

Republic of South Africa

Companies Act, 2008

MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY

COMPOSERS AUTHORS AND PUBLISHERS ASSOCIATION NPC

Registration No.: 2014/073024/08

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## 1. INTERPRETATION

In this MOI, unless the context otherwise requires –

- 1.1.1. “Accounting Records” means information in written or electronic form concerning the financial affairs of the Company as required in terms of the Companies Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of Financial Statements;
- 1.1.2. “Address” shall include Electronic Address, business, residential or postal or any other address;
- 1.1.3. “Annual General Meeting” means the meeting required to be held in terms of clause 14.1;
- 1.1.4. “Auditing Profession Act” means the Auditing Profession Act, No. 26 of 2005, as amended or any legislation which replaces it;
- 1.1.5. “Auditor” has the meaning set out in the Auditing Profession Act;
- 1.1.6. “Author” means an author as defined in the Copyright Act;
- 1.1.7. “Biem” means the Bureau International des Sociétés Gérant les Droits d’Enregistrement et de Reproduction Mécanique;
- 1.1.8. “Biem Rights” means the Mechanical Rights administered by royalty collecting societies who are Biem members;
- 1.1.9. “Board” means the Board of Directors of the Company;
- 1.1.10. “Chief Executive Officer” means the person contemplated in clauses 21.3 and 21.4;

- 1.1.11. "Commercial Music" means a Work of Music intended for commercial release or publication to the general public by any means presently known or devised in future;
- 1.1.12. "Commercial Music Member" means a Person who has been admitted to membership of the Company on the basis that he is an owner, licensee, assignee and/or successor in interest, of a Commercial Music work;
- 1.1.13. "Commission" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.14. "Commissioned Music" means any Work of Music that is authored by a Member in terms of an Exclusive Use Agreement and which Work of Music does not constitute Production Music;
- 1.1.15. "Companies Act" means the Companies Act, No 71 of 2008, as amended, or any legislation which replaces it;
- 1.1.16. "Company" means Composers Authors and Publishers Association NPC, or by whatever other name it may be known from time to time, a non-profit company incorporated in accordance with the laws of the Republic and governed in terms of this MOI;
- 1.1.17. "Company's Rules" means the distribution rules, membership rules, code of conduct and any other rule as contemplated in section 15(3) – (5) of the Companies Act, binding all Members of the Company;
- 1.1.18. "Copyright Act" means the Copyright Act, No 98 of 1978, as amended, or any legislation which replaces it;

- 1.1.19. "Deliver" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with this MOI and the Companies Act;
- 1.1.20. "Director" means a member of the Board;
- 1.1.21. "Distribution cycle" means the 12 (twelve) month period ending on 30 June in each year;
- 1.1.22. "Electronic Address" means in regard to Electronic Communication, any email Address furnished to the Company by a Member or Director of the Company;
- 1.1.23. "Exclusive Use Agreement" means an agreement entered into between a Member and a commissioning party in terms of which the Member composes a Work of Music for exclusive or limited use by the commissioning party;
- 1.1.24. "Financial Statements" includes –
- 1.1.24.1. annual financial statements and provisional annual financial statements;
  - 1.1.24.2. interim or preliminary reports;
  - 1.1.24.3. group and consolidated financial statements in the case of a group of companies; and
  - 1.1.24.4. financial information in a circular that an actual or prospective creditor, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;
- 1.1.25. "Financial Year" means the 12 (twelve) month period beginning on 1 July in each year and ending on 30 June of the subsequent year;

- 1.1.26. "Ineligible or Disqualified" means ineligible or disqualified as contemplated in the Companies Act or as contemplated in this Memorandum of Incorporation;
- 1.1.27. "Juristic Person" includes a foreign company and a trust, irrespective of whether or not it was established within or outside the Republic;
- 1.1.28. "Loan" means the sum of money advanced by SAMRO to the Company for payment of its start-up costs;
- 1.1.29. "Material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is  
—
- 1.1.29.1. of consequence in determining the matter; or
- 1.1.29.2. might reasonably affect a person's judgement or decision-making in the matter;
- 1.1.30. "Mandating Rightsholder" means a Person, other than a Member, who owns or holds a Mechanical Right and who mandates the Company to administer such Mechanical Right as agent, and is subject to the Company's Rules to the extent and in the manner described in the Company's Rules
- 1.1.31. "Master Right" means the right to reproduce a sound recording;
- 1.1.32. "Mechanical Right" means the right to reproduce a Work of Music;
- 1.1.33. "Member" means a Person who holds membership in the Company;

- 1.1.34. "Members Register" means the register of Members required to be kept in terms of section 24(4);
- 1.1.35. "Minister" means the Minister of Trade and Industry, or the relevant government department responsible for copyright matters in the Republic;
- 1.1.36. "MOI" means this Memorandum of Incorporation;
- 1.1.37. "Musical Work" means a musical work as defined in the Copyright Act;
- 1.1.38. "NORM" means the National Organisation For Reproduction Rights in Music in Southern Africa NPC, registration number 1971/000142/08, or by whatever other name it may be known from time to time;
- 1.1.39. "Ordinary Resolution" means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution, or a higher percentage as contemplated in section 65(8);
- 1.1.40. "Panel" means the Takeover Regulation Panel, established by section 196;
- 1.1.41. "Person" includes a juristic person ;
- 1.1.42. "Personal Financial Interest" means when used with respect to any Person:
- 1.1.42.1. means a direct Material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
  - 1.1.42.2. does not include any interest held by a person in a unit trust or collective investment scheme in terms of the



Collective Investment Schemes Act, No 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

- 1.1.43. “Prescribed Officer” means a person who, within a company, performs any function that has been designated by the minister in terms of section 66(10);
- 1.1.44. “Production Music” means a Work of Music intended for use in synchronization with third party productions, whether such productions are in visual or audio format, provided that the Work of Music is not subject to an Exclusive Use Agreement with any third party, and that the Work of Music has been catalogued and made generally available in the territory for such use. Subject to the discretion of the Board, for any purpose related to membership of the Company, a Work of Music cannot simultaneously exist as Production Music and Commercial Music and/or Commissioned Music;
- 1.1.45. “Production Music Member” means a Person who has been admitted to membership of the Company on the basis that he is an owner, licensee, assignee and/or successor in interest, of a Production Music work, provided that such Members shall licence to the Company 100% (one hundred percent) of the Mechanical Right in the Production Music work (including the Work of Music and Sound Recording that embodies such work) in order to qualify as Production Music Members;
- 1.1.46. “Publisher” means a person who in terms of a publishing agreement with an Author holds the Mechanical Right in a Work of Music;

- 1.1.47. "Record Date" means the date established under section 59 on which the Company determines the identity of its Members;
- 1.1.48. "Registered Office" means the office of the Company that is registered as required by section 23;
- 1.1.49. "Regulations" means regulations published pursuant to the Companies Act;
- 1.1.50. "Related", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in the Companies Act;
- 1.1.51. "Republic" means the Republic of South Africa;
- 1.1.52. "Round Robin Resolution" means a resolution passed other than at a –
- 1.1.52.1. Members meeting, which –
- 1.1.52.1.1. was submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution; and
- 1.1.52.1.2. was voted on by the requisite percentage of the Persons entitled to vote contemplated in clause 14.28 by signing a resolution in counterparts within 20 (twenty) business days after the resolution was submitted to them.
- 1.1.52.2. meeting of Directors, in respect of which, subject to clause 24.13, all the Directors who may at the time be present in South Africa being not less than a quorum of Directors, voted in favour by signing in Writing a

resolution in counterparts, within 20 (twenty) business days after the resolution was submitted to them;

- 1.1.53. "SAMRO" means the Southern African Music Rights Organisation, registration no. 1961/002506/07, or by whatever other name it may be known from time to time.
  - 1.1.54. "Sound Recording" means a sound recording as defined in the Copyright Act;
  - 1.1.55. "Special Resolution" means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights exercised on the resolution, or a different percentage as contemplated in section 65(10);
  - 1.1.56. "Voting Member" means the Persons who are entitled to exercise Voting Rights in respect of matters that may be decided by voting;
  - 1.1.57. "Voting Rights" means the rights of a Member to vote in connection with a matter;
  - 1.1.58. "Work of Music " means the whole or a part of a Musical Work or of a Musical Work in combination with lyrics, words or any other literary work written for the purpose of being associated with the Musical Work, such as a song;
  - 1.1.59. "Writing" includes electronic communication;
- 1.2. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
  - 1.3. references to Members entitled to vote present at a meeting or acting in person shall include Juristic Persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;

- 1.4. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.5. all references to "clause/s" in this MOI refer to a corresponding provision of this MOI;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## **2. CALCULATION OF BUSINESS DAYS**

When 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 —

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

### **3. NON-PROFIT COMPANY**

3.1. The Company is a Non-Profit Company as it is:

- 3.1.1. incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 to the Companies Act;
- 3.1.2. consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act; and
- 3.1.3. prohibited from directly or indirectly distributing any of its funds to any Person (otherwise) than in the course of carrying out its stated objects and is required to solely utilise its funds for the purpose that it has been established.

### **4. OBJECTS OF THE COMPANY**

4.1. The objects of the Company are to:

- 4.1.1. Administer the Mechanical Right in Works of Music;
- 4.1.2. enter into licence agreements in respect of these Mechanical Rights;
- 4.1.3. act as a licensing body for Mechanical Rights in the music industry;
- 4.1.4. act as a licensing body for Master Rights accompanying Mechanical Rights in Production Music works in the music industry;
- 4.1.5. collect royalties in respect of Mechanical Rights;
- 4.1.6. collect royalties in respect of Master Rights accompanying Mechanical Rights in Production Music works;

- 4.1.7. operate internationally as contemplated in section 37 of the Copyright Act and any regulations promulgated by the Minister thereunder;
- 4.1.8. authorise the reproduction of Works of Music in any manner or form in terms of sections 1(1) and 6(a) of the Copyright Act;
- 4.1.9. authorise the reproduction or adaptation of Works of Music in terms of sections 1(1) and 6(g) of the Copyright Act;
- 4.1.10. set tariffs of fees in terms of the regulations promulgated by the Minister under section 39 of the Copyright Act, and to collect and administer such fees;
- 4.1.11. refer tariffs, license schemes and other appropriate matters to the copyright tribunal in terms of chapter 3 of the Copyright Act;
- 4.1.12. receive and administer royalties received for compulsory licenses in terms of section 14(d) of the Copyright Act;
- 4.1.13. carry out the functions of a licensing body as generally understood in the music industry and/or within the context of the Copyright Act;
- 4.1.14. negotiate and conclude "licence schemes" as defined in the Copyright Act;
- 4.1.15. administer on an agency basis, the copyrights in Works of Music as defined in the Copyright Act;
- 4.1.16. act as a collecting society; and
- 4.1.17. represent international rights, whether through reciprocal agreements with collecting societies outside the Republic,

including reciprocal agreements with Biem members, or directly through the international rights owners.

## 5. CONDITIONS

### 5.1. The Company :

5.1.1. must apply all of its assets and income, however derived, to advance its stated objects, as set out in this MOI; and

5.1.2. subject to clause 5.1.1, may -

5.1.2.1. acquire and hold securities issued by a profit company; or

5.1.2.2. directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

5.2. The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any Person who is or was an incorporator of the Company, or who is a Director, or Person appointing a Director, of the Company, except -

5.2.1. as reasonable -

5.2.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

5.2.1.2. payment of, or reimbursement for, expenses incurred

to advance a stated object of the Company;

5.2.2. as a 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; or

5.2.3. as a 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 object of the Company; or

5.2.4. in respect of any legal obligation binding on the Company,

subject always to the requirement that any such distribution must not directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company.

## **6. MEMBERSHIP**

6.1. The Company shall have two classes of Members, namely voting and non-voting Members. Only Members whose annual membership subscription fee, as determined by the Board, is fully paid up in the Financial Year in question shall be eligible to exercise Voting Rights in that Financial Year.

6.2. The Voting Rights of each Member in each Financial Year shall depend on the South African Rand value, expressed as a percentage, of such Member's pro rata royalty earnings for the previous Financial Year in terms of the Company's Rules, but subject always to a maximum of 10% of the Voting Rights. By way of example, should a Member receive 3% (three percent) of the royalty earnings of the previous Financial Year, such Member shall have 3% (three percent) of the Voting Rights. If a Member receives more than 10% (ten percent) of the royalty earnings his Voting Rights shall be limited to 10% (ten percent) of the Voting Rights.

6.3. Application for membership of the Company shall be submitted on the application form prescribed, from time to time, by the Board.

6.3.1. Subject to clause 6.5 any person who makes a written application, in terms of this clause 6.3, to become a Member of the Company and whose application is accepted by the Board shall be and become a Member of the Company, subject to clause 6.3.2.



- 6.3.2. Despite anything to the contrary in this MOI, the Company's Rules, if any, or any agreement between the Company and a prospective Member, or between any Members and a prospective Member, no Member shall be admitted unless he agrees to be bound by this MOI and any agreement in force between the Company and its Members and/or between the Members governing their relationship as Members in the Company.
- 6.3.3. Taking into consideration the Company's Rules, admission to membership of the Company shall be at the sole discretion of the Board, which may either admit or refuse to admit any applicant, and in the event of its refusing to admit any applicant, this shall be done in accordance with the procedure set out in the Company's Rules. The Board shall be entitled to impose the payment of an entrance fee upon any Person applying for membership, which amount shall be determined by the Board.
- 6.3.4. The Board shall fix the annual subscriptions, levies or other charges payable to the Company by the Members.
- 6.3.5. Any Member whose subscription or levy remains unpaid for 60 (sixty) days after the due date for payment, shall, unless otherwise determined by the Board, forthwith cease to enjoy any of the rights, benefits, privileges and advantages of membership until such time as the arrear subscriptions or levies have been paid.
- 6.3.6. Every Person who becomes a Member of the Company shall be bound by all the terms and conditions of this MOI.

- 6.4. The Company shall not restrict or regulate, or provide for any restriction or regulation of membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution of the Republic.
- 6.5. Only natural persons being Authors or Publishers, or their successors in title, who own or hold the Mechanical Right in a Work of Music shall be eligible for membership in the Company.
- 6.6. Membership may be suspended for violation of any provision of this MOI or the Company's Rules. Such suspension shall be carried out by a vote of at least 75% (seventy five percent) of the members of the Board subject to the following conditions:
  - 6.6.1. If the Board proposes to suspend any Member a statement of the alleged offences, together with a notice of the time and place of the Board meeting at which the alleged offences are to be considered shall first be sent by registered mail to the address of the Member appearing on the Members Register at least 15 (fifteen) days before the date of the Board meeting.
  - 6.6.2. The Member shall have the right to appear at the Board meeting in person and may be represented there-at by a representative of his choice, and present a defence against the alleged offences before a vote on whether to suspend the Member is taken by the Board.
  - 6.6.3. A decision to suspend a Member and the duration of such suspension shall be at the sole discretion of the Board. In the event of a decision to suspend a Member being taken the Board shall not be obliged to furnish reasons for its decision.
- 6.7. Subject to the laws relating to the administration of the estates of insolvent persons, deceased persons and persons under disability –

- 6.7.1. the trustee of an insolvent Member;
- 6.7.2. the liquidator of a body corporate or other juristic person which is a Member;
- 6.7.3. the tutor or curator of a Member under disability;
- 6.7.4. the executor or administrator of the estate of a deceased Member; or
- 6.7.5. any other Person becoming entitled by any lawful means to exercise the Voting Rights held by a Member,

shall, upon production of such evidence as may be required by the Board, have the right to exercise the same rights and to receive the same royalties and other advantages to which he would be entitled if he were a Member; provided always that any Person becoming entitled to any rights in terms of this clause 6.6 shall not at any time be eligible to be appointed or elected as a Director of the Company.

6.8. A Member shall *ipso facto* cease to be a Member of the Company :

- 6.8.1. in the case of a natural person, if such:-
  - 6.8.1.1. Member dies;
  - 6.8.1.2. Member tenders 3 (three) month's Written notice of his resignation as a Member, to the Board; or
  - 6.8.1.3. Member becomes a lunatic or of unsound mind; or
  - 6.8.1.4. Member's estate is surrendered or sequestrated, whether voluntarily or compulsorily; or
  - 6.8.1.5. Member commits any act of insolvency; or

- 6.8.1.6. Member is removed by Special Resolution of the Members; or
  - 6.8.1.7. Member is removed by a vote of at least 75% (seventy five percent) of the members of the Board; or
  - 6.8.1.8. Member is determined by the Board pursuant, mutatis mutandis, to the procedure contemplated in clause 6.5, to have been party to an act or omission despite knowing that the act or omission was calculated to defraud the Company, or had another fraudulent purpose; or
  - 6.8.1.9. Member is convicted of a criminal offence by a court of law and is sentenced to imprisonment for a period longer than 12 (twelve) months without the option of a fine; or
  - 6.8.1.10. Member, in the view of the Board, brings the Company into disrepute or is found guilty of misconduct or contravening the Company's code of conduct.
- 6.8.2. in the case of a Member which is not a natural person, if such Member:
- 6.8.2.1. tenders 3 (three) month's Written notice of resignation as a Member, to the Board; or
  - 6.8.2.2. is liquidated, wound up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily; or
  - 6.8.2.3. is removed as a Member by Special Resolution of the Members; or

6.8.2.4. is removed by a vote of at least 75% (seventy five percent) of the members of the Board; or

6.8.2.5. is determined by the Board pursuant, mutatis mutandis, to the procedure contemplated in clause 6.5 to have been party to an act or omission despite knowing that the act or omission was calculated to defraud the Company, or had another fraudulent purpose; or

6.8.2.6. in the view of the Board, brings the Company into disrepute or is guilty of misconduct or contravening the Company's code of conduct.

6.9. Any Member whose membership in the Company comes to an end during the course of a Financial Year shall not be entitled to the return of any portion of his membership fees, subscriptions, levies or other charges payable to the Company by the Members.

## **7. POWERS AND CAPACITY OF THE COMPANY**

The Company has the powers and capacity of an Individual save to the extent set out in the Companies Act and Regulations, as well as the limitations in clause 5. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a non-profit company to do if so authorised by its MOI.

## **8. AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall, subject to section 16, be made at any time if a Special Resolution to amend the MOI –

8.1. is proposed by –

8.1.1. the Board; or

8.1.2. Members entitled to exercise at least 10% (ten percent) of the Voting Rights that may be exercised on such a resolution; and

8.2. is adopted at a Members meeting, or in accordance with clause 1.1.50.1.

## **9. THE MAKING OF RULES**

9.1. The authority of the Board to make rules for the Company, as contemplated in section 15(3) to (5), is not limited or restricted in any manner by this MOI.

9.2. The Board must –

9.2.1. publish any rules made in terms of section 15(3) to (5) by delivering a copy of those rules to each Member by e-mail or ordinary mail; and

9.2.2. file a copy of those rules.

9.3. The Board must -

9.3.1. publish a notice of any alteration of the MOI or the Company's Rules, made in terms of section 17(1), by delivering a copy of those rules to each Member by ordinary mail; and

9.3.2. file a copy of those alterations.

## **10. MEMBERS REGISTER**

10.1. The Company must maintain a Members Register, in accordance with the provisions of section 24 (4).

10.2. The Company shall cause the Members Register to reflect –

- 10.2.1. the names and identity numbers or passport numbers of the Members;
  - 10.2.2. the Member's business, residential or postal Address;
  - 10.2.3. the Member's Electronic Addresses who have furnished them;
  - 10.2.4. the date on which the person became a Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company; and
  - 10.2.5. any other information prescribed in terms of the Companies Act from time to time.
- 10.3. The Company shall not be bound to enter any person in the Members Register until that person gives the Company an Address for entry on the Members Register.

## **11. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

- 11.1. The Company elects, in terms of section 30(2)(b)(ii)(aa), that the annual Financial Statements of the Company be audited voluntarily.
- 11.2. The Company elects, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Companies Act to the extent required by clauses 11.1 and 26.

## **12. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 12.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 12.2. The Company must maintain adequate records of all revenue received from donations, grants, royalties collected, licence fees or other amounts payable by the Members or received by the Company, if any, or in terms of any funding

contracts or arrangements with any party or Person for a period of at least 5 (five) years after receipt of same.

- 12.3. The Company shall prepare its Financial Statements in accordance with the applicable Regulations to the Companies Act which shall be presented to the Annual General Meeting after the statements have been approved by the Board.
- 12.4. The Board shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, records in respect of Directors, Accounting Records required to be maintained by the Company, reports to Annual General Meetings, annual Financial Statements, notices and minutes of Members meetings, communications generally to Members and the Members Register), shall be open to inspection by Members not being Directors. In addition the Members have rights to information regarding Directors declarations of interests.
- 12.5. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Company (other than the Members Register) unless expressly authorised by the Board or by Ordinary Resolution.
- 12.6. The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

### **13. AUDITOR**

- 13.1. The Company shall appoint an Auditor annually at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office in terms of the procedure contemplated in section 91 within 40 (forty) business days after the date of the



Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting after the year-end without any resolution being passed, unless –

13.1.1. the retiring Auditor is –

13.1.1.1. no longer qualified for appointment;

13.1.1.2. no longer willing to accept the appointment, and has so notified the Company; or

13.1.1.3. required to cease serving as Auditor, in terms of section 92;

13.1.2. the Company has notice of an intended resolution to appoint some other Person or Persons in place of the retiring Auditor.

13.2. If a vacancy arises in the office of Auditor, the Board –

13.2.1. must appoint a new Auditor within 40 (forty) business days, if there was only 1 (one) incumbent Auditor; and

13.2.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

13.3. If, by comparison with the membership of a firm at the time of its latest appointment, less than  $\frac{1}{2}$  (one half) of the Members remain after a change in the composition of the Members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

13.4. The Auditor may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.

## **14. MEMBERS MEETINGS AND ROUND ROBIN RESOLUTIONS**

- 14.1. The Company shall convene an Annual General Meeting not more than 18 (eighteen) months after its incorporation and thereafter once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –
- 14.1.1. presentation of –
    - 14.1.1.1. the Directors' report;
    - 14.1.1.2. audited Financial Statements for the immediately preceding Financial Year;
  - 14.1.2. appointment of an Auditor for the ensuing year;
  - 14.1.3. election of Directors, whenever required in terms of this MOI;
  - 14.1.4. any matters raised by Members, with or without advance notice to the Company.
- 14.2. The Company shall, as determined by the Board, either–
- 14.2.1. hold a Members meeting in order to consider one or more resolutions; or
  - 14.2.2. as regards such resolution/s that could be voted on at a Members meeting, instead require them to be dealt with by Round Robin Resolution of the Members.
- 14.3. Within 10 (ten) business days after a Round Robin Resolution is adopted, the Company must deliver a statement describing the results of the vote, consent process, or appointment to every Member who was entitled to vote on or consent to the Round Robin Resolution.

- 14.4. The Company must hold a Members meeting or put the proposed resolution by way of a Round Robin Resolution of the Members -
- 14.4.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for decision;
  - 14.4.2. whenever required to fill a vacancy on the Board.
- 14.5. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information/explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 14.6. The Board or Members holding not less than 33% (thirty-three percent) of the Voting Rights may, whenever they/he think/s fit, convene a Members meeting or put the proposed resolution by way of a Round Robin Resolution of the Members. A Members meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution of the Members if one or more Written and signed demands for such a Members meeting or Round Robin Resolution is/are delivered to the Company, and —
- 14.6.1. each such demand describes the specific purpose for which the Members meeting is proposed; and
  - 14.6.2. in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Members meeting.

- 14.7. A Round Robin Resolutions of the Members will be passed if signed 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.
- 14.8. Every Members meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Members meeting entirely by Electronic Communication, or to provide for participation in a Members meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members meeting, as set out in section 63(2), is not limited or restricted.
- 14.9. An Annual General Meeting and a meeting called for the passing of a Special Resolution shall be called by at least 21 (twenty one) business days' notice and any other meeting shall be called by at least 14 (fourteen) business days' notice Delivered by the Company (and for this purpose clause 28.3 shall not apply) to all Members entitled to vote or otherwise entitled to receive notice.
- 14.10. The Company may call a Members meeting with less notice than required by clause 14.9, but such a Members meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda-
- 14.10.1. is Present at the Members meeting; and
- 14.10.2. votes to waive the required minimum notice of the Members meeting.
- 14.11. A Member entitled to vote, who is Present at a Members meeting –
- 14.11.1. is regarded as having received or waived notice of the Members meeting if at least the required minimum notice was given;

14.11.2. has a right to —

14.11.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Members meeting; and

14.11.2.2. participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and

14.11.3. except to the extent set out in clause 14.11.2.1 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Members meeting.

14.12. A notice of a Members meeting must be in Writing, in plain language and must include -

14.12.1. the date, time and place for the meeting, and the Record Date for the meeting;

14.12.2. the general purpose of the meeting, and any specific purpose contemplated in clause 14.5, if applicable;

14.12.3. in the case of an Annual General Meeting a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

14.12.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

14.12.5. a reasonably prominent statement that-

- 14.12.5.1. a Member entitled to attend and vote at the Members meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members meeting in the place of the Member entitled to vote or give or withhold written consent on behalf of the Member entitled to vote to a decision by Round Robin Resolution of the Members;
- 14.12.5.2. a proxy need not be a Member;
- 14.12.5.3. a Member entitled to vote may in respect of different matters appoint more than 1(one) proxy to exercise Voting Rights held by that Member entitled to vote in respect of any Members meeting;
- 14.12.5.4. the proxy may not delegate the authority granted to him as proxy;
- 14.12.5.5. participants in a Members meeting are required to furnish satisfactory identification in terms of section 63(1) in order to reasonably satisfy the person presiding at the Members meeting;
- 14.12.5.6. where applicable, participation in the Members meeting by Electronic Communication is available, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Company determines otherwise.

14.13. A Members meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 14.14, only if every Person who is entitled to

exercise Voting Rights in respect of each item on the agenda of the Members meeting is present at the Members meeting and votes to approve the ratification of the defective notice.

- 14.14. If a Material defect in the form or manner of giving notice of a Members meeting relates only to one or more particular matters on the agenda for the Members meeting -
  - 14.14.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 14.14.2. the Members meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 14.15. An immaterial defect in the form or manner of Delivering notice of a Members meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members meeting.
- 14.16. No business may commence to be transacted at any Members meeting unless a quorum is present.
- 14.17. The quorum shall be sufficient Persons present at the Members meeting to exercise, in aggregate, at least 10% (ten percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Members meeting but if the Company has more than 2 (two) Persons entitled to vote, the Members meeting may not begin unless in addition at least 5 (five) Persons entitled to vote are Present.
- 14.18. A matter to be decided at the Members meeting may not begin to be considered unless sufficient Persons are present at the Members meeting to exercise, in aggregate, at least 10% (ten percent) of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda for

the Members meeting but if the Company has more than 2 (two) Persons entitled to vote, a matter may not begin to be debated, unless in addition at least 5 (five) Persons entitled to vote, are Present.

- 14.19. If within 30 (thirty) minutes from the time appointed for the Members meeting to commence, a quorum is not present, the Members meeting shall be postponed, without motion, vote or further notice, subject to clause 14.23, for 1(one) week to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Members meeting a quorum is not present within 15 (fifteen) minutes from the time appointed for the Members meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 14.20. A Members meeting, or the consideration of any matter being debated at the Members meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights —
- 14.20.1. held by all of the Persons who are present at the Members meeting at the time; and
- 14.20.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Members meeting, or on the matter under debate, as the case may be.
- 14.21. Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members), as agreed at the Members meeting.
- 14.22. A Members meeting may not be adjourned beyond 120 (one hundred and twenty) business days after the Record Date.
- 14.23. No further notice is required to be Delivered by the Company of a Members meeting that is postponed or adjourned as contemplated in clause 14.19, unless the location for the Members meeting is different from -



14.23.1. the location of the postponed or adjourned Members meeting; or

14.23.2. a location announced at the time of adjournment, in the case of an adjourned Members meeting.

14.24. After a quorum has been established for a Members meeting, or for a matter to be considered at a Members meeting, the Members meeting may continue, or the matter may be considered, so long as at least 3 (three) Persons with Voting Rights entitled to be exercised at the Members meeting, or on that matter, are Present at the Members meeting.

14.25. The chairman, if any, of the Board shall preside as chairman at every Members meeting. If there is no such chairman, or if at any Members meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Members meeting or is unwilling to act as chairman, the vice-chairman shall act as chairman in his place, and if he is not present or willing to act as chairman, the Persons entitled to vote which are Present shall select a Director present at the Members meeting, or if no Director be present at the Members meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairman of the Members meeting.

14.26. At any Members meeting a resolution put to the vote shall be decided on a show of hands and a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book 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. No objection shall be raised as to the admissibility of any vote except at the Members meeting or adjourned Members meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the Members meeting, whose decision shall be final and conclusive.

- 14.27. In the case of an equality of votes, the chairman of the Members meeting at which the vote takes place shall be entitled to a second or casting vote.
- 14.28. Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution.
- 14.29. In any vote by the Members, whether on a show of hands, a ballot vote or Member's Round Robin Resolution, a Person exercising a vote, including a proxy, where applicable, shall be entitled to the Voting Rights determined in accordance with clause 6.2.
- 14.30. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration. The appointment is revocable at any time unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in Writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the Member as of the later of either the date stated on the revocation, if any, or the date on which the revocation instrument was delivered to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 14.31. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of such power or authority shall be delivered to the Company immediately prior to the Members meeting, before the proxy exercises any rights of the Member entitled to vote at a Members meeting.

- 14.32. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in Writing of such death, insanity or revocation as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Members meeting or adjourned Members meeting at which the proxy is used.
- 14.33. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Member entitled to vote.
- 14.34. If a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.
- 14.35. A Member entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights held by that Member in respect of any Members meeting.
- 14.36. A proxy may not delegate the authority granted to him.

## **15. RECORD DATE**

- 15.1. If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) business days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 15.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- 15.2.1. in the case of a Members meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that Members meeting; or
  - 15.2.2. the date of the action or event, in any other case.

- 15.3. The Company must publish a notice of a Record Date for any matter by –
- 15.3.1. Delivering a copy to each Member (and clause 28.3 shall not apply); and
  - 15.3.2. posting a conspicuous copy of the notice –
    - 15.3.2.1. at its principal office; and
    - 15.3.2.2. on its web-site, if it has one.

**16. ELECTION/APPOINTMENT OF DIRECTORS AND FILLING OF CASUAL VACANCIES**

- 16.1. The minimum number of Directors shall be 8 (eight), it being recorded and agreed that–
- 16.1.1. Subject to clause 16.2.3 , SAMRO and NORM shall each be entitled to appoint 3 (three) Directors to the founding Board of the Company until the Annual General Meeting held in 2015;
  - 16.1.2. At the 2015 Annual General Meeting and each year thereafter, one-third of the Directors for the time being (determined in exclusion of the independent non-executive chairman and the Chief Executive Officer), shall retire from the Board by rotation. If the number of Directors is not 3 (three) or a multiple of 3 (three), the number nearest to one-third, but not less than one-third, shall retire from office, provided that if a Director is appointed as a Chief Executive Officer or independent non-executive chairman of the Company he shall not, while he continues to hold that position or office, be subject to retirement by rotation.
- 16.2. The Directors appointed by SAMRO in terms of clause 16.1.1 shall include:-

- 16.2.1.1. SAMRO's chief executive officer for the time being, or his replacement; and
  - 16.2.1.2. 2 (two) SAMRO members, each of whom may be an Author selected from the Members of the Company.
- 16.2.2. The Directors appointed by NORM in terms of clause 16.1.1 shall include:-
- 16.2.2.1. 2 (two) Publishers who are Members of the Company, selected from a publisher's association that represents a majority of the publishers in the Republic; and
  - 16.2.2.2. 1 (one) Production Music representative, who is a Member of the Company selected from a Production Music organisation that represents a majority of music entities in the Republic; provided that if there is no candidate available that meets the requirements of this clause 16.2.2.2 an additional candidate that meets the requirements of clause 16.2.2.1 shall be appointed by NORM.
- 16.2.3. Notwithstanding the term of office of the Directors on the founding Board stipulated in terms of clause 16.1.2 SAMRO's chief executive officer, or his replacement, shall be appointed onto the founding Board of the Company to serve for a period terminating upon:
- 16.2.3.1. the repayment by the Company of the Loan; and
  - 16.2.3.2. the transfer to the Company of 75% (seventy five percent) of the Biem Rights.
- 16.2.4. There shall at all times be an independent chairman of the Board, who shall be a non-executive Director of the Company. Employees or members of SAMRO and NORM

shall not be eligible for appointment to the office of chairman of the Company. The independent non-executive chairman of the Company shall serve for a term of up to 3 (three) years, whereafter he/she may be eligible for re-appointment for a subsequent term of up to 3 (three) years. No one shall be eligible for re-appointment as a chairman once the subsequent term has expired. For avoidance of doubt, a chairman shall only be allowed to hold office for a maximum of 2 (two) terms, each not exceeding 3 (three) years..

16.2.5. Other than the Chief Executive Officer of the Company, as contemplated in clause 21, all Directors shall be non-executive Directors.

- 16.3. Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 16.4. The Directors shall not be connected persons in relation to one another and no single person shall directly or indirectly control the decision making powers relating to the Company.
- 16.5. In the first 3 (three) years during which retirement by rotation takes place the Directors to retire in every year shall include one appointee of SAMRO and NORM, respectively, determined by lot, from the Directors who have been longest in office since their appointment, but as between persons who become Directors on the same day those to retire shall, unless they otherwise agree amongst themselves, be determined by lot. Once all of the members of the founding Board have retired, the Directors to retire in each year shall be determined by lot from the Directors who have been longest in office, whilst maintaining an equal Author / Publisher ratio. For the avoidance of doubt, the provisions of this clause 16.5 shall not apply to the Director contemplated in clause 16.2.1.1 prior to the fulfilment of the conditions for expiry of his term of office stipulated in clause 16.2.3.

- 16.6. A retiring Director shall be eligible for re-appointment or re-election for a single additional term; no Director shall be entitled to hold office for more than 2 (two) terms.
- 16.7. For as long as any member of the founding Board of the Company appointed in terms of clause 16.1.1 has not yet retired by rotation as contemplated in clause 16.1.2, only the party who appointed that Director in terms of clause 16.1.1 shall be entitled to fill a vacancy occasioned when such Director vacates his office, but thereafter the Board may, subject to the requirement that the Author / Publisher ratio shall at all times remain equal, at any Board meeting or at any Members meeting fill a vacancy occasioned by the retirement or removal of a Director provided that the Director appointed by the Board shall cease to hold office at the beginning of the next Annual General Meeting, in order for the Members to elect a replacement.
- 16.8. The Members shall, at each Annual General Meeting where an election of Directors takes place, elect a replacement for a retiring Director subject to the following conditions:
- 16.8.1. if the Director to be elected replaces an author the Members shall elect an Author, who is a member of SAMRO or the Authors' organisation that represents a majority of the Authors in the Republic from among the Members to fill the position;
  - 16.8.2. if the Director to be elected replaces a Publisher the Members shall elect a Publisher, who is a member of the Publishers' association that represents a majority of the Publishers in the Republic, from among the Members to fill the position;
  - 16.8.3. if the Director to be elected replaces a Production Music representative, or a publisher who was appointed in terms of clause 16.2.2.2, the Members shall elect from among the

Members a Production Music representative who is a member of the Production Music association that represents a majority of the Production Music entities in the Republic or, if unavailable, a Publisher as contemplated in 16.8.2;

16.8.4. when the chief executive officer of SAMRO, or his replacement, resigns as contemplated in clause 16.2.3 the Members shall elect an Author, as contemplated in 16.8.1, from among the Members to fill his position, and thereafter the provisions of clause 16.8.1 shall apply.

- 16.9. In addition to the requirements of the Companies Act for qualification to serve as a Director, if any, it is a specific requirement for membership of the Board that each Board member, with the exception of the independent non-executive chairman and Chief Executive Officer, respectively, shall be a Member of the Company and shall have expertise in Mechanical Rights.
- 16.10. No Director shall be entitled to appoint any person as an alternate Director to himself. Each Director shall instead be entitled to appoint a proxy to attend a Board meeting on his behalf.
- 16.11. No person shall be appointed as a Director, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a Director nor act as a Director. A person placed under probation by a court must not serve as a Director unless the order of court so permits.
- 16.12. No appointment or election of a Director shall take effect until he has delivered to the Company a Written consent to serve.
- 16.13. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Director's meeting.



- 16.14. If there is no Director able and willing to act, then any Member entitled to appoint a Director may convene a Members meeting for the purpose of appointing Directors.

## **17. INELIGIBILITY/DISQUALIFICATION OF A DIRECTOR**

- 17.1. A person is Ineligible to be a Director if the person –

17.1.1. is a Juristic Person; or

17.1.2. is an unemancipated minor, or is under a similar legal disability;

- 17.2. A person is Disqualified to be a Director if –

17.2.1. a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of the Companies Act as amended from time to time or the Close Corporations Act, No 69 of 1984, as amended from time to time; or

17.2.2. the person –

17.2.2.1. is an unrehabilitated insolvent;

17.2.2.2. is prohibited in terms of any public regulation to be a Director;

17.2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

17.2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –

17.2.2.4.1. involving fraud, misrepresentation or dishonesty;

17.2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act as contemplated in the Companies Act as amended from time to time; or

17.2.2.4.3. under the Companies Act, the Insolvency Act, No 24 of 1936, the Close Corporations Act, No 69 of 1984, the Competition Act, No. 89 of 1998, the Financial Intelligence Centre Act, No 38 of 2001, the Securities Services Act, No 36 of 2004, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, No 12 of 2004.

## **18. CESSATION OF OFFICE AS DIRECTOR**

18.1. A Director shall cease to hold office as such –

18.1.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);

18.1.2. when his term of office contemplated in clause 16 expires;

18.1.3. when he dies;

18.1.4. when he resigns by Written notice to the Company;

- 18.1.5. if there are more than 3 (three) Directors in office and if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 18.1.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
- 18.1.7. if he is removed by Ordinary Resolution in accordance with section 71(1);
- 18.1.8. if he is removed by a vote of at least 75% (seventy five percent) of the Directors;
- 18.1.9. if there are more than 3 (three) Directors in office and if he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 18.1.10. if he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 18.1.11. if he brings the Company into disrepute;

- 18.1.12. if he misses 3 (three) consecutive Board meetings within a calendar year; or
- 18.1.13. if he misses 2 (two) consecutive Board meetings without a valid excuse;
- 18.1.14. if he is otherwise removed in accordance with any provision of this MOI.

**19. REMUNERATION OR REIMBURSEMENT**

- 19.1. The remuneration of the Directors as determined from time to time in accordance with a Special Resolution approved by the Members within the previous 2 (two) years shall be market related and subject always to the provisions of clause 5.
- 19.2. The Directors may also be paid all 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 any committee of the Directors or at any meeting of Members of the Company, provided always that such expenses are incurred on travel outside of the Gauteng province.

**20. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER RELATED PARTIES**

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, other than a transaction if it –

- 20.1. is in the ordinary course of the Company's business and for fair value;
- 20.2. constitutes an accountable advance to meet-

- 20.2.1. legal expenses in relation to a matter concerning the Company; or
  - 20.2.2. anticipated expenses to be incurred by the Person on behalf of the Company;
- 20.3. is to defray the Person's expenses for removal at the Company's request; or
- 20.4. is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

## **21. GENERAL POWERS AND DUTIES OF DIRECTORS**

- 21.1. The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.
- 21.2. The Directors may -
  - 21.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
  - 21.2.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,  
  
any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company and the wives, widows, families and dependants of such persons.
- 21.3. The Board may from time to time appoint a Chief Executive Officer for such period and at such remuneration and generally on such terms they may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office.

21.4. The Board may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers vested in the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A Chief Executive Officer appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause.

## **22. BOARD COMMITTEES**

22.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include persons who are not Directors.

22.2. No person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

22.3. There are no general qualifications prescribed by the Company for a person to serve as a member of a Board committee in addition to the requirements of the Companies Act.

22.4. A member of a Board committee shall cease to hold office as such immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.

22.5. Committees of the Board may consult with or receive advice from any person.

- 22.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

**23. PERSONAL FINANCIAL INTERESTS OF DIRECTORS**

- 23.1. For the purposes of this clause 23 (Personal Financial Interests of Directors), "Director" includes a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.
- 23.2. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 23.3. If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director -
- 23.3.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
  - 23.3.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
  - 23.3.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
  - 23.3.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 23.3.2 or 23.3.3;
  - 23.3.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 23.3.2 or 23.3.3;

23.3.6. while absent from the meeting in terms of this clause 23.3:

23.3.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and

23.3.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

23.3.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

23.4. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

23.5. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if -

23.5.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 23 (Personal Financial Interests of Directors); or

23.5.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.



## **24. PROCEEDINGS OF DIRECTORS**

- 24.1. A Director authorised by the Board -
- 24.1.1. may, at any time, summon a meeting of the Directors; and
  - 24.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
- 24.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 24.3. If all of the Directors -
- 24.3.1. acknowledge actual receipt of the notice;
  - 24.3.2. are present at a meeting of the Directors; or
  - 24.3.3. waive notice of the 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.
- 24.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 24.5. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors 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.

- 24.6. The quorum for a Directors' meeting shall be -
- 24.6.1. 2 (two) Directors if the total number of Directors is not more than 3 (three), or
  - 24.6.2. 4 (four) Directors in any other case.
- 24.7. The Board may, subject to clause 16.2.4, elect a chairman of the Board to serve as chairman for the term stipulated in clause 16.2.4, but if at any meeting the chairman is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairman of the meeting.
- 24.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 24.9. In the case of a tied vote the chairman may cast a deciding vote even if the chairman did initially have or cast a vote.
- 24.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 24.10.1. any declaration given by notice or made by a Director as required by clause 23(Personal Financial Interests of Directors);
  - 24.10.2. every resolution adopted by the Board.
- 24.11. Resolutions adopted by the Board –
- 24.11.1. must be dated and sequentially numbered; and
  - 24.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.

- 24.12. 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, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 24.13. A Round Robin Resolution of Directors, consented to by a majority of the Directors (given in person or by electronic communication), shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa who is able to receive notice, has received notice of the matter to be decided upon.

## **25. PRESCRIBED OFFICERS**

- 25.1. No person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 25.2. A Prescribed Officer shall cease to hold office as such immediately when he becomes Ineligible or Disqualified in terms of the Companies Act.

## **26. APPOINTMENT OF SECRETARY**

- 26.1. The Directors may appoint a company secretary from time to time, who –
- 26.1.1. shall be a permanent resident of South Africa and remain so while serving as secretary; and
  - 26.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and
  - 26.1.3. may be a Juristic Person subject to the following -

- 26.1.3.1. every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
  - 26.1.3.2. at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 26.1.1 and 26.1.2.
- 26.2. Within 60 (sixty) business days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 26.1.3.
- 26.3. If at any time a Juristic Person or partnership holds office as company secretary of the Company –
  - 26.3.1. the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 26.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
  - 26.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 26.1.3, until the Company has received a notice contemplated in clause 26.1.3; and
  - 26.3.3. any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or

partnership had ceased to satisfy the requirements of clause 26.1.3 at the time of that action.

- 26.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 26.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.
- 26.6. Whenever a company secretary has been appointed as contemplated in clause 26.1, the Company must maintain a record including –
- 26.6.1. the name, including any former name of each such person;  
and
  - 26.6.2. the date of every such appointment; and
  - 26.6.3. any changes in the particulars referred to in clause 26.6.1 and 26.6.2, as they occur, with the date and nature of each such change.

## **27. LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any document sent through the post either to the registered Address of any Member or to any other Address requested by the Member.

## 28. NOTICES

- 28.1. The Company may give notices, documents, records or notices of availability of the foregoing by personal Delivery to the Member or by sending them prepaid through the post or by transmitting them by telegram, telex or fax.
- 28.2. Any Member who/which has furnished an Electronic Address to the Company, by doing so –
- 28.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and
  - 28.2.2. confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 28.3. Any notice required to be given by the Company to the Members and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with clause 28.1 or 28.2), if given by posting it on the Company's web site, if any, until at least the date when the event to which the notice refers occurs.
- 28.4. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been Delivered on the date and time determined in accordance with the provisions of the Companies Act.
- 28.5. A Member shall be bound by every notice. The Company shall not be bound to enter any Person in the Members Register until that Person gives the Company an Address for entry on the Members Register.
- 28.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed Delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be

deemed to be Delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not business days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.

- 28.7. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## **29. INDEMNITY**

- 29.1. For the purposes of this clause 29 (Indemnity), "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.
- 29.2. The Company may -
- 29.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation;
  - 29.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 29.2.3. directly or indirectly indemnify a Director for –
    - 29.2.3.1. any liability, other than in respect of -

29.2.3.1.1. any liability arising in terms of sections 77(3)(a), (b) or (c) or from wilful misconduct or wilful breach of trust on the part of the Director; or

29.2.3.1.2. any fine contemplated in clause 29.2.1;

29.2.3.2. any expenses contemplated in clause 29.2.2, irrespective of whether it has advanced those expenses, if the proceedings -

29.2.3.2.1. are abandoned or exculpate the Director;  
or

29.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 29.2.3.1.

29.3. The Company may purchase insurance to protect -

29.3.1. a Director against any liability or expenses contemplated in clause 29.2.2 or 29.2.3; or

29.3.2. the Company against any contingency including but not limited to -

29.3.2.1. any expenses:

29.3.2.1.1. that the Company is permitted to advance in accordance with clause 29.2.2; or

29.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 29.2.3; or



29.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 29.2.3.1.

29.4. The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75.

### **30. FUNDAMENTAL TRANSACTIONS AND CONVERSION**

30.1. The Company may not –

30.1.1. amalgamate or merge with, or convert to, a profit company; or

30.1.2. 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.

30.2. If the Company has Voting Members, any proposal to –

30.2.1. dispose of all or the greater part of its assets or undertaking; or

30.2.2. amalgamate or merge with another non-profit company,

must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.

30.3. Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 30.2.

### **31. WINDING UP OR DISSOLUTION**

Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, the net value of the Company shall be distributed to any similar public benefit organisation which has been approved by the Commissioner: South African Revenue Service in terms of section 30 of the Income Tax Act or any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the aforementioned Act, which has as its sole object the carrying on of any public benefit activity and which has similar objects to those of the Company.