

**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA**

The Companies Act, No. 71 of 2008, as amended

**SUBSTITUTED
MEMORANDUM OF INCORPORATION
of a
NON PROFIT COMPANY WITH MEMBERS
known as
THE FYNBOS FORUM (RF) NPC**

Registration Number :

2017/120278/08

Date of Registration:

13 March 2017

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA
[The Companies Act, No. 71 of 2008, as amended]

MEMORANDUM OF INCORPORATION
of
The Fynbos Forum (RF) NPC

NATURE OF COMPANY

This is a Non-Profit Company with Members, who are to be admitted from time to time upon the basis and subject to the terms stipulated in clauses 9 – 18, of this Memorandum.

OBJECTS AND PURPOSE

The Sole or Principal Object of the Company shall be as stated in clause 3.

DIRECTORS

Provision is made for the appointment of a minimum of five (5) and a maximum of fifteen (15) Directors, as stated in clause 21.1.

ALTERNATE DIRECTORS

Each Director has a qualified right to appoint an Alternate Director on the conditions stated in clause 23.

SPECIAL CONDITIONS (Ring-Fencing)

The objects and powers of the Company are limited and subject to certain statutory limitations and conditions, including in particular the following special conditions, viz:

- Attachment "A"** - The special conditions applicable to Non-Profit Companies, as prescribed in terms of Schedule 1 to the Companies Act, No. 71 of 2008, as amended.
("The NPC Conditions").
- Attachment "B"** - The special conditions applicable to tax-exempt "Public Benefit Organisations" approved by the Commissioner for purposes of Sections 30 and 18A of the Income Tax Act, No 58 of 1962, as amended.
("The Fiscal Conditions").
- Attachment "C"** - The special conditions applicable to Registered Non-Profit Organisations, as prescribed in terms of Section 12(2) of the Non-Profit Organisations Act, No. 71 of 1997, as amended.
("The NPO Conditions").

<u>CLAUSE</u>	I N D E X	<u>PAGE</u>
A.	DEFINITIONS	1
B.	INTERPRETATION	4
	<i>BACKGROUND</i>	5
1.	INCORPORATION	6
2.	PRELIMINARY	6
3.	SOLE OR PRINCIPAL OBJECT	6
4.	GOVERNANCE PROVISIONS	7
5.	POWERS AND CAPACITIES	7
6.	LIMITATION ON POWERS AND CAPACITIES	7
7.	ALTERATIONS TO THIS MEMORANDUM : AND THE MAKING OF COMPANY RULES	9
8.	NON-APPLICABILITY OF OPTIONAL PROVISIONS	9
9.	MEMBERSHIP	10
10.	SUSPENSION AND CESSATION OF MEMBERSHIP	11
11.	RIGHTS OF MEMBERS	12
12.	REPRESENTATIVE MEMBERS	13
13.	NON-TRANSFERABILITY OF MEMBERSHIP	13
14.	REGISTER OF MEMBERS	13
15.	GENERAL MEETINGS	13
16.	NOTICE OF GENERAL MEETINGS	14
17.	PROCEEDINGS AT GENERAL MEETINGS	15
18.	VOTES OF MEMBERS	17
19.	MINUTES AND MINUTE BOOK	18
20.	PROXIES	18
21.	APPOINTMENT OF DIRECTORS	20
22.	TERM OF APPOINTMENT	21
23.	ALTERNATE DIRECTORS	22
24.	DISQUALIFICATION AND REMOVAL OF DIRECTORS	22
25.	MEETING FORMALITIES	23
26.	AUTHORITY OF THE BOARD	24
27.	PROCEEDINGS OF DIRECTORS	24
28.	DIRECTORS REMUNERATION AND REIMBURSEMENT	27
29.	CONFLICTS OF INTEREST	27
30.	POWERS AND DUTIES OF DIRECTORS	28
31.	BORROWING POWERS	28
32.	PATRON	27
33.	FINANCIAL YEAR – FINANCIAL STATEMENTS – GOVERNANCE	28
34.	LIMITATION OF LIABILITY AND INDEMNITY	30
35.	NOTICES	30
	<u>ATTACHMENTS :</u>	
	Attachment "A" - The NPC Conditions	32 - 36
	Attachment "B" - The PBO Conditions	37 - 41
	Attachment "C" – The NPO Conditions	42 - 43

A. DEFINITIONS AND INTERPRETATION

Unless the context clearly otherwise indicates, words and expressions defined in the Companies Act, No. 71 of 2008, as amended, shall bear the same meanings when used in this Memorandum of Incorporation, save that the following words and phrases shall bear the specific meanings assigned to them, as follows, viz:

- A.1 **"Alternate Director"** means any person duly appointed and acting from time to time as an Alternate Director in terms of clause 23.
- A.2 **"Associate Members"** means the persons who are admitted by the Board to this category of Non-Voting Membership, in accordance with the provisions of Clause 9.2.
- A.5 **"Board"** means the Board of Directors of the Company as constituted from time to time in terms of this Memorandum.
- A.6 **"Commission"** means the Companies and Intellectual Property Commission (CIPC) established in terms of the Companies Act.
- A.7 **"Companies Act"** means the Companies Act, No 71 of 2008, as amended, and this term shall be deemed to include all schedules, regulations, and notices prescribed thereunder from time to time, incorporating any amendment, substitution, or re-enactment thereof.
- A.8 **"Company"** means the company which is incorporated and governed in terms of this Memorandum of Incorporation.
- A.9 **"Company Secretary"** means any person that may at any time be appointed to perform the duties and functions of a Company Secretary, as contemplated by the Companies Act.
- A.10 **"Co-opted Director"** means any person appointed by the Board to serve as an additional Director, in accordance with the provisions of clause 21.5 of this Memorandum.

- A.11 **"Custodian Members"** means the persons who are admitted by the Board to this category of Voting Membership, in accordance with the provisions of Clause 9.1.
- A.12 **"Deliver"** in relation to a notice or other document to be communicated to Members or Directors, includes the hand-delivery or despatch thereof by ordinary registered mail to an address furnished to the Company for this purpose by the addressee; or the transmission thereof by email, internet, intranet, or other permitted means of electronic communication, subject to the provisions of clause 35.
- A.13 **"Directors"** means the persons duly appointed or co-opted to that office from time to time, including the Incorporators insofar as they were deemed to be the first Directors of the Company in terms of the Act; and the term "Directors" shall also include any person duly appointed as an Alternate Director.
- A.14 **"Duly Certified"**, in relation to copies, shall mean and denote a copy certified by an appropriate public officer or notary public; or such other form of certification as the Directors may from time to time in their sole discretion accept.
- A.15 **"File"** or **"Filing"** in relation to a document to be lodged with the Commission means the delivery and lodgment thereof with the Commission, in the manner and in the form prescribed by the Companies Act.
- A.16 **"Former Association"** means the Voluntary Association likewise described as The Fynbos Forum which was duly constituted in terms of a written constitution, and which represented the institutional predecessor to this Company.
- A.17 **"Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended, including the schedules and regulations prescribed thereunder.
- A.18 **"Membership Classes"** means the two (2) Classes of Membership referred to in clause 9 of this Memorandum – that is, a Voting class in relation to the **Custodian Members**, and a Non-Voting Class in relation to the **Associate Members**, when applicable; and **"Membership Categories"** means any

such categories of membership into which the Membership Classes may be divided at any time, as contemplated by clause 9 of this Memorandum.

- A.19 **"Members"** means the individual persons and juristic persons (if any; also referred to as 'a member') which may from time to time be admitted to Membership by the Board at its discretion in accordance with the terms of this Memorandum.
- A.20 **"Month"** means a calendar month.
- A.21 **"Memorandum" or "MOI"** means this Memorandum of Incorporation, including the attachments thereto.
- A.22 **"Nomination Committee"** means a committee to be constituted in accordance with the provisions of Clause 9.2, with delegated authority to consider and determine from time to time applications and proposals submitted for the admission of additional Custodian Members, but subject to the over-riding discretion of a General Meeting of Custodian Members.
- A.23 **"Non Profit Organisations Act"** means the Non-Profit Organisations Act No. 71 of 1997, as amended.
- A.24 **"Office"** means the Registered Office of the Company.
- A.25 **"Prescribed Companies Act Provisions"** means the special provisions concerning Non-Profit Companies, prescribed in terms of Schedule 1 to the Companies Act, as are referred to in Attachment "A" to this Memorandum.
- A.26 **"Prescribed Fiscal Provisions"** means the provisions concerning Public Benefit Organisations approved by the Commissioner in terms of Sections 30 and 18A of the Income Tax Act, as set forth in Attachment "B" to this Memorandum.
- A.27 **"Prescribed NPO Provisions"** means the provisions concerning registered Non-Profit Organisations, prescribed in terms of Section 12(2) of the Non-Profit Organisations Act, as set forth in Attachment "C" to this Memorandum.

- A.28 **"Prescribed Statutory Provisions"** includes the Prescribed Companies Act Provisions; the Prescribed Fiscal Provisions; and the Prescribed NPO Provisions, which are binding upon the Company from time to time in terms of clause 6.1.
- A.29 **"Public Benefit Activities"** means such activities as are from time to time defined and listed as such in the Ninth Schedule to the Income Tax Act, subject to any such amendments or additions thereto as may from time to time be enacted or prescribed.
- A.30 **"Republic"** means the Republic of South Africa.
- A.31 **"Rules"** mean any such rules as may at any time be made and adopted by the Board, in accordance with the provisions of clause 7.3 of this Memorandum.
- A.332 **"Written Consent"** means a duly signed and authorised written communication; but includes also a communication, including an electronic signature, addressed in the form of a data message, which is accessible in visual form for subsequent reference.

B. INTERPRETATION

The interpretation of this Memorandum of Incorporation shall be further informed and governed by the following provisions, viz:-

- B.1 Expressions with reference to writing shall be deemed to include reference to printing, lithography, photographs, electronic images, and other modes of representing or reproducing words in visible form.
- B.2 References to the Companies Act; the Income Tax Act; the Non-Profit Organisations Act; or any other legislation, and the regulations prescribed thereunder shall be deemed to denote such legislation or regulations, as they may be amended from time to time, including any re-enactment or substitution therefor.
- B.3 Words importing the singular shall include the plural; words importing the masculine, feminine, or neuter, shall include the others of such genders; and

words importing persons shall include juristic persons, and vice versa in each instance.

- B.4 In the event of any conflict between the terms of this Memorandum and the provisions of the Companies Act, this Memorandum shall prevail, except insofar as the Companies Act may impose an unalterable provision.

BACKGROUND

The Fynbos Forum had its origin in multi-disciplinary collaboration that came into existence during 1977, addressing research and management issues affecting the conservation and future sustainability of the unique Fynbos Biome. Over the ensuing four decades the annual conference of the Fynbos Forum became an essential opportunity for the exchange of knowledge and ideas amongst a wide cross-section of diverse role players who shared a passion and commitment to the protection, conservation and better understanding of this unique and distinct biological region. The resulting dialogue and discourse not only served to inform and guide future research, but also led to significant practical initiatives and actions, including the programmes and projects described as Working for Water and the Fynbos Forum Ecosystems Guidelines for Environmental Assessment in the Western Cape.

A decision was made to reconstitute the informal voluntary association which had become known as the Fynbos Forum, as a new non-profit company and public benefit organisation. It was intended that in this manner the long-term sustainability of the Forum might be assured, and that recognition could be given to the wide cross-section of participants, who included not only professional managers and biologists, but also a diverse community of knowledge and practice, involving policy-makers, land users, consultants, representatives of concerned non-governmental and community-based organisations, and individuals who shared a passion and concern for the long-term conservation and protection of this unique part of the South African natural heritage.

By bringing together this diverse group of participants in an annual conference, the Fynbos Forum creates opportunities to form alliances, and provides ongoing opportunities for communication and collaboration. It provides a strong platform for participatory learning, which builds a collective knowledge base. The Fynbos Forum seeks to support effective conservation in the region through sharing and upgrading the knowledge of participants, by agreeing on priorities for research and by motivating and developing alternatives for implementation.

Accordingly, the vision and purpose of this non-profit company is to provide an appropriate legal structure for the Fynbos Forum, in order that its established role and sustainability might be assured, and it might continue to develop new programmes of initiative and action.

1. INCORPORATION

A NON-PROFIT COMPANY WITH MEMBERS is established and incorporated in terms of the Companies Act, which shall be governed and administered in accordance with the terms of this Memorandum of Incorporation. The Company shall be known as:-

The Fynbos Forum (RF) NPC

2. PRELIMINARY

- 2.1 In accordance with the provisions of Schedule 1 to the Companies Act, the Incorporators became the initial Membership of the Company; provided that within 90 days of the adoption of this Substituted Memorandum of Association by Special Resolution duly passed by the Incorporators, a meeting of the members of the Management Committee of the Former Association likewise described as The Fynbos Forum shall be held in order to elect and determine the identity of the initial Directors and the identity of the initial Custodian Members, whereupon the Incorporators shall effect the required nominations and appointments to give effect thereto.
- 2.2 For the avoidance of doubt, it is recorded that, prior to the holding of the first Annual General Meeting of the Company after the adoption of this Substituted Memorandum of Association by Special Resolution duly passed by the Incorporators, there shall be no Associate Membership; but as soon as this may be deemed practicable by the Board it shall give attention to the admission of further members within the Voting and/or Non-Voting Membership Categories, as it may deem appropriate.

3. SOLE OR PRINCIPAL OBJECT

- 3.1 The Sole or Principal Object of the Company shall be to promote the conservation and sustainable management of the Fynbos Biome.
- 3.2 This Object shall be advanced and achieved by such means as may be deemed effective and appropriate from time to time, including programmes and activities which serve to facilitate a transdisciplinary discourse, synergy and collaboration between researchers, planners, managers, landowners and other relevant stakeholders promoting coordination between the efforts of those

whose shared objective is to advance the conservation and sustainable management of fynbos ecosystems.

At the heart of the activities of the Forum shall be the convening of an annual conference focussed upon the collaborative sharing and production of knowledge that underpins regional conservation efforts within the Fynbos Biome; including discussions on resource management issues and research results, in order to assess biological resources, determine priorities for future research, ensure institutional capacity, and consider socio-economic implications and other relevant issues.

It also formulates priorities for future research and conservation management actions required to ensure the conservation and sustainable use of fynbos ecosystems which include:

- Innovative and applied research leading to a better knowledge of fynbos;
- Sustaining and extending the diverse knowledge network to widen the appreciation of fynbos by society;
- Developing a greater understanding of fynbos ecosystems, and consolidating scattered knowledge and sound management principles;
- Building human capacity and providing mentorship, inspiration, and new work opportunities, leading to greater representivity and diversity of people supporting the conservation of fynbos;
- Developing guidelines for sustainable policies and planning, including opportunities for greater citizen and community involvement in conservation and sustainable natural resource management.

3.3 Without derogating from the generality of the foregoing, and subject to the availability of funding for this purpose, the Company may also: grant scholarships, bursaries and awards to persons wishing to acquire relevant skills and qualifications; provide financial support (in part or in full) to attend and participate in the annual forum; generate best-practice guidelines and/or research and undertake projects which are relevant to the objectives and priorities of the Company. With respect to the granting of any such scholarships, sponsorship, research grants or project funding, the Company shall have due regard to the applicable Prescribed Statutory Provisions contemplated by Attachment "B".

4. GOVERNANCE PROVISIONS

In accordance with the provisions of the Companies Act:-

- 4.1 The *unalterable* provisions of the Companies Act which are applicable to Non-Profit Companies with Members, (including the special provisions concerning Non-Profit Companies set forth in Schedule 1 to the Companies Act) shall be binding upon the Company, and are deemed to have been incorporated in this Memorandum.
- 4.2 The *alterable* provisions of the Companies Act which are applicable to Non-Profit Companies with Members (including the special provisions concerning Non-Profit Companies set forth in Schedule 1 to the Companies Act) shall be binding upon the Company, and are deemed to be incorporated in this Memorandum, only to the extent and insofar as this Memorandum may not stipulate to the contrary in a manner permitted by the Companies Act, whether by limitation, extension, variation, or otherwise.

5. POWERS AND CAPACITIES

As a Non-Profit Company incorporated in terms of the Companies Act, the Company is deemed to constitute a juristic person, having all the legal powers and capacities of an individual, except to the extent that a juristic person may be incapable of exercising any of such powers or having any of such capacities; but subject further to the terms of clause 6 of this Memorandum, and to the relevant provisions of the Companies Act.

6. LIMITATION ON POWERS AND CAPACITIES

- 6.1 The exercise of the Company's aforesaid powers and capacities shall be restricted in the manner contemplated by Section 19(1)(b)(ii) of the Companies Act, to the extent necessary to ensure the required compliance with various prescribed provisions, including the undermentioned further statutory provisions, namely:-
 - 6.1.1 The Prescribed Companies Act Provisions which are applicable to Non-Profit Companies (NPCs) with Members, as contemplated by Attachment "A" hereto;

- 6.1.2 The Prescribed Fiscal Provisions, which are applicable to Approved Public Benefit Organisations, as contemplated by Attachment "B" hereto; and
- 6.1.3 The Prescribed NPO Provisions, insofar as they may be or become applicable to the Company by reason of its registration in terms of the Non-Profit Organisations Act No. 71 of 1997, as amended, as contemplated by Attachment "C" hereto.
- 6.2 The income and property of the Company whencesoever derived shall be applied solely towards the advancement of its Sole or Principal Object (see Clause 3), and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any Members/Directors, or any controlling Company; Provided that nothing herein contained shall prevent the Company from giving financial or other assistance to other tax- exempt Public Benefit Organisations, in support of their Public Benefit Activities, to the extent that such assistance serves to promote the Sole or Principal Object of the Company; nor shall the foregoing prevent the payment in good faith by the Company of reasonable reimbursement or remuneration (commensurate with the services actually rendered) to any officer or servant of the Company, including a Member or a Director, subject to due compliance with the Prescribed Fiscal Provisions.
- 6.3. Upon the winding-up, deregistration or dissolution of the Company for any reason, the assets then remaining after the satisfaction of all its commitments and liabilities shall be given or transferred to one or more other Public Benefit Organisations having the same or similar objects as those of the Company, as may be determined by the members in a General Meeting, with the approval of the Commissioner for the South African Revenue Service (SARS), insofar as that may be required by law.

7. ALTERATIONS TO THIS MEMORANDUM; AND THE MAKING OF COMPANY RULES

- 7.1 This Memorandum may at any time be altered or amended by Special Resolution duly passed at a General Meeting by the required majority of Custodian Members; and provided further that no such alteration or amendment shall be competent if it would be inconsistent with the limitations on the powers of the Company referred to in clause 6 above. Forthwith upon the adoption of any such alteration, or amendment, written notice thereof

shall be delivered to every Voting Member and to every Director of the Company; and it shall also be filed with the Commission in the manner required by the Companies Act.

- 7.2 Without limiting the ambit of the preceding clause, the Board or any person authorised by the Board shall have the ancillary power to cause this Memorandum to be altered in any manner deemed necessary in order to correct a patent error of spelling, punctuation, reference, grammar, or similar formal defect appearing from the face of the document, by means of the delivery of a notice with respect to any such amendment addressed to each Member and to each Director of the Company; and by filing notice thereof also with the Commission in the manner required by the Companies Act.
- 7.3 Should the Board at any time deem this necessary or desirable, it shall also be empowered to make Rules for the Company, including such as may be applicable to the participation of Associate Members; but such power to make Rules shall be limited and restricted likewise to the extent that the powers of the Company are themselves limited as aforesaid. A copy of any such Rules shall be published, by delivering a copy thereof to each Member of the Company and to each Director, and by filing a copy thereof with the Commission, in the manner required by the Companies Act.

8. NON-APPLICABILITY OF OPTIONAL PROVISIONS

- 8.1 The Company hereby elects not to assume the voluntary obligation of compliance with the enhanced accountability and transparency provisions set out in Chapter 3 of the Companies Act, save to the extent that the Company hereby voluntarily assumes the obligation to appoint an independent auditor, and to prepare Audited Annual Financial Statements, as therein contemplated.
- 8.2 Notwithstanding the foregoing, the Company may subsequently at its discretion voluntarily assume other obligations contemplated by the enhanced accountability and transparency provisions; and in any such event the Company may subsequently at its discretion, rescind any such voluntary obligation of compliance, provided that a Special Resolution to this effect is duly passed by the Custodian Members of the Company in accordance with the provisions of the Companies Act.

9. MEMBERSHIP

The Company shall have a Membership comprising both voting and non-voting Members. Unless at any time otherwise determined by Special Resolution, the Membership of the Company shall comprise the following classes and categories, viz:-

- 9.1. A Custodian Membership, which shall be a voting category, comprising such qualified academic professionals, managers, and other individuals having a substantive and committed involvement with and concern for fynbos conservation and sustainable management of fynbos ecosystems, as may be admitted initially in accordance with the process referred to in Clause 2.1; and as may be admitted subsequently from time to time by the Nomination Committee to be constituted in terms of Clause 9.3, in its sole and absolute discretion.
- 9.2 An Associate Membership, which shall be a non-voting category, comprising such individual persons having a special interest, concern and knowledge within the field of fynbos conservation and sustainable management of fynbos ecosystems, as the Nomination Committee in its sole and absolute discretion may resolve to admit to this category of membership from time to time.
- 9.2 The Nomination Committee shall comprise not less than 3 and not more than 5 persons, one of whom shall be a Director elected to this office by the Board, and the remainder of whom shall be elected by the Custodian Members at the Annual General Meeting. A quorate meeting of the Nomination Committee shall require the presence and participation of all its members. In the event of dissent, the decision of a majority shall prevail. Nomination Committee members shall serve for a rotational 3-year term on the same basis as is applicable to persons elected to serve on the Board of Directors.
- 9.2 Further categories of membership, including an institutional or professional membership, may be established at any time by Special Resolution. Any such further category shall confer upon its constituent members such rights and prerogatives, and impose such duties and eligibility requirements as may be determined by Special Resolution with reference thereto.

- 9.3 For the avoidance of doubt, the Nomination Committee of the Company shall have a complete and unfettered discretion with respect to the admission of Members in each such category, and shall be under no obligation to furnish reasons for, or otherwise motivate any such decisions. Notwithstanding the foregoing, the Nomination Committee may consult with and invite suggestions by the Custodian Membership and/or the Associate Membership regarding persons who should be considered for membership in each such category. It is further stipulated that the Nomination Committee shall be entitled to decline to admit to Membership a particular applicant for Membership, notwithstanding an applicant's ability, and professed willingness to fulfil the usual qualifications and requirements defining eligibility in respect of the Membership category concerned.
- 9.4 Anything to the contrary hereinbefore stated notwithstanding, the Custodian Members at a duly convened General Meeting shall have over-riding authority at any time to review, rescind and amend a decision of the Nominations Committee with respect to the admission of a Custodian Member, or a decision of the Board with respect to the termination of such membership, as the case may be.

10. SUSPENSION AND CESSATION OF MEMBERSHIP

- 10.1 Membership in any class or category may be suspended or terminated by Resolution of the Board, provided such resolution is approved by a majority comprising no less than Two-Thirds ($\frac{2}{3}$) of the Directors then in office (being not less than the minimum number of Directors stipulated in Clause 21.1. Without limiting the ambit of the Board's discretion, it is contemplated that suspension or termination of Membership may be implemented in any of the following circumstances, viz:
- 10.1.1 In the event of the Member concerned ceasing to comply with the criteria by virtue of which such Member was initially regarded as eligible to be admitted as a Member of the Company in the class or category concerned; or
- 10.1.2 In the event of a Member being found guilty of conduct which in the sole and absolute discretion of the Board is considered inimical to such continued membership, or which may reflect adversely upon the Company; or

- 10.1.3 In the event of a Member failing and/or refusing to remit payment of any levy, subscription, or contribution which may be required of the Member concerned; or
- 10.1.4 In the event of the Board for any other reason considering that such suspension or termination of Membership would be in the best interests of the Company.
- 10.2 Before adopting any such Resolution to suspend or terminate membership as aforesaid, the Board shall afford the Member concerned an opportunity to make written representations with regard to the issues affecting such Membership.
- 10.3 The Board may at its discretion choose to furnish reasons for its decisions with respect to the termination or suspension of Membership; but the Board shall be under no obligation to do so, whether express or implied.
- 10.4 Membership of the Company shall also be terminated ipso facto in either of the following circumstances, viz:
- 10.4.1 upon the disestablishment, voluntary dissolution, or final liquidation, of any Member which is an organisation or juristic person; or upon the death of a Member who is a natural person; or
- 10.4.2 upon receipt by the Company at The Office of the written resignation of the Member concerned.
- 10.5 For the avoidance of doubt, it is further stipulated that nothing herein contained or implied shall preclude the Board at its discretion from extending a period of grace to allow for the mitigation or rectification of the matter constituting the grounds for such suspension or termination of membership for such reasons, and upon such conditions, as the Board in its sole discretion may deem appropriate in the circumstances.

11. RIGHTS OF MEMBERS

In addition to all other rights conferred by statute, Members of the Company shall have the following rights and prerogatives, viz:

- 11.1 All Custodian Members of the Company shall receive copies of the Annual Financial Statements, and Annual Reports of the Company as may be issued from time to time. Associate Members shall similarly be entitled upon request to receive copies of the same documentation;
- 11.2 Notwithstanding the foregoing, the right to receive notice of, attend, speak and vote at General Meetings of the Company, whether Ordinary or Extraordinary, shall be restricted to the Custodian Members; although this provision shall in no way preclude the Board at its discretion from inviting non-voting Associate Members and other interested and affected persons to be present and to participate at General Meetings in such manner and to such extent as may be permitted by the Chairperson of the meeting.

12. REPRESENTATIVE MEMBERS

The Board shall be entitled (but not obliged) to recognise any person as a member, *nomine officii*, by reason of that person's appointment as:

- 12.1 the holder of any office or appointment by virtue of which such person has been recognised as a member *nomine officii*; or
- 12.2 the Liquidator of any Member which is a Body Corporate in the course of being wound up.

Any Representative Member recognised by the Board in terms of these provisions, shall from the date of the Board's determination, and subject to the provision of any proof required by the Board with respect to the office or appointment concerned, be deemed, in all respects and for all purposes, to be a Member of the Company in the same category as the Member concerned.

13. NON-TRANSFERABILITY OF MEMBERSHIP

Membership shall not be capable of being assigned or transferred.

14. REGISTER OF MEMBERS

The Company shall maintain a register of Members at The Office, as provided for in terms of the Companies Act.

15. GENERAL MEETINGS

- 15.1 The Company shall hold its Annual General Meetings initially within Eighteen (18) months after the date of its incorporation. Thereafter it shall convene and hold an Annual General Meeting in each succeeding year; provided that no more than Fifteen (15) months shall elapse between the date of one Annual General Meeting and that of the next; and Annual General Meetings shall be held within Six (6) months after the expiration of each financial year of the Company.
- 15.2 Other General Meetings of Members of the Company may be held at any time, as circumstances may require.
- 15.3 Annual General Meetings and any other General Meetings shall be held at such times and places as the Board may appoint, or at such times and places as may be stipulated in respect of meetings to be convened in terms of the Companies Act.
- 15.4 Anything to the contrary hereinbefore contained notwithstanding, a General Meeting must be convened at any time if there is a written requisition therefore signed by not less than Ten percent (10%) or 20 of the Custodian Members.
- 15.5 Without implying any enforceable right or obligation, the intention is recorded that the Board, at its discretion, may permit the attendance and participation at General Meetings (but without the right to vote) of persons who are not members of the Company, but who in the opinion of the Board are able to contribute value to the proceedings of such meeting.

16. NOTICE OF GENERAL MEETINGS

- 16.1 Annual General Meetings, and any other General Meeting of Members, may be called from time to time, subject to not less than fifteen (15) business days' notice in writing given to all Members entitled to vote at General Meetings of the Company.

16.2 The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in General Meetings to all Members of the Company entitled to attend and vote in person or in such manner as may be determined by the board; provided that a meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this clause or notice, or that is otherwise defective, be deemed to have been duly called, and the meeting may proceed accordingly, on condition that all members entitled to exercise voting rights at that meeting:-

16.2.1 Acknowledge actual receipt of the notice; or

16.2.2 Are actually present, or represented at the meeting; or

16.2.3 Waive notice of the meeting; or

16.2.4 In the case of a material defect, ratify the defective notice; subject to the provisions of Section 62 of the Companies Act.

17. PROCEEDINGS AT GENERAL MEETINGS

17.1 Annual General Meetings shall deal with and dispose of all matters prescribed by the Companies Act, or required in terms of this Memorandum, including :

17.1.1 The consideration of the Annual Financial Statements;

17.1.2 The nomination or election of Directors in accordance with clause 21;

17.1.3 The appointment of Auditors.

All other business laid before a General Meeting shall be considered Special Business.

17.2 No business shall be transacted at any General Meeting unless a quorum of Members is present or deemed to be present at the time the meeting proceeds to business. A quorum shall be constituted if there shall be personally present or deemed to be present at such meeting (or duly represented in the case of Members which are juristic persons), at least twenty (20) Members entitled to vote.

17.3 As contemplated by the Act, if within forty-five (45) minutes after the time appointed for the meeting to commence, there is no quorum, the meeting, if convened upon the requisition of Voting Members, shall be dissolved. In any other case the chairperson of the meeting may at his/her discretion extend the period of adjournment for a further period not exceeding forty five (45) minutes, on the grounds *inter alia* that:-

17.3.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or

17.3.2 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 requirement for a quorum.

Thereafter, if a quorum is still not present, the meeting shall stand adjourned to such time and date as the chairperson of the meeting may decide, provided that it shall be within twenty-one (21) days of the date of the original meeting; and if at such adjourned meeting a quorum is still not present within forty-five (45) minutes after the time appointed for the commencement of such meeting, the Voting Members then present, in person or by proxy, shall be deemed to constitute a quorum.

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

17.5 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned as aforesaid in terms of clause 17.3, unless the location for the meeting is different from:-

17.5.1 the location of the postponed or adjourned meeting; or

17.5.2 the location announced at the time of adjournment, in the case of an adjourned meeting.

- 17.6 The chairperson of the Board, or in his/her absence the deputy-chairperson, if any; or in the event of co-chairpersons, then either of them shall preside as chairperson at General Meetings of the Company. If there is no such chairperson or deputy-chairperson or co-chairperson, or if at any meeting none of them is present within thirty (30) minutes after the time appointed for the holding of the meeting, or is unwilling to act as chairperson of the meeting, the Voting Members present shall elect another of those present to act as chairperson of the meeting.
- 17.7 The person chairing the meeting may, with the consent of the Members at any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 17.8 At any General Meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the person chairing the meeting, or the Members so qualified as referred to hereunder; and unless a poll is so demanded, a declaration by the person chairing the meeting that a resolution has, on a show of hands, been carried unanimously or by a particular majority or rejected, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof being required of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be made at any time by any five (5) or more other voting members, present or represented by proxy at the meeting. The demand for a poll may be withdrawn.
- 17.9 If a poll is duly demanded, it shall be taken in such manner as the person chairing the meeting may so direct.
- 17.10 A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting may direct. The demand for a poll shall not prevent the continuation of a

meeting for the transaction of any business other than the question upon which the poll has been demanded.

- 17.11 Unless a meeting is required to be held in compliance with the provisions of the Companies Act, a resolution signed by or on behalf of All Custodian Members entitled to vote shall be as valid and effectual as if passed at a duly convened meeting of the Company.

18. VOTES OF MEMBERS

- 18.1 On a poll, each Voting Member shall have One (1) vote.
- 18.2. For the avoidance of doubt, it is reiterated that the right to vote, shall be the sole prerogative of the Custodian Members, and Members in other Classes and Categories shall have no vote.
- 18.3 In the case of an equality of votes, the Chairperson of the meeting shall be entitled to a second or casting vote.
- 18.4 Save in respect of any special majority required by the Companies Act for purposes of a Special Resolution, all other resolutions to be passed at General Meetings of the Company shall require a simple majority of the votes cast by the voting Members actually present or represented at a quorate General Meeting.

19. MINUTES AND MINUTE BOOK

The Directors shall cause minutes to be kept:

- 19.1 of the appointments of all officers of the Company;
- 19.2 of the names of all Members present or represented at every General Meeting (including their respective Membership Classes and Categories); and of all Directors present at every meeting of the Board; and
- 19.3 of the proceedings of General Meetings, and the proceedings of the Board.

The minutes shall be signed by the person chairing the meeting or in his/her absence by the person chairing the next succeeding meeting.

20. PROXIES

- 20.1 The instrument appointing a proxy shall be in writing under the hand of the appointer or her/his agent duly authorised in writing; or if the appointer is a juristic person or body corporate, under the hand of a duly authorised officer or agent. A proxy need not be a Member of the Company. The holder of a general or special power of attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.
- 20.2 Although the chairperson of the meeting shall be entitled to condone any non-compliance with these formalities, the Company shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy including a power of attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been deposited at the Office not less than forty-eight (48) hours before the time for holding such meeting, or any adjournment thereof.

20.3 The instrument appointing a proxy shall be in the following form or in such other form as may be acceptable to the Board:

We, _____ of _____ being a Member of the Company known as

The Fynbos Forum (RF) NPC

do hereby appoint: _____ of _____ whom failing _____ of _____ whom failing _____ of _____

as our proxy to attend, vote and speak for us and on our behalf at the Annual General Meeting (as the case may be) of the Company to be held on the day of 20 , and at any adjournment thereof as follows:

	In favour of	Against	Abstain from voting
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction to proxy by way of a cross in space provided above)

Unless otherwise instructed, our proxy may vote as s/he thinks fit.

Signed this _____ day of _____ 20 _____ .

(Note: A Member who is entitled to attend and vote at a General Meeting, is entitled to appoint a proxy to attend, speak and on a poll vote in its stead. Such proxy need not also be a Member of the Company).

21. APPOINTMENT OF DIRECTORS

- 21.1 Unless otherwise determined at any time by Resolution adopted at a General Meeting of Custodian Members, there shall at no time be fewer than Five (5) nor more than fifteen (15) Directors of the Company.
- 21.2 In accordance with item 3(b) of Schedule 1 to the Companies Act, the Incorporators of the Company are deemed to constitute its first Directors.
- 21.3 As contemplated by Clause 2.1, within 90 days of the adoption of this Substituted Memorandum of Association by Special Resolution duly passed by the Incorporators, a meeting of the members of the Management Committee of the Former Association together with the Incorporators of the NPC likewise described as The Fynbos Forum shall be held in order to elect and determine the identity initial custodian members who shall elect Directors who shall thereupon be appointed to this office in addition to or in succession to the Incorporators.
- 21.4 The persons so elected and appointed as Directors shall serve in that capacity for terms of office which are to be determined in accordance with the provisions of Clause 22.
- 21.5 Unless otherwise determined by Special Resolution, no other person shall have the power to appoint Directors; and no persons shall be deemed to be appointed Directors *ex officio* as contemplated by Section 66(4) of the Act.
- 21.6 Without derogating from the aforesaid provisions, the Board shall be entitled at its discretion to select from amongst the Custodian Members one or more persons whom it may itself co-opt as additional Directors, subject to the maximum number of Directors hereinbefore stipulated. In considering such persons as are to be co-opted by it as additional Directors, the Board may invite proposals from the Associate Members; and it should also have regard to the importance of ensuring that the Board includes persons with special knowledge and skills, and reflects both diversity and representivity of race and gender, in particular. Any such co-opted Directors shall hold office at the discretion of the Board until the next-succeeding Annual General Meeting, but shall remain eligible for co-option or election at any time thereafter.

21.6 The continuing Directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of Directors required to act as such for the time being, the continuing Director/s may act only:

21.6.1 to preserve, secure and ensure the continuity of the assets and activities of the Company;

21.6.2 to cause vacancies to be filled, and the number of Directors to be increased to the required minimum; and/or

21.6.3 to initiate a process, which may include the summoning of a General Meeting for that purpose.

22. TERM OF APPOINTMENT

22.1. Subject to the provisions of clause 22.2, each of the Directors elected to this office shall serve in that capacity for a term of Three (3) years; and shall be eligible, if so elected, to serve for one or more further terms of Three (3) years each, unless removed in terms of the Companies Act, or otherwise in terms of this Memorandum.

22.2 Notwithstanding the foregoing, in order to provide opportunities for rotation and renewal, the terms of individual Directors may be differentiated at the time of their appointment, both initially and from time to time as may be considered desirable and in the best interests of the company. Accordingly, the Board may recommend and a General Meeting may so determine that the duration of the terms of particular Directors be for one, two or three years, as the case may be, in order to facilitate continuity and the retention of knowledge and experience amongst those who serve as Directors of the company.

22.2 Subject to the preceding provisions, at each Annual General Meeting, one-third (1/3) of the Directors then serving shall retire, but those retiring shall be eligible for re-election. The Directors retiring at each Annual General Meeting shall be such as have completed their three (3) year terms; provided that if more than one third (1/3) of the elected Directors have completed their three (3) year terms at any Annual General Meeting, the Directors who are required to retire shall be such as may be mutually agreed amongst the

Directors concerned who are due for retirement; but in the absence of such agreement, those who retire shall be determined by the drawing of lots between them.

- 22.3 Notwithstanding the foregoing, Directors shall be deemed to have retired at the conclusion of the first Annual General Meeting which occurs after they have attained the age of Seventy-five (75) years, unless the Meeting shall otherwise determine.

23. ALTERNATE DIRECTORS

- 23.1 Each Director shall have the power to nominate any other Director of the Company to act as Alternate Director in her/his place during her/his absence or inability to act as such; provided that the appointment as an Alternate of any person who is not already a Director of the Company shall require the approval of the Board. Upon any such appointment being duly made, the Alternate Director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other Directors of the Company.
- 23.2 Any Alternate Director, whilst acting in the stead of the Director who appointed her/him, shall be entitled to exercise the voting rights of the Director concerned, and shall exercise and discharge all the powers, duties and functions of such Director. The appointment of an Alternate Director shall be revoked, and the Alternate Director shall cease to hold office, whenever the Director who appointed her/him ceases for any reason to be a Director; or should such Director or the Alternate Director himself give notice to the Secretary of the Company that such Alternate Director has ceased to represent the Director concerned.

24. DISQUALIFICATION AND REMOVAL OF DIRECTORS

The office of a Director shall also be vacated in any of the following circumstances:

- 24.2 If the Director concerned ceases to satisfy the qualifications and eligibility requirements set out in Section 69 of The Act, or for any other reason becomes disqualified or precluded from serving as a Director by virtue of any other provision of The Act; or

- 24.3 If the Director concerned resigns office by notice to this effect duly given in writing to the Company in the manner required by The Act; or ceases to hold any office by virtue of which that person may have been appointed *ex-officio* as a Director; or
- 24.4 If a Resolution to this effect is passed unanimously by all the other Directors then serving, who shall represent not less than the minimum number of Directors stated in Clause 21.1. In such an event, the Board may but shall not be required to provide reasons or motivation for its decision.
- 24.5 If the Director concerned is directly or indirectly interested in any contract or proposed contract involving the Company, and fails to declare a conflict of interest in the manner required by The Act.

25. MEETING FORMALITIES

- 25.1 General Meetings of Custodian Members and/or meetings of the Board may be held at any time or times, and at any place or places, subject to due notice having been given; and such meetings may be held simultaneously in more than one place, provided the parties concerned are linked by telephone, video, tele-conference or other facilities, enabling them to participate effectively in the business of such meetings, without reliance upon an intermediary, as if actually present together at the same time and place.
- 25.2 Meetings of the Board and General Meetings of Custodian Members may be held wholly or partially by electronic communication, and provide for the participation in such meeting by electronic communication, as contemplated by Section 63 of the Companies Act; and the power to do so is not limited or restricted by this Memorandum. Accordingly, any such meeting of the Board or of Custodian Members may be conducted entirely by electronic communication; or one or more Custodian Members, (including their proxies or Alternate Directors, if applicable) may participate by electronic communication in all or part of the relevant meeting, provided all such persons participating in the meeting are able to communicate concurrently with each other, and without reliance upon an intermediary, and to participate in a manner that is effective.

- 25.3 The notice of a General Meeting of Custodian Members or of the Board, as the case may be, at which it will be possible for the persons concerned to participate by way of electronic communication shall inform such persons of the ability to so participate; and shall provide all any necessary information that may be required to enable them to access the available medium or means of electronic communication.

26. AUTHORITY OF THE BOARD

The Directors shall have an unrestricted power and authority to manage and direct the affairs of the COMPANY in furtherance of its stated Objects or Purpose, subject only to the exclusions, qualifications and conditions stipulated from time to time in terms of this Memorandum and the Act.

27. PROCEEDINGS OF DIRECTORS

- 27.1 The Directors may meet together for the despatch of business, and adjourn or otherwise regulate their meetings as they deem fit.
- 27.2 At all meetings of the Board, the quorum necessary for the transaction of business shall require the participation of a majority of the Directors appointed at the relevant time. For the avoidance of doubt, if a Director shall have been duly appointed in terms of clause 23 to serve also as an Alternate Director, such Director shall be deemed for purpose of the determination of a quorum to represent the presence both of him/herself as a Director and also of the Director on whose behalf he/she has been appointed as an Alternate Director. Notwithstanding the foregoing, a meeting of the Board shall be deemed not to be quorate unless there are at least three (3) individual persons actually present or participating in the meeting in their capacity as Directors or Alternate Directors.
- 27.3 A General Meeting shall have the prerogative to appoint one of the Directors to act as Chairperson of the company, and should it deem this appropriate, it shall have the further prerogative to appoint another of the Directors to act as Deputy Chairperson of the company, each of which appointees shall hold office until the next occurring Annual General Meeting. If no Chairperson or Deputy Chairperson has been nominated as aforesaid, or if at any Meeting neither of them is present or available to act within Fifteen (15) minutes of the

time appointed for the commencement of the meeting, the persons then present and having the right to vote shall choose another of their number as Chairperson of that Meeting.

- 27.4 The Chairperson, or in his/her absence the Deputy Chairperson, shall preside at all Meetings of the Board. The Chairperson may convene a Meeting of the Board at any time, but shall be obliged to convene such a meeting if so requested by any TWO (2) or more of the Directors. Each Director or Alternate Director shall be entitled to at least SEVEN (7) days prior written notice of a meeting, which shall include an Agenda and such other meeting papers as may be applicable; provided that, in a situation of urgency, such formalities may be dispensed with and the notice convening a meeting may be given on less notice and/or in any such other manner as the Chairperson may deem appropriate in the circumstances.
- 27.5 Each Director present or represented at a meeting of the Board shall be entitled to exercise one (1) vote. An Alternate Director shall have an additional vote on behalf the Director whom s/he represents, in addition to her/his own vote as a Director.
- 27.6 Questions arising at a meeting of Directors shall be decided by a majority of votes, provided that in the case of an equality of votes the person chairing the meeting shall be entitled to a second and casting vote.
- 27.7. Subject to the prescriptive requirements of the Companies Act, a "round robin" resolution shall be as valid as if passed at a duly convened meeting of the Board, provided such resolution is supported in writing by not less than 75% of all Directors then serving, who must number not less than the minimum number of Directors stated in Clause 21.1. Unless stated to the contrary in the resolutions itself, a "round-robin" resolution shall be deemed to have been passed as at the date of the last signature thereto. A "round-robin" resolution may be recorded in a single document or in several documents, as may be found more convenient. The vote of a Director may be recorded not merely by signature but also by other secure means of communication, including the intranet, internet, email, fax, or in such other manner as the Chairperson may regard as acceptable.

- 27.8 The Board may delegate any of its powers to an Executive Committee and /or one or more special purpose committees, subject to the following provisions:
- 27.8.1 As required by the Companies Act, all Board Committees shall include one or more Directors, but may also include other persons, as the Board may deem appropriate; but this provision shall not preclude the Board from establishing committees and structures comprising persons who are not Directors. Unless otherwise determined by the Board, the Chairperson shall be deemed *ex officio* to be a member and may attend and participate in the proceedings of any such Board Committee or other committee, as the case may be.
- 27.8.2 Such committees shall determine their own procedural formalities, in the exercise of their powers and responsibilities, but shall conform to any such Terms of Reference, rules, restrictions, or procedures that may be prescribed by the Board.
- 27.9 All acts performed in good faith by the Board, or any committee or working group, or by any one or more persons acting as Directors shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 27.10 Written minutes shall be kept of the decisions and proceedings of the Board, and an Attendance Register shall be maintained recording the names of the Directors personally present, or represented by an Alternate, at each meeting. The minutes shall be signed by the person acting as Chairperson of the meeting, and a copy thereof shall be made available to each Director.
- 27.11 Meetings of the Board may be held at any time or times, and at any place or places, subject to due notice having been given; and such meetings may be held simultaneously in more than one place, provided the parties concerned are linked by telephone, video, tele-conference or other communication facilities, in a manner which enables them to speak, hear, and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present at the same time and place.
- 27.12 The Notice of a Meeting at which it will be possible for the members of the Board to participate as aforesaid by way of Electronic Communication shall

inform such persons of their ability to so participate; and shall provide any information necessary to enable them to access the available medium or means of Electronic Communication, as contemplated by Section 63 of The Act.

28. DIRECTORS REMUNERATION AND REIMBURSEMENT

28.1 The Directors shall:

28.1.1 not be entitled to remuneration for their services as Directors, save in the case of a person who may be appointed at any time as an Executive Director; but

28.2.2 may be entitled at the discretion of the Board to reimbursement of reasonable travelling, subsistence, and other expenses properly incurred in the execution of their duties in or about the business of the Company, provided such disbursement was previously authorised or subsequently approved by the Board.

28.2 The Annual Financial Statements shall include particulars showing, on an individual basis, any remuneration, or other benefits, that are received by a Director, and by an individual holding another prescribed office in the Company.

29. CONFLICTS OF INTEREST

No transaction involving the Company shall be void or voidable merely by reason of the existence of a conflict of interest between the Company and one or more of its Directors, provided that:

29.1 Any Director having a conflict of interest must promptly declare such interest;

29.2 Such Director must make full disclosure in good faith of all relevant facts and circumstances affecting such interest;

29.3 Following such disclosure, the Director concerned must be recused from any further part in the discussion or consideration of the affected transaction;

- 29.4 Approval of the transaction shall require a Resolution to be passed unanimously by the other Directors then serving, being not less than the minimum number stipulated in Clause 21.1 above;
- 29.5 All material details of the transaction, and of the discussions leading up to the vote of the Directors, must be minuted and recorded.

30. POWERS AND DUTIES OF DIRECTORS

- 30.1 The business of the Company shall be managed by the Board, which may pay on behalf of the Company all expenses incurred in promoting and incorporating the Company.
- 30.2 The Company's financial transactions must be conducted through one or more banking accounts, to be operated under such mandates and authorisations as the Board may determine from time to time.

31. BORROWING POWERS

The Directors' borrowing powers shall be unlimited, and they shall be entitled to borrow and mortgage or bind the undertaking and property of the Company or part thereof, and issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability, or obligations of the Company or of any third party.

32. PATRON

Subject to the approval and authority of a General Meeting of the Custodian Members, the Board may invite one or more distinguished persons to accept appointment to the office of Honorary Patron for such period as the Board may deem appropriate.

33. FINANCIAL YEAR – FINANCIAL STATEMENTS - GOVERNANCE

- 33.1 The financial year of the Company shall commence on 1 March in each year, and shall terminate on the last day of February in the succeeding year, unless other dates are determined by the Board at any time, with the approval of the

Commissioner for the South African Revenue Service (SARS), as required in terms of the Income Tax Act.

- 33.2 An independent Auditor shall be appointed, and may be removed, and replaced from time to time, at the discretion of the Board.
- 33.3 The Directors shall cause Annual Financial Statements to be prepared in respect of each financial year, in accordance with the requirements of the Companies Act, and of this Memorandum. A copy of such Annual Financial Statements shall be made available to each Director, and to each Custodian Member of the Company. Associate Members may also receive such Annual Financial Statements on request.
- 33.4 The Directors shall cause to be kept such accounting records as are prescribed in terms of the Companies Act and any other applicable legislation, in order to fairly present the affairs of the Company, and in order to give due account of its operations, activities, and financial position.
- 33.5 The accounting records shall be kept at The Office, or at such other place or places as the Board may think fit, and shall be open to inspection on request by any Director, at reasonable times.
- 33.6 The Directors shall determine from time to time whether, and to what extent, and at what times and places, and under what conditions or regulations, the accounting records of the Company or any of them shall be open to inspection by a Custodian Member; but no Member shall have the right of inspecting such accounting records except as conferred by the Companies Act or authorised by the Board or by the Company in General Meeting.
- 33.7 One or more banking accounts, as may be deemed necessary by the Board, shall be established from time to time in the name of the Company with duly registered banking institutions; and all payments received shall be promptly deposited to the credit of such banking account/s, through which the Company's financial transactions must be conducted.
- 33.8 All cheques, promissory notes, and other banking instruments requiring signature or authorisation on behalf of the Company, shall be signed or authorised, as the case may be, in such manner and by such persons as the

Board may authorise and depute from time to time, provided that more than one person shall be involved in any such banking transaction in excess of an amount to be determined by the Board.

34. LIMITATION OF LIABILITY AND INDEMNITY

- 34.1 A Director shall incur no personal liability for the debts or obligations of the Company, by reason only of such person having served in that capacity as a Director.
- 34.2 Subject to the relevant provisions of the Companies Act, each Director and other officer of the Company shall be indemnified by the Company against costs, expenses, and liabilities reasonably incurred, with the authority of the Board, on behalf and in the interests of the Company.
- 34.3 No Director or other officer or employee of the Company shall be liable for the acts, receipts, neglects or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the funds of the Company may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom any moneys, securities or effects shall be deposited; or for any loss or damage occasioned by any error of judgment or oversight; or for any other loss, damage or misfortune whatever which shall happen in the execution of duties performed on behalf of the Company, or in relation thereto, unless the same be attributable to that person's own wrongful act, gross negligence, breach of duty or trust.

35. NOTICES

Save as otherwise stipulated in terms of this Memorandum, or as may be required by the Companies Act:-

- 35.1 Notices may be given by the Company either personally, or by sending the same by facsimile, or Internet or Intranet transmission, or by registered post in a prepaid letter addressed to the Custodian Member concerned at the address supplied to the Company for the purpose of the giving of notices.

- 35.2 If receipt of notice is disputed by a Custodian Member, such notice shall be deemed not to have been duly given, unless the Company can produce written confirmation of transmission or a registered slip indicating that the notice was duly addressed, transmitted or posted, as the case may be.
- 35.3 Any notice by registered post shall be deemed to have been served five (5) business days after the letter containing the same was duly posted within the Republic as aforesaid.
- 35.4 In the event of the dissolution, liquidation, disestablishment, death, insolvency or disability of any Custodian Member, the Company shall be entitled to give any required notice in any manner in which the same may have been given if such event had not occurred. As soon as proof of the appointment of any representative Member in terms of clause 12 shall have been given to the Company, notices shall thereafter be given by the Company to any person so deemed to be a member, duly addressed to such person by name, or by her/his title, or any like description, at the address (if any) in the Republic supplied for the purpose by such person, or (until such address has been so supplied) by giving the notice as aforesaid, at the Custodian Member's address recorded in the register of the Company.
- 35.5 Notices shall be given by the Company in any manner required by the Companies Act or permitted by this Memorandum, provided that such notices need not be sent:
- to any Custodian Member who has requested in writing that copies of such notices be not sent to her/him/it; or
 - to any person of whose address the Company is unaware; or
 - to more than one of the joint holders of any debentures;
- 35.6 The accidental bona fide omission to give notice, and/or the non-receipt of any such notice, shall not invalidate the ensuing proceedings, or any resolution passed at the ensuing meeting of Custodian Members or Directors, as the case may be.

**PRESCRIBED COMPANIES ACT PROVISIONS
CONCERNING NON-PROFIT COMPANIES (NPCs)
WITH MEMBERS**

The Special Provisions Concerning Non-Profit Companies, insofar as they relate to Non-Profit Companies with Members – as set out in Schedule 1 to the Companies Act - are applicable, to the Company; and to that extent, such provisions are deemed to be incorporated in this Memorandum of Incorporation, and are repeated hereunder, for ease of reference, as follows:-

1. Objects and Policies

- (1) As required in terms of Schedule 1, this Memorandum of Incorporation –
- (a) sets out one or more objects of the Company, and each such object is either:-
 - (i) a public benefit object; or
 - (ii) an object relating to one or more cultural or social activities, or communal or group interests; and
 - (b) is consistent with the principles set out in sub-items (2) to (5) hereunder.
- (2) As a Non-Profit Company, this Company:-
- (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation; and
 - (b) subject to paragraph (a), and subject to due compliance with the Prescribed Fiscal Conditions and all other applicable provisions of the Income Tax Act 1962 (Act No. 58 of 1962) with respect to approved Public Benefit Organisations, may:-
 - (i) acquire and hold securities issued by a profit Company; or
 - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- (3) As a Non-Profit Company, this Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, to any person who is or was an Incorporator of

the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:-

(a) as reasonable:-

(i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

(ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

(b) 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;

(c) 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

(d) in respect of any legal obligation binding on the Company.

(4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of this Company:-

(a) no past or present Member or Director of the Company, or person appointing a Director of this Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

(b) the entire net value of the Company must be distributed to one or more other non-profit companies, external non-profit companies carrying on activities within the Republic, voluntary associations, or non-profit trusts—

(i) having objects similar to the main object of this Company; and

(ii) as determined:-

(aa) in terms of the Company's Memorandum of Incorporation;

(bb) by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or

(cc) by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.

(5) In accordance with the provisions of the Companies Act, the Commission may apply to the court, on behalf of this Company, for a determination contemplated in sub-item (4)(b)(ii)(cc) if the Company has:-

(a) no remaining Members or Directors; and

(b) failed to:-

(i) make a determination contemplated in sub-item (4)(b)(ii)(bb); or

(ii) apply to the court for such a determination.

- (6) It is hereby acknowledged, as stipulated in terms of Schedule 1 to the Companies Act, that incorporation as a Non-Profit Company, or if applicable, registration as an External Non-Profit Company in terms of the Companies Act, and compliance by either with the provisions of that Act, does not necessarily qualify that Non-Profit Company, or External Non-Profit Company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.
- (7) As a Non-Profit Company with voting and non-voting Members, each voting Member has at least one vote.
- (8) The vote of each Member of a Non-Profit Company is of equal value to the vote of each other voting Member on any matter to be determined by vote of the Members, except to the extent that the Company's Memorandum of Incorporation provides otherwise.
- (9) As a Non-Profit Company with Members, the requirements in Section 24(4) to maintain a securities register must be read as requiring the Company to maintain a membership register.

2. Fundamental Transactions

- (1) As a Non-Profit Company, this Company may not—
 - (a) amalgamate or merge with, or convert to, a profit Company; or
 - (b) 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.
- (2) As a Non-Profit Company with voting Members, any proposal to:-
 - (a) dispose of all or the greater part of its assets or undertaking; or
 - (b) amalgamate or merge with another Non-Profit Company,must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with Sections 112 and 113, respectively.

- (3) Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in sub-item (2).

3. Incorporators of Non-Profit Company

As a Non-Profit Company with Members, the Incorporators are its-

- (a) first Directors; and
- (b) its first Members.

4. Members

- (1) The Memorandum of Incorporation provides for the Company to have Members.
- (2) As the Memorandum of Incorporation provides for the Company to have Members, it:-
 - (a) must not restrict or regulate, or provide for any restriction or regulation of, that membership in any manner that amounts to unfair discrimination in terms of Section 9 of the Constitution;
 - (b) must not presume the membership of any person, regard a person to be a Member, or provide for the automatic or *ex officio* membership of any person, on any basis other than life-time membership awarded to a person:-
 - (i) for service to the Company or to the public benefit objects set out in the Company's Memorandum of Incorporation; and
 - (ii) with that person's consent;
 - (c) may allow for membership to be held by juristic persons, including profit companies;
 - (d) may provide for no more than two classes of Members, that is voting and non-voting Members, respectively; and
 - (e) must set out:-
 - (i) the qualifications for membership;
 - (ii) the process for applying for membership;
 - (iii) any initial or periodic cost of membership in any class;
 - (iv) the rights and obligations, if any, of membership in any class; and
 - (v) the grounds on which membership may, or will, be suspended or lost.

5. Directors

- (1) As this is a Non-Profit Company with Members, the Memorandum of Incorporation must:
 - (a) set out the basis on which the Members choose the Directors of the Company; and
 - (b) if any Directors are to be elected by the voting Members, provide for the election each year of at least one-third of those elected Directors.

- (2) If this Non-Profit Company had no Members, the Memorandum of Incorporation would need to set out the basis on which Directors are to be appointed by its Board, or other persons.

- (3) A Non-Profit Company must 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.

- (4) Sub-item (3) does not prohibit a transaction if it:-
 - (a) is in the ordinary course of the Company's business, and for fair value;
 - (b) constitutes an accountable advance to meet:-
 - (i) legal expenses in relation to a matter concerning the Company; or
 - (ii) anticipated expenses to be incurred by the person on behalf of the Company;
 - (c) is to defray the person's expenses for removal at the Company's request; or
 - (d) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

ATTACHMENT "B"

PRESCRIBED FISCAL PROVISIONS

[As prescribed in terms of Sections 18A and 30 of the Income Tax Act]

In compliance with the requirements of the Income Tax Act as applicable to Public Benefit Organisations, this Memorandum of Incorporation includes the undermentioned prescribed fiscal conditions, including any amendments or additions thereto as may at any time be enacted or prescribed in terms of the relevant legislation, viz:-.

1. As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, the Directors shall :

- 1.1 Ensure that any eligible donations actually paid or transferred to the Organisation, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.
- 1.2 Ensure that during each year of assessment preceding the year of assessment of the Organisation during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Fifty Percent (50%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.

- 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.
- 1.4 Ensure that an audit certificate is provided upon submission by the Organisation to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Organisation in that year, in respect of which section 18A receipts were issued by the Organisation, were utilised in the manner contemplated by that section.

2. As a Public Benefit Organisation approved by the Commissioner for purposes of section 30 of the Income Tax Act, the Directors shall :

- 2.1 Carry on the public benefit activities of the Organisation in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Take reasonable steps to ensure that each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.
- 2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.
- 2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary

responsibility of the organisation, and that no single person directly or indirectly controls the decision making powers of the organisation.

- 2.7 Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to:
 - 2.8.1 any public benefit organisation which has been approved in terms of section 30(3) of the Income Tax Act;
 - 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
 - 2.8.3 any government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of that Act.
- 2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.
- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of 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, but for such transaction, operation or

scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.

- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of at least four years after the date of the last entry in any such book; or
 - 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transaction, act or operation to which they relate.

3. As a Public Benefit Organisation approved also for purposes of Item 4(o) of Part I of the Ninth Schedule to the Income Tax Act, the Directors shall ensure that:-

- 3.1 All scholarships, bursaries or awards granted by the Organisation will be *bona fide* and be granted to an individual on grounds of objective merit or need.

- 3.2 No scholarship, bursary or award granted will be:
- 3.2.1 revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award; and
 - 3.2.2 subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or
 - 3.2.3 granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or the organisation (or any associated institution in relation to the donor or organisation) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to the person or his or her relative, even if that person had not been an employee of the donor, organisation or associated institution.
- 3.3 All decisions regarding the granting of scholarships, bursaries and awards will be made by a duly constituted committee of the voting Members consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.
- 3.4 All scholarships, bursaries and awards granted in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
- 3.4.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
 - 3.4.2 to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in paragraph 3.4.1 above.

**PRESCRIBED NPO PROVISIONS
CONCERNING REGISTERED NON-PROFIT ORGANISATIONS (NPOs)
REGISTERED IN TERMS OF THE NON-PROFIT ORGANISATIONS ACT,
NO. 71 OF 1997, AS AMENDED.**

If at any time the Company shall be registered in terms of the Non-Profit Organisations Act, No 71 of 1997, as amended, this Memorandum of Incorporation shall also be deemed to include provision for the eligibility requirements prescribed in terms of Section 12(2) of that Act, as follows:-

1. The Company's name is stated on the cover page and in clause 1 of this Memorandum.
2. The Company's main and ancillary objectives are stated in clause 3 of this Memorandum.
3. The Company's income and property shall not be distributable to its Members, or to its Directors or other office-bearers, except as reasonable compensation for services rendered, as stated in clause 1(3) of Attachment "A" and clause 2.7 of Attachment "B" to this Memorandum.
4. The Company is a body corporate, and shall have an identity and existence distinct from its Members, Directors, and other office-bearers, in accordance with the terms of the Companies Act.
5. The Company shall continue to exist notwithstanding changes that may occur in the composition of its membership, or of its Directors or other office-bearers, pursuant to the provisions of the Companies Act, and as envisaged by clause 5/ 7 *et seq* of the Memorandum.
6. The Members of the Company and its office-bearers shall have no rights in the property or other assets of the Company solely by virtue of their being Members, Directors, or other office-bearers, as contemplated by clause 1(3) and 1(4) of Attachment "A", and clause 2.7 of Attachment "B" to this Memorandum.

7. The powers of the Company are referred to in clause 5 and 26 of this Memorandum, as read with the provisions of the Companies Act.
8. The organisational structures and mechanisms for its governance are set forth in Clauses 15,16,17, 18 (General Meetings) and 21 (Appointment of directors) of this Memorandum.
9. The rules for convening and conducting meetings, including quorums required for, and the minutes to be kept of those meetings, shall be as stated in clauses 15 to 20, as read with clauses 25 and 27 of this Memorandum.
10. The manner in which decisions are to be made shall be as stated in clauses 17, 18 and 27 of this Memorandum.
11. The Company's financial transactions must be conducted by means of a banking account; as stated in clause 33.7 of this Memorandum.
12. The date for the end of the Company's financial year shall be as stated in clause 33.1 of this Memorandum.
13. The procedure for changing the provisions of this Memorandum shall be as stated in clause 7 of this Memorandum.
14. The procedure by which the Company may be wound up or dissolved shall be as stated in the Companies Act, including the provisions of Clause 1(4) to Attachment "A" and clause 2.8 of Attachment "B".
15. When the Company is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another Non-Profit Organisation, as stated in clause 6.3 of this Memorandum, and in clause 1(4) of Attachment "A" and clause 2.8 of Attachment "B".