

**MEMORANDUM OF INCORPORATION**

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008

**SOUTH AFRICAN GRADUATE EMPLOYERS ASSOCIATION NPC**  
(registration number 2002/028163/08)

(hereinafter referred to as “the Company”)

INCORPORATED AS A NON-PROFIT COMPANY  
WITH MEMBERS

## 1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context otherwise requires
- 1.1.1 "Board" - means the Board of Directors of the Company;
  - 1.1.2 "Chairperson" - means the chairperson of the Board of Directors;
  - 1.1.3 "Commission" - means the Companies and Intellectual Property Commission established in terms of section 85;
  - 1.1.4 "Companies Act" - means the Companies Act, No. 71 of 2008, as amended;
  - 1.1.5 "Directors" - means the directors for the time being of the Company;
  - 1.1.6 "ex officio Director" - means a person who holds office as a Director of a particular Company solely as a consequence of that person holding some other office, title, designation or similar status specified in the Company's memorandum of incorporation;
  - 1.1.7 "General Meeting" - any general meeting of the Members, or any adjournment thereof, as the case may be, and all references in this Mol to "General Meeting" shall, where the context so requires, include a reference to an "Annual General Meeting";
  - 1.1.8 "Income Tax Act" - means the Income Tax Act, No. 58 of 1962 as amended or any legislation which replaces it;
  - 1.1.9 "Individual" - means a natural person;
  - 1.1.10 "Independence" - generally means the exercise of objective, unfettered judgement. When used as the measure by which to judge the appearance of independence, or to categorise a non-executive Member of the governing body or its committees as independent, it means the absence of an interest, position, Company or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making;
  - 1.1.11 "the Company" - means South African Graduate Employers Association NPC, a non-profit Company incorporated and existing under the laws of the Republic;
  - 1.1.12 "Member" - any member of the Company as contemplated by clause 7;
  - 1.1.13 "Mol" - means this Memorandum of Incorporation;
  - 1.1.14 "Non-executive Director" - means a director who is ordinarily not involved in the daily management or operations of the Company and who is ordinarily elected by Members at General Meetings of the Company, unless the Board fills vacancies subject to re-election by the Members.
  - 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, or a higher percentage as contemplated in section 65(8):
    - 1.1.15.1 at a Directors' Meeting; or
    - 1.1.15.2 by Directors acting other than at a Meeting, as contemplated in section 60 (section 1 of Act 71/2008 as amended by section 1(1)(u) of Act 3/2011);
  - 1.1.16 "Record Date" - means the date established under section 59 on which a Company determines the identity of its members for the purposes of the Companies Act;
  - 1.1.17 "Republic" - means the Republic of South Africa;
  - 1.1.18 "Rules" - means any rules made by the Company as contemplated in section 15(3) to (5);
  - 1.1.19 "Sign" - includes the reproduction of a signature lithography, printing with an india-rubber stamp, or any other mechanical process, or partly the one and partly the other process and "signature" has the corresponding meaning; and
  - 1.1.20 "Writing" - includes printing, typewriting, lithography or any other electronic or mechanical process, or partly one and partly the other. A requirement that a document, notice or information should be given in Writing will be met if the document, notice or information is in the form of a data message and accessible in a manner usable for subsequent reference. "Written" has a corresponding meaning.
- 1.2 Section or sections refers to a section or sections of the Companies Act, Act 71 of 2008, as amended.
- 1.3 Regulation or Regulations refers to a Regulation or Regulations of the Companies Regulations, 2011 in terms of section 223 and Item 14 of Schedule 5 of the Companies Act, Act 71 of 2008, as amended.

- 1.4 Words importing any one gender shall include all genders.
- 1.5 The singular shall include the plural and vice versa.
- 1.6 Any word which is defined in the Act shall bear that defined meaning in this Memorandum.
- 1.7 Headings have been inserted for convenience only and shall not be used for or assist or affect their interpretation.
- 1.8 If the provisions of this Mol are in any way inconsistent with the unalterable provisions of the Companies Act, the provisions of the Companies Act shall prevail.
- 1.9 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Mol.
- 1.10 When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
  - 1.10.1 excluding the day on which the first such event occurs;
  - 1.10.2 including the day on or by which the second event is to occur; and
  - 1.10.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.10.1 and 1.10.2 respectively.

## **2 OBJECTS**

The objects of the Company are to:

- 2.1 connect and advance the graduate employer industry, making use of synergies, resourcefulness and insights to bring global best practice to its members, and to elevate the professions concerned.
- 2.2 secure organisations as members interacting with one another at regular events and conferences, sharing ideas and experiences, gaining access to the latest research, trends and surveys, enhancing their ability to perform at their peak, raising awareness and regard for graduate employers, and enhancing the careers of those involved.
- 2.3 carry out advocacy tasks and speak on behalf of the members in order to achieve the above;
- 2.4 do all such other lawful things as are or may be incidental or conducive or ancillary to, or necessary for the attainment of the above objectives.

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

- 3.1 Incorporation
  - 3.1.1 The Company is incorporated as a Non-Profit company, with members, in terms of the Companies Act.
  - 3.1.2 The Company is incorporated in accordance with, and governed by: -
    - 3.1.2.1 the unalterable provisions of the Companies Act that are applicable to Non-Profit companies;
    - 3.1.2.2 the alterable provisions of the Companies Act that are applicable to Non-Profit companies, subject to any negation, restriction limitation, qualification, extension, variation or substitution set out in this Mol; and
    - 3.1.2.3 the provisions of this Mol.
- 3.2 Objects and Powers
  - 3.2.1 The objects of the Company are as set out in clause 2 and, except to the extent necessarily implied by the stated objects, the Company has the powers and capacity of an Individual as envisaged by section 19(1) (b).
  - 3.2.2 The Company is not subject to any restrictive conditions and there are no additional requirements or restrictions which apply to the amendment of this Mol as envisaged by section 15(2)(b) and section 15(2)(c) and accordingly the Company may do anything which the Companies Act empowers a company to do unless prohibited by its Mol.

- 3.2.3 The Company:
- 3.2.3.1 must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a Member or Director, or person appointing a Director, of the Company, except:
- 3.2.3.1.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;
- 3.2.3.1.2 as reasonable payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 3.2.3.1.3 as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another party;
- 3.2.3.1.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 3.2.3.1.5 in respect of any legal obligation binding on the Company;
- 3.2.3.2 must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Mol; and
- 3.2.3.3 subject to clause 3.2.3.2 and 10, may:
- 3.2.3.3.1 acquire and hold securities issued by a profit company; and
- 3.2.3.3.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

#### **4 LEGAL STATUS OF THE COMPANY**

- 4.1 From the date and time that the incorporation of the Company is registered, as stated in its registration certificate, the Company is a juristic person, which exists continuously until its name is removed from the Company's register in accordance with this Act, has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity, or the Company's Mol provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Company's Mol, and any further provisions of the Company as set out in the Company's Memorandum of Incorporation.
- 4.2 No persons shall solely by reason of being an Incorporator or Director of the Company, be liable for any liabilities and obligations of the Company.

#### **5 MEMORANDUM OF INCORPORATION AND RULES**

- 5.1 The Board may make, amend or repeal any necessary or incidental Rules relating to the governance of the Company by publishing a copy of these Rules and by sending notice thereof by registered post (to any address, within the Republic supplied by the Member to the Company) or by electronic transmission (to any electronic address supplied by the Member to the Company) to each of the Members and by filing a copy of the Rules with the Commission. Any Rules published in this manner take effect on the date specified in that rule and shall be subject to ratification by the Members as set out in section 15(4)(c)(ii).
- 5.2 The Board may propose to amend any of the provisions of this Mol and the Members may by way of special resolution adopt such amendments.
- 5.3 A notice of the proposed alterations of the Mol shall be sent to each Member by registered mail or by electronic transmission at least 15 (fifteen) Business Days before the meeting at which the special resolution to amend the provisions of the Mol is to be passed.

- 5.4 The Board shall ensure that a copy of any amendments that have been made to the Mol have been provided to the Commissioner for the South African Revenue Service within 30 (thirty) days of having affected such amendments.
- 5.5 The Board or a person authorised by the Board may alter the Mol or the Rules to correct any patent errors (spelling, punctuation, grammar or similar defects on the face of the document) by publishing a notice of the alteration, on its website or in any other manner required or permitted by the Rules and by filing a notice of the alteration with the Commission.
- 5.6 No amendments to the Mol shall be made which will: -
- 5.6.1 allow any income or other funds or other assets of the Company to be applied for a purpose which does not promote the achievement of the objects of the Company or
  - 5.6.2 amend this clause 5.6 in any manner which would give any proprietary or similar interest in the Company's income or other funds or other assets to any Individual or any incorporated entity contrary to the provisions of the Income Tax Act.

## **6 OPTIONAL PROVISIONS OF THE COMPANIES ACT**

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

## **7 MEMBERS OF THE COMPANY**

- 7.1 Membership
- 7.1.1 A Member may be any person including individuals, companies or other incorporated entities, statutory bodies or partnerships. The Board may, in its sole discretion, determine the criteria to be applied for qualification of membership of the Company.
  - 7.1.2 Membership for a determined period becomes effective subject to the following:
    - 7.1.2.1 application in Writing, on the prescribed application form;
    - 7.1.2.2 acceptance of the application; and
    - 7.1.2.3 payment of the requisite membership fee, which may be different for the different categories of Members.
  - 7.1.3 The decision to accept or to reject an application for membership is, subject to applying the qualification criteria as determined by the Board in terms of Clause 7.1.1, and in the discretion of the management of the Company which is not required to give reasons for its decision and there is no appeal process available.
  - 7.1.4 The Board may in its sole discretion determine categories of membership with set eligibility criteria and confer membership of a certain category on a person who qualifies in terms of the criteria for that category.
- 7.2 Termination of Membership
- 7.2.1 Membership of the Company is terminated if the Member:
    - 7.2.1.1 dies;
    - 7.2.1.2 fails to make punctual payment of any amount due to the Company and despite a written demand;
    - 7.2.1.3 fails to discharge any of the member's obligations to the Company on due date or fails to comply with any provisions of this Mol, policy, code of conduct or any other regulation issued by the Company, whether such provision is related to membership or not and is given fair notice, if the Board as a result decides to terminate membership, provided that a member may lodge an appeal;
    - 7.2.1.4 gives notice to the Company in Writing of resignation as a Member;
    - 7.2.1.5 is sequestered, surrenders his/her estate, or in the case of a juristic person, voluntary closure, an order for the provisional winding-up of the Member is made, or the relevant Member enters into Business Rescue proceedings as contemplated in the Companies Act;
    - 7.2.1.6 is placed under curatorship.

- 7.2.2 In addition to the causes for termination of membership in terms of clause 7.2.1, the Board has the power to terminate a Member's membership of the Company if, in its sole discretion, if:
- 7.2.2.1 the Member is guilty of conduct that is obstructive or harmful to the interests and/or objects of the Company or which contravenes the Company's code of conduct for Members;
  - 7.2.2.2 the Member brings the Company into disrepute;
  - 7.2.2.3 it is obstructive or harmful to the interests and/or objectives of the Company that the Member should continue as a Member of the Company.
- 7.2.3 The Board shall, when terminating a Member's membership in terms of clause 7.2.2, follow due and fair process as determined by the Board from time to time.
- 7.2.4 A Member whose membership has been terminated remains liable for all amounts that may be, at the date of termination of membership, due by the Member to the Company.
- 7.2.5 The Company maintains at its registered office, a register of Members of the Company as required by the Companies Act.
- 7.3 Rights of members
- 7.3.1 Each Member has an equal vote in any matter to be decided by Members.
  - 7.3.2 The Board has regard to each of the Members' rights not to be discriminated against unfairly, as provided in section 9 of the Constitution of the Republic.
- 7.4 Appointment of proxies
- 7.4.1 A Member may appoint any Individual, who is a Member of the Company in good standing, as a proxy to participate in and speak and vote at a General Meeting on behalf of the Member.
  - 7.4.2 The appointment of a proxy shall be in Writing in the format prescribed by the Company's management and dated and Signed by the appointing Member.
  - 7.4.3 The proxy form referred to in Item 7.4.2. shall be delivered to the registered office of the Company not less than 48 (forty-eight) hours before the time for holding the General Meeting at which the person named in the form proposes to vote, and in default of complying herewith the proxy form shall not be treated as valid.
  - 7.4.4 No form appointing a proxy is valid after the expiration of 1 (one) year from the date when meeting for which it was Signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned General Meeting which could not have been used at the original General Meeting.
  - 7.4.5 A Member of the Company may not appoint more than one person as a proxy.
  - 7.4.6 A Member's proxy shall not have the authority to further delegate such proxy's powers to another person.
- 7.5 Record date for exercise of member rights
- If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General Meeting is the latest date by which the Company is required to give Members notice of that meeting.
- 7.6 General meetings
- 7.6.1 The Company must hold an Annual General Meeting within 15 (fifteen) months of the previous Annual General Meeting held.
  - 7.6.2 The right of Members to requisition a General Meeting, as set out in section 61(3), may be exercised by at least 25% of the Members, as provided for in that section.

- 7.6.3 The Company must deliver a notice of each General Meeting (including the Annual General Meeting) at least 15 (fifteen) Business Days before the date of the meeting in the manner and form as prescribed by section 62(3) to all of the Members of the Company as at the Record Date for the meeting.
  - 7.6.4 The authority of the Board to determine the location of any General 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) is not limited or restricted by this Mol.
  - 7.6.5 The authority of the Company to conduct a General Meeting entirely by electronic communication, or to provide for participation in a General Meeting by electronic communication, as set out in section 63 is not limited or restricted by this Mol. The Company may, from time to time, provide for Members to participate in General Meetings by way of electronic communication, in the event of which the Company shall communicate this to Members in advance of the General Meeting as required by section 63.
- 7.7 Proceedings, quorum and voting at General Meetings
- 7.7.1 At the Annual General Meeting the following matters are dealt with and disposed of:
  - 7.7.2 presentation of:
    - 7.7.2.1 the Directors' report;
    - 7.7.2.2 audited financial statements for the immediately preceding financial year;
    - 7.7.2.3 the election of non-executive Directors;
    - 7.7.2.4 the appointment of an auditor for the ensuing financial year;
    - 7.7.2.5 any matters placed on the agenda by the Board; and
    - 7.7.2.6 any matters raised by the Members, provided the procedure in clause 7.7.3 has been followed in respect of such matters.
  - 7.7.3 If a Member wishes to raise a matter to be dealt with at a General Meeting, that Member must give the Board written notice of any such matter at least 5 (five) Business Days before the date of the meeting, setting out in the notice the nature of the matter and reasons in sufficient detail.
  - 7.7.4 A General Meeting may not begin until at least 5 (five) Members are present at the meeting and any matter to be decided at the meeting may not begin to be considered and decided unless at least 5 (five) Members are present at the meeting at the time the matter is called on the agenda.
  - 7.7.5 The Chairperson presides as chairperson at every General Meeting of the Company. If the Chairperson is unwilling or unable to act as chairperson of the General Meeting or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Board members present shall elect one of their number to be chairperson of the meeting.
  - 7.7.6 If within 1 (one) hour from the time appointed for the General Meeting to commence, a quorum is not present, the General Meeting shall be postponed, without motion, vote or further notice for 1 (one) week to the same time and day in the next week or, if that day is not a Business Day, to the next succeeding day which is a Business Day, and if at such adjourned General Meeting a quorum is not present within 1 (one) hour from the time appointed for the General Meeting, then the Members entitled to vote and present at the meeting shall be deemed to be the requisite quorum.
  - 7.7.7 At a General Meeting, voting may either be by show of hands, or by polling.
  - 7.7.8 A polled vote must be held on any particular matter to be voted on at a General Meeting if a demand for such a vote is made by at least 5 (five) persons having the right to vote on that matter.
  - 7.7.9 A declaration by the Chairperson of the General Meeting that a resolution has been carried together with an entry to that effect in the General Meetings minutes is conclusive evidence of the fact, without requiring proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 7.7.10 If a poll is duly demanded it shall be taken in such a manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded. The Chairperson of the General Meeting may appoint scrutineers to determine the result of the poll.
  - 7.7.11 In the event of an equality of votes, the Chairperson of the General Meeting has a second or casting vote.
  - 7.7.12 A poll demanded on the question of adjournment, is taken forthwith. A poll demanded on any other question is taken at such time as the chairperson of the General Meeting directs and no notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll has been demanded.
  - 7.7.13 On a show of hands at a General Meeting each Member who is entitled to vote on a resolution proposed at that meeting and is present by person or by proxy is entitled to 1 (one) vote on that resolution.
  - 7.7.14 On a poll at a General Meeting each Member who is entitled to vote on a resolution proposed at that meeting and who is present in person or by proxy has 1 (one) vote on that resolution.
- 7.8 Members resolutions
- 7.8.1 For an ordinary resolution to be adopted at a General Meeting, it must be supported by more than 50% of the Members who voted on the resolution, as provided in section 65(7).
  - 7.8.2 For a special resolution to be adopted at a General Meeting, it must be supported by at least 75% of the Members who voted on the resolution, as provided in section 65(9).
  - 7.8.3 The quorum for both ordinary and special resolutions is as set out in the clause 7.7.4.

## **8 BOARD OF DIRECTORS**

- 8.1 Authority of the Board and delegation
- 8.1.1 The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) is not restricted in this MoI.
  - 8.1.2 The Board may delegate any of its powers to Board appointed committees consisting of such Board members or other persons as it deems fit.
  - 8.1.3 Each Board committee must have a terms of reference dealing with its composition; role and purpose; functions; delegated authorities; tenure; meeting requirements and procedures and reporting mechanism to the Board.
  - 8.1.4 The Board or a committee of the Board may delegate to management of the Company any of its powers upon such terms and conditions as is deemed fit.
  - 8.1.5 Notwithstanding that it may afterwards be discovered that there has been some defect in the appointment or continuance in office of a Director or person acting as a Director, bona fide decisions by the Board or by any person acting in good faith as a Director of the Company are as valid as if every such person had been duly appointed, were qualified and continued to be a Director or were entitled to vote, as the case may be.
- 8.2 Composition of the Board
- 8.2.1 The Board consists of a minimum of 5 (five) and a maximum of 15 (fifteen) Directors, inclusive of ex officio directors.
  - 8.2.2 The Chief Executive Officer serves as an ex officio executive Director of the Company. The Board may from time to time in its sole discretion identify one other executive manager position that qualifies for ex officio membership of the Board.
  - 8.2.3 A Director may resign office by notice in Writing to the Board.



- 8.3 Appointment, nomination and election of non-executive Directors
- 8.3.1 Subject to 8.2.1 the Board may, co-opt and appoint Directors to its number between Annual General Meetings. Any casual vacancy occurring on the Board between Annual General Meetings may be filled by the Board if the number of remaining Directors is at the minimum or above but must be filled by the Board if the number of remaining Directors falls below the minimum.
- 8.3.2 A Director who has been appointed by the Board in terms of 8.3.1 must stand down at the next Annual General Meeting and may, subject to recommendation by the Board, stand for re-election.
- 8.3.3 Subject to 8.3.1, vacancies in non-executive Director positions are filled by Member elections at the Annual General Meeting.
- 8.3.4 Prior to the Annual General Meeting, the Board by notice to Members, calls for the nomination of candidates in the manner and in the form prescribed by the Board, provided that only fully paid-up Members shall be entitled to nominate candidates and no individual Member can nominate him or herself. The Board may review and amend the nomination process from time to time. A shortlist of candidates is decided on by the Board in its sole discretion for recommendation to Members for election at the annual General Meeting. In determining such shortlist, the Board follows due and fair process and considers the skills, knowledge and experience requirements of the Board.
- 8.3.5 The Board includes in the notice of the Annual General Meeting the names of the short-listed candidates, together with their curricula vitae and such further information as the Board deems necessary to enable Members to exercise an informed vote.
- 8.3.6 The nomination of candidates by Members is subject to 8.3.4 and no nominations by Members made outside the set process are allowed.
- 8.3.7 Candidates absent from the Annual General Meeting are not eligible without having rendered prior apologies to the Company in advance of the meeting together with sound reasons for absence.
- 8.3.8 The election by Members at the Annual General Meeting is to be conducted by a show of hands or by secret ballot. Each Member present in person or by proxy is entitled to vote in favour of as many candidates as there are vacancies.
- 8.3.9 A vacancy is filled only if a majority of the voting rights exercised support the candidate i.e. 50% plus one of the members present at the Annual General Meeting in person or by proxy.
- 8.3.10 If at any General Meeting at which an election of non-executive Directors ought to take place the offices of the retiring non-executive Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of clause 7.7.6 shall apply to such adjournment, and if at such adjourned meeting the vacancies are not filled, the Board shall fill the vacancies subject to re-election of those Directors at the next Annual General Meeting.
- 8.4 Rotation and re-election of non-executive Directors
- 8.4.1 One third (1/3) of the non-executive Directors will retire from office at every annual General Meeting in accordance with a Board approved rotation schedule. If the number of non-executive Directors is not three or a multiple of three, the number nearest to one-third (1/3) retires from office.
- 8.4.2 Retiring non-executive Directors may, subject to recommendation by the Board, stand for re-election.
- 8.5 Disqualification and removal of Directors
- 8.5.1 A Director ceases to hold office in the event of the Director: -
- 8.5.1.1 becoming ineligible or disqualified to be a Director by virtue of any of the provisions of the Companies Act;

- 8.5.1.2 being removed by a resolution of the Members or Board of Directors as provided for in section 71;
- 8.5.1.3 failing to attend 3 (three) official meetings of the Board excluding special or ad hoc Board meetings, without a written and valid excuse will constitute grounds for removal of office or its committees in 1 (one) financial year, and the Board determines in its sole discretion that it is without good cause; or
- 8.5.1.4 having a material interest in any contract or proposed contract with the Company or in a matter before the Board and failing to declare such interest and the nature thereof in the manner required by the Companies Act and this Mol.

## 8.6 Proceedings of the Board

- 8.6.1 The Board may meet in person or via any electronic communication, for the dispatch of business, adjourn and otherwise regulate their meetings at such times and places as it thinks fit. The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Mol.
- 8.6.2 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Mol.
- 8.6.3 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this Mol. The right of Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the Directors.
- 8.6.4 The quorum necessary for the transaction of the business of the Board is a majority of the number of Directors in office, provided that the majority of the directors' present are non-executive Directors.
- 8.6.5 Questions arising at any meeting are decided by a majority of votes. Each Director has one vote on a matter before the Board. In the event of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.
- 8.6.6 Subject to the provisions of section 75, in respect of Directors' conflicts of interests:
  - 8.6.6.1 All Directors must at the first Board meeting of each year or at the first Board meeting that the Director attends complete an interest declaration in the format agreed by the Board and submit the forms to the Chairperson.
  - 8.6.6.2 At every Board meeting a declaration of conflict of interest must be made in the manner and form agreed by the Board in regard to all items for consideration before the Board.
  - 8.6.6.3 A Director may not vote in respect of any matter tabled at the Board in which the Director has a material interest, or on any matter arising therefrom and if a vote is exercised contrary to this, the vote is not counted.
  - 8.6.6.4 The Director must not take part in the consideration of the matter and leave the meeting immediately after making the required disclosure.
- 8.6.7 While being absent from the meeting in terms of 8.6.6.4, the Director:
  - 8.6.7.1 will be regarded as being present for the purpose of determining whether a sufficient number of Directors are present to constitute a quorum; and
  - 8.6.7.2 will not be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted.

- 8.6.8 Subject to the provisions of the Act, a round-robin resolution in Writing adopted by the majority of Directors is as 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 clause is 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)
  - 8.6.9 The Board may act notwithstanding a vacancy, but, if and for as long as its number is below the minimum required in terms of this Mol, the continuing Directors may only act for the purpose of increasing the number of Directors to the minimum number, or for convening a General Meeting of the Company.
  - 8.6.10 The Board must elect a Chairperson and determine the period for which the Chairperson is to hold office. If at any meeting the Chairperson is not present within five minutes after the time appointed for holding the same, the Directors present may elect one of their number to chair the meeting.
- 8.7 Accounting Records and Annual Financial Statements
- 8.7.1 The Board causes accounting records as required by section 28 to be kept.
  - 8.7.2 The accounting records are kept at the registered office of the Company or at such other place or places as the Board decides and are always open for inspection by the Directors.
  - 8.7.3 The Board determines from time to time whether, to what extent, at what times and places and under what conditions the accounting records of the Company shall be open to inspection by Members, and no Member has any right to inspect any accounting records or documents of the Company except as conferred by the Companies Act and/or other applicable legislation.
  - 8.7.4 The Board, in accordance with the Companies Act, ensures the preparation and tabling at the Annual General Meeting, as a minimum, the matters referred to in clause 7.811 and performs all duties in relation to annual financial statements, accounting records and auditors in accordance with the Companies Act and other applicable legislation. A copy of the annual financial statements which are to be tabled at the Annual General Meeting, is sent to every Member not less than 15 (fifteen) Business Days before the date of the meeting.

## 9 NOTICES TO MEMBERS

- 9.1 If a manner of delivery of a document, record, statement or notice is prescribed in terms of this Mol or the Companies Act:
  - 9.1.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed; and
  - 9.1.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering that document, record, statement or notice, unless the deviation-
    - 9.1.2.1 materially reduces the probability that the intended recipient will receive the document, record, statement or notice; or
    - 9.1.2.2 is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered.
- 9.2 If, in terms of this Mol or the Companies Act, a notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 9.3 Any notice, document or statement sent in terms of this Mol or the Companies Act shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the regulations in terms of the Companies Act.

## **10 COMPLIANCE WITH SECTION 308 OF THE INCOME TAX ACT**

- 10.1 The Board consisting of more than three Directors who are not related to each other accept the fiduciary responsibility of the Company. No single person shall directly or indirectly control the decision-making powers relating to the Company.
- 10.2 The Company is prohibited from distributing any of its funds or assets to any person (otherwise than in the course of undertaking its objects) and is required to utilise its funds solely for the objects for which it has been established.
- 10.3 Any Member of the Company is prohibited from having any personal or private interest in the Company except in so far as rendering a service to the Company in pursuit of its objects and subject to 10.4 and 10.5.
- 10.4 The Company is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of clause 11 of this Mol.
- 10.5 Substantially the whole of the activities of the Company shall be directed to the furtherance of its objects and not for the specific benefit of an individual member or minority group.
- 10.6 The Company is prohibited from holding any share or other interest in any business, profession or occupation which is carried on by its members.
- 10.7 The Company may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 10.8 The Board undertakes to submit to the Commissioner of the South African Revenue Service, a copy of any amendment to the Mol within thirty days of its amendment.
- 10.9 Substantially the whole, being a considerable majority of the Company funding, must be derived from its annual or other long-term members.
- 10.10 The Company undertakes to comply with the reporting requirements as may be determined by the Commissioner of the South African Revenue Service from time to time.
- 10.11 The Company is 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, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

## **11 DISSOLUTION OF THE COMPANY**

- 11.1 The Company shall be dissolved by a special resolution to be affected by the Members. Upon the dissolution of the Company, the Board shall, after making provision for the liabilities and obligations of the Company and the costs of dissolving the Company, distribute the whole of the Company's income (including distributed income still in its possession) and assets to:
  - 11.1.1 another entity approved by the Commissioner of the South African Revenue Service in terms of section 30B of the Income Tax Act;
  - 11.1.2 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;
  - 11.1.3 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; or
  - 11.1.4 any department of state or administration in the national or provincial or local sphere of Government of South Africa.
- 11.2 No past or present Member or Director shall be entitled to any part of the net value of the Company after the liabilities and obligations contemplated in clause 11.1 have been satisfied.