



**Companies and Intellectual Property Commission
Republic of South Africa**

MEMORANDUM OF INCORPORATION
(Effective from the date the Company was registered)

of

COMMUNITIES AGAINST POLLUTION NPC

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1. Interpretation

1.1 In this MOI, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

1.1.1 **"Annual General Meeting"** means a meeting to be initially held, no more than 18 (eighteen) months after the Company's date of incorporation, and thereafter once every calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting;

1.1.2 **"Associate Member"** means a member of the Company that does not have the right to vote, as contemplated in item 4(2)(d) of Schedule 1 to the Companies Act;

1.1.3 **"Board"** means the board of Directors of the Company;

1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;

1.1.5 **"Chairperson"** means the Chairperson of the Board of the Company;

1.1.6 **"Code of Conduct"** means the code of conduct of the Company approved by the Board from time to time;

1.1.7 **"Commission"** means the Companies and Intellectual Property Commission established in terms of Section 185 of the Companies Act;

1.1.8 **"Companies Act"** means the Companies Act No. 71 of 2008, as amended from time to time;

1.1.9 **"Companies Regulations"** means the Companies Regulations of 2011, promulgated by the Minister in terms of Section 223 of the Companies Act, as amended from time to time;

1.1.10 **"Company"** means Communities Against Pollution NPC, a non-profit company incorporated in accordance with the laws of the Republic of South Africa;

1.1.11 **"Director"** means a Director of the Company, which may be either an executive director who performs operational and strategic business functions of the Company or a non-executive director appointed based on their specific knowledge, expertise, or as an independent oversight to aid the executive directors;

- 1.1.12 **"Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 1.1.13 **"Member"** means a member of the Company, which may be a Voting Members or and Associate Members dependant on the context in which it is used;
- 1.1.14 **"MOI"** means this Memorandum of Incorporation of the Company;
- 1.1.15 **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution, their number rounded up;
- 1.1.16 **"Rules"** and **"Rules of a Company"** means any rules made by a company as contemplated in Section 15(3) to (5);
- 1.1.17 **"SARS Commissioner"** means the Commissioner of the South African Revenue Services; and
- 1.1.18 **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy-five percent) of the voting rights exercised on the resolution, their number rounded up.
- 1.1.19 **"Voting Member"** means a member of the Company that has the right to vote, as contemplated in item 4(2)(d) of Schedule 1 to the Companies Act and which holds the right to vote as voting member, as contemplated in item 1(7) of Schedule 1 to the Companies Act.
- 1.2 In this Memorandum:
- 1.2.1 a reference to **"File"**, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.2.2 a reference to a **"Section"** by number refers to the corresponding section of the Companies Act;
- 1.2.3 a reference to a **"Paragraph"** by number refers to corresponding paragraph in this MOI;
- 1.2.4 a reference to a **"Regulation"** by number refers to the corresponding regulation in the Companies Regulations;

- 1.2.5 any reference to a "**person**" includes any natural, juristic, or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
- 1.2.6 references to a "**day**" shall be to any calendar day. Where any number of days or Business Days are prescribed in this MOI, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.7 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and *vice versa*;
- 1.2.8 any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;
- 1.2.9 words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this MOI in a similar context bear the same meaning unless excluded by the subject or the context, or unless this MOI provides otherwise;
- 1.2.10 the provisions of this MOI shall be interpreted in the same way as the provisions of the Companies Act (which forms part of the constitution of the Company in terms of Section 19(1)(c)) are interpreted; and
- 1.2.11 each provision and each sentence and each part of a sentence in this MOI is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from the MOI, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.

2. **Memorandum of Incorporation**

- 2.1 This MOI is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii).

- 2.2 The standard form of memorandum of incorporation for a Non-Profit Companies with members contained in the Regulations published in terms of the Companies Act, as amended from time to time, shall not apply to the Company.

3. **Incorporation and Nature of the Company**

- 3.1 The Company is a Non-Profit Company, with members, as defined in the Companies Act.

- 3.2 The Company is incorporated in accordance with the terms of Section 19(1)(c) read with Section 15(2), and governed by:

- 3.2.1 the unalterable provisions of the Companies Act, which are applicable to Non-Profit Companies;

- 3.2.2 the alterable provisions of the Companies Act, which are applicable to Non-Profit Companies, subject to the limitations, extensions, variations, or substitutions set out in this Memorandum of Incorporation;

- 3.2.3 the provisions of this MOI.

- 3.3 Any person, Director, prescribed officer, or member of a Board committee bound by this MOI is required to familiarise themselves with the relevant provisions of the Companies Act, including those contemplated by Paragraph 3.2 and the provisions of this MOI.

4. **Conflicts with the Companies Act**

4.1 **Notification of Conflicts**

Any person bound by this MOI who becomes aware that any provision of this MOI or any agreement entered into by the Company contravenes or is or has become inconsistent with any provision of the Companies Act, whether or not such provision is void or could be declared void by a court in terms of Section 218(1) or a person could incur personal liability in terms of Section 218(2) or otherwise, shall within 10 (ten) Business Days of becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

4.2 **No Obligation to Act Inconsistently with the Companies Act**

4.2.1 Notwithstanding anything to the contrary contained herein, no person shall be required, obliged, or entitled to do or omit to do something in terms of this MOI, to the extent that it is inconsistent with or contravenes any provision of the Companies Act.

4.2.2 Any person who has complied with Paragraph 4.1 and has done something or has failed to do something to the extent necessary so as not to be inconsistent with or contravene any provision of the Companies Act or to avoid personal liability under Section 218(2) or otherwise in terms of the Companies Act, but as a result thereof has contravened any provision of this MOI, which is void or is declared void by a court in terms of Section 218(1), shall not for that reason alone be liable or responsible therefor under or in terms of this MOI, with respect to any claim by any other person who is bound by and whom is entitled under or in terms of this MOI to make a claim, arising out of or in connection with any such act or omission.

4.3 **Board Must Address Inconsistencies**

If any provision of this MOI is or becomes inconsistent with or contravenes any provision of the Companies Act, or if any agreement entered into by the Company is or has become inconsistent with or contravenes provision of the said Act, or if the Board becomes aware or informed of such inconsistency or contravention, in terms of Paragraph 4.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of this MOI or otherwise, the Board shall expeditiously:

4.3.1 address and assess that inconsistency or contravention; and

4.3.2 obtain reasoned written external legal opinion, if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and

4.3.3 propose a Special Resolution required to appropriately amend the MOI, or propose amendments to the transgressing agreement, to remove, eliminate or address any applicable contraventions or inconsistencies.

5. **Objects of the Company**

5.1 The main objectives of the Company are as follows:

- 5.1.1 To establish and maintain independent environmental quality control monitoring networks, throughout the geographic area it serves.
- 5.1.2 To give monitored communities access to their respective ambient environmental quality via live or near-live streaming.
- 5.1.3 To educate monitored and other affected communities on matters impacting their rights to a healthy environment.
- 5.1.4 To disseminate information about the causes and possible prevention of environmental degradation.
- 5.1.5 To make monitored communities aware of governmental public participation hearings (at national, provincial, or local levels), environmental impact assessments and other matters affecting their environmental quality control importance.
- 5.1.6 To help promote and improve environmental quality control policies impacting affected communities' rights to an environment protected from pollution and ecological degradation.
- 5.1.7 To share with member groups, where possible, administrative, personnel and other resources, to conduct studies, inquiries, research, consultations, and educational activities aimed at implementing mutually beneficial environmental quality control policies and programs amongst affected stakeholders.
- 5.1.8 To encourage and promote the continued public support of the Company's activities throughout its area of influence. The geographic area in which the Company may offer its services shall extend throughout South Africa and SADC.
- 5.1.9 To accept and administer gifts, donations, and bequests, in the form of money, personal property, immovable property, or another nature, and to manage, disburse, apply and accumulate funds for the sole purpose of promotion, advancement and achievement of the stated purposes.
- 5.1.10 To adhere to the Independent Code of Governance for Non-Profit Organisations in South Africa.
- 5.1.11 To comply with such reporting requirements as may be determined by the SARS Commissioner from time to time.
- 5.2 The legal powers and capacity of the Company are not subject to the restrictions, limitations or qualifications as contemplated in Section 19(1)(b)(ii).

5.3 The Company is not subject to any restrictive conditions or prohibitions contemplated in Section 15(2)(b) or (c).

6. **Fundamental Restrictions**

The Company shall not:

6.1.1 use any of its resources to directly or indirectly to advance, support, or oppose, any political party, religious organisation, or any activity which may be considered *contra bonos mores*.

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

6.1.3 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.

7. **Powers of the Company**

The purposes and powers of the Company are subject to the following restrictions, limitations, and qualifications.

7.1 **Use of Assets and Funds**

7.1.1 The income, property and assets of the Company, however derived, shall be applied solely towards the promotion of its stated objects as set out in this MOI, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever, to the Directors of the Company, provided that nothing herein contained shall prevent the payment in *bona fides* of reasonable remuneration to any officer or employee of the Company, for any services rendered to, or expenses incurred on behalf of, the Company.

7.1.2 The Company shall not provide an advance to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Member or a member of a related or inter-related company, or to a person related to any such Member. The foregoing shall not prohibit a transaction if it:

7.1.2.1 constitutes an accountable advance to meet:

7.1.2.1.1 legal expenses in relation to a matter concerning the Company; or

7.1.2.1.2 anticipated expenses to be incurred by the person on behalf of the Company;

7.1.2.2 is in terms of an employee benefit scheme available to all employees or a specific class of employees.

7.1.3 The Company is restricted to invest its funds:

7.1.3.1 with a financial institution as defined in Section 1 of the Financial Institutions Protection of Funds Act No. 28 of 2001; or

7.1.3.2 in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act No. 1 of 1985; or

7.1.3.3 in such other prudent investments in financial instruments and assets as the SARS Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the director of Non-Profit Organisations,

provided that the provisions of this Paragraph 7.1.3 shall not prohibit the Company from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest, or by other similar means.

7.2 **Activities**

7.2.1 The Company is prohibited from carrying on any business, undertaking or trading activity, other than to the extent that:

7.2.1.1 the business, undertaking or trading activity:

7.2.1.1.1 is integral and directly related to the stated objects of the Company; and

7.2.1.1.2 is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

7.2.1.1.3 would not result in unfair competition in relation to taxable entities, or

7.2.1.2 the business, undertaking or trading activity, if not integral and directly related to the stated objects of the Company as contemplated in Paragraph 7.2.1.1, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.

7.2.2 The Company may not have a share or other interest in any business, profession or occupation which is carried on by its Members.

7.2.3 The Company does not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in Section 103(5) of the Income Tax Act.

7.3 **Payments by the Company**

The Company may 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, a Member, or Director of the Company, except:

7.3.1 as reasonable:

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

7.3.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company, or

7.3.2 as a payment of an amount due and payable by the Company in terms of a *bona fide* arm's-length agreement between the Company and that person; or

7.3.3 as a payment in respect of any rights of that person, to the extent that the Company administers such rights to advance a stated object of the Company; or

7.3.4 in respect of any legal obligation binding on the Company.

7.4 **Funding**

7.4.1 The Company's funding may be derived from, but not limited to:

7.4.1.1 Membership fees; or

7.4.1.2 Donations gifts and bequests; or

7.4.1.3 Crowdfunding, fundraising or such similar activities; or

7.4.1.4 Corporate social responsibility funding or grants; or

7.4.1.5 Appropriations by the government of the Republic of South Africa at national, provincial, or local levels; or

- 7.4.1.6 Trading, undertaking or activity, as described in Section 10(1)(cN) of the Income Act.
- 7.4.2 The Company shall only accept funds which will be received in the absence of any commercial or financial relationships that could be construed as a potential conflict of interests with the objectives of the Company.
- 7.4.3 All funds, donations, gifts, bequests of money, property, or services accepted by the Company shall be irrevocable and subject to the terms and conditions prescribed by the Company from time to time.

8. **Amendment of the MOI**

- 8.1 This MOI may only be altered or amended in the manner set out in Sections 16 or 17, which:
 - 8.1.1 corrects a patent error in spelling, punctuation, reference, grammar, or similar defect on the face of the document, by:
 - 8.1.1.1 publishing a notice of the alteration, in any manner required or permitted by this MOI or the Rules of the Company; and
 - 8.1.1.2 filing a notice of the alteration, or
 - 8.1.2 is in compliance with a court order; or
 - 8.1.3 is by way of a Special Resolution to amend the MOI, which is proposed and adopted by the Voting Members at a meeting held in terms of Sections 60.
- 8.2 Any amendment of the Memorandum, save for an amendment contemplated in Paragraph 8.1.1, may only be effected by a Special Resolution of the Voting Members, at a meeting held in terms of Sections 60.
- 8.3 The Company must publish a notice of any alteration of this MOI by delivering a copy of the amendment to each Director by email or ordinary mail.
- 8.4 A copy of all amendments to this MOI must be filed with the Commission and SARS Commissioner within 30 (thirty) days of its amendment.

9. Rules

9.1 The Company will ensure that it complies with such requirements set out by the SARS Commissioner, as may be necessary to obtain approval that the Company is recognised for tax and other purposes as an association in terms of the provisions of Section 30(3) of the Income Tax Act.

9.2 The Board shall not have the authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Companies Act or in this MOI as contemplated in Section 15(3) to 5(A), except with the prior approval of an Ordinary Resolution of the Voting Members of the Company.

9.3 A Rule contemplated in Paragraph 9.2:

9.3.1 must be consistent with the Companies Act and this MOI, and any such Rule that is inconsistent with the Companies Act or this MOI is void to the extent of the inconsistency; and

9.3.2 takes effect on a date that is the later of:

9.3.2.1 10 (ten) Business Days after the Rule is Filed; or

9.3.2.2 the date, if any, specified in the Rule.

9.4 The Board must publish any Rules made, amended, or repealed by delivering a copy of those rules to each Member and Director by email, ordinary mail, or fax.

10. Members and Membership

10.1 General Membership Conditions

10.1.1 As contemplated in item 4(1) and 4(2)(d) of Schedule 1 of the Companies Act, the Company shall have two classes of Members; the first class of Members being; Voting Members, each of whom has an equal vote, on any matter to be decided by the Voting members of the Company other than as expressly provided for in this MOI, and the second class of Members being; Associate Members, each of whom shall not have a vote, on any matter to be decided by the Voting members of the Company other than as expressly provided for in this MOI.

10.1.2 The Members of the Company shall be such persons that are admitted to membership, as from time to time, as hereinafter provided.

- 10.1.3 Members may be any natural person, company, statutory body, partnership, body corporate, or association of persons.
- 10.1.4 Membership shall be personal to the admitted Member and such membership may not be assigned or transferred by them to any other person, company, or concern.
- 10.1.5 No Member may directly or indirectly have any personal or private interest in the Company, except as may be provided for in terms of this MOI.

10.2 **Types of Membership**

The Company differentiates between Voting Members and Associate Members.

10.2.1 **Voting Membership**

Voting Membership is bestowed upon:

- 10.2.1.1 the incorporators of this Memorandum; and
- 10.2.1.2 those Associate Members who have been in good standing with the Company for a minimum of 3 (three) years, have been nominated by and Associate Member or Voting Member and seconded by a Voting Member, have made application, and are approved by the Board, at its sole discretion.

A Voting Member shall be entitled to one vote on a show of hands or a poll at any general meeting of the Company.

10.2.2 **Associate Membership**

- 10.2.2.1 **Subscribing Members.** Those persons wishing to become a member of the Company, who applies for membership in the manner and form prescribed by the Company from time to time.
- 10.2.3 **Patron Members.** Those persons wanting to provide professional services or wish to financially support the Company. Patron members may be consulted but may not hold elected office.
- 10.2.4 **Honorary Members.** Those persons who have rendered distinguished or exceptional services to the Company, eminent persons, or persons whom the Board want to co-opt for special purposes, which are invited by the Board, at its sole discretion, to become Honorary Members of the Company, for such periods as the Board may determine. Honorary Members will not be required to pay subscriptions and will enjoy the benefits of and Associate Membership.

An Associate Member shall be entitled to attend and speak at any general meeting of the Company but shall not be entitled to vote.

10.3 **Applications for Admission**

10.3.1 Applications for admission as a Voting Member or an Associate Member must be addressed in writing to the Chairperson of the Board. Such applications must contain a commitment to abide by the MOI, the Code of Conduct of the Company, and a commitment to meet the financial obligations of membership, where applicable, for the entire duration of membership.

10.3.2 The Board shall, at its sole discretion, determine procedures for the admission of Members.

10.3.3 Applicants for membership shall disclose such information as reasonably and justifiably requested by the Board under appropriate and clearly defined conditions of confidentiality.

10.4 **Scrutiny of Admissibility**

10.4.1 The Board shall scrutinise the admissibility of the membership, based on the membership requirements set out in Paragraphs 10.2.1, 10.2.2 and 10.3 The decision to admit or to reject an applicant for membership shall be at the sole and absolute discretion of the Board who shall not be required to give reasons for their decision.

10.4.2 If the application for admission is accepted by the Board, the candidate shall become a Voting Member or an Associate Member, as the case may be, of the Company upon receipt of the applicable membership fee and/or voluntary services by the Company.

11. **Termination of Membership**

11.1 Membership of the Company shall automatically terminate:

11.1.1 upon receipt by the Company of the Member's written notice of resignation;

11.1.2 when the Member dies, or is declared insane or incapable of managing their own affairs;

11.1.3 should the Member commit any act of insolvency;

- 11.1.4 if the Member is sequestrated, surrenders their estate (whether voluntarily or compulsorily), or being a legal entity, the Member is wound up or placed in business rescue proceedings (whether provisionally or finally and whether voluntarily or compulsorily);
- 11.1.5 if the Member assigns or transfers, or purports to assign or transfer, its membership contrary to the provision of this MOI;
- 11.1.6 in the event of non-compliance by a Member with any such obligations as may attach to their membership, upon the expiration of a period of 3 (three) months reckoned from:
 - 11.1.6.1 The date of written notice by the Company to the Member concerned requiring the remedying of such default, save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate;
 - 11.1.6.2 The date of written notice by the Company to the Member concerned notifying the Member that its annual fees or contribution, as laid down from time to time by the Board, are overdue, save that the Board shall have the power to reinstate such Member on such terms as to the payment of arrears and otherwise as the Board think fit.
- 11.2 The Board has the power to terminate a membership of the Company, at its sole discretion, if a Member:
 - 11.2.1 has a conflict of interests, actual or perceived, with those of the Company; or
 - 11.2.2 displays a tendency that may be interpreted to harmful, unfriendly, hostile or reflect unfavourably towards the Company and it is in the best interests of the Company.

The Board shall, when terminating a Member's membership in terms of Paragraph 11.2, follow due and fair process as determined by the Board from time to time.
- 11.3 A Member whose membership has been terminated shall remain liable for all sums, which may at the date of termination of their membership be, due from it to the Company and such Member shall not have any claim against the Company or its officers, its property, or its funds.

- 11.4 No Member shall be entitled to claim or receive the return of any membership fees, or contributions paid to the Company and any resigning Member whose resignation takes effect after the first day in any financial year shall nevertheless be liable for the payment of its annual fees or contributions, as laid down by the Board from time to time, for the year.
- 11.5 Certificates of membership may be issued under the authority of the Board in such manner and form as the Board may determine from time to time.
- 11.6 The Company shall maintain at its registered office a register of Members of the Company as provided in Section 24(4) of the Companies Act, containing among other things the email address, postal address, and fax number of each Member.

12. **Members Meetings**

12.1 **Right to Call Meeting**

- 12.1.1 The Board may call a meeting of Members at any time.
- 12.1.2 If the Company is unable to convene a meeting because it has no Directors or because all its Directors are incapacitated, then any Member may convene a meeting under these extra ordinary circumstances.

12.2 **Obligatory Members Meetings**

- 12.2.1 The Company is required to hold Members meetings, subject to Paragraph 12.12, in the following circumstances:
- 12.2.1.1 when adopting any Ordinary Resolution or Special Resolution;
- 12.2.1.2 whenever required to fill a vacancy on the Board, in terms of Section 70(3);
- 12.2.1.3 when a demand for a meeting is delivered to the Company and such demand describes the specific purpose for which the meeting is proposed, specifies a reasonable time to hold such meeting to address the said demands, and is signed by the holders of at least 25% (twenty-five percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting, their number rounded up. Provided that:
- 12.2.1.3.1 the Company, or any Member, may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.

12.2.1.3.2 at any time before the start of a Members meeting contemplated in Paragraph 12.2.1.3 any Member who signed or submitted the demand for such meeting may withdraw their demand. If the withdrawal of one or more demand results in the voting rights of the remaining Members, continuing such demand, falls below the minimum percentage requirement of voting rights needed to call the said meeting, the Company must cancel the meeting.

12.2.2 Notwithstanding anything to the contrary in this MOI, the Company shall hold Annual General Meetings of the Members. Provided that not more than 15 (fifteen) months shall be permitted to elapse between the date of one Annual General Meeting and that of the next.

12.2.2.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act, including the consideration of the annual financial statements, the election of executive and non-executive Directors, the appointment of an auditor, and may deal with any other business laid before it. All business presented before any other general meeting shall be considered special business.

12.3 **Location of Members' Meetings**

The Board may determine the location of Members' meetings.

12.4 **Notice of Members' Meetings**

12.4.1 The Company must deliver a notice of each Members' meeting in the prescribed manner and form to all the Members of the Company with at least 30 (thirty) clear days' notice in writing in the case of an Annual General Meeting or a General Meeting convened to pass a Special Resolution, and with at least 14 (fourteen) clear days' notice in writing in the case of any other General Meeting.

12.4.2 A meeting of Members may be called on less notice as required in Paragraph 12.4.1, but such meeting may only proceed if 75% (seventy-five percent), their number rounded up, of the total voting rights of all Voting Members having a right to attend and vote at the meetings are present at the meeting and vote to waive the required minimum notice of the meeting.

12.4.3 The notice of a Members meeting must include the following information:

12.4.3.1 the date, time, and place for the meeting;

12.4.3.2 the purpose of the meeting;

12.4.3.3 a copy of any proposed resolution 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; and

12.4.3.4 a prominent statement that:

12.4.3.4.1 a Voting Member entitled to attend and vote at the meeting is entitled to appoint a single proxy to attend, participate in and vote at the meeting in the place of the Voting Member;

12.4.3.4.2 the said proxy need not also be a Member of the Company; and

12.4.3.4.3 the participants and/or proxies will be required to provide satisfactory identification to verify their right to participate at the meeting, as contemplated in Paragraph 12.6.

12.4.4 If the Company fails to give the required notice of a Members meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if every Voting Member who is entitled to exercise voting rights in respect of each item on the agenda of the meeting:

12.4.4.1 acknowledges actual receipt of the notice;

12.4.4.2 is present at the meeting; and

12.4.4.3 waives notice of the meeting, or in the case of a material defect in the manner and form of giving notice, ratifies the defective notice.

12.5 **Proxies**

12.5.1 The instrument appointing a proxy shall be in writing in a form to be decided by the Board, under the hand of the appointer or of their agent duly authorised in writing. A proxy need not be a Member. 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 Voting Member granting such power.

12.5.2 The Company shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy, including the Power of Attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been delivered to the Company or to any other person acting on behalf of the Company provided that such instrument of proxy is delivered before the time for holding such meeting or any adjournment thereof. (Section 58(3)(c)).

12.5.3 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

COMMUNITIES AGAINST POLLUTION NPC

(A non-profit company incorporated in terms of the Companies Act 71 of 2008)

I, _____ of _____ being a Voting Member of the Communities Against Pollution NPC, hereby appoint

_____ of _____ failing

_____ of _____ failing

_____ of _____, as my proxy to vote for me and on my behalf at the Annual General Meeting or General Meetings (as the case may be) of the Company to be held on ____ day of _____ and at any adjournment thereof as follows:

| | In favour of | Against | Abstain |
|---------------------|--------------|---------|---------|
| Resolution to | | | |
| Resolution to | | | |
| Resolution to | | | |

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

Unless otherwise instructed, my proxy may vote as they think fit.

Signed at _____ on this ____ day of _____

Signature

(Note: A Voting Member entitled to attend, and vote is entitled to appoint a proxy to attend, speak and vote in their stead, and such proxy does not have to be a Member of the Company. Proxies will be required to provide satisfactory identification to verify their right to participate at the meeting)

12.6 **Verification of Right to Attend Meeting**

- 12.6.1 A person wishing to attend or participate in a Members meeting (whether as a proxy or Member), must present satisfactory identification to the chairperson of the meeting at least 20 (twenty) minutes before the time scheduled for the start of the meeting. The Chairperson must be satisfied that the right of the person to attend and vote has been verified.
- 12.6.2 For the purposes of Paragraph 12.6, the following forms of identification shall be satisfactory: a valid identity document, driver's license, or passport (or a certified copy of any of these documents). Proxies or person to attend the meeting on behalf of a Member must also provide an original or certified copy of their power of attorney, letter of authority or another appointing instrument.
- 12.6.3 In the event that the identification process is not completed by the time that the meeting is scheduled to begin, then the commencement of the meeting shall be delayed until the identification process is complete.

12.7 **Chairperson of a Members Meeting**

The Chairperson of the Board shall be entitled to chair meetings of Members. If, however, there is no Chairperson, or if they have notified of their inability to attend a meeting or if at any meeting they are not present within 20 (twenty) minutes of the time appointed for the meeting, the Voting Members who are entitled to exercise voting rights at the meeting present and represented shall choose another Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Voting Members shall choose one of their own to be the chairperson.

12.8 **Quorum**

- 12.8.1 No business shall be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business.
- 12.8.2 The quorum for a Member's meeting of the Company called for the passing of a Special Resolution or to dissolve the Company shall be at least $\frac{2}{3}$ (two thirds) of the number of Voting Members present in person or by proxy or if a Voting Member is a body corporate, its representative: Provided that a quorum shall never be less than 3 (three) Voting Members present in person or if a Voting Member is a body corporate, its representative.

- 12.8.3 The quorum for an Annual General Meeting or any other Member's meeting of the Company shall be at least $\frac{1}{3}$ (one third) of the number of Voting Members present in person or by proxy or if a Voting Member is a body corporate, its representative: Provided that a quorum shall never be less than 3 (three) Voting Members present in person or if a Voting Member is a body corporate, its representative.
- 12.8.4 The participation by a Member at a meeting of the Members' in accordance with Paragraph 12.8 shall be considered for the purposes of constituting a quorum as well as with respect to voting at such meeting.
- 12.8.5 After a quorum has been established for a meeting (or in respect of a specific matter on the agenda), the meeting may continue (or the matter may be considered) provided the meeting is quorate for the full duration of the meeting.
- 12.9 **Electronic Participation in Members' Meetings**
- 12.9.1 A Members meeting may be conducted entirely by electronic communication or one or more participants in the Members meeting may participate using electronic communication, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively.
- 12.9.2 A resolution signed by the requisite majority or percentage of Voting Members who were connected electronically where:
- 12.9.2.1 all such Members remained connected for the duration of the electronic meeting;
- 12.9.2.2 the subject matter of the resolution has been discussed; and
- 12.9.2.3 the chairperson of the meeting or any other Member certifies in writing that the aforementioned requirements have been met,
- shall be deemed to have been passed on the date on which the resolution was signed by the last to sign Voting Member it (unless a statement to the contrary is made in that resolution) and such resolution may consist of several documents, each of which may be signed by one or more Voting Members who participated in the electronic meeting.

12.10 Postponement and Adjournment of Meetings of Members

- 12.10.1 If within 30 (thirty) minutes of the appointed time for a meeting to begin, a quorum is not present, the meeting will automatically (without any further action or formalities being required, unless the location of the meeting is different):
- 12.10.1.1 be dissolved, if convened at the request of Members; or
 - 12.10.1.2 be postponed, in any case other than contemplated in Paragraph 12.10.1.1, to a date determined by the chairperson on written notice to the Members but which shall be no earlier than 7 (seven) days and no later than 21 (twenty-one) days from the date of the non-quorate meeting (or if that is not a Business Day, to the next succeeding Business Day) at the same time and place, or to such other time and place as the chairperson of the meeting may appoint.
- 12.10.2 If a quorum is not present when a matter is called on the agenda, the consideration of that matter may be postponed to a later time in the meeting if there is other business on the agenda. However, if there is no further business on the agenda, the meeting is automatically (without any further action or formalities being required, unless the location of the meeting is different) adjourned to a date determined by the chairperson on written notice to the Members but which shall be no earlier than 7 (seven) days and no later than 21 (twenty-one) days from the date of the meeting (or if that is not a Business Day, to the next succeeding Business Day) to be continued at the same time and place, or to such other time and place as the chairperson of the meeting may appoint.
- 12.10.3 The 30 (thirty) minutes limit specified in Paragraph 12.10.1 may be extended by the chairperson presiding at the Members' meeting as contemplated in Section 64(5) for a reasonable period on grounds that:
- 12.10.3.1 exceptional circumstances affecting weather, transportation or electronic communication have impeded or are impeding the ability of Members to be present at the meeting; or
 - 12.10.3.2 one or more Voting Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of Paragraph 12.8.
- 12.10.4 A Members' meeting (or consideration of a particular matter on the agenda) may be adjourned without further notice to a fixed time and place (but will require a notice if it is adjourned "until further notice") by a vote in favour thereof by holders of a majority

of those voting rights present or represented at the meeting and entitled to be exercised on at least one matter remaining on the agenda of the meeting or, where the adjournment is in respect of a particular matter, by a vote in favour thereof by holders of a majority of those voting rights present or represented by proxy and entitled to be exercised in respect of the matter in question.

12.10.5 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting which was adjourned.

12.10.6 If within 30 (thirty) minutes of the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Voting Members who are entitled to exercise voting rights at the meeting, present or represented at the meeting will be deemed to constitute a quorum, pursuant to Section 64(8).

12.11 **Voting**

12.11.1 Save as is otherwise expressly provided by the Companies Act or by this MOI, all resolutions to be considered at any Members' meeting shall be decided by a majority of votes cast.

12.11.2 At a meeting of Members, voting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by the chairperson of the meeting or no less than 50% (fifty percent), their number rounded up, of the Voting Members present. Subject to the provisions of the Companies Act, unless a poll is demanded, a declaration by the Chairperson that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final 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.

12.11.3 If a poll is demanded, it shall be taken in such manner and at such place and time as the chairperson of the meeting directs and either immediately or after an interval or adjournment which shall not exceed 7 (seven) days, the demand for a poll may be withdrawn. Scrutineers shall be appointed by the chairperson to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the chairperson of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the dispute and the *bona fides* determination of the chairperson shall be final and conclusive.

12.11.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

12.11.5 In the case of an equality of votes either on a show of hands or on a poll, the chairperson of the Members meeting shall have a casting vote in addition to any vote or votes which they may have been entitled to as a Member or representative of a Member.

12.12 **Members Acting Other than at a Meeting**

12.12.1 An Ordinary Resolution or Special Resolution that could be voted on at a Members meeting may alternatively be voted on in writing, notwithstanding Paragraph 12.2.1, via a round-robin resolution if:

12.12.1.1 the resolution is submitted to Voting Members entitled to exercise voting rights in relation to the resolution; and

12.12.1.2 is thereafter voted on in writing by the Voting Members within 20 (twenty) Business Days after the resolution was submitted to them.

12.12.2 A resolution contemplated in Paragraph 12.12.1 will be adopted if it is supported by Voting Members entitled to exercise sufficient voting rights for it to have been adopted, as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Members meeting and if adopted, has the same effect as if it had been approved by voting at a Members meeting.

12.12.3 Within 10 (ten) Business Days after adopting the resolution as set out in Paragraph 12.12.1, the Company must deliver a statement describing the results of the vote to every Voting Member who was entitled to vote on the resolution.

The written resolution, as set out in Paragraph 12.12.1, shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Voting Members who are entitled to exercise voting rights in relation to that resolution. The written resolution may consist of two or more documents in the same form, each of which is signed by one or more such Voting Members, as the case may be.

13. Directors

13.1 Composition of the Board

13.1.1 The Company shall have a minimum of 3 (three) and a maximum of 5 (five) Directors, subject to the exception stated in Paragraph 13.3.1.

13.1.2 No Director may be a 'connected person' in relation to any other Director (as defined in the Income Tax Act). No single Director shall directly or indirectly control the decision-making powers relating to the Company.

13.1.3 The 3 (three) incorporators of the Company shall be the first executive Directors of the Company.

13.1.4 The Board shall comprise of no less than 3 (three) Directors.

13.2 Authority of the Board and Delegation

13.2.1 The authority and responsibility to exercise all the powers and perform any of the functions of the Company shall vest in the Board. The Board may exercise all powers of the Company which are not excluded by a statute or this MOI.

13.2.2 The Board may delegate the management and any of its powers, of the Company, upon such terms and conditions as is deemed fit.

13.2.3 All *bona fides* decisions or actions by the Board or individual Director of the Company are deemed to be valid, notwithstanding that it may later be discovered that there was some defect in the appointment or continuance in office of such, and the decisions or actions taken will be considered valid as if they had been duly appointed, continued to be a Director, or was entitled to vote, as the case may be. Provided that this Paragraph will not condone any wilful, deceitful, fraudulent, or gross negligence decision or action on the part of the Board or and individual Director.

13.3 Appointment, Nomination, and Election of Directors

13.3.1 When Director vacancies arise, in the Company or on the Board, between Annual General Meetings or if there are anticipated vacancies due to Director resignations required in terms of this MOI, the Board may, when issuing a notice of an Annual General Meeting, simultaneously give notice to Voting and Associate Members inviting them to propose, to the Board, nominations of individuals to act as executive or non-executive Director, for election by Voting Members at the next Annual General Meeting, provided:

- 13.3.1.1 such nominations must be returned to the Board within 21 (twenty-one) days of the date of issue of the Annual General Meeting Notice.
- 13.3.1.2 at the close of the return period the Board must draw up a shortlist of Director candidates and such list must be emailed to the Voting Members no later than 7 (seven) days before the Annual General Meeting.
- 13.3.1.3 in determining the shortlist, the Board must comply with eligibility requirements stated in Paragraphs 13.3.2 and 13.3.5 and follow due and fair process.
- 13.3.1.4 no Director nomination will be considered if not made in compliance with process set out in Paragraph 13.3.1.
- 13.3.1.5 Candidates absent from the Annual General Meeting are not eligible for election unless they have rendered written apologies together with sound reasons for their absence, at least 24 (twenty-four) before the meeting, and which apology must be reasonable and acceptable to the Board.
- 13.3.1.6 The election of Directors by Voting Members at the Annual General Meeting is to be conducted as a single ballot, with vacancies being filled by the candidates polling the highest number of votes, in descending order, until all vacancies have been filled. Each Voting Member present in person, effectively online, or by proxy, is entitled to vote in favour of as many candidates as there are vacancies.
- 13.3.1.7 If the offices of the retiring Directors are not filled at any Annual General Meeting, at which the election of Directors should have taken place, then the at the sole discretion of the chairperson of the Meeting, the chairperson may decide to adjourn the meeting or instruct the outgoing Board to fill the vacancies subject to Paragraph 13.3.2 and 13.3.6 and re-election of those Directors at the next Annual General Meeting.
- 13.3.2 The Board shall have the power at any time, and from time to time, to appoint any person as a non-executive Director (in addition to the 5 (five) Directors appointed in terms of Paragraph 13.1.1, provided that no more than 3 (three) Directors so appointed shall be members of the Board at any one time. Any non-executive Director so appointed shall be entitled to vote and shall only hold office for such periods as the Board may determine or until the date of the next Annual General Meeting when they shall stand down, they may however, subject to a nomination in terms of Paragraph 13.3.5 or by recommendation from the Board, stand for re-election.

- 13.3.3 To be eligible as an executive Director, save for the first Directors, a person must satisfy the qualification and eligibility requirements set out in Section 69, not be a politically exposed person as defined in Financial Intelligence Centre Act 38 of 2001, as amended from time to time, and have:
- 13.3.3.1 been a Voting Member of the Company for more than 3 (three) years;
 - 13.3.3.2 provided no less than 200 (two hundred) hours volunteer service to the Company;
 - 13.3.3.3 actively participated in promoting the objectives of the Company,
- 13.3.4 Executive Directors may hold office for a term of 3 (three) years after which they shall retire and are eligible for re-election.
- 13.3.5 To be eligible as a non-executive Director, a person must satisfy the qualification and eligibility requirements set out in Section 69, not be a politically exposed person as defined in Financial Intelligence Centre Act 38 of 2001, as amended from time to time, and have:
- 13.3.5.1 the skills, knowledge, and experience to meet the requirements of the Board, all of which may be determined by the Board in its sole discretion; and
 - 13.3.5.2 not previously have been appointed at as an executive Director.
- 13.3.6 Non-executive Directors may hold office for a term of 2 (two) years, save for the provisions of Paragraph 13.3.2, after which they shall retire and are eligible for re-election.
- 13.3.7 No Director shall serve for more than 3 (three) consecutive terms.

13.4 **Proceedings at Board Meetings**

- 13.4.1 As soon as possible after the incorporation of the Company the first Directors shall hold a meeting at which they shall elect a Chairperson, Vice Chairperson, Secretary and Treasurer, of the Board. A Director may serve in more than one capacity.
- 13.4.2 At the first Directors meeting after an Annual General Meeting of the Company. The Directors shall elect a Chairperson, Vice Chairperson, Board Secretary and Treasurer of the Board. Such appointments are made on terms and conditions as may be determined by the Board from time to time and may be revoked by simple majority vote of the

- 13.4.3 The Directors must meet at least quarterly to dispatch the business of the Company.
- 13.4.4 Board Meetings shall be governed in terms of Section 73, but the Board shall have the authority to regulate their meeting as they think fit and such authority is not limited or restricted by this MOI.
- 13.4.5 Notice of a Board meeting must be given to each Director in writing, whether by post, fax, or email, not less than 14 (fourteen) days prior to the meeting.
- 13.4.6 Any 25% (twenty-five percent) of the Directors, their number rounded down, may convene a meeting of the Directors by requesting such a meeting from the Chairperson, who shall summon the meeting by no later than 14 (fourteen) days from receipt of the request. A Director while absent from the Republic of South Africa shall, during such absence, be entitled to notice of any meeting.
- 13.4.7 The Board may proceed with a meeting despite a failure or defect the notice of such meeting subject to the provisions of Section 73(5), provided that all of the Directors:
 - 13.4.7.1 acknowledge actual receipt of the notice; or
 - 13.4.7.2 are present at the meeting; or
 - 13.4.7.3 waive notice of the meeting.
- 13.4.8 The Board may meet in person or partly or entirely by electronic communication, where one or more if the Directors may participate in the meeting using electronic communication, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively.
- 13.4.9 The quorum necessary for the transaction of the business of the Board is a majority of the number of Directors in office.
- 13.4.10 The Chairperson shall preside at meetings of the Board. If the Chairperson is not present or willing to act within 5 (five) minutes of the time appointed for the commencement of such meeting, the Directors then present shall choose any other of their number to be chairperson of such meeting.
- 13.4.11 Questions arising at any Board meeting must be decided by a majority of votes, of those present. Each Director has one vote on a matter before the Board. In the event of an equality of votes at a meeting, the Chairperson shall have a second or casting vote.

- 13.4.12 The Company shall keep minutes of all Board meetings and any of its committees meetings, such minutes must include:
 - 13.4.12.1 a very brief summary of the matters discussed; and
 - 13.4.12.2 any declaration of personal financial interest given by notice or made by a Director as required by Section 75; and
 - 13.4.12.3 the respective resolutions adopted by the Board.
- 13.4.13 Any minutes of a Board meeting or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next Board meeting, is evidence of the proceedings of that meeting or the adoption of a particular resolution.
- 13.4.14 Resolutions adopted by the Board:
 - 13.4.14.1 must be dated and sequentially numbered; and
 - 13.4.14.2 are effective as of the date of the resolution unless the resolution states otherwise.
- 13.4.15 The Board may elect to round-robin a resolution in writing and if adopted by the majority of Directors will be deemed to be valid and effective as if it had been passed at a duly called and constituted meeting of the Board or its committee as the case may be, provided that each Director has received notice of the matter to be decided. An adopted round-robin resolution may consist of multiple hard or electronic copies of the same resolution, each signed by one or more Board members. A resolution of Directors passed in terms of this Paragraph must be presented at the next meeting of the Board, or its committee, as the case may be for noting and signature by the Chairperson of that meeting in terms of the provisions of Section 24 and Section 73(8).
- 13.5 **Material, Financial or any Other Conflicts of Interests**
 - 13.5.1 All Director's material, financial or any other conflicts of interests are to be dealt with in accordance with provisions of Section 75 and any other terms, conditions, or restrictions that may be imposed by this MOI.
 - 13.5.2 The Board shall:
 - 13.5.2.1 require that, at the first Board meeting each year, all Directors complete a written and signed interest declaration and submit the same to the Chairperson;

13.5.2.2 ensure that newly appointed Directors attending their first Board meeting also complete a written and signed interest declaration and submit the same to the Chairperson;

13.5.2.3 such nominations must be returned to the Board within 21 (twenty-one) days of the date of issue of the Annual General Meeting Notice.

13.6 **Material, Financial or any Other Conflicts of Interests**

All Director's material, financial or any other conflicts of interests are to be dealt with in accordance with provisions of Section 75 and any other terms, conditions, or restrictions that may be imposed by this MOI.

13.6.1 The Board shall:

13.6.1.1 that, at the first Board meeting each year, all Directors complete a written and signed interest require declaration and submit the same to the Chairperson;

13.6.1.2 ensure that newly appointed Directors attending their first Board meeting also complete a written and signed interest declaration and submit the same to the Chairperson;

13.6.1.3 at every Board meeting require a declaration of conflict of interest, by all attending Directors, in the manner and form agreed by the Board, in respect of all matters under consideration at such meeting;

13.6.1.4 require Directors with personal material, financial or any other interest, (or who knows that a related person has any such an interest) to disclose the same in writing and provide all relevant information on the nature and extent of such interest, at the start of the Board meeting;

13.6.1.5 when there is a disclosed conflict of interest or if one arises at a Board meeting, before or after a discission has been taken on such matter, advise the conflicting Director that such Director shall not take any further part in the consideration and must leave the meeting immediately;

13.6.1.6 the conflicting Director shall not be entitled to a vote on such matter and if their vote has been already cast it shall be deemed to have been revoked and shall not be counted;

13.6.1.7 whilst being absent from the meeting in terms of 13.6.1.5, the conflicting Director:

13.6.1.7.1 will be regarded as being present for the purpose of determining whether a sufficient number of Directors are present to constitute a quorum; and

13.6.1.7.2 will not be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted.

13.7 **Alternate Directors**

Any Director shall have the power to nominate another person (who may not already be an acting Director) to act as their alternate during their absence or inability to act as Director. Subject to the following conditions:

13.7.1 the alternate Director's nomination shall be conditional upon the approval by the majority of the Board; and

13.7.2 a person nominated may not be appointed as alternate to more than 1 (one) Director; and

13.7.3 the alternate Director shall be subject to all eligibility requirements and the same the terms and conditions that have been imposed on the nominating Director; and

13.7.4 the appointment of an alternate Director shall cease if:

13.7.4.1 the Director who appointed them ceases to be a Director; or

13.7.4.2 the Director who appointed them gives notice to the Board that the alternate Director representing no longer represents them; or

13.7.4.3 there is any other reason that would cause a Director to vacate their office in terms this MOI.

13.8 **Remuneration**

13.8.1 The Directors of the Company shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors.

13.8.2 Where a Director renders additional services to the Company, other than their services as a Director, such Director may be remunerated by the Company for such services, provided that such remuneration is fair and reasonable, and has been approved by an Ordinary Resolution Board, following the procedure set out in Section 75(5), and supported by the majority of the unaffected Directors of the Company.

13.9 Director Reimbursements

A Director of the Company may be reimbursed by the Company for reasonable and necessary expenses incurred in the *bona fides* performance of their duties to the Company, provided that the reimbursement of any expense, that has not been categorised as an expenses and expressly budgeted for in the annual budget of the Company and approved by the Board, or is of an amount exceeding any limit with respect to any category of expenses specified in the annual budget of the Company, shall require the prior approval of a unaffected majority of the Directors of the Company by Ordinary Resolution.

13.10 Advances

The Company may not provide an advance to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company, or to a person related to any such Director, unless it:

13.10.1 is in the ordinary course of the Company's business and for fair value and to achieve one or more of the stated objects of the Company set out in this MOI; or

13.10.2 constitutes an accountable advance to meet:

13.10.2.1 legal expenses in relation to a matter concerning the Company; or

13.10.2.2 anticipated expenses to be incurred by the Director or committee member on behalf of the Company, or

13.10.3 is to defray a Company expense subject to prior request; or

13.10.4 is in terms of an employee benefit scheme available to all employees or a specific class of employees.

13.11 Indemnity

13.11.1 Subject to the passing of an Ordinary Resolution of the Directors, the Board may:

13.11.1.1 advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Company; and

13.11.1.2 may directly or indirectly indemnify a Director for expenses contemplated in Paragraph 13.11.1.1, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any

liability for which the Company may indemnify the Director as provided in terms of Sections 78(5).

13.11.1.3 Subject to the limitations imposed by Section 78(6), the Company may also indemnify an alternate Director, committee member or officer of the Company.

13.11.2 The Company may purchase insurance to protect:

13.11.2.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with Paragraph 13.11.1.2; or

13.11.2.2 the Company against any contingency including, but not limited to:

13.11.2.2.1 any expenses that the Company is permitted to advance in accordance with Paragraph 13.11.1.1; or

13.11.2.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with Paragraph 13.11.1.2.

13.11.3 The Company is entitled to claim restitution from a Director of the Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this Paragraph 13.11.

13.12 **Vacation of Office**

The office of the Director shall be deemed vacated if such Director:

13.12.1 gives a written notification of their resignation;

13.12.2 dies;

13.12.3 becomes incapacitated to the extent that they are unable to perform the functions of a Director, and are unlikely to regain that capacity within a reasonable time;

13.12.4 is absent from meetings of Directors for more than 6 (six) months without consent of the Board;

13.12.5 it comes to the Board's attention that such Director holds an office of profit under the Company, without the knowledge and consent of the Company;

13.12.6 has a direct or indirect interest in any contract or proposed contract with the Company and fails to declare their interest and nature thereof as contemplated in Paragraph 13.5;

- 13.12.7 becomes ineligible or disqualified in terms of Section 69; or
- 13.12.8 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
- 13.12.9 is removed in terms of Paragraph 13.13.
- 13.12.10 is a representative of a Voting Member and the Voting Member who appointed the affected Director ceases to be a Voting Member of the Company;
- 13.12.11 ceases to be a representative of the Voting Member which appointed such Director;

13.13 **Removal from Office**

- 13.13.1 The Company may in accordance with Section 71 remove any Director before expiration of this period of office and may appoint another Director in their stead as provided for in Paragraph 13.3.1.
- 13.13.2 A Director may further be removed from office by order of the court as contemplated in Section 71(5) or (6).

14. **Officers and Committees**

- 14.1 The Board may appoint any officer it considers necessary to better achieve the stated objects of the Company.
- 14.2 The Board may appoint any number of committees, and to delegate to any such committees any of the authority of the Board.
- 14.3 Any committee appointed by the Board:
 - 14.3.1 may include in any such committees persons who are not Directors, provided that no such person has a vote on a matter to be decided by the committee; and
 - 14.3.2 shall be provided with a term of reference which will guide the committee in respect of its role and purpose, function, delegated authorities, tenure, meeting requirements, and reporting mechanisms to the Board; and
 - 14.3.3 may consult with or receive advice from any person.
- 14.4 Any person appointed as officer or committee member of the Company, must not be ineligible or disqualified to be a director in terms of Section 69 not be a politically exposed person as defined in Financial Intelligence Centre Act 38 of 2001, as amended from time to time.

15. **Registered Office**

The registered office of the Company, which shall be located within the Republic of South Africa, may be determined by the Board, from time to time, and if no address has been fixed then the physical address of the Company auditors, as appointed from time to time, shall be deemed to be the registered address of the Company.

16. **Financial Year**

The financial year of the Company shall end on the last day of February of each year.

17. **Company Records and Accounting Records**

All Company records contemplated by Section 24 and all accounting records contemplated by Section 28 and Regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the Company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.

18. **Enhanced Accountability and Transparency**

18.1 The Company has elected to have its annual financial statements independently reviewed or audited, in terms of Sections 30(2) and (7), read with Regulation 28 and Regulation 26(2), and therefore the Company shall comply to the extent necessary with the provisions of Chapter 3 of the Companies Act.

18.2 The Company does not elect, in terms of Section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act.

18.3 The Company may, but is not obliged to, appoint a person to serve as company secretary or establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.

19. **Annual Financial Statements**

19.1 Each year, the Company must prepare annual financial statements within 6 (six months) after the end of its financial year.

19.2 The annual financial statements must:

19.2.1 include an independent review conclusion or audit report opinion;

- 19.2.2 include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Company, including:
 - 19.2.2.1 any material matter relating to the Company's state of affairs; and
 - 19.2.2.2 any prescribed information;
- 19.2.3 be approved by the Board and signed by an authorised Director; and
- 19.2.4 be submitted to the Members in the first General Meeting, after such annual financial statements have been approved by the Board and signed by the authorised Director, within 9 (nine) months of the end of the financial year.

20. **Annual Returns**

- 20.1 Each year, the Company must File an annual return in the prescribed form with the prescribed fee, and within the prescribed period after the end of the anniversary of the date of its incorporation, which return must:
 - 20.1.1 include a copy of the Company's annual financial statements;
 - 20.1.2 designate a Director, employee or other person who is responsible for the Company's compliance with the transparency, accountability, and integrity requirements in terms of Part C of Chapter 2 of the Companies Act, and the requirements of Chapter 3 of the Companies Act, if these requirements apply to the Company; and
 - 20.1.3 any other prescribed information.

21. **Winding Up or Dissolution of the Company**

- 21.1 The Company may be wound up voluntarily by the Board on passing of an Ordinary Resolution supported by a majority of the Directors. Any such voluntary winding up shall be effected in accordance with Section 80.
- 21.2 Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act and Section 30B of the Income Tax Act:
 - 21.2.1 to another entity approved by the SARS Commissioner in terms of section 30B of the Income Tax Act;

- 21.2.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act to be determined by the Directors at or before the time of dissolution or failing such determination by the Court; or
- 21.2.3 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity.
- 21.3 No past or present Member or Director shall be entitled to any part of the Company's its net assets on dissolution.

22. **Review**

- 22.1 This MOI shall be reviewed at least once every 5 (five) years.