

**COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION**

**REPUBLIC OF SOUTH AFRICA**

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**In accordance with s 16(1)(c)**

**MEMORANDUM OF INCORPORATION  
OF  
SOUTH AFRICAN FAITH COMMUNITIES' ENVIRONMENT INSTITUTE NPC  
Registration Number: 2006/014388/08  
('the Company')**

The Company is a non-profit company with members, and a multi-faith organisation, with the object of supporting faith leaders and their communities in Southern Africa to:

**Empower and inspire faith leaders and communities to raise awareness of, to gain skills and to take action on eco-justice, sustainable living and climate justice.**

**The Company shall carry out this object by collaborating with people of faith, networking, training and learning, research and taking action to, *inter alia*:**

- **Raise environmental awareness;**
- **Promote environmental responsibility and action;**
- **Facilitate and support environmental advocacy;**
- **Confront injustices and advance eco- and socio-economic justice;**
- **Influence and formulate environmental policies and ethical guidelines.**

**Adoption of Memorandum of Incorporation**

This amended Memorandum of Incorporation ("MOI") was adopted by the members of the Company, in accordance with section 16(1)(c) of the Companies Act, 2008 ("the Act"), as evidenced by the special resolution to which this MOI is annexed.

**Confirmed as so adopted and amended**

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**Chairperson**

*In this MOI:*

- a) A reference to a clause by number refers to the corresponding clause in this MOI;*
- b) A reference to a section by number refers to the corresponding section of the Act; and*
- c) Words that are defined in the Act bear the same meaning in this MOI as in the Act.*

## **1. INCORPORATION**

- 1.1 The Company was incorporated is a non-profit company, as defined in the Act.
- 1.2 The Company was incorporated in accordance with, and is governed by:
  - 1.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;
  - 1.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI; and
  - 1.2.3 the provisions of this MOI.

## **2. OBJECT AND POWERS OF THE COMPANY**

- 2.1 The object of the Company is as set out on the first page of this MOI and describes the ambit and types of the public benefit activities (as defined in the Ninth Schedule to the Income Tax Act 58 of 1962, as amended [“the Income Tax Act”]) which the Company intends to carry out.
- 2.2 The Company shall have all the legal powers and capacity of an individual:
  - 2.2.1 provided that these powers may only be exercised in pursuing its stated object;
  - 2.2.2 except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and
  - 2.2.3 subject to the restrictive conditions, limitations or qualifications, as are contained in this MOI.
- 2.3 The powers of the Company may only be executed in accordance with the main object of the Company.
- 2.4 The Company may not:
  - 2.4.1 amalgamate or merge with, or convert to, a profit company;
  - 2.4.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that the disposal of an asset occurs in the ordinary course of the activities of the Company; or
  - 2.4.3 knowingly become a party to, or knowingly permit itself to be used as part of any tax avoidance scheme, being any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax duty or levy which would have been or would have become

payable by any person under the Income Tax Act or any other Act Administered by the Commissioner for the South African Revenue Services.

- 2.5 All of the public benefit activities of the Company shall be carried out in a non-profit manner and with an altruistic or philanthropic intent and no public benefit activities shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of the Company, other than by way of reasonable remuneration payable to that director, officer or employee.

### **3. MEMBERS OF THE COMPANY**

- 3.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has members who are in either of two classes, being voting and non-voting members respectively.
- 3.2 The work of the Company is founded on its ongoing engagement with faith leaders and multi-faith or community leaders, and the projects carried out by these leaders and their faith communities.
- 3.3 The Board of the Company is accountable to faith communities, and the mechanism for this accountability is through the representative membership structure of the Company.
- 3.4 The voting members of the Company shall be the individual representatives selected by the faith community groups or entities (“the faith groups”) which support the objectives of the Company and which are included on the register in terms of 3.6.
- 3.5 Where there are individuals who are engaged with and contribute to the work of the Company, but who do not belong to a faith group, they will be encouraged to join or found a faith group in their area or on a remote or digital platform made up of likeminded persons who are not based at a local group. If this is not possible, the individual may be admitted on application as a non-voting member.
- 3.6 The Company will keep a register, which will be updated annually, of the faith groups which are approved by the Board as being part of the Company ecosystem. The process and terms of inclusion of these groups in the register of associated groups will be determined and articulated by the Board from time to time.
- 3.7 Each year, each of the faith groups will select a representative who will serve as a voting member of the Company in that year.
- 3.8 Voting members shall all be individual, natural persons.
- 3.9 The representatives of the faith groups selected will, on acceptance of their nomination, be accorded the status of voting members of the Company for the ensuing year.
- 3.10 Each voting member shall have a single vote.

- 3.11 The Board of the Company shall also be entitled to admit as non-voting members of the company, individuals, other organisations, stakeholders, parties or interested persons as support the work of the Company and wish to be admitted to and participate as non-voting members. The Board may create and administer procedures for admission as non voting members and protocols for members in general.
- 3.12 The Company shall maintain an up to date register of the voting and non-voting members.
- 3.13 A member of the Company shall cease to be a member if:
- 3.13.1 the faith group which that member represents does not update or renew its intention to continue as part of the ecosystem of the Company;
  - 3.13.2 the faith group which that member represents indicates in writing that it no longer wishes to be associated with the Company or that it no longer wishes to have a voting member representing it;
  - 3.13.3 the member resigns in writing addressed to the Chairperson of the Company or to its Secretary at its registered office;
  - 3.13.4 a resolution of a majority of voting members of the Company in general meeting deprives that person of their membership, provided that before the members may consider the resolution, the member concerned shall be given notice of the meeting and the resolution, and the member shall be given a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote;
  - 3.13.5 being a voting member who has been selected by a recognised faith group, their term of office ends and is not renewed by the group they represent;
  - 3.13.6 the member's nomination by the body which that member represents is revoked in writing addressed to the Chairperson of the Company or its Secretary at its registered office;
  - 3.13.7 the member dies or is declared insolvent or incapacitated or is convicted of a criminal offence in respect of which a sentence of imprisonment without the option of a fine is imposed; or
  - 3.13.8 the member is a juristic person, and business rescue, insolvency, voluntary winding up or deregistration proceedings have begun in respect of that member.

#### **4. RIGHTS OF MEMBERS**

- 4.1 Voting members may appoint proxies to act on their behalf at meetings of the Company provided that:
- 4.1.1 the proxy must be appointed from within the one of the faith groups;
  - 4.1.2 members may not appoint more than one proxy at one time;
  - 4.1.3 a member's proxy may not delegate the proxy's powers to another person;
  - 4.1.4 unless authorised by the Board in advance, no person may act as proxy for more than one member at any time;

- 4.1.5 a member must clearly indicate to the Company the name of the proxy or any change in proxy before that proxy may exercise the member's rights at a members meeting; and
- 4.1.6 any member intending to vote by proxy shall have the right to terminate the proxy at any time prior to the commencement of the meeting by lodging with the Company a written notice terminating the proxy and a proxy shall further be deemed to be *ipso facto* terminated in the event of the member who granted the proxy to be present at the meeting
- 4.2 The Company shall maintain and keep up to date, in one of the official languages of South Africa, a physical and/or electronic register of the members of the Company and members shall have the right to inspect and copy the information contained in the members' register.

## 5. MEMBERS' MEETINGS - CONVENING

- 5.1 The Company shall convene an Annual General Meeting ("AGM") of its members once in every calendar year, but no more than 15 months after the date of the previous AGM, or within an extended time allowed by the members by unanimous vote.
- 5.2 Members' meetings shall also be called:
- 5.2.1 at any time that the Board is required by the Act or this MOI to refer a matter to members for decision and the Board determines that it is not appropriate to hold the matter over till the following AGM; or
- 5.2.2 if the number of directors drops below the minimum required by this MOI, and the next AGM is more than 2 months from the date upon which the relevant director/s cease/s to act.
- 5.3 The right of members to call a meeting may be exercised by at least 50% of the voting members, provided that the costs of any unscheduled meeting called by members shall be borne by the members who call the meeting and that the notice calling the meeting shall comply with the requirements of 5.5.
- 5.4 The Company's Board of directors may determine the location of any members meeting, and may hold any meeting in any country which is agreed upon as suitable.
- 5.5 The minimum number of days for the Company to deliver a notice of a members' meeting to the members, shall be 15 business days before the meeting date. The notice of meeting shall include the agenda and the detail of any proposed resolutions to be taken at the meeting.
- 5.6 The Company may conduct a meeting entirely by electronic communication or provide for participation in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

## 6. MEMBERS' MEETINGS - QUORUM AND VOTING

- 6.1 The quorum requirement for a members meeting to begin, or for a matter to be considered is 50% or three members (whichever is higher) of voting members being present or represented by proxy.
- 6.2 If, within half an hour after the appointed time for a meeting to begin, the quorum requirements for that meeting to begin have not been satisfied, the meeting shall be automatically postponed without considering any business or item of the agenda for one week, subject to the proviso in 6.4.
- 6.3 If the quorum requirements for consideration of a particular matter to begin have not been satisfied and:
- 6.3.1 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 motion or vote; or
- 6.3.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for one week.
- 6.4 The rules in 6.2 and 6.3 shall be subject to the proviso that the person intended to preside at a meeting that cannot begin may extend the half-hour limit allowed in for a reasonable period on the grounds that exceptional circumstances including weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting or 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 quorum requirements.
- 6.5 For a matter to be considered and decided on at a meeting;
- 6.5.1 sufficient voting members for a quorum to be established must be present at the time the matter is decided; and
- 6.5.2 the matter must have been included in the agenda of the meeting and/or mentioned in the notice of meeting provided that, if any matter is raised which members have not had prior notice of **and** there is any member present who objects to consideration of and voting on the matter in absence of proper notice, the matter shall be postponed until a meeting at a later date to allow proper notice to be delivered.
- 6.6 The maximum period allowable for an adjournment of a members meeting is 60 days from the date of the adjourned meeting or part-meeting.
- 6.7 Meetings of members shall be chaired by the Chairperson or, in their absence, by another Board member elected by the Board to chair that meeting.

- 6.8 For a resolution to be adopted at a members meeting, it must be supported by:
- 6.8.1 more than 50% of the voting members present or represented by proxy , in the case of an ordinary resolution; or
- 6.8.2 at least 75% of the voting members present or represented by proxy, in the case of a special resolution.
- 6.9 The members may consider a matter other than at a meeting, and the members may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the members, given in person or by electronic communication, provided that each member has received notice of the matter to be decided upon. For a resolution to be adopted by written vote of members it must be 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 members meeting, which votes shall be those received within 20 business days of the resolution's being submitted to them. A decision so made shall have the same effect as if it had been approved at a meeting. Each decision so made shall be recorded in writing and included in the record of resolutions of the members.
- 6.10 A special resolution is only required for those matters set out in section 65(11), being the amending of the MOI, ratifying actions by the Company or directors in excess of their authority, approving an application to transfer the registration of the Company to a foreign jurisdiction, amalgamating or merging with another non-profit Company, approving the voluntary winding up of the Company, or disposing of all or a greater part of the assets of the Company.

## 7. COMPOSITION OF THE BOARD OF DIRECTORS

- 7.1 The Board of directors shall consist of at least three persons who are elected to office by the voting members and who are not 'connected persons' (as defined in the Income Tax Act) in relation to one another and a maximum of 10 directors. No single person shall, directly or indirectly, control the decision-making powers of the Company.
- 7.2 Included in the number of the directors the Executive Director (ED) shall serve as director of the Company, *ex officio*.
- 7.3 Except for *ex officio* director, directors shall serve terms of three years each beginning from the date of their appointment and shall retire at the meeting of directors following the expiry of each term of office provided that the appointment and resignation of directors shall be staggered so that at least one third of the directors retires each year.
- 7.4 Directors retiring in terms of clause 7.3 shall be eligible for re-appointment for a maximum of two further (three total) consecutive terms of office, but once this maximum

is reached must then take a sabbatical of at least one year before they may be re-appointed as directors.

- 7.5 At the meeting at which the member of the Board retires in the manner aforesaid, the members may fill the vacated office by electing an eligible person thereto subject to clause 7.4.
- 7.6 If the number of directors falls below the minimum required by clause 7.1 at any time the remaining directors in office shall be empowered to continue to make decisions and govern the Company, while replacement directors are appointed to meet the requirements.
- 7.7 The directors shall have the power at any time to appoint any other person as a director either to fill a casual vacancy or as an addition to the Board, subject to subsequent ratification of the appointment by the members.
- 7.8 The office of a director shall *ipso facto* be vacated if:
- 7.8.1 the director's term of office ends and they are not or may not be re-appointed to office;
  - 7.8.2 by one month's written notice to the Company, the director resigns from office;
  - 7.8.3 the director ceases to be a director by virtue of the Act;
  - 7.8.4 they are a director *ex officio* and cease to occupy the relevant position or office, unless the members decide otherwise;
  - 7.8.5 the director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare their interest and the nature thereof in the manner required by the Act;
  - 7.8.6 the director is removed from office by ordinary resolution of the members, provided that before the members may consider the resolution, the director concerned shall be given notice of the meeting and the resolution, and the director shall be given a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote; or
  - 7.8.7 the director fails to attend three consecutive meetings of directors without good cause and being excused from these meetings by the remaining directors, and the remaining directors resolve to exclude them from office in accordance with section 71 of the Act.

## **8. AUTHORITY, VALUES AND DUTIES OF THE BOARD OF DIRECTORS**

- 8.1 The authority of the Company's Board of directors to lead and direct the business and affairs of the Company, as set out in section 66 (1) is limited or restricted to the extent that the powers of the Company are limited in this MOI.
- 8.2 In accordance with legal requirements, each of the directors shall exercise their powers:
- 8.2.1 in good faith and for the purpose for which they were conferred;



- 8.2.2 in the best interests of the Company; and
- 8.2.3 with the degree of care, skill and diligence that may reasonably be expected of a person:
  - 8.2.3.1 carrying out the functions of a director; and
  - 8.2.3.2 having the general knowledge, skill and experience of that director.
- 8.3 The directors shall exercise their powers in accordance with the following fundamental values:
  - 8.3.1 **Conscience, Teamwork and Honesty:** acting with intellectual honesty and independence of mind in the best interests of the Company and all its stakeholders, in accordance with the inclusive stakeholder approach to corporate governance;
  - 8.3.2 **Competence and Dependability:** having the knowledge and skills required for governing the Company effectively. This competence should be continually developed;
  - 8.3.3 **Commitment and Accountability:** diligence in performing duties and devoting sufficient time and energy to the affairs of the Company. Ensuring the Company's performance and compliance requires unwavering dedication and appropriate effort; and
  - 8.3.4 **Courage and Positivity:** taking the risks associated with directing and controlling a successful, sustainable non-profit company, as well as acting with integrity in all Board decisions and activities.
- 8.4 The duties of the directors shall include (but not be limited to) the following key areas:
  - 8.4.1 discharging the duties of governance and leadership effectively and efficiently;
  - 8.4.2 keeping the planning, strategy and work of the Company aligned with the objects of the Company and being familiar with the fundamentals of the projects and programmes in which the Company is engaged;
  - 8.4.3 keeping informed about the activities of the Company and monitoring the organisational affairs, policies and compliance environment of the Company;
  - 8.4.4 contributing meaningfully and effectively to devising and implementing the medium and long-term strategy of the Company;
  - 8.4.5 engaging with the advisory council and members for eco-theological inputs so that they may advise on the work of the Company;
  - 8.4.6 interrogating the financial statements and determining the financial performance of the Company, including its solvency and liquidity;
  - 8.4.7 overseeing the Company's risk management policy and the implementation and the ongoing monitoring of risk management;
  - 8.4.8 overseeing stakeholder policy implementation and reporting to funders and other stakeholders;
  - 8.4.9 responding to strategic challenges in a creative, proactive and constructive manner; and
  - 8.4.10 interacting with fellow Board members and management in a manner that is beneficial to the work of the Company.

## 9. BOARD OF DIRECTORS MEETINGS

- 9.1 The Board shall schedule their meetings in advance, by discussion and agreement at meetings of the Board. For additional/ unplanned meetings of the Board it shall be required that no fewer than 25% of the directors (or at least two directors, whichever is greater) shall be required to call an unplanned meeting of the Board.
- 9.2 The minimum period of notice required to hold a Board meeting is 7 business days from the date on which the notice is issued. The notice must specify the date, time and place of the meeting and the general nature of the business to be discussed. The notice shall be in writing or by electronic communication.
- 9.3 The Company's Board of Directors may conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 9.4 The Company's Board of directors may consider a matter other than at a meeting, and the directors may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the majority of directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided upon. A decision so made shall have the same effect as if it had been approved at a meeting.
- 9.5 The Board of Directors may proceed with a meeting despite a failure or defect in giving notice of the meeting, if all of the directors of the Company:
- 9.5.1 acknowledge actual receipt of the notice;
  - 9.5.2 are present at a meeting; or
  - 9.5.3 waive notice of the meeting.
- 9.6 The directors shall appoint a Chairperson, from their number, who shall preside over all meetings of the Board and perform the tasks set out in this MOI and all the other normal functions of a chairperson of the Company. The Chairperson shall remain in office for a term of one year with the option of re-election for a single additional term (two terms in total). If no Chairperson is elected, or if the Chairperson is not present at a meeting within fifteen minutes after the time appointed for holding it, the directors present may choose one of their number to preside at that meeting.
- 9.7 As a standing item in the Board meeting agendas the directors shall disclose any ongoing or current conflict of interests to the other directors. The Chairperson shall facilitate a discussion by the directors of any conflicts so declared and:
- 9.7.1 each director who declares a conflict shall absent themselves from the meeting during the time that the conflict is discussed by the other directors;
  - 9.7.2 the other directors shall consider whether the extent and nature of the conflict is adequately dealt with by the relevant director following the procedure in 9.9 OR

- whether the director should be requested or required to leave office for the duration of the conflict of interest; and
- 9.7.3 the minutes shall note the conflicts declared and decisions made by the directors.
- 9.8 The rules for directors' meetings are as follows:
- 9.8.1 the directors shall meet together not less often than three times per year for the dispatch of business but shall otherwise regulate their meetings as they think fit;
- 9.8.2 the quorum necessary for the transacting of business of the Board shall be three directors or half plus one of the total number of directors, whichever is greater;
- 9.8.3 the *ex officio* Director will be a non-voting director ;
- 9.8.4 except for the *ex officio* director, each director shall have one vote on a matter before the Board, except as provided in 9.9;
- 9.8.5 the directors will endeavour to govern by consensus but where consensus cannot be reached a vote will be taken and except as otherwise provided in this document, a majority of the votes cast on a resolution will be sufficient to approve that resolution; and
- 9.8.6 in the case of a tied vote the Chairperson may cast a deciding vote, in addition to their deliberative vote.
- 9.9 Directors shall:
- 9.9.1 disclose in advance,
- 9.9.2 inform the relevant meeting of material information and answer questions concerning,
- 9.9.3 not take part in any consideration of any matter and leave the relevant meeting after disclosure, and
- 9.9.4 not be entitled to vote on or sign any document in relation to
- any matter in which they have, or any person in relation to whom they are a 'connected person' (as defined in the Income Tax Act) have, a personal financial interest.
- 9.10 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:
- 9.10.1 any declaration given by notice or made by a director as required by section 75 with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and
- 9.10.2 every resolution adopted by the Board, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.
- 9.11 Copies of the minutes of every meeting shall be dispatched by the person appointed by the Board from time to time, to all directors within one month of the holding of the meeting.

## **10. OFFICERS, COMMITTEES AND STAKEHOLDERS**

- 10.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 10.2 The Board of Directors may appoint committees of directors, and delegate to any committee any of the authority of the Board, and/or include in any committee persons who are not directors.
- 10.3 The authority of a committee appointed by the Company's Board, as set out in section 72 (2)(b) and (c) is limited and restricted to the extent that the powers of the Company are limited by clause 2.
- 10.4 The Board of directors may invite thought-leaders, activists, persons with relevant qualification and experience, stakeholders, partners and interested parties as it sees fit, to form an advisory council of the Company.
- 10.5 The Board may consult with the advisory council on matters of eco-theology which lie within their areas of expertise at least twice yearly and from time to time.
- 10.6 The advisory council, if constituted, shall discharge the following duties:
- 10.6.1 Participate candidly and constructively in discussions with the directors;
- 10.6.2 Appropriately share their knowledge, skills and experience in the best interests of the work of the Company;
- 10.6.3 Disclose any actual or potential conflicts of interest and recuse themselves from discussion on matters in which they have a direct or indirect interest; and
- 10.6.4 At all times conduct themselves in a manner that will not bring the Company into disrepute.
- 10.7 Members of the advisory council for so long as they are a member of the advisory council and any time thereafter shall not use for their own benefit or for the benefit of any other person any confidential information acquired whilst serving as a member of the advisory council.

## **11. ACCOUNTING RECORDS, BANKING AND RECEIPT OF DONATIONS**

- 11.1 The directors shall cause accurate and complete records to be kept which enable the Company to satisfy all legal requirements and prepare financial statements.
- 11.2 The accounting records shall be securely stored and accessible to the directors from the registered office of the Company through any method or platform as the directors agree from time to time.
- 11.3 The financial transactions of the Company shall be administered via one or more bank accounts which shall be opened in the name of the Company.

- 11.4 The Company shall be entitled to accept donations including revocable and conditional donations provided that:
- 11.4.1 the Company may only accept revocable donations where the reason for the revocation is:
- 11.4.1.1 a material failure to conform to the designated purposes and conditions of the donation; or
- 11.4.1.2 any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act;
- 11.4.2 a donor (other than a donor which is an approved public benefit organisation or an institution or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable the donor or any connected person in relation to the donor to derive some direct or indirect benefit from the application of the donation.

## 12. EXPENDITURE AND USE OF RESOURCES

- 12.1 The income and property of the Company, however derived, shall be applied solely towards the promotion of its main object or invested and no funds will be distributed to any person other than in the course of undertaking any 'public benefit activity' (as defined in the Income Tax Act) and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to the directors or persons appointing directors of the Company; provided that this shall not prevent:
- 12.1.1 the payment in good faith of reasonable remuneration to any officer or servant of the Company, for any services rendered to the Company;
- 12.1.2 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;
- 12.1.3 payment in respect of any rights of that person, to the extent that those rights are administered by the Company in order to advance a stated object of the Company; or
- 12.1.4 payment in respect of any legal obligation binding on the Company.
- 12.2 Remuneration (as defined in the Fourth Schedule to the Income Tax Act) may be paid to any employee or other person in keeping with the policy of the Company from time to time provided that:
- 12.2.1 no remuneration may be paid if it is excessive, having regard to what is generally considered reasonable in the appropriate sector and in relation to the service rendered;
- 12.2.2 no person shall be economically benefitted in any way which is not consistent with the objects of the Company; and
- 12.2.3 the provisions of clause 9.10 shall apply to any decision taken regarding remuneration for directors, officers or their connected persons.

- 12.3 The Company shall 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 director, unless it
- 12.3.1 is in the ordinary course of the Company's business and for fair value;  
12.3.2 constitutes an accountable advance to meet:
- 12.3.2.1 legal expenses in relation to a matter concerning the Company; or  
12.3.2.2 anticipated expenses to be incurred by the person on behalf of the Company;
- 12.3.3 is to defray the person's expenses for removal at the Company's request; or  
12.3.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 12.4 The Company shall not use its resources, directly or indirectly, to support, advance or oppose any political party.
- 12.5 If the Company is approved under section 18A(1)(b) of the Income Tax Act, the directors shall be obliged to utilise at least the percentage as is required by the Income Tax Act at any time of the funds received by the Company which qualify for deductions under this section within a period of twelve months from the end of the financial year in which the funds are received, provided that this shall not apply if the Commissioner for the South African Revenue Services waives, defers or reduces the obligation to distribute in terms of the proviso to section 18A(2A)(b)(i).
- 12.6 No expenditure shall be incurred by or on behalf of the Company except on authority of the Board or of the person or persons to whom the Board has generally or specifically delegated the power to authorise expenditure.

### **13. ANNUAL FINANCIAL STATEMENTS AND RETURNS**

- 13.1 The directors shall, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the members of the Company those annual financial statements as are referred to in those sections which annual financial statements:
- 13.1.1 shall be prepared no longer than six months after the end of each financial year;  
13.1.2 if audited, shall include an auditor's report;  
13.1.3 shall include a report by the directors as to the activities and financial state of the Company; and  
13.1.4 shall be approved by the directors of the Company and signed by an authorised director.
- 13.2 A copy of the annual financial statements to be presented at the AGM, or a summarised form thereof, shall be at least fifteen days prior to the AGM be sent to every member of the Company with the Notice of Meeting.

- 13.3 The Company shall file annual returns:
- 14.3.1 with the Companies and Intellectual Property Commission within thirty business days of each anniversary of its date of incorporation; and
- 14.3.2 for income tax with the Commissioner for South African Revenue Services,
- along with the payment, documents and information which may be required from time to time.

#### **14. REMUNERATION OF AND CONTRACTS WITH DIRECTORS**

- 14.1 The directors shall not be remunerated for their services as directors but shall serve on the Board on a voluntary capacity.
- 14.2 Directors who are also employees of the Company (i.e. Executive Directors) will not be paid for attending Board meetings or for any other director duties, as they are already remunerated by the Company in terms of their employment contracts.
- 14.3 Directors may be paid the reasonable travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as directors including those of attending and travelling to and from meetings of the directors or of any committee of the directors, as are approved and provided for in the budget.
- 14.4 Any director who serves on any committee or who devotes special attention to the business of the Company, or otherwise performs services which are outside the scope of the ordinary duties of a director, shall do so on a volunteer basis.
- 14.5 Directors may be appointed to act in their professional capacity on behalf of the Company and perform professional services for the Company or may contract with the Company and with any entity in which the Company may be interested provided that they may not levy any charge or receive any payment for this work and they may not vote on the contract or on any other matter in which they are interested, directly or indirectly.

#### **15. NONPROFIT ORGANISATIONS ACT**

- 15.1 The directors may apply for the Company to be registered as a nonprofit organisation and shall, if so registered, ensure that the Company complies with all the requirements of the Nonprofit Organisations Act No.71 of 1997.

#### **16. INDEMNIFICATION OF DIRECTORS**

- 16.1 If directors or officers of the Company, or members of any committee of the Company:
- 16.1.1 defend any legal proceedings, whether civil or criminal, for any liability or charge arising from their position in or authorised actions on behalf of the Company; and

- 16.1.2 judgment is given in their favour, or they are acquitted, or the proceedings are abandoned, or the proceedings are in connection with any application under Section 77(9) of the Act and relief is granted to them by the Court,
- they shall be indemnified by the Company against costs arising from the defence of proceedings and the Company may advance to the director funds to cover the legal costs of defending these proceedings.
- 16.2 The Company will indemnify directors, officers or employees of the Company against personal liability for:
- 16.2.1 loss or expense incurred by the Company through the insufficiency or deficiency of any security in or upon which any of the funds of the Company are invested;
- 16.2.2 loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom monies, securities or effects are deposited; or
- 16.2.3 loss or damage occasioned by any error of judgment or oversight on their part; or
- 16.2.4 other loss, damage or misfortune whatever which happens in the execution of the duties of their office, or in relation thereto, unless the loss, damage or expense:
- 16.2.4.1 happened through their own gross negligence, gross default, gross breach of duty or wilful misconduct or wilful breach of trust; or
- 16.2.4.2 is a fine arising from conviction for an offence (provided that the Company will indemnify against fines imposed in circumstances where there is no wrongful conduct by the director, officer or employee, but the fine is imposed by law purely because of the officer's position in the Company).
- 16.3 The Company's Board of directors may purchase insurance to protect the Company or director, officer or employee against any liability for which the Company provides an indemnity.

## 17. CHANGING MEMORANDUM OF INCORPORATION

- 17.1 This MOI of the Company may be altered or amended in the manner set out in sections 16, 17, 60 or 152(6)(b), provided that any amendment under section 16 shall require the following:
- 17.1.1 if the Company is exempted from payment of normal tax a copy of any amendment shall be sent to the Commissioner for the South African Revenue Service or their authorised representative;
- 17.1.2 if the Company is registered as a nonprofit organisation then a copy of any amendments shall be sent to the Directorate of Nonprofit Organisations.
- 17.2 The Company shall publish a notice of any alteration of the MOI made in terms of section 17(1) to correct a patent error in spelling, punctuation, reference, grammar or similar defect, by delivering a copy of these changes to each member by electronic mail provided



that the members concerned have consented to the delivery of the communication by electronic mail.

## **18. WINDING UP, DEREGISTRATION OR DISSOLUTION**

- 18.1 Upon its winding up, deregistration or dissolution 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, but the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the members of the Company at or immediately before the time of its dissolution, or failing determination, by a court and which:
- 18.1.1 are non-profit;
  - 18.1.2 have objects similar to the Company's main object;
  - 18.1.3 if the Company is so registered, is/are registered in terms of the Nonprofit Organisations Act, 1997; and
  - 18.1.4 if the Company is exempt from income tax, donations tax and estate duty, under the relevant laws of the country are public benefit organisations which have been approved in terms of section 30 of the Income Tax Act and are required to use those assets solely for purposes of carrying on one or more public benefit activities.