

EXECUTION VERSION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 71 OF 2008**

MEMORANDUM OF INCORPORATION

OF

RISA AUDIO VISUAL LICENCING NPC

**A NON-PROFIT COMPANY WITH MEMBERS
REGISTRATION NUMBER: 2000/021434/08**

T A B A C K S

Neither the short nor the long standard form of Memorandum of Incorporation for a Non Profit Company, shall apply to the Company.

This Memorandum is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.

Adoption of Memorandum

This Memorandum was adopted by Special Resolution passed on _____ and in substitution for the existing Memorandum of Incorporation of the Company

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1. INTERPRETATION

In the interpretation of this Memorandum and unless contrary to or excluded by the subject or context:

- 1.1 any word or reference herein signifying:
 - 1.1.1 the singular shall include the plural and vice versa;
 - 1.1.2 any one gender, whether masculine, feminine or neuter, includes the other;
 - 1.1.3 a person or persons, shall include, without being limited to, any individual, juristic person, body corporate, unincorporated Company or other entity recognized under any law as having separate legal existence or personality;
 - 1.1.4 references to a statute or statutory provision include any subordinate legislation made from time to time under that statute or provision, and references to a statute or provision include that statute or provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Memorandum.
- 1.2 any word herein, which is defined in the Act and is not defined in article 1.6 shall bear that statutory meaning in this Memorandum;
- 1.3 any word, phrase or sentence herein which is not defined in the Act or in article 1.6 shall bear its usual meaning;
- 1.4 each term, power or authority herein shall be given the widest possible interpretation;

- 1.5 all the headings and sub-headings in this Memorandum are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 1.6 each of the following words and expressions bear the meaning stated opposite it:
- 1.6.1 **“Act”** means the Companies Act, 71 of 2008 as amended, consolidated or re-enacted from time to time, and includes all schedules and Regulations of such Act;
- 1.6.2 **“Annual General Meeting”** means the Annual General Meeting held between the Members of the Company on an annual basis pursuant to article 20.5 to determine those matters referred to in article 20.3.2 read together with article 20.3.2.5;
- 1.6.3 **“Applicant”** means any person or entity applying for Membership of the Company;
- 1.6.4 **“Auditors”** mean the Auditors of the Company from time to time;
- 1.6.5 **“Business day”** means any calendar day excluding Saturdays, Sundays or statutory public holidays in the Republic;
- 1.6.6 **“CEO”** means the Chief Executive Officer appointed in terms of article 24;
- 1.6.7 **“Chairperson”** means the Chairperson of the Board;

- 1.6.8 “**Code**” means any code of conduct prescribed by the Board from time to time and initially being the code which is attached to this Memorandum as Annexure A;
- 1.6.9 “**Company**” means RISA Audio Visual Licencing, a not for profit company with members incorporated with registration number 2000/021434/08;
- 1.6.10 “**Board**” means the board of directors of the Company from time to time;
- 1.6.11 “**Firm**” means a business, whether incorporated or not;
- 1.6.12 “**General Meeting**” means a meeting of Members of the Company convened in terms of this Memorandum and the Act and shall be construed as including a reference to an Annual General Meeting unless the context indicates a contrary intention;
- 1.6.13 “**Good Standing**” means, in relation to a Member, a Member who has paid up all arrear Members Fees and surcharges levied upon him/her by the Company and is not the subject of any disciplinary or sanction under the Code, Rule or Memorandum;
- 1.6.14 “**IFPI**” means the International Federation of Phonographic Industries;
- 1.6.15 “**Independent Member**” means a Member other than a Multinational Member;
- 1.6.16 “**Industry**” means the industry as defined in Clause 4 of this Memorandum;

- 1.6.17 **“Income Tax Act”** means Income Tax Act, 58 of 1962;
- 1.6.18 **“Member”** means a member of the Company and **“Members”** shall bear the corresponding meaning;
- 1.6.19 **“Memorandum”** means Memorandum of Incorporation of the Company being in force for the time being;
- 1.6.20 **“Multinational Member”** means each of Sony Music Entertainment, Universal Music and Warner Music Group or their successors in title;
- 1.6.21 **“Non-Profit Company”** means a Non-Profit Company as defined in the Act;
- 1.6.22 **“Office”** means the principal office of the Company for the time being;
- 1.6.23 **“Ordinary Resolution”** means an ordinary resolution of Members present or represented at a General Meeting, referred to in article 20.4.7.1;
- 1.6.24 **“Records”** as a noun, means any carrier of sound recordings now known or hereafter discovered shall include gramophone records, cassette tapes or tapes in any other form or compact discs;
- 1.6.25 **“Representative”** means the nominated and registered representative of a firm or of a Member who is not a natural person;

- 1.6.26 **“Register”** means the written recordal by the Company of anything which is required to be recorded in terms of the Memorandum of Incorporation or the Act;
- 1.6.27 **“Rules”** mean Rules of the Company made from time to time in terms of section 15(3) to (5) of the Act and this Memorandum and shall include the Code;
- 1.6.28 **“Republic”** means the Republic of South Africa;
- 1.6.29 **“Secretary”** means the Secretary of the Company for the time being, or any person duly authorised by the Board acting in the place of such Secretary for the time being, or any person appointed by the Board to perform any of the duties of the Secretary;
- 1.6.30 **“Special Resolution”** means a special resolution of Members present or represented at a General Meeting, referred to in article 20.4.7.2;
- 1.6.31 **“Specified Rights”** – collectively –
- 1.6.31.1 the exclusive right under s9(a) of the Copyright Act 1978, to copy or to authorise the copying of a sound recording in the Republic;
- 1.6.31.2 the exclusive right under s8 of the Copyright Act 1978, to do or to authorise the doing of any of the acts referred to in s8(a) to (g) (inclusive), in the Republic;

- 1.6.32 **“Treasurer”** means the Treasurer of the Company for the time being, or any person duly authorized by the Board acting in the place of such Treasurer for the time being, or any person;
- 1.6.33 **“Vice Chairperson”** means the Vice Chairperson of the Board;
- 1.6.34 **“Writing”** means legible writing and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations;

2. **ADOPTION OF MEMORANDUM OF INCORPORATION**

This Memorandum was adopted by the Members of the Company in accordance with section 13(1) of the Act.

3. **INCORPORATION AND NATURE OF THE COMPANY**

- 3.1 The Company is incorporated as a Non-Profit Company with Members, as defined in the Act.
- 3.2 The Company is incorporated in accordance with and governed by:
- 3.2.1 the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies;
- 3.2.2 the alterable provisions of the Companies Act, 2008 without any limitation, extension, variation or substitution set out in this Memorandum; and

3.2.3 the provisions of this Memorandum of Incorporation.

4. THE MAIN BUSINESS AND MANDATE BY MEMBERS

4.1 The main business of the Company is to:

4.1.1 administer, exercise and enforce, on behalf of Members, all rights and remedies in respect of the:

4.1.1.1 broadcasting and causing to be heard and/or seen in public and causing to be transmitted via a diffusion service, of videograms and audio visual recordings;

4.1.1.2 reproduction, copy, dubbing and or duplication (and causing same to be done) any videograms, audio visual recordings, phonograms and/or sound recording; and

4.1.2 promote the group interests of persons who carry on the business of doing such things referred to in 4.1.1 above ("**the Industry**") and more particularly the Company is hereby authorised by and on behalf of the Members:

4.1.2.1 to provide a forum for discussing matters of common interest, to promote dialogue between the various independent creative arms of the Industry and address their opportunities, needs and problems which are ever changing in the face of modern technology;

- 4.1.2.2 to represent the collective views of its Members to the public media, related bodies, government departments and other interested organizations and persons;
- 4.1.2.3 to serve as information source and continually to have available information and background on the state of the industry, new developments, trends and statistics;
- 4.1.2.4 to establish and maintain bonds and reciprocity between the Company and similar associations elsewhere in the world;
- 4.1.2.5 to investigate and support or oppose any legislation or other measures affecting the common interests of the Members and the Industry;
- 4.1.2.6 to promote ethical business, to repress malpractices and investigate any other illicit activities detrimental to the industry as a whole and to settle disputed points of practice;
- 4.1.2.7 to establish and enforce rules and a code of conduct for the regulation, maintenance and promotion of standards by Members, their management, employees, Directors and agents in their dealings with each other and with third parties;
- 4.1.2.8 to organise, promote and host events including awards for and on behalf of the music industry;

- 4.1.2.9 to take such action as may be necessary by legal or other process, for the protection of rights including intellectual property rights, of Members or group of Members;
- 4.1.2.10 to consult and liaise with related bodies both on an international and national level, including chambers of commerce, trade and business and other mercantile and industrial bodies for the purpose of joint action in the interests of Industry and commerce;
- 4.1.2.11 to try to ensure that the interests of the Members of the Industry are protected on a basis equivalent to that provided for other major record producers and manufacturers in the major markets of the world;
- 4.1.2.12 to enter into contracts on behalf of some or all of the Members to promote the common interests of such Members –
 - 4.1.2.12.1 to provide such services to Members for the administration and operation of such contracts; and
 - 4.1.2.12.2 to act on behalf of Members in all criminal cases relating to or connected with, piracy of audio visual and sound recordings of any Members (and shall include the right to appoint agents to do so on behalf of the Company, if required).
- 4.2 Without limiting the generality of the foregoing provisions of this article 4, the Company is hereby irrevocably and unconditionally, authorised,

mandated and empowered by each Member as each such Member's attorney and agent in rem suam, with effect from the date ("**Membership Date**") on which each such Member becomes a Member to do all such things and take all such steps referred to in Schedule 1 to this Memorandum, for and on behalf of the Member on the basis that all such provisions shall be deemed to be incorporated herein by reference.

4.3 Each Member hereby –

4.3.1 cedes, transfers and makes over to the Company (as cessionary) its rights of legal action in respect of any accrued claims against any third parties arising out of any infringements of its Specified Rights as identified above, with effect to and from the Membership Date;

4.3.2 cedes, transfers and makes over to the Company (as cessionary) its rights of legal action in respect of any future claims against any third parties as arising out of any infringements of its Specified Rights as identified above, with effect to and from the Membership Date;

4.3.3 undertakes to make available to the Company the originals of all and any documents of any nature whatsoever in terms of which the Member acquired its Specified Rights in respect of any recording, whether as copyright owner or as a licensee or sub-licensee;

4.3.4 undertakes to provide all and any such assistance as might reasonably be requested by the Company at any time for the purposes of enabling the Company to exercise the rights of legal action in respect of any

recording that have been ceded, transferred and made over to the Company in terms of this article 4;

4.3.5 undertakes to cooperate fully with the Company in all respects in regard to the preparation and presentation of any evidence that might be required to be led in any court action or arbitration hearing relating to the enforcement of any rights of legal action that have been ceded, transferred or made over to the Company in terms of this article 4;

4.3.6 ratifies, confirms and approves all actions and steps of every nature whatsoever taken by the Company in connection with the Member's Specified Rights after the Membership Date.

5. MAIN OBJECTS

5.1 The main object of the Company is to promote the common interests of the persons engaged in the Industry in the manner more fully set out in article 4 .

5.2 The specific ancillary objects referred to in Item 2(b)(ii) of Schedule 1 of the Act, which are excluded from the unlimited ancillary objects of the Company shall be:

5.2.1 the promotion of the common interests referred to in article 4 shall be by means other than the carrying on by the Company in any business, profession or occupation carried on by any of its Members; and

5.2.2 the provision to any of its Members of financial assistance or of any premises or continuous services or facilities required by its Members for the purpose of carrying on any business, profession or occupation.

5.3 The activities of the Company shall be directed to the furtherance of its principal object.

5.4 The funds of the Company shall be invested:

5.4.1 with a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984;

5.4.2 in securities listed on a licensed Stock Exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985; or

5.4.3 in such other financial instruments as the Commission of Inland Revenue may approve.

5.5 Subject to article 5.4 and Schedule 1 of the Act, the Company may acquire and hold securities issued by a profit Company; or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects as set forth in this Memorandum.

6. **SEPARATE LEGAL IDENTITY OF THE COMPANY**

6.1 The Company shall be deemed to be a Non-Profit Company and shall have an identity and existence distinct from that of the Members.

6.2 Legal proceedings instituted by and against the Company may be instituted and defended in the name of the Company.

6.3 Howsoever or wherever the Company's assets may be held or registered they shall be held on and for the account of the Company and at no time shall the Members be deemed to acquire for themselves or their personal account or benefit any vested right or interest in the funds or assets of the Company.

7. **BORROWING POWERS**

The Board may exercise all the powers of the Company to borrow and raise money and to mortgage or bind its undertaking and property or any part thereof.

8. **INDEMNITY**

Every office bearer or officer for the time being of the Company is indemnified out of the assets of the Company against all liability incurred by him/her as such in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application under section 78 of the Act, in which relief is granted to him/her by the court, to the fullest extent allowed under Section 78 of the Act.

9. **WINDING-UP OF THE COMPANY**

9.1 The Company shall continue indefinitely notwithstanding any changes in the composition of its Membership until such time as the Members in Good

Standing resolve, or are obliged by any duly authorised body, to wind-up the Company.

9.2 The Company may wound-up by Special Resolution of the Members.

9.3 Upon the winding-up, de-registration or dissolution of the Company, the assets of the Company remaining after the satisfaction of all its liabilities shall be transferred to:

9.3.1 an organisation(s) which engages in similar public benefit activities as the Company having objects similar to its main objects which have been approved in terms of the Income Tax Act and is a registered Non-profit Company in terms of the Act; or

9.3.2 any institution, Board or body which has its sole or principal object as the carrying on of any public benefit activity,

as may be determined by the Board at or before the time of the winding-up of the Company and provided that any such transfer of assets is on condition that such assets are used solely for the purposes of carrying on one or more public benefit activities.

10. RESTRICTIONS ON POWERS OF THE COMPANY

10.1 The Company shall be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilize its funds solely for the objectives for which it has been established, or to invest such funds:-

- 10.1.1 with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); and
- 10.1.2 in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or such other prudent investments in financial instruments and assets as the Commissioner of the South African Revenue Services may determine after consultation with the Board Officer of the Financial Services Board and the Director of Non-Profit Organizations.
- 10.2 Provided that the provisions of this Memorandum 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 were acquired by way of donation, bequest or inheritance.
- 10.3 The Company shall be prohibited from carrying on any business undertaking or trading activity unless approved per the Members by Ordinary Resolution in a General Meeting.
- 10.4 The Company shall 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 of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organization or an institution, Board or body which is exempt from tax in terms of Section

10(1)(A)(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.

11. ALTERATION OF OBJECTS AND ARTICLES

11.1 The Board may alter the provisions of its Memorandum in the circumstances referred to in Section 17 of the Act.

11.2 The Company may, in accordance with the provisions of the Act, amend this Memorandum by Special Resolution.

12. OFFICERS

12.1 There are the following categories of officers of the Company:

12.1.1 The Chairperson and Vice-Chairperson of the Company are appointed by the Board as provided in article 29.1

12.1.2 The CEO of the Company is appointed by the Board as provided in article 24 .

13. MEMBERSHIP

13.1 Application and Registration

13.1.1 Any person or corporate entity who qualifies to be registered as a Member of the Company as provided for herein, shall in writing lodge with the Board via the Secretary an application in such form as

may be prescribed for such registration and such information and documentation as the Board may require from time to time.

13.1.2 If after consideration of such application, the Board is satisfied that the Applicant:

13.1.2.1 in the event of a natural person:

13.1.2.1.1 satisfies the Membership criteria as provided for in the Rules or in any amendments thereto;

13.1.2.1.2 is not less than 21 (twenty-one) years of age;

13.1.2.1.3 is a fit and proper person to be registered as a Member;
and

13.1.2.1.4 has satisfied the Board in terms of the Rules and this Memorandum that he is qualified to be registered as a Member,

then the Board shall register the Applicant as Member of the Company and issue to him/her a certificate of registration in such form as it may prescribe.

13.1.2.2 In the event of a corporate entity:

13.1.2.2.1 being a firm, partnership, Close Corporation and Company; and

13.1.2.2.2 has satisfied the Board that it qualifies to be a Member,

then the Board shall register the Applicant as a Corporate Member of the Company and issue to him/her a certificate of registration in such form as it may prescribe.

- 13.1.3 An application for Membership must be made in writing, in the form laid down by the Board, with such further information and verification as may be dictated by the circumstances and must contain such information as the Board considers necessary to determine whether the Applicant is to be considered for Membership.
- 13.1.4 The Board has the right from time to time to lay down, vary, amend or alter the form or forms of application and/or proposal for Membership.
- 13.1.5 With any application for Membership, the Applicant must produce proof to the satisfaction of the Board that it is a Member in Good Standing of IFPI, if so required by the Board.
- 13.1.6 Upon receipt of an application for Membership, the CEO shall send a summary of such application, in the form laid down by the Board, to each Member of the Board from time to time of the Company, for consideration by the Board.
- 13.1.7 An objection by any member of the Board to any application for Membership shall be invalid if it is founded upon any ground which would amount to a contravention of the Applicant's rights under section 9 of the Constitution of the Republic of South Africa. Nevertheless the

provisions of Section 33 of the said Constitution shall apply to such rights, mutatis mutandis.

13.1.8 Should no objection to the application be received from any member of the Board within 21 days of dispatch of the summary in terms of article 13.1.6, the Applicant shall, subject to article 13.2, be deemed to have been elected as a Member.

13.1.9 Should any member of the Board object to the election of an Applicant within the 21 day period specified in article 13.1.8, the CEO shall inform the Board and convene a General Meeting of Members (to be held within two months of receipt of the objection). Unless the admission of the Applicant is approved by Special Resolution, an application for Membership shall be refused.

13.2 **Disqualification of Membership**

13.2.1 The Board may decline to register Membership on the following grounds:

13.2.1.1 in the event of a natural person:

13.2.1.1.1 if he has at any time been removed from an office of trust on account of misconduct or dishonesty;

13.2.1.1.2 if he has been declared by a competent authority to be of unsound mind;

13.2.1.1.3 if he is an un-rehabilitated insolvent;

- 13.2.1.1.4 if he is the subject of any order under the Act disqualifying him from being a Director of a Company or a member of a Close Corporation in terms of the relevant provisions of the Act; or
- 13.2.1.1.5 if he has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document or perjury or any offence of dishonesty.
- 13.2.1.2 in the event of a corporate entity:
 - 13.2.1.2.1 if such entity has been sequestrated or liquidated, as the case may be or placed under business rescue proceedings;
 - 13.2.1.2.2 if any of its Directors are sequestrated or removed from office of trust on account of misconduct or dishonesty or declared by a competent authority to be of unsound mind or is an un-rehabilitated insolvent or is disqualified as being a Director or Member or has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document or perjury or any offence of dishonesty; or
 - 13.2.1.2.3 If such entity has conducted its business in an unethical manner as determined by the Board in its sole discretion.
- 13.2.2 The decision of the Board within the context of this clause will be final.

13.3 Termination of Membership

13.3.1 The Membership of any Member terminates if:

13.3.1.1 it submits its resignation in Writing to the CEO;

13.3.1.2 it is convicted of any offence which, in the opinion of the Board involves fraud or dishonesty;

13.3.1.3 it becomes of unsound mind or is placed under curatorship;

13.3.1.4 it becomes disqualified from being a Director of a Company by reason of any order under any statute;

13.3.1.5 any amount due by such a Member (including those amounts due under article 14) remains unpaid for a period of one month after dispatch by the CEO by means of a registered letter, a demand for payment. No such demand under this sub-article may be made unless an amount has remained unpaid for a period of three months. A Member whose Membership is terminated under this sub-article may not again become a Member except by a fresh application and upon express compliance with the provisions of this Memorandum;

13.3.1.6 the principal activity of the Member no longer falls within the scope of the Industry;

13.3.1.7 the Board, after affording a Member a hearing, recommends to a General Meeting of Members that the Member be expelled on

- the ground that the Member has wilfully and persistently refused to perform its obligations to the Company and (subject to article 13.3.2) it is resolved by Ordinary Resolution at such General Meeting that such Member be expelled;
- 13.3.1.8 it is made subject to an order of provisional or final winding-up, sequestration or judicial management or is placed under business rescue proceedings;
- 13.3.1.9 it ceases to be a Member in Good Standing of IFPI, unless the Board in its discretion determines otherwise; or
- 13.3.1.10 it ceases to carry on business for any reason whatsoever; and
- 13.3.1.11 is a natural person, when such Member dies;
- 13.3.1.12 it is a juristic person, such Member ceases to exist for any reason whatsoever; or
- 13.3.2 A General Meeting may not vote on any resolution for the expulsion of a Member until the Member has been informed of the reasons for the proposed expulsion and is given the opportunity to answer complaint against it, either in writing or by appearing before a General Meeting, if the Members so wish.
- 13.3.3 No refund of any Members Fees in whole or in part should be made by the Company to any person ceasing to be a Member and such Member shall remain liable to the Company for any Members Fees or other

debts, amounts owing or obligations due by it, up to the time of ceasing to be a Member.

13.4 Cancellation of Members

13.4.1 The Board shall, subject to article 13.4.4, cancel the registration of any Member

13.4.1.1 who:

13.4.1.1.1 becomes subject to any of the disqualifications referred to in article 13.2; or

13.4.1.1.2 is found to have been disqualified at the time of being admitted as a Member by virtue of any of the disqualifications as provided for in article 13.2.

13.4.1.2 whose:

13.4.1.2.1 Membership is terminated pursuant to article 13.3; or

13.4.1.2.2 whose registration was made in error or on information subsequently proved to be false or incorrect.

13.4.2 Before cancelling any registration, the Board shall give to the Member not less than 21 (twenty-one) days' notice in writing of its intention to take such action, setting out the reasons why it intends to do so, and informing the Member that if within 21 (twenty-one) days of dispatch of the notice he informs the Board in Writing of his desire to

do so, the Board will give him or their representative an opportunity before the action is taken, of showing cause why his registration as a Member should not be cancelled.

13.4.3 If, after giving any Member the opportunity of being heard, the Board decides to cancel the registration, it shall make an order to that effect and shall send a copy of the order to all other interested parties as the Board deems fit.

13.4.4 The Board may, in its sole discretion, at the written request of a Member, remove his name from the register, but the removal shall not exonerate such Member for the payment of any outstanding monies due to the Company, nor shall it prevent the Board from instituting any disciplinary proceedings against such Member either before or after such resignation in respect of the Member's conduct during the tenancy of his Membership.

14. FUNDING OF THE COMPANY

14.1 The Company is authorised and mandated by its Members to deduct a maximum of 20% from the total royalties and all other revenue collected by the Company in order to recover the costs associated with the administration of the Company as provided for and permitted under the Copyright Act 1978's Regulations on the Establishment of Collecting Societies in the Music Industry.

- 14.2 The Company may, by Ordinary Resolution in a General Meeting, on the recommendation of the Board, resolve to charge (and determine the extent of) joining fees to be paid with the lodging of an application for Membership and, if not so paid, the application is invalid.

15. MEMBERS' RIGHT TO INFORMATION

Each Member has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:

- 15.1 The Company's Memorandum and any amendments to it, and any Rules, as referred to in section 24(3) (a) of the Act;
- 15.2 The records in respect of the Company's Board, as mentioned in section 24(3)(b) of the Act;
- 15.3 The reports to annual meetings, and Annual Financial Statements as mentioned in section 24(3)(c)(i) and (ii) of the Act;
- 15.4 The notices and minutes of Annual General Meetings, and communications mentioned in section 24(3)(d) and (e) of the Act, must be regarded in the case of a non-profit Company as referring to a meeting of Members, or communication to Members, respectively ; and
- 15.5 The Members register as mentioned in section 24(4) of the Act.

16. REPRESENTATION OF MEMBERS

- 16.1 A director of a company which is a Member and any member of a Close Corporation which is a Member is deemed to be authorized to represent that Member unless the Directors of the Company or the Members of the Close Corporation, as a body, gives the Company, written notice to the contrary. In such event, the Company or Close Corporation may, from time to time, by notice in writing to the Company, nominate a representative who are, for all purposes, entitles to exercise powers and duties of that Member on its behalf.
- 16.2 Unless the Board, in its discretion, otherwise decides, any document requiring the signature of a Member must be signed by the Member personally or on behalf of that Member by its representative recognized in accordance with the foregoing provisions.
- 16.3 Notwithstanding the foregoing, the Board is entitled, at any time, for such reasons as it may deem fit, to require a person purporting to represent a Member to produce satisfactory verification of that fact.
- 16.4 A Member appointing a representative is entitled, by notice in writing to the Company, to appoint, replace and remove such representative and an alternate to such representative who, on appointment, may exercise all the powers of a representative.
- 16.5 By virtue of the foregoing, Members which are not natural persons are not entitled to be represented by proxy as commonly understood.

- 16.6 Only a Member who is a natural person is entitled to appoint another person who is actively engaged in the Industry and acceptable to the Chairperson of the meeting as his or her proxy to attend, speak and vote in his or her stead at a meeting of the Company. The instrument appointing such a proxy must be in writing under the hand of the appointer and must be deposited at the registered office of the Company not less than 48 hours before the time for holding the meeting at which the Member proposes to vote, and in default of complying herewith, the instrument of proxy may not be treated as valid. No instrument appointing a proxy is valid after the expiration of three months from the date when it was signed.

17. RECORD DATE FOR EXERCISE OF MEMBER RIGHTS

If at any time the Company's Board fails to determine a record date as contemplated in section 59 of the Act the record date for the relevant matter is to be determined in accordance with section 59(3) of the Act.

18. REGISTER OF MEMBERS

- 18.1 The Company must maintain a register of Members.
- 18.2 It is the responsibility of each Member to ensure that the entries relating to it in the register are correct, more particularly with regard to:
- 18.2.1 the name of the Member;
- 18.2.2 the postal and street addresses of the Member;

- 18.2.3 any telephone, telex, teletex, fax or other electronic address or of the Member;
 - 18.2.4 the full name of the owner or the Member or, if the Member is a partnership, Close Corporation or Company, the full name of each partner, Member or Director, as the case may be; and
 - 18.2.5 the full name of any representative and any alternate representative of the Member.
- 18.3 The Company is under no liability for any action taken on any communication purporting to emanate from a Member, representative or alternate representative.

19. CORRECTION OF REGISTER

If at any time the Board has reason to believe that a Member has been or has become incorrectly registered, it may call for such evidence as it thinks fit as to the correctness of the registration and if satisfied that the Member has been or is incorrectly, registered, it shall correct the register and issue an amended certificate. The former certificate shall cease to have effect, and shall be returned forthwith to the Office of the Company.

20. MEETINGS OF MEMBERS

20.1 Requirement to Hold Meetings

- 20.1.1 The Company is not required to hold any meetings other than those specifically required by the Act and this Memorandum.

20.1.2 The Company shall, during each financial year of the Company, convene and hold an Annual General Meeting.

20.2 **Location of Members Meetings**

The authority of the Board to determine the location of any Members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act is not limited or restricted by this Memorandum.

20.3 **Notice of General Meetings**

20.3.1 All General Meetings of Members (including the Annual General Meeting) must be called by not less than 15 (fifteen) Business Days' notice in writing. The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and must specify the place, the day and the time of the meeting and must be given in the manner hereinafter mentioned or in such other manner, as may be prescribed by the Company in the General Meeting from time to time, to such persons as are, under these articles, entitled to receive notices from the Company.

20.3.2 Notice of every General Meeting of Members shall:-

20.3.2.1 state the date, time of commencement and place of the General Meeting;

20.3.2.2 state the business to be transacted at the General Meeting;

- 20.3.2.3 list all Special Resolutions and Ordinary Resolutions proposed to be voted on at the General Meeting;
- 20.3.2.4 call for notices of special business to be raised by any Member;
- 20.3.2.5 in respect of Annual General Meetings, or any General Meeting at which such matters are required to be voted on -
 - 20.3.2.5.1 if it is the elective year, state the names of Members, the name of the business under which they carry on business and the business addresses of any Member who has been nominated for election to the Board;
 - 20.3.2.5.2 if it is the elective year, include the election of the Board;
 - 20.3.2.5.3 call for the appointment of the Auditors and the fixing of the amount of the Auditors' remuneration;
 - 20.3.2.5.4 include the receiving and consideration for the Annual Financial Statements; and
 - 20.3.2.5.5 include the consideration and approval for the Report of the Board.
- 20.3.2.6 include the consideration of any other matter of which due notice has been given.
- 20.3.3 A Member who intends to propose a Special Resolution or Ordinary Resolution before a General Meeting shall, not less than 20 (twenty)

Business Days before the day appointed for the said General Meeting, serve upon the Company at its Office, a notice in writing signed by himself and one other Member containing the proposed resolution. Upon receipt of such notice, the secretary shall, in any case where the notice is received before the notice of the General Meeting is issued include it in the notice of the General Meeting, and shall in any other case stand over until the next notice of General Meeting is issued by the Company.

20.3.4 The Board may on such dates and at such times and places as it may determine, convene General Meetings in accordance with Section 61(1) of the Act.

20.3.5 The Board shall upon a request in writing made by Members in terms of Section 61(3) of the Act and in compliance therewith convene a General Meeting to consider such business for which a meeting is required to be held.

20.4 **Proceedings at all General Meetings**

20.4.1 No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting is opened. Subject to the provisions of the Act, a quorum shall be 10 Members present in person, or, if a Member is a body corporate, by its registered representative.

- 20.4.2 If within 30 minutes of the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day one week hence at the same time and place, and at the adjourned meeting the Members present form a quorum.
- 20.4.3 The Chairperson of the Company must preside at a General Meeting and, failing him, the Vice-Chairperson. Failing the Vice-Chairperson, the meeting must elect a Chairperson from among the Members of the Board present.
- 20.4.4 The Chairperson of any General Meeting may, with the consent of the General Meeting decided by Ordinary Resolution, adjourn the same from place to place and from time to time, but no business may be transacted at an adjourned meeting other than business left unfinished at the meeting from which the adjournment took place.
- 20.4.5 Each resolution put to the vote of any General Meeting, shall be either a Special Resolution or an Ordinary Resolution.
- 20.4.6 Voting shall be decided on a poll.
- 20.4.7 Save as otherwise provided for in article 20.4.8, all –
- 20.4.7.1 Ordinary Resolutions shall require a majority of all votes of all Members present or represented as calculated in accordance with article 20.4.8;

20.4.7.2 Special Resolutions shall require three fourths of all votes of all Members present or represented as calculated in accordance with article 20.4.8.

20.4.8 For purposes of determining the number of votes available to each Member for purposes of Ordinary Resolutions and Special Resolutions, there shall be a total of 10 000 votes capable of being cast at every General Meeting on each resolution put to the vote. Each Member shall have that proportion of the 10 000 votes as their Membership Fees in the most recently completed financial year of the Company bears to the total of all Membership Fees raised by the Company in its most recently completed financial year (rounded down to the nearest whole number). The Auditors of the Company shall determine the number of votes allocated to each Member and shall, save for any manifest error, be final and binding on the Members and the Company.

20.4.9 No Member is entitled to vote at a General Meeting if any amounts owing to the Company (including those amounts due under article 14) are more than three months in arrear at the date of the General Meeting.

20.4.10 In the case of an equality of votes, the Chairperson of the meeting shall be entitled to a second or casting vote.

20.5 **Proceedings at Annual General Meetings**

20.5.1 At each Annual General Meeting the Members of the Board must present the Annual Financial Statements of the Company drawn as at the conclusion of the preceding financial year, together with their report.

20.5.2 Subject to the Act, the business to be transacted at the Annual General Meeting must include, but not limited to:

20.5.2.1 the consideration of the annual report of the Board and the Annual Financial Statements, the adoption thereof and taking of decisions on any matters arising therefrom;

20.5.2.2 if it is an elective year, the announcement of the nomination of Members of the Board;

20.5.2.3 if it is an elective year, the election of Members of the Board;

20.5.2.4 the consideration of resolutions proposed by Members of which due and proper notice has been given to the CEO;

20.5.2.5 The appointment of an auditor.

20.6 **Electronic Participation in General Meetings**

The authority of the Company to conduct a General Meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63, is not limited or restricted by this Memorandum.

20.7 Meeting Minutes

20.7.1 Minutes of the proceedings of every General Meeting shall be kept by the Secretary, or in the event of his absence, by any other person appointed for the occasion by the Chairperson at the meeting, a fair copy of which minutes shall be entered into a minute book to be kept for that purpose and shall, subject to any necessary correction having been made, be signed as correct by the Chairperson at the first succeeding meeting of the Board.

20.7.2 Such minutes shall be held available at the offices of the Chairperson or Secretary for inspection, free of charge, by any Member on request.

20.7.3 Minutes shall be made of all resolutions and proceedings of General Meetings of the Company, and of meeting of the Board and each committee.

21. PROVISIONS COMMON TO ALL MEETINGS

21.1 Save in regard to voting at General Meetings of the Company, at all other meetings held by or under the auspices of the Company or meetings of any Board, branch or subcommittee, matters must be decided by an ordinary majority of votes.

21.2 The Chairperson of any such meeting shall not have a casting vote in addition to his deliberate vote.

21.3 Any such meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions which from time to time may be vested in such meeting.

21.4 The continuing members of the Board, or any committee of the Company, being a quorum, may act notwithstanding any vacancy in their number. All acts done by such meetings is, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any person present at the meeting, as valid as if every such person had been duly appointed.

21.5 Members of the Board and other office bearers or committee members of the Company may be paid their travelling and other expenses incurred by them in and about the business of the Company.

21.6 No person may adjudicate upon any investigation, objection or similar hearing if he or she has or had an interest in the result of the matter or has or had previously adjudicated upon the matter.

21.7 Members of the Board do not receive any remuneration, bonus, gratuity or gift for their services, but nothing in this article prevents the reimbursement of expenses incurred by them on the business of the Company.

22. **THE BOARD**

22.1 **Constituance of the Board**

22.1.1 The Board shall consist of 13 Members (or such other number of persons as may be determined from time to time by Special Resolution of the Members in General Meeting) provided that such persons forming part of the Board include the CEO and the Treasurer and are either:

22.1.1.1 Members; or

22.1.1.2 directors or employees of a Member,

and shall be elected and appointed in accordance with the provisions of article 22.2.

22.1.2 In so far as the Board is not a representative of the body of Members, the Board is entitled to appoint an advisory committee consisting of person representative of all the Members. The Board may, after consultation with the advisory committee, make rules to govern the proceedings and authority of the advisory committee.

22.2 **Election and appointment of the Board**

22.2.1 The Board shall be appointed to serve a term of two years calculated from the date of the Annual General Meeting at which they are so appointed. At the Annual General Meeting in each alternate year, Members of the Board must retire but are eligible for re-election.

22.2.2 Nominations of candidates for election to the Board must be on forms laid down by the Board and must be lodged with the CEO 14 days

before the Annual General Meeting. The Board shall be entitled in writing to waive compliance with the time period set out in this Memorandum and to condone the late filing of a nomination for a Member to the Board in its sole and absolute discretion.

22.2.3 Subject to clauses 22.2.4 and 22.2.5, a Member may nominate no more than two candidates for election to the Board.

22.2.4 Members which are subsidiary companies of holding companies which are Members, shall not be entitled to nominate candidates for election to the Board.

22.2.5 Members which are subsidiary companies of holding companies which are not Members, shall jointly be entitled to nominate no more than two candidates for election to the Board.

22.2.6 The provision of clause 22.2.5 shall apply mutatis mutandis to joint ventures or partnerships between Members of the Company.

22.2.7 Nothing contained in clauses 22.2.4 and 22.2.5 shall prevent any Member from voting under clause 22.2.10;

22.2.8 A candidate for election must be proposed in writing by a Member in Good Standing and must signify willingness to accept nomination by signing on the nomination form. If –

- 22.2.8.1 there are not more nominations than there are vacancies, the person so nominated is deemed to have been elected with effect from the conclusion of the ensuing Annual General Meeting;
- 22.2.8.2 more persons are nominated as candidates than there are vacancies, an election must take place. The Members of the Board elected shall be those candidates achieving the greatest number of votes at the Annual General Meeting.
- 22.2.9 The Board may appoint a person to fill any casual vacancy occurring on the Board. The person so appointed holds office until the ensuing Annual General Meeting of the Company, unless the appointment is terminated under clause 23 or any other provision of the Act of this Memorandum.
- 22.2.10 Any Member of the Board shall be entitled to appoint an alternate to act in his stead, provided that such alternate is –
- 22.2.10.1 a Member; or
- 22.2.10.2 an employee or a director of a Member.
- 22.3 The provision of this clause shall apply, mutatis mutandis to Close Corporations.
- 22.4 A candidate may not be nominated for, or a person appointed to, the Board if such individual is employed by a Member whose subscriptions are more

than three months in arrears at the date of the Annual General Meeting or when a vacancy on the Board is filled.

23. DISQUALIFICATION OF MEMBERS OF BOARD

A member of the Board shall cease to hold office if –

- 23.1 he ceases to be a Member of the Company, or
- 23.2 the Member of the Company who employed the Member of the Board ceases to be a Member of the Company, or
- 23.3 the Member of the Board ceases to be a director, employee or the representative of a Member of the Company for any reason whatsoever; or
- 23.4 he is absent without leave of the Board for more than three consecutive meetings held over a period of more than 90 days of which due notice has been given; or
- 23.5 he ceases to be an appointed representative of a Member; or
- 23.6 he resigns his office by notice in writing to the Company; or
- 23.7 is removed from the office pursuant to any other provision of the Act or the Memorandum; or
- 23.8 ceases to be engaged in the Industry.

24. CHIEF EXECUTIVE OFFICER

24.1 The Board may, from time to time, appoint a CEO at such remuneration as it may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case. The Board may, from time to time, entrust to or confer upon the CEO, for the time being, or any other member of the Board, such of the powers and authorities vested in it as it may think for, and may confer such powers and authorities from time to time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may expedient, and it may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers or authorities of the Board and may from time to time revoke or vary any or all of such powers and authorities.

24.2 Subject to such limitations as the Boards may impose, the CEO is responsible for the financial control and accounting records of the Company. The CEO must, at the end of each financial year, produce to the Board figures of the total amount of Members Fees paid or payable under article 14 and the relative contribution of each Member to the total Members Fees collected during such financial year. Such figures being the basis for the calculation of voting power at all General Meetings held during the ensuing financial year.

25. MANAGEMENT OF THE AFFAIRS OF THE COMPANY

25.1 The management and control of the affairs of the Company vests in the Board which must pay all expenses incurred in promoting and incorporating the Company, subject to the general supervision and direction of the Members in General Meeting. The Board has full power and authority to do any act, matter or thing which might be done by the Company, except such matters as are in these articles specially reserved to be dealt with by the Members in General Meeting. In addition to the general powers and authorities hereby conferred on the Board, and without any way limiting such powers and authorities, of the Board has the following further express powers:

25.1.1 to facilitate the exchange of ideas and cause the Company to act as a clearing house for ideas, priorities and problems;

25.1.2 to take any steps with regards to the acquisition, publication, distribution and disposal of journals, calendars, year books and other forms of printed matter as it may deem necessary and to establish and maintain specialist libraries;

25.1.3 to acquire any movable or immovable property for the Company calculated to benefit the Company and to advance its objects, and to maintain, improve and alter any of the Company property;

- 25.1.4 to institute, conduct, defend compound or abandon any legal proceedings by or against the Company or its officers, or otherwise concerning the affairs of the Company;
- 25.1.5 to operate accounts with registered financial institutions in the name of the Company and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other financial instruments connected with the business and affairs of the Company;
- 25.1.6 as agent, to receive any moneys, including royalties due by third parties to the Company or its Members, from time to time;
- 25.1.7 to invest and deal with any moneys of the Company not immediately required for the purposes of the Company;
- 25.1.8 to secure the fulfilment of any contracts or engagements entered into by the Company by the mortgage of all or any part of the property of the Company;
- 25.1.9 to establish, promote or assist in establishing or promoting and to subscribe to or become a Member of any Company or society as whose objects are similar or partly similar to the objects of the Company, or the establishment or promotion of which may be beneficial to the Company, provided that no subscription is paid to any such other Company out of the funds of the Company except bona fide in furtherance of the interests of the Company;

- 25.1.10 to support and subscribe to any institution or society which may be for the benefit of the Company or for its employees, whether past or present;
- 25.1.11 to borrow or raise and give security for money by the issue of bonds, debentures, debenture stock, bills of exchange, promissory notes or other obligations or securities of the Company or by mortgage of all or any part of the property of the Company;
- 25.1.12 to make donations, loans (other than to Members), exchanges, leases and any other forms of contract whatsoever, including sales and purchases of property of any kind whatsoever;
- 25.1.13 to appoint such agents, officers, clerks and servants for permanent, temporary or special services as they think fit, and to invest them with such powers as they may think expedient, and to determine their duties and fix and vary their salaries or emoluments (if any) and to require security in such instances, and to such amounts, as they may think fit, and to suspend or discharge any such persons at their discretion;
- 25.1.14 to establish such subcommittee and regional committees as may be required or desired and to prescribe for the control, management, administration and regulation of such subcommittees and regional committees and their affairs in so far as these are not regulated for herein, and to delegate to them such powers as may be deemed necessary;

- 25.1.15 to establish and support or aid in the establishment and support of any charitable Companies or institutions and to subscribe or guarantee money for charitable purposes in any way connected with the purposes of the Company or calculated to further any of its objects;
- 25.1.16 to constitute and appoint appeal boards;
- 25.1.17 to constitute and appoint enquiry boards;
- 25.1.18 to make and promulgate, and to add to, repeal and alter rules for the administration of the Company and the achievement of all its objects and, in particular, without limitation;
- 25.1.19 to regulate and control the industry and the conduct of business within the industry;
- 25.1.20 to determine the procedure for enquiries, investigation, hearings or meetings before any enquiry Board or appeal Board;
- 25.1.21 to prescribe the imposition of penalties for non-compliance with or contravention of particular rules, including, without limitation, the imposition of reasonable fines and penalties;
- 25.1.22 to circumscribe the power of enquiry Boards and appeal Boards;
- 25.1.23 to delegate its powers;
- 25.1.24 to determine when rules become effective;

- 25.1.25 to lay down a code for the conduct of Members their Directors and their employees and to propose amendments and additions to any codes, for consideration and adoption by the Company in General Meeting;
- 25.1.26 of its own accord or on the application of any party who alleges that there has been a gross irregularity or illegality in any appeal Board proceedings, to review those proceedings and , where it is found that there has been a gross irregularity or illegality, to set aside the decision of such appeal Board and to require the appeal to be heard anew;
- 25.1.27 after holding an enquiry or hearing, to declare any person ineligible or unfit to hold office in the Company;
- 25.1.28 to enquire into and investigate, directly or by delegation, any matter relating to the industry, its running or conduct, and to make such decisions as it may consider expedient; provided that the enquiries, investigations, and adjudications into and upon breaches or contraventions of these articles, the code of conduct or the rules by any person must be conducted, undertaken and made by enquiry Boards;
- 25.1.29 to interpret the meaning, effect and intent of any of the rules or code and clauses of these articles;
- 25.1.30 to determine in such manner as it considers just any matter relating to the achievement of the objects of the Company which is not provided for in these articles or in the rules or code;

- 25.1.31 At any time to publish or cause or authorize the publication of any conviction for any breach of these articles or the rules and codes, the identity of the persons concerned, the facts relating to any decisions made, the decisions and penalties imposed and any other information as it may in its reasonable discretion deem fit;
- 25.1.32 to delegate to any subcommittee or subcommittees all or any of the authorities conferred on the Board by these articles and such subcommittees has such powers as may be conferred on it at the time of its appointment, or thereafter, by the Board of the Company and be subject in all respects to such rules or instructions as may from time to time be framed given or approved by the Board; and
- 25.1.33 to do all such things as is incidental or conducive to the attainment of the above objects or any of them.

26. CODE OF CONDUCT

The Board has the expressed powers to lay down a code for the conduct of members, their employees and to propose amendments and additions to any existing code, for consideration and adoption by the Company in General Meeting.

27. ENQUIRY BOARD

- 27.1 All enquiries, investigations and adjudication into and upon breaches or contraventions of these articles or the rules or code by any person must be conducted by an enquiry board.

27.2 An enquiry board must consist of such person or persons as are appointed in the sole discretion of the Board. The Board shall exercise this power of appointment by appointing persons (who may include one or more of its number) to a panel from which persons may be appointed to an enquiry board, and by appointing one or more persons from that panel as a convener or conveners of enquiry boards. The convener or conveners have the power to convene an enquiry board from among the persons on the panel provided that an enquiry board so constituted:

27.2.1 may consist of one or more persons of whom the convener must be and other conveners may be a Member or Members; and

27.2.2 must be constituted either specifically in such matters for which it may be convened or generally for such purpose for such periods as the convener or conveners may determine.

27.3 An enquiry board has the powers:

27.3.1 to enquire into, investigate and adjudicate upon any alleged breach or contravention of these articles or any rules or any code; and

27.3.2 in cases of a breach or contravention of these articles or of any code, to impose on a person any one or more of the following penalties: a reprimand; a caution; a warning; a fine; the expulsion of a Member; and

27.3.3 in its sole discretion, to co-opt at the commencement of any enquiry any person to sit on such enquiry board where it considers such person will be able to assist in the enquiry.

27.4 Where an enquiry board consists of more than one Member, the enquiry board must appoint one of its Members to act as Chairperson.

27.5 All enquiry boards must act in accordance with and apply these articles, the rules and the code.

28. APPEALS

28.1 Appeals against decisions made or penalties imposed by an enquiry board are competent except where otherwise determined in the rules and lie to an appeal board only.

28.2 An appeal Board consists of such person or persons (including any person who is not a Member or a representative of s Member) as are appointed in the sole discretion of the Board.

28.3 The Board shall exercise this power of appointment by appointing persons (which may include one or more of its number) to a panel from which persons may be appointed to an appeal board and by appointing one or more persons from that panel as convener or conveners of appeal board. The convener or conveners have the power to convene an appeal board from among the Members on the panel, provided that an appeal board so constituted:

28.3.1 must consist of not less than three persons of whom the convener or conveners may be a Member or Members; and

28.3.2 must be constituted specifically to hear the particular appeal for which it was convened by the convener or conveners.

- 28.4 An appeal board, on hearing an appeal, has one or more of the following powers:
- 28.4.1 to allow the appeal;
 - 28.4.2 to dismiss the appeal;
 - 28.4.3 to substitute any finding or decision as it deems fit or substitute such penalty as it deems fit, including any increased penalty;
 - 28.4.4 to make such order as in its opinion the circumstances may require including an order to remit the matter for the hearing of further evidence or an order for the hearing of an enquiry to be set aside and to be begun again;
 - 28.4.5 to hear further evidence or receive any documents on such terms and conditions as it in its discretion may decide;
 - 28.4.6 to direct the enquiry board to determine a matter on an alternative charge or basis;
 - 28.4.7 to order a person to pay all or a portion of the actual costs and expenses incurred by the Company in connection with an appeal, in addition to any other penalty, if it is of the opinion that the appeal is unwarranted or unreasonable; and
 - 28.4.8 to make such rulings as it in its sole discretion determines.

28.5 The appeal board must appoint one of its Members to act as Chairperson, who has a casting vote in addition to his deliberative vote. Provided that three Members of the appeal board hearing an appeal are present continuously throughout the hearing of such an appeal, the absence of a Member of the appeal board on any occasion during the hearing of an appeal does not affect the validity of such proceedings. Any Member who has absented himself from any part of the hearing of an appeal is not permitted to take any further part in that appeal.

28.6 All appeal boards must act in accordance with and apply these articles, the rules and the code.

29. **MEETINGS OF THE BOARD**

29.1 The Board must, at its first meeting or should a vacancy occur, elect from amongst its number a Chairperson and Vice-Chairperson. The Chairperson and the Vice-Chairperson are eligible for re-election; provided that they are not eligible for re-election for a third successive term to the same office of Chairperson or Vice-Chairperson, as the case may be. The Chairperson and the Vice-Chairperson hold office until conclusion of the elective Annual General Meeting following their election.

29.2 The chair at all meetings of the Board must be taken by the Chairperson or, in the absence of the Chairperson, by the Vice-Chairperson. Should both be absent, the Members present must elect from their number a Chairperson for that meeting.

- 29.3 The Board must meet at least once in each calendar quarter on such dates as it decides. One weeks' notice at least must be given of all meetings of the Board unless the other Members of the Board agree to accept shorter notice.
- 29.4 To constitute a quorum for a meeting of the Board there must be one-third of the Members of the Board present at the commencement of and throughout the meeting. Any decision of the Board must be by an ordinary majority of votes. Each person entitled to be present and to vote has one vote and the Chairperson of the meeting shall not have a casting vote in addition to his deliberative vote. No voting by proxy is permitted.
- 29.5 The CEO must convene a special meeting of the Board on the instructions of the Chairperson or upon the written request of at least two Members of the Board or if there's an urgent matter which requires resolution by the Board.
- 29.6 A resolution in writing which is signed by all Members of the Board and inserted in the minute book of the Company is as valid and effective as if passed at a meeting of the Board. Any such resolution may consist of several documents in the same form each of which is signed by one or more Members of the Board and is deemed (unless the contrary appears from that resolution) to have been passed on the date on which it was signed by the last Member entitled to sign it. A resolution is deemed to have been signed if consent thereto has been given in a message transmitted by email, telegram, teleprinter or telefax and purporting to emanate from the person whose signature to such resolution is required.

- 29.7 Acts done by any meeting of the Board or by any person acting as a Member of the Board are, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Member or person acting as aforesaid, or that they or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a Member of the Board.
- 29.8 The inadvertent omission to give notice of any meeting of the Board does not invalidate the proceedings at any such meeting.
- 29.9 The proceedings of the Board are valid notwithstanding any vacancy in the Board.

30. **MINUTES**

The Board must, cause minutes to be kept. Such minutes must be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

31. **ACCOUNTING RECORDS**

- 31.1 In terms of the Act and this Memorandum of Incorporation the Company shall keep accurate and complete accounting records as necessary to provide an adequate information base sufficient to enable the Company to satisfy all reporting requirements applicable to it and to provide for the compilation of Financial Statements. The Company shall maintain the necessary Accounting Records in accordance with Section 28 of the Companies Act 71 of 2008.

- 31.2 The accounting records must be kept at the registered office of the Company or at such other place or places as the Board thinks fit, and must always be open to inspection by the Members of the Board.

32. ANNUAL FINANCIAL STATEMENTS

- 32.1 The financial year end of the Company is the last day of December each year
- 32.2 The Board shall comply with the provisions of the Act insofar as it relates to the keeping and auditing of financial accounts and ensure that Annual Financial Statements are prepared in respect of the Company at the end of each financial year and must file the same with the Commissioner for the South African Revenue Service.

33. TAX EXEMPTION CONDITIONS

- 33.1 In order for the Company's receipts or accruals to be exempt from income tax in terms of Section 10(1)(d)(iv)(bb) of the Income Tax Act, 58 of 1962 ('the Income Tax Act') and for donations by or to the Company to be exempt from donations in terms of section 56(1)(h) of the Income Tax Act, the conditions set out below apply to the Company.
- 33.2 The Company may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives (as set out in its Memorandum of Incorporation).

- 33.3 No member of the Company may directly or indirectly have any financial interest in the Company (other than the situation where a member may also be an employee of the Company, and so be entitled to remuneration for their services).
- 33.4 Substantially the whole of the Company's activities must be directed to the furtherance of its main object and not for the specific benefit of an individual Member or minority group.
- 33.5 The Company may not have a share or other interest in any business, profession or occupation, which is carried on by its members.
- 33.6 The Company may not pay any remuneration, as defined in the Fourth Schedule of 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.
- 33.7 Substantially the whole of the Company's funding must be from its annual or other long-term members or from an appropriation by the government, a provincial administration or a municipality.
- 33.8 The Company shall comply with such reporting requirements as may be determined by the Commissioner of the South African Revenue Services from time to time.
- 33.9 The Company is and will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part 11A of Chapter 111 of the

Income Tax Act, or a transaction, operation or scheme as contemplated in section 103(5) of the Income Tax Act.

- 33.10 The Company shall ensure that it at all times has at least three persons who are not connected persons, as defined in the Income Tax Act, in relation to each other to accept fiduciary responsibilities of the Company, such persons to be appointed by the Board. No single person shall directly or indirectly control the decision making powers relating to the Company.

SCHEDULE 1 – AUTHORISATION AND SPECIAL POWER OF ATTORNEY

The Company is hereby irrevocably and unconditionally authorised, mandated and empowered by Member as the Member’s attorney and agent in rem suam, with effect from the Membership Date to:

1. Issue licences, collect royalties and enforce rights on behalf of the Member for music supply systems incorporating the Specified Rights in sound recordings which now exist or may come into existence for as long as the Member’s membership of the Company may exist.
2. Institute legal action on behalf of the Member in respect of any infringements of the Specified Rights in any such sound recording insofar as the same are rights are now or subsequently vested in the Member, and the administration of which rights has been entrusted to the Company for purposes set out above.
3. To prescribe and approve the minimum requirements in respect of encryption and other security measures, as may be applicable to the music supply service and, in its discretion, to inspect any such potential or existing licensee’s encryption and other security measures, before issuing a licence to such user or before taking steps to terminate any such licence.
4. To settle or compromise any claims, which the Member may have against such third parties, to set or agree the quantum of monetary payments to be made in terms of such settlement or compromise; and to enter into agreements on the Member’s behalf in respect of such settlements as the Member’s nominee or delegate.
5. To give undertakings as to costs, or to make security payments in respect of proceedings before any court of law and/or administrative authority, provided such undertaking or security is required and the Member has given prior approval in respect of such costs or security payments.
6. To do in connection with civil proceedings any of the following:

- 6.1 Appoint counsel to act on the Company's behalf;
 - 6.2 Negotiate a settlement or submit the dispute to alternative forms of dispute resolution;
 - 6.3 Amend pleadings or other documents;
 - 6.4 Obtain stipulations or admissions of fact and of documents to avoid unnecessary difficulty in proving infringements;
 - 6.5 Agree to shorten forms of proceedings and implement any other measures, such as exceptions, which will have the effect of shortening or curtailing proceedings;
 - 6.6 Lodge and/or prosecute appeals to their final determination against any decision or to oppose any such appeal brought against any decision by a third party;
 - 6.7 Generally to take such actions and steps as may be necessary or expedient to effect a prompt and reasonable conclusion of the proceedings.
7. To receive payment of damages and other sums due and owing to the Member arising out of claims and receive and issue receipts for such sums, monies or other valuable consideration flowing from the resolution of such claims.
 8. Generally, to exercise all such powers and rights as may be necessary or expedient in order to protect and enforce the Member's intellectual property rights, subject to the limitations specifically imposed above.