrity of the Company through seeking common positions as far as possible.

## 9.2 **Membership Subscriptions & Benefits of Membership**

- 9.2.1 The Management Board shall determine the subscriptions applicable for each category of membership each year.
- 9.2.2 The Management Board may also determine from time to time an enrolment fee which shall be payable on application for membership.
- 9.2.3 Membership fees are payable annually in advance by the 31st of January of each year.
- 9.2.4 The payment of subscriptions in instalments by debit order shall be permitted with the understanding that the cost of recovery by this means will increase the annual

subscription. At any stage during the year, while monthly payments have been effected, the member shall be considered to be paid up.

- 9.2.5 Honorary Members of the Company shall enjoy all the benefits of PCB membership without the payment of subscriptions.
- 9.2.6 Reciprocal Members shall enjoy all the benefits of PCB membership without the payment of subscriptions, however the Company will enjoy membership of their organisation in lieu of these membership fees.
- 9.2.7 Only Corporate, Country, Associate and Honorary Members shall have the right to vote.
- 9.2.8 The founding members of the Company will each have 1 (one) vote over and above their possible Corporate or Honorary Member vote.
- 9.2.9 In addition to the rights of membership prescribed by the Act and by this Memorandum of Incorporation, membership of the Company shall confer upon each Member the right to receive –
  - 9.2.9.1 Access to the annual financial statements of the Company;
  - 9.2.9.2 all the services rendered by the Company including, in particular, the right to receive all notices, publications, reports and literature issued by it in the format predetermined by the Company; and
  - 9.2.9.3 to attend and speak at general meetings of the Company.

## 10 **TERMINATION OF MEMBERSHIP**

- 10.1 Membership of the Company shall be terminated –
  - 10.1.1 On resignation from the Company: Members shall give notice, in writing, of their intention to resign from the Company prior to the 31 December of any year. If such notice is given after this date, the members concerned shall be liable for the subscription which falls due on 1 January of the following year.
  - 10.1.2 upon the issue of a final order of sequestration or liquidation of or commencement of business rescue proceedings against the Member concerned;
  - 10.1.3 upon any Member ceasing to carry on business;
  - 10.1.4 upon the death of any Member, or upon any Member being declared insane or incapable of managing his own affairs;
  - 10.1.5 by expulsion, at the sole discretion of the Board, if such Member is guilty of misconduct, conduct inimical to the Objects of the Company or if such Member is guilty of conduct which has brought, or is likely to bring the Company or its business into disrepute.

10.2 Notwithstanding anything to the contrary herein contained or implied, the termination of Membership shall in no way release a Member of any obligation undertaken by that Member prior to the termination of its Membership.

10.3 A Member who resigns in terms of clause 10.1.1 hereof –

10.3.1 shall be bound by the provisions of this Memorandum of Incorporation and any Rules of the Company until the date of the final termination of its Membership; and

10.3.2 shall not be entitled to any refund and shall be liable for its financial and/or any other responsibilities to the Company, including any arrears which are due up to the date of expiry of its period of notice.

## 11 **NON-TRANSFERABILITY OF MEMBERSHIP**

Save may be provided otherwise herein, Membership of the Company may not be assigned or transferred.

## 12 **REPRESENTATIVE MEMBERS**

12.1 The Board is entitled (but not obliged) to recognise any person as a representative of a Member, by reason of her/his appointment as –

12.1.1 an executive office holder or duly authorised representative of a particular organisation, statutory body or company;

12.1.2 an executor, administrator, trustee, curator or guardian of the estate of a deceased or sequestrated Member, or of a Member who is otherwise under disability; or

12.1.3 the liquidator of any Member which is a body corporate in the course of being wound up.

12.2 Should the Board recognise a representative Member, from the date of such recognition and submission of any proof required by the Board, he/she shall be deemed to be a Member of the Company in the relevant capacity or of the same class as the Member concerned.

## 13 **MEMBERS' REGISTER**

13.1 The Company shall maintain a Members' register in the form prescribed by the Act and maintain such register in accordance with the prescribed standards.

13.2 The Members' register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.

13.3 The Members' register shall be open to inspection by any Member at any reasonable time during the ordinary business hours of the Company.

## 14 **MEETINGS OF MEMBERS & THE ANNUAL GENERAL MEETING**

- 14.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a special meeting of Members at any time.
- 14.2 Subject to the provisions of section 60, dealing with the passing of resolutions of Members otherwise than at a meeting of Members, the Company shall hold a meeting of Members –
  - 14.2.1 at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision; or
  - 14.2.2 when required in terms of clause 14.3 or by any other provision of this Memorandum of Incorporation.
- 14.3 The Board shall call a meeting of Members if 1 (one) or more written and signed demands calling for such a meeting are delivered to the Company and –
  - 14.3.1 each such demand describes the specific purpose for which the meeting is proposed; and
  - 14.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 14.4 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Members annually, between the months of March and August.
- 14.5 Each annual general meeting of the Company contemplated in clause 14.4 shall provide for at least the following business to be transacted –
  - 14.5.1 the presentation of the financial statements for the immediately preceding financial year of the Company;
  - 14.5.2 the election of Directors, to the extent required by the Act or by this Memorandum of Incorporation;
  - 14.5.3 the appointment of an auditor for the following financial year, to the extent that the annual financial statements of the Company are required to be audited in terms of the Act or by this Memorandum of Incorporation; and
  - 14.5.4 any matters raised by the Members, as prescribed
- 14.6 Save as otherwise provided herein, the Company is not required to hold any other meetings of Members other than those specifically required by the Act.
- 14.7 The Board may determine the location of any meeting of Members, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

- 14.8 The minimum number of days for the Company to deliver a notice of a meeting of Members to the Members as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Members as of the record date for the meeting at least 15 (fifteen) business days before the meeting is to begin.
- 14.9 The quorum requirement for a meeting of Members to begin or for a matter to be considered are as set out in section 64(1) and 64(2) and, accordingly –
- 14.9.1 a meeting of Members may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 5% (five percent) of the voting rights that are entitled to be exercised at the meeting; and
- 14.10 The time periods allowed in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements –
- 14.10.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;
- 14.10.2 for consideration of a particular matter to begin have not been satisfied –
- 14.10.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
- 14.10.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week, provided that the person intended to chair a meeting that cannot begin due to the operation of clause 14.9.1 may extend the 1 (one) hour limit allowed in clause 14.10 for a reasonable period on the grounds that –
- 14.10.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
- 14.10.4 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of clause 14.9.1.
- 14.11 The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.
- 14.12 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 14.10 unless the location for the meeting is different from –
- 14.12.1 the location of the postponed or adjourned meeting; or

- 14.12.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 14.13 If at the time appointed in terms of clause 14.10 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 14.9.1 have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 14.14 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.
- 14.15 The maximum period allowable for an adjournment of a meeting of Members is as set out in section 64(12), without variation.
- 14.16 The chairperson, if any, of the Board shall preside as chairperson at every Member's meeting.
- 14.17 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no director is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairperson of the meeting.
- 14.18 The chairperson of a meeting of Members may –
- 14.18.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
- 14.18.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 14.19 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless –
- 14.19.1 it is brought to the attention of the chairperson at the meeting; and
- 14.19.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 14.20 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised –

14.20.1 at the meeting or adjourned meeting at which the vote objected to was recorded;  
or

14.20.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

14.21 The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.

## 15 MEMBERS' MEETINGS BY ELECTRONIC COMMUNICATION

15.1 The Company may conduct a meeting of Members entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

15.1.1 any meeting of Members may be conducted entirely by Electronic Communication;  
or

15.1.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any meeting of Members that is being held in person, so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

15.2 Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Member or proxy concerned.

## 16 VOTES OF MEMBERS

16.1 Only Members in good standing, i.e. fully paid up members, will be allowed to vote.

16.2 At a meeting of the Company every person present and entitled to exercise voting rights shall be entitled to such number of votes as allocated by the Board from time to time to the specific Member, having regard to inter alia its Membership Category.

16.3 At any meeting of the Company a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.



- 16.4 In the case of an equality of votes, the chairperson of the meeting, shall not be entitled to a second or casting vote.
- 16.5 The board of any company or the controlling body of any other entity or person that is a Member may authorise any person to act as its representative at any meeting of Members of the Company, in which event the following provisions will apply –
- 16.5.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual Member; and
- 16.5.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any meeting of Members at which such person intends to exercise any rights of such Member, unless excused from doing so by the chairperson of such meeting.

## 17 PROXIES AND REPRESENTATIVES

- 17.1 Any Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to –
- 17.1.1 participate in, and speak and vote at, a meeting of Members on behalf of that Member; or
- 17.1.2 give or withhold written consent on behalf of that Member to a decision contemplated in section 60.
- 17.2 A proxy appointment –
- 17.2.1 must be in writing, dated and signed by the Member;
- 17.2.2 must reach the Company no later than 48 (forty eight) hours before the meeting is due to commence; and
- 17.2.3 remains valid for –
- 17.2.3.1 6 (six) months after the date on which it was signed; or
- 17.2.3.2 any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.
- 17.3 The holder of a power of attorney or other written authority from a Member may, if so authorised thereby, represent such Member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Member at a meeting of Members.

- 17.4 A Member may appoint the President of the Company or any other person to exercise the vote on its behalf.
- 17.5 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –
  - 17.5.1 a Member has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3) (a);
  - 17.5.2 a Member’s proxy may delegate the proxy’s powers to another person as set out in section 58(3)(b);
  - 17.5.3 a Member or his proxy must deliver to the Company a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Member’s rights ; and
  - 17.5.4 unless the instrument appointing a proxy provides otherwise, a Member’s proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58(7),

and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

- 17.6 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We \_\_\_\_\_

being a member of \_\_\_\_\_ do hereby appoint

\_\_\_\_\_

or failing him/her

\_\_\_\_\_

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at on and at any adjournment thereof as follows:-

	In favour of	Against	Abstain
Special Resolution 1	.....	.....	.....
Ordinary Resolution 1	.....	.....	.....

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

\_\_\_\_\_  
MEMBER'S SIGNATURE

(Note -- A member entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a member of the Company)."

## 18 MEMBERS' RESOLUTIONS

- 18.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Members exercised on the resolution, as provided in section 65(7).
- 18.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9).
- 18.3 No matters, except those matters set out in section 65(11) (to the extent applicable to the Company) and any other matter required by the Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution adopted at a meeting of Members of the Company.
- 18.4 In the event that any Member abstains from voting in respect of any resolution, such Member will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

## 19 MEMBERS ACTING OTHER THAN AT A MEETING

- 19.1 In accordance with the provisions of section 60, a resolution that could be voted on at a meeting of Members (including in respect of the election of Directors) may instead be –
- 19.1.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
- 19.1.2 voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.
- 19.2 A resolution contemplated in clause 19.1 –
- 19.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted meeting of Members; and

19.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.

19.3 Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause 19, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

## 20 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

20.1 The Board must comprise at least 7 (seven) Directors, with a maximum number of 14 (fourteen) Directors that may be appointed.

20.2 The Board shall at least 30 (thirty) days prior to the Annual General Meeting at which Directors are to be elected, call for nominations for the election of directors from the Members. Nominees shall be included in a list of persons from whom nominations have been received and accompanied by a brief outline of the nominee's suitability for the position of director ("Directors Candidate List"). Each person on the Directors Candidate List must have consented in writing to act as a director. The Directors Candidate List shall be sent to the Members together with the notice of the Annual General Meeting no later than 21 (twenty one) days prior to the Annual General Meeting. At the Annual General Meeting the Directors shall be elected by voting members in accordance with section 68 (2) Of the Companies Act.

20.3 The Board shall have the power, by majority vote to –

20.3.1 appoint such additional Directors as the Board may consider appropriate; and/or

20.3.2 appoint a successor or successors to assume office as Directors/s on the failure of any one or more of them; and/or

20.3.3 remove any Director from office as they may in their discretion deem fit, provided that they shall so exercise the powers hereby granted to them to ensure that the number of Directors shall not fall below 7 (seven).

20.4 In the event that the number of Directors should, for any reason, fall below 7 (seven), the remaining Directors/s –

20.4.1 shall retain the power to act in terms of this clause to appoint a further Director to increase the Directors to the required number; and

20.4.2 shall further, pending such appointment, have power to exercise all the functions and powers of the Directors under this Memorandum of Incorporation for a period not exceeding 2 (two) months.

20.5 In addition to satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or

qualifications to become or remain a Director or a prescribed officer of the Company.

- 20.6 Unless the terms upon which any Director is appointed provide otherwise, each Director of the Company shall serve for a period of 2 (two) years and a vacancy in the number of Directors shall only arise in the event of –
- 20.6.1 any Director ceasing to hold office or become disqualified from holding office as such for any reason; and/or
- 20.6.2 the Directors resolving to increase the number of Directors; and/or
- 20.6.3 any of the other circumstances contemplated in section 70(1) arising.
- 20.7 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1), and the powers of the Board in this regard are not limited or restricted by this Memorandum of Incorporation.
- 20.8 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 20.9 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 20.10 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration and otherwise as a disinterested quorum of the Directors may determine.
- 20.11 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company or other juristic person promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company or juristic person.

## 21 THE CHIEF EXECUTIVE OFFICER

- 21.1.1 Subject to the direction and control of the Board, there shall vest in the CEO, who is permanently employed, by the Board, the powers and functions assigned to her by the Board which powers and functions may include, inter alia-

- 21.1.1.1 To manage the affairs of the Company;
  - 21.1.1.2 To strategise and execute policy in consultation with the Board;
  - 21.1.1.3 To appoint and manage members of staff in a manner that will lead to the successful attainment of the objectives of the Company;
  - 21.1.1.4 To liaise with Members, government, other organisations and the media, both nationally and internationally, and to represent the Company in domestic and public affairs and act as an official spokesperson for the Company in accordance with its policies;
  - 21.1.1.5 To report and make recommendations to the Board, and the Executive Committee;
  - 21.1.1.6 To prepare and submit an annual report to the Annual General Meeting;
  - 21.1.1.7 To prepare, in consultation with the treasurer, and to submit annual financial statements to the Annual General Meeting;
  - 21.1.1.8 To prepare, in consultation with the treasurer, and to submit to the Management Board for approval, an annual budget;
  - 21.1.1.9 To ensure that the overall finances are in accordance with the budgets approved by the Management Board;
  - 21.1.1.10 To ensure that the Act is complied with in the Company's administration;
  - 21.1.1.11 In consultation with the treasurer, on behalf of the Company to invest, retain, realize and reinvest any moneys not required for the immediate business of the Company, on fixed deposit or in recognized public securities or in any other way that the Officers Committee may, from time to time, determine;
  - 21.1.1.12 generally, to perform such other duties as the Board may determine, to attain the objectives of the Company.
- 21.2 The Directors may from time to time entrust to and confer upon a managing Director for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 22 DIRECTORS' MEETINGS

- 22.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit save that meetings of the Directors shall be held not less than 5 (five) times a year.

- 22.2 The Directors shall elect a President who shall act as Chairperson and 2 (two) Deputy Presidents who shall act as Deputy Chairpersons. The Chairperson, or in his absence, one of the Deputy Chairpersons, shall be entitled to preside over all meetings of Directors. If no Chairperson or Deputy Chairperson is elected, or if at any meeting none are present or willing to act as Chairperson thereof, within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be Chairperson of such meeting.
- 22.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 22.4 The Board has the power to –
- 22.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 22.4.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 22.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4); and
- 22.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5),
- and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.
- 22.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) shall consist of no fewer than 50 (fifty) percent of the appointed Directors.
- 22.6 The voting rights at such a meeting and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clause 22.6.5 and accordingly –
- 22.6.1 if all of the Directors of the Company –
- 22.6.1.1 acknowledge actual receipt of the notice convening a meeting; or
- 22.6.1.2 are present at a meeting; or

- 22.6.1.3 waive notice of a meeting, the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 22.6.2 a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;
- 22.6.3 each Director has 1 (one) vote on a matter before the Board;
- 22.6.4 a majority of the votes cast on a resolution is sufficient to approve that resolution;
- 22.6.5 in the case of a tied vote –
  - the chair may cast a deciding vote in addition to any deliberative vote;
- 22.6.6 Resolutions adopted by the Board –
  - 22.6.6.1 must be dated and are effective as of the date of the resolution, unless any resolution states otherwise.
- 22.7 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

## 23 **DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

- 23.1 The Company may not pay remuneration to the Directors for their services as directors.
- 23.2 As contemplated in item 5(3) in Schedule 1 to the Act, the Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director.
- 23.3 Notwithstanding the provisions of clause 23.2, a transaction shall not be prohibited if it –
  - 23.3.1 is in the ordinary course of the Company's business and for fair value;
  - 23.3.2 constitutes an accountable advance to meet –
    - 23.3.2.1 legal expenses in relation to a matter concerning the Company; or
    - 23.3.2.2 anticipated expenses to be incurred by the person on behalf of the Company; or
  - 23.3.3 is to defray the person's expenses for removal at the Company's request; or

## 24 **INDEMNIFICATION OF DIRECTORS**

- 24.1 The Company may –



- 24.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);
  - 24.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or
  - 24.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7), and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.
- 24.2 The provisions of clause 24.1 shall apply mutatis mutandis in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee, if any.

## 25 COMMITTEES OF THE BOARD

- 25.1 The Board may –
- 25.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or
  - 25.1.2 include in any such committee persons who are not Directors, as set out in section 72(2) (a), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
- 25.2 The authority of a committee appointed by the Board as set out in section 72(2) (b) and (c) is not limited or restricted by this Memorandum of Incorporation.
- 25.3 The Board shall pursuant to the principles of corporate governance, determine the terms of reference of the committee.

## 26 EXECUTIVE COMMITTEE

- 26.1 The Executive Committee is established in order to make recommendations to the Board regarding operational aspects of the organization.
- 26.2 The Executive Committee shall comprise:
- 26.2.1 The President;
  - 26.2.2 2 (two) Deputy Presidents;
  - 26.2.3 The Immediate Past President;
  - 26.2.4 The Treasurer; and
  - 26.2.5 2 (two) additional members elected by the Management Board
- 26.3 Meetings of the Executive Committee:-
- 26.3.1 Meetings of the Executive Committee shall be held no less than 7 (seven) times per year and at such other times as the Board or the President may determine.

- 26.3.2 The Executive Committee shall be newly constituted each year at the second meeting of the Management Board after the Annual General Meeting.
- 26.3.3 Unless otherwise provided elsewhere in this Memorandum of Incorporation or in the Rules, the quorum in respect of meetings of the Executive Committee shall be 3 (three).
- 26.3.3.1 Decisions of the Executive Committee shall be determined by a simple majority of votes.
- 26.3.4 Each Member is entitled to one vote, provided that with a written mandate to do so, a single representative present at a meeting of the Executive Committee may exercise the votes of absent members.
- 26.3.5 The Executive Committee may co-opt any person who may be in a position to assist in its objectives for a period not exceeding 1 (one) year, provided that such person shall have no right to vote.
- 26.3.6 The Executive Committee may appoint or request observers to attend its meetings, provided that such observers shall have no right to vote.
- 26.3.7 The President, or in his absence the Deputy President, or in the case of both being absent, the second Deputy President, shall preside as Chairperson at any meeting of the Executive Committee.

## 27 OFFICE BEARERS

- 27.1.1 The office bearers of the Company shall be-
- 27.1.1.1 The President;
- 27.1.1.2 The First Deputy President;
- 27.1.1.3 The Second Deputy President;
- 27.1.1.4 The Treasurer;
- 27.1.1.5 The Immediate Past President.
- 27.1.2 The Office Bearers (excluding the immediate past president) shall be directors of the company elected at the Annual General Meeting and shall be elected by the Management Board at a meeting constituted for this purpose.
- 27.1.3 Each Office Bearer shall serve for one term being 2 (two) years.
- 27.1.4 The term of office shall commence from the conclusion of the relevant Annual General Meeting at which they will be elected and shall endure until the conclusion of the following Annual General Meeting.

27.1.5 The president and deputy president may be re-elected for a second term provided that that they may not occupy these offices for more than two successive terms.

27.1.6 In the event of any office falling vacant during a term, the vacancy shall be filled by the Management Board for the remainder of the term.

27.1.7 The Office Bearers shall have the following functions-

27.1.7.1 The President shall be responsible for *inter alia*:

27.1.7.1.1 Representing the Company in domestic and public affairs and acting as official spokesperson for the Company in accordance with its policies;

27.1.7.1.2 Chairing the Annual General Meetings and any General Meetings of the Company;

27.1.7.1.3 Chairing the Board and fulfilling the responsibilities of this position as required by the highest standards of corporate governance;

27.1.7.1.4 Chairing the Executive Committee.

27.1.7.2 The First Deputy President shall be responsible for *inter alia*-

27.1.7.2.1 Deputising for the President in his absence;

27.1.7.2.2 Accepting any other particular responsibility assigned by the Board.

27.1.7.3 The Second Deputy President shall be responsible for *inter alia*-

27.1.7.3.1 Assisting the President and the First Deputy President in representing the Company;

27.1.7.3.2 Accepting any particular responsibility assigned by the Board.

27.1.7.4 The Treasurer shall be responsible for overseeing the financial affairs of the Company including the drafting of the annual budget and reporting on these to the Board, Executive Committee and the Annual General Meeting.

## 28 **FUNDAMENTAL TRANSACTIONS**

As contemplated in item 2(1) of Schedule 1 to the Act, the Company may not —

28.1 amalgamate or merge with, or convert to, a profit company; or

28.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

## 29 **ANNUAL FINANCIAL STATEMENTS**

- 29.1 Notwithstanding the provisions of clause 8 –
- 29.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
- 29.1.1.1 the Act;
- 29.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;
- 29.1.1.3 the Regulations; and
- 29.1.1.4 this Memorandum of Incorporation; and
- 29.1.2 the Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 29.2 The Company shall in particular, in order to satisfy its obligations in Regulation 27(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any party, to the extent applicable.
- 29.3 The Company shall appoint an auditor each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 29.4 For purposes of the affairs of the Company, with regard to and/or relating to the auditor of the Company, the provisions of sections 90(1), 90(1A), 90(2)(a) and (b), 90(3), 90(5), 90(6)(a)(i) to (iii), 90(6)(b) and (c), 91(1), 91(2), and 93(1) are incorporated, *mutatis mutandis*, into this Memorandum of Incorporation.
- 29.5 In the event that the annual financial statements of the Company –
- 29.5.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and
- 29.5.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 29.6 Subject to clause 29.5, and notwithstanding any contrary provision in the Act, the annual financial statements shall be audited as set out in clause 29.7.
- 29.7 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 29.6, the annual financial statements shall be prepared on a

basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –

- 29.7.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 29.7.2 subject to and in accordance with IFRS –
  - 29.7.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
  - 29.7.2.2 show the Company's assets and liabilities, as well as its income and expenses;
  - 29.7.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
  - 29.7.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

### 30 **ACCESS TO COMPANY RECORDS**

- 30.1 Each Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
  - 30.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof, and any Rules of the Company;
  - 30.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
  - 30.1.3 all –
    - 30.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact, hold an annual general meeting; and
    - 30.1.3.2 annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;
  - 30.1.4 notice and minutes of all meeting of Members, including –
    - 30.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
    - 30.1.4.2 any document that was made available by the Company to Members in relation to each such resolution;

30.1.5 any written communications sent generally by the Company to all Members (or all members of any class of Members, if any), for a period of 7 (seven) years after the date on which each of such communications was issued; and

30.1.6 the Members' register of the Company.

30.2 A person not contemplated in clause 30.1 has a right to inspect the Members' register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

## 31 NOTICES

31.1 All notices intended or required to be given by the Company to any Member of the Company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations.

31.2 Each Member of the Company –

31.2.1 shall notify in writing to the Company an address, which address shall be its registered address for the purposes of receiving written notices from the Company by post; and

31.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be its address for the purposes of receiving notices by way of Electronic Communication.

31.3 Any Member whose address is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon it, shall be entitled to have notices served upon it at such address.

31.4 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

## 32 AMENDMENT OF MEMORANDUM OF INCORPORATION

32.1 Subject to the Companies Act, this Memorandum of Incorporation may, subject to clauses 3.2, only be altered or amended in the manner set out below-

32.1.1 if a special resolution to amend it is proposed by the Board of the company and adopted at a duly convened meeting of the Members;

32.1.2 by the Board if the Company is required to do so to comply with an order of court;

32.1.3 if required pursuant to section 152(6)(b) of the Companies Act.

32.2 As contemplated in section 17, the Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

- 32.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member; and
- 32.2.2 filing a notice of the alteration.
- 32.3 An amendment of this Memorandum of Incorporation will take effect from the later of –
  - 32.3.1 the date on, and time at, which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7); or
  - 32.3.2 the date, if any, set out in the said notice of amendment.

### 33 **COMPANY RULES**

- 33.1 The Board, the CEO or any Member may submit proposals regarding the making of Rules or the amendment, alteration, addition to or revision thereof, provided that any proposed amendment, together with a motivation for its adoption, is conveyed in writing to all Members at least 21 (twenty one) days prior to the Annual General Meeting or a Special General Meeting.
- 33.2 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation subject to it obtaining 66% of the exercisable votes of Members present or by proxy in favour of such amendments;
- 33.3 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4) and shall remain so binding unless amended or rescinded by a resolution of the Annual Convention.
- 33.4 The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
  - 33.4.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member; and
  - 33.4.2 filing a notice of the alteration.

### 34 **DISSOLUTION/WINDING UP**

- 34.1 The Company may be dissolved if-
  - 34.1.1 at least two thirds of the Members present and voting at a meeting convened for the purpose of considering such matter, are in favour of dissolution; and
  - 34.1.2 not less than 21 (twenty one) days notice shall be given of dissolution of the Company and disposal of the Companies Assets shall be considered.

34.2 If there is no quorum at such meeting the meeting shall stand adjourned for not less than 1 (one) week and the members attending such adjourned meeting shall constitute a quorum.

34.3 If upon dissolution of the Company there remains any assets whatsoever after the satisfaction of all its debts, liabilities and obligations, such assets shall not be paid or given to the Members but shall be applied in terms of clause 0 above.

### 35 **PUBLIC BENEFIT ORGANISATION PROVISIONS**

35.1 The Company will have a Board of Directors consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity, for tax purposes.

35.2 No single person will directly or indirectly control the decision-making powers relating to the Company.

35.3 The Company will not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives.

35.4 The Company will utilise substantially the whole of its funds for the sole or principal object for which it has been established.

35.5 No member will directly or indirectly have any personal or private interest in the Company.

35.6 Substantially the whole of the activities of the Company will be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group.

35.7 The Company will not have a share or other interest in any business, profession or occupation which is carried on by its members.

35.8 The Company will not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule to the Income Tax Act (Act 58 of 1962) as amended, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

35.9 Substantially the whole of the Company's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere. In the absence of any formal or official interpretation issued by SARS in respect of the meaning of "funding", the Board will confirm its interpretation and application of this condition with SARS to ensure compliance with section 30B.

35.10 The Company must as part of its dissolution transfer its assets to —

a). Another entity approved by the Commissioner for SARS in terms of section 30B of the Income Tax Act;



- b). A public benefit organisation approved in terms of section 30 of the Income Tax Act (Act 58 of 1962) as amended;
  - c). An institution, board or body which is exempt from tax under section 10(1) (cA) (i) of the Income Tax Act (Act 58 of 1962) as amended; or
  - d). The government of the Republic of South Africa in the national, provincial or local sphere;
- 35.11 The Board of Directors will submit any amendment of the Memorandum of Incorporation to the Commissioner within 30 days of its amendment.
- 35.12 The Company will comply with such reporting requirements as may be determined by the Commissioner for SARS from time to time.
- 35.13 The Company is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act (Act 58 of 1962) as amended, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act (Act 58 of 1962) as amended.