

# **CONSTITUTION of the VOLUNTARY ASSOCIATION known as THE RIGHT2KNOW CAMPAIGN (Abbreviation : The Right2Know/Right2Know/ R2K)**

AS AMENDED ON 15 MARCH 2014 AND 11 MARCH 2019.

## **CONTENTS**

<b>CONTENTS</b>	<b>1</b>
<b>PREAMBLE</b>	<b>2</b>
<b>1. NAME</b>	<b>3</b>
<b>2. LEGAL STRUCTURE</b>	<b>3</b>
<b>3. DEFINITIONS AND INTERPRETATION</b>	<b>3</b>
<b>4. OBJECT, VISION AND PURPOSE</b>	<b>5</b>
<b>5. MEMBERSHIP</b>	<b>5</b>
<b>6. NATIONAL WORKING GROUP</b>	<b>6</b>
<b>7. VACATING OFFICE</b>	<b>7</b>
<b>8. PROCEDURE AT NATIONAL WORKING GROUP MEETINGS</b>	<b>7</b>
<b>9. PROVINCIAL WORKING GROUP</b>	<b>8</b>
<b>10. NATIONAL SUMMIT</b>	<b>8</b>
<b>11. POWERS AND DISCRETIONS</b>	<b>10</b>
<b>12. NOTICES</b>	<b>10</b>
<b>13. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS</b>	<b>11</b>
<b>14. ACCOUNT AND SIGNATURES</b>	<b>11</b>
<b>15. AMENDMENTS TO CONSTITUTION AND DISSOLUTION</b>	<b>11</b>
<b>16. INDEMNITY</b>	<b>12</b>
<b>17. AMBIT OF DISCRETIONS</b>	<b>12</b>

<b>18. PRESCRIBED FISCAL CONDITIONS</b>	<b>13</b>
<b>19. REGISTRATION: NONPROFIT ORGANISATIONS ACT</b>	<b>13</b>
<b>20. FURTHER MEETING FORMALITIES</b>	<b>14</b>
<b>NAMES OF FOUNDER MEMBER</b>	<b>15</b>
<b>SCHEDULE "A": GENERAL INVESTMENT AND ADMINISTRATIVE POWERS</b>	<b>16</b>
<b>SCHEDULE "B" PRESCRIBED FISCAL CONDITIONS</b>	<b>19</b>

## **PREAMBLE**

### **WHEREAS**

- A. The Constitution of the Republic of South Africa (the Constitution) includes within its Bill of Rights, an entrenched Right of Access to Information, for which the Promotion of Access to Information Act No. 2 of 2000, as amended, makes detailed provision. The Constitution also contains a Right to Freedom of Expression.
- B. The Object of such rights is the right to know, which includes the right to transparency, accountability, a free and diverse media, effective governance affecting both public and private bodies, and the promotion of a human rights culture and social justice in South Africa.
- C. The Founder Members have resolved to establish an Association to advance the public interest in the achievement of this Object, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THE FOUNDERS HEREBY RESOLVE AND AGREE AS FOLLOWS:- 1.

## **1. NAME**

1.1. The name of the Association shall be: THE RIGHT2KNOW CAMPAIGN (Abbreviation : The Right2Know/Right2Know/R2K)

1.2 The Association shall have power at any time to change its name (and/or the acronyms "the, Right2Know and R2K") as may be deemed appropriate, subject to compliance with the formalities contemplated by clause 15 hereunder.

## **2. LEGAL STRUCTURE**

2.1 The Association is constituted as a juristic person or body corporate, which is separate and distinct from its members and officers-bearers, and which shall continue to exist through "perpetual succession", notwithstanding periodic changes which may occur in the composition of its membership and/or the identity of its officer-bearers.

2.2 The Association shall have the capacity to acquire rights, including ownership of assets; and to incur duties and liabilities; and enter into contracts, apart from its members and officers; with the right to sue and be sued in its own name.

2.3 As a duly constituted Non-Profit Organisation ("NPO"), the Association shall do all such things as may be necessary to procure its registration in terms of the Non-Profit Organisations Act, No. 71 of 1997, as amended. It shall also seek approval by the Commissioner for SA Revenue Service (SARS) for the 4 fiscal status of a "Public Benefit Organisation" ("PBO"), as contemplated by Section 30 of the Income Tax Act, No. 58 of 1962, as amended; and for purposes of Section 18A of that Act.

2.4 As a Registered NPO and Approved PBO, the Association shall ensure that its income and property (including rights and assets), however derived, shall be applied solely towards the promotion of its Sole or Principal Object which constitutes a "Public Benefit Activity"; and no portion thereof shall be paid, transferred, or distributed, directly or indirectly, by way of dividend, bonus, or otherwise to its Members or Office-Bearers – provided that this provision shall not preclude the payment in good faith of reasonable remuneration to any such Member or Office-Bearer in return for services rendered. Save as aforesaid, no Member or Office Bearer shall have any right or interest in the property, assets, or interests of the Association by virtue of their Membership or Office.

## 3. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context clearly otherwise indicates:

3.1 "Association" means this Voluntary Association, namely the Association which will be described as the "The Right2Know Campaign "

3.3 "Commissioner" means the Commissioner for The South African Revenue Service ("SARS").

3.5 "Income Tax Act" means The Income Tax Act No. 58 of 1962, as amended.

3.6 "Minister" means The Minister of Finance.

3.7 "National Working Group" or "NWG" means the governance structure of the Association, which is to be constituted in accordance with clause 6, in order to exercise overall responsibility for the affairs of the Association, directly or indirectly by delegation to one or more of the Provincial Working Groups.

3.8 "National Summit" means the Annual General Meeting of the Association, which is to be convened from year to year, in accordance with Clause 10.

3.9 "National Membership" means those persons who are admitted to membership by the NWG, in recognition of their concern and commitment to support the objects of the Association, and at the nomination of the relevant PWG. Such national membership shall be valid until the next national summit.

3.10 "Ninth Schedule" means the Ninth Schedule to the Income Tax Act, in terms of which "Public Benefit Activities" are listed and defined for purposes of section 30, and 5 for purposes of section 18A of the Act; subject in each instance, to any such amendments or additions thereto as may from time to time be enacted or prescribed

3.11 "Nonprofit Organisations means The Nonprofit Organisations Act, No. 71 of Act" 1997, as amended.

3.12 "Prescribed Fiscal Conditions" means the provisions prescribed from time to time in terms of sections 30 and 18A of the Income Tax Act, as being applicable to Public Benefit Organisations approved by the Commissioner for purposes of exemption from income tax in terms of Section 10(1)(cN); and for purposes of the tax deductibility of grants and donations in terms of section 18A of the Act. Such provisions as are presently applicable as at the date of adoption of this Constitution being set forth in Schedule "B" hereto; but being subject to any amendments or additions thereto as may from time to time be enacted or prescribed.

3.13 "Provincial Working Group" or "PWG" means a provincial governance structure of the Association, which is to be constituted from time to time in accordance with the provisions of clause 9, in order to exercise responsibility for the affairs of the Association in terms of its delegated mandate within the area of such delegation.

3.14 "Public Benefit Activities" means the activities designated as such in terms of the Ninth Schedule to the Income Tax Act and/or pursuant to a determination by the Minister in terms of section 30(1) of the Act.

3.15 "Public Benefit Organisation" means an Organisation duly approved as such by the Commissioner in terms of section 30 of the Income Tax Act.

3.16 "The Republic" means the Republic of South Africa.

3.17 The singular shall include the plural; and terms referring to persons shall include juristic persons; and vice versa in each instance.

3.18 Any reference to the Income Tax Act; the Nonprofit Organisations Act; or any other Statute mentioned or referred to hereunder, including the Schedules and Regulations applicable thereto, shall be deemed to denote such Statutes, Schedules, and Regulations, as they may be amended from time to time, including any legislation constituting a re-enactment or substitution thereof.

## 4. OBJECT, VISION AND PURPOSE

The Association shall be established for the following Object, Vision and Purpose, viz:-

### **4.1 Object**

To promote human rights and democracy by advocating for the right to know – that is to be free to access and to share information. The organisation shall do so, inter alia by: o Campaigning for laws, policies and practices consistent with the right to know; o Campaigning for a media that is free and diverse; o Campaigning for and assisting communities to access

information held by government or the private sector that is necessary for the social, economic and environmental justice they need; and o Campaigning for and supporting whistleblowers who act so that the public can exercise the right to know.

## **4.2 Vision**

“We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity.”

## **4.3 Purpose**

- To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.
- To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.
- To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.
- To propagate our vision throughout society.
- To engage those with political and economic power where necessary.
- To act in concert and solidarity with like-minded people and organisations locally and internationally.

# **5. MEMBERSHIP**

5.1 The Membership of the Association shall consist of National Membership;

5.2 The persons admitted initially to Membership shall be those whose names are reflected accordingly on the relevant Membership Schedules attached to this Constitution.

5.3 Further Members in the categories of National Membership may be admitted from time to time at the sole and absolute discretion of the National Working Group (which may include the requirement for Membership Fee) that may be determined from time to time with respect to such category of membership.

5.4 For the avoidance of doubt, it is confirmed that the National Working Group shall have a complete and unfettered discretion with regard to the acceptance or rejection of applications for membership, or the suspension or termination of membership, as they may deem appropriate and in the best interests of the Association. Such decisions shall be taken as set out below.

# **6. NATIONAL WORKING GROUP**

6.1 “The National Working Group shall be responsible for the running of the affairs of the Association. The NWG shall be the highest decision making authority between National Summits and or National General Meetings. The NWG shall be constituted every second year by election, co-option, or ex officio, as the case may be, in terms of the succeeding provisions. Only bonafide members may be eligible for election (or co-option in special cases determined by the National Summit) to the NWG, with due consideration to even (equal) representation by functioning PWGs.” .

6.2 The National Working Group shall comprise a minimum of Seven (7) and a maximum of Fifteen (15) persons, who shall be designated by election of the National Summit as the Association's NWG, by the National Membership. Office-Bearers may be appointed by the National Working Group from within its rank, as it may deem desirable from time to time, including:

6.2.1 A Chairperson and/or

6.2.2 A Vice-Chairperson; and/or

6.2.3 A Secretary; and/or

6.2.4 A Treasurer

6.3 The persons serving initially on the National Working Group, and the initial Office-Bearers, shall be those whose names are reflected on the Schedule to this Constitution. Such persons shall hold office until the first National Summit, but shall be eligible for re-election thereafter.

6.4 The National Working Group may itself co-opt up to Three (3) persons to serve as additional Members of the National Working Group, and any such co-opted persons shall likewise hold office until the next-occurring National Summit, and shall be eligible for re-cooption or election thereafter, as the case may be.

6.5 By Resolution adopted by no less than Seventy-Five (75%) of its members at the relevant time (excluding the person concerned), the National Working Group shall be entitled to remove or suspend from office any person elected or appointed to the National Working Group.

6.6 If any member of the National Working Group misses three meetings of the National Working Group without tendering their apologies, a motion must be tabled by the Chairperson calling for their removal at the next NWG meeting, and must be duly considered by the meeting, and voted on.

## 7. VACATING OFFICE

Persons appointed to the National Working Group shall vacate office in the event that any such person:-

7.1 completes the term of office for which she/he was appointed, without subsequent re-election or co-option; or

7.2 dies, or tenders her/his resignation in writing; or

7.3 becomes of unsound mind; or otherwise unfit or incapable of acting in this capacity;

7.4 becomes disqualified in terms of either the Trust Property Control Act, or the Companies Act, or any legislation substituted therefor, from acting as a Trustee, Director, or in any other fiduciary capacity; or

7.5 is removed from Office, in terms of a Resolution duly passed in accordance with the provisions of clause 6.6 above.

## 8. PROCEDURE AT NATIONAL WORKING GROUP MEETINGS

The National Working Group shall conduct its meetings, and regulate its proceedings, as it may find convenient from time to time, provided that:

8.1 The members of the National Working Group shall elect a Chairperson for that meeting.

8.2 The Chairperson or Vice-Chairperson, if any, may at any time convene a meeting of the National Working Group; but shall be obliged to do so, if so requested in writing by any Three (3) Members of the National Working Group.

8.3 The quorum necessary for the transaction of any business by the National Working Group shall require the participation of at least Five (5) of its Members.

8.4 At all meetings of the National Working Group each member shall have ONE (1) vote.

8.5 All questions arising shall be decided by consensus. Failing consensus, all questions arising shall be decided by a majority of votes, provided that in the event of an equality of votes, the Chairperson shall have a second or casting vote.

8.6 Proper minutes shall be kept of all proceedings of the National Working Group, including a record of all persons present at each meeting. Minutes shall be signed by the members of the National Working Group resident near the National Office, and shall be available for inspection or copying by any National Member or Provincial Member of the association.

8.7 The National Working Group shall be entitled to delegate any of its powers and prerogatives to one or more of its Members, or to a Special Purpose Committee (which may include persons who are not members of the National Working Group), or to an employee or agent for the Association, as it deems appropriate. The person/s to whom any such delegation is made shall, in the exercise of delegated powers and prerogatives, conform to any directions or procedures that may be stipulated by the National Working Group with regard thereto.

## 9. PROVINCIAL WORKING GROUP

9.1 The Provincial Working Groups may be established from time to time by decision, and at the discretion of the National Working Group; and in that event shall be mandated to undertake such activities and pursue such purposes as are consonant with the Objects, Vision and Purpose of the Association, within the area in respect of which it has been mandated.

9.2 The Provincial Working Group shall only have such powers and prerogatives as may be delegated at the discretion of the National Working Group; and it shall conform to any such directions, conditions and procedures as may be stipulated by the National Working Group from time to time.

9.3 The Provincial Working Group shall nominate those persons who should attend the National Summit, in numbers agreed by the NWG. The NWG shall invite those persons nominated by the PWG to the Annual Summit, at which invitation they will become national members.

9.4 Save insofar as the context may clearly otherwise indicate, the provisions of this Constitution which have reference to the National Working Group shall also apply mutatis mutandis with respect to the conduct of the affairs of a Provincial Working Group, within the designated area of this mandate.

## 10. NATIONAL SUMMIT

10.1 The National Summit is the highest decision-making body of the Campaign. The ultimate authority and responsibility for the exercise of the powers of the Association; including power to determine policy, values, and strategy; and for authorising and mandating the National Working Group (NWG), the establishment (or dis-establishment) of Provincial Working Groups, and for determining their operating conditions (with an ancillary right to review such decisions and actions), shall vest in the National Summit.

10.2 The National Summit will constitute the Annual General Meeting of the Association, and shall be held initially within a period of Fifteen (15) months after the adoption of this Constitution; and thereafter from year to year, within a period not exceeding Three (3) months after the end of each Financial Year.

10.3 The business of a National summit shall include, inter alia:

10.3.1 the presentation and adoption of the Annual Report;

10.3.2 the consideration of the Annual Financial Statements;

10.3.3 the consideration of an annual Budget for the ensuing year;

10.3.4 every second year, the election of persons who shall serve on the National Working Group for the ensuing two years;

10.3.5 the appointment of Auditors;

10.3.6 such other matters as may be considered appropriate by the Meeting.

### 10.4 Other National General Meetings

Other General Meetings of the National Membership may be convened from time to time as may be considered necessary at the request of:

10.4.1 The National Working Group;

10.4.2 the Chairperson or Vice-Chairperson, if any; or

10.4.3 any Two (2) or more Provincial Working Groups.



### 10.5 General Meeting Notices

Not less than fourteen (14) business days' prior written notice of each such general meeting shall be given to all National Members of the Association, and to each Provincial Working Group. Such notices shall state in broad terms the business to be transacted at the Meeting: provided that should the Chairperson, having been duly requested, fail to give such notice within Ten (10) business days of written request, the persons entitled to request the Meeting shall themselves be entitled to give notice of, and to convene the Meeting.

### 10.6 Resolutions and Voting

10.6.1 At all National General Meetings, a resolution put to the vote shall be decided by a show of hands, or by a poll – if the Chairperson shall so determine. A poll shall be taken as directed by the Chairperson, and the result of the poll shall constitute the resolution of the Meeting.

10.6.2 Each member present or represented shall be entitled to One (1) vote, and all matters arising shall be determined by consensus, if possible; but in the absence of consensus, then by decision of majority of the Voting Members present or represented at the meeting. The Chairperson shall be entitled to a second or casting vote, in the event of an equality of votes.

10.7 Quorum A quorum in respect of any National General Meeting of the Association shall require the participation of at least a majority of the National Members entitled to attend and vote.

10.8 Adjournment In the event of any National General Meeting being convened but no quorum being present, such Meeting shall stand adjourned to another twenty-one (21) business days thereafter, as may be determined by the National Working Group. Written notice reflecting such adjournment shall be given to all persons entitled to attend and exercise a vote at such meeting. At such reconvened National General Meeting, the Members then present or represented shall be deemed to constitute a quorum.

## 11. POWERS AND DISCRETIONS

Subject to the Prescribed Fiscal Conditions referred to in clause 18, the National Working Group, or any Provincial Working Group (to the extent that it may be so delegated) shall be vested with the undermentioned powers and discretions, viz :

11.1 The power to administer and generally conduct the affairs of the Association.

11.2 The power to initiate and determine activities of the Association, within the ambit of what are statutorily defined as "Public Benefit Activities"; and generally the manner and terms upon which the resources of the Association shall be invested, utilised and appropriated from time to time; including the power to determine how the funds of the Association shall be invested, with the intent and purpose that all such funds shall be held, invested, and appropriated by the National Working Group, as it may deem appropriate in its sole discretion from time to time.

11.3 The General Investment and Administrative Powers, set forth in Schedule "A" hereto, within the ambit of the overriding Prescribed Fiscal Conditions referred to in clause 16.

11.4 Any such further powers and discretions as may be found necessary to execute its fiduciary responsibilities hereunder, and to promote the best interests and advance the purposes of the Association, and exercise due responsibility with respect to its affairs.

## 12. NOTICES

12.1 Notices of Meetings shall be delivered to each Member entitled thereto, either personally, electronically, by prepaid registered post, or in any such other manner, as may be deemed appropriate by the Chairperson (or ViceChairperson, if any); and such Notices shall be directed to the last address known to and recorded with the Association in respect of the person concerned.

12.2 The inadvertent, but bona fide, omission to address notices to any person entitled thereto shall not invalidate the proceedings of the ensuing meeting.

12.3 If delivered personally, notices shall be deemed to have been received on the date of proven delivery.

12.4 If despatched electronically, notices shall be deemed to have been received twenty-four (24) hours after proven data transmission.

12.5 If despatched by prepaid registered post to an address in the Republic, notices shall be deemed to have been received five (5) days after the proven date of despatch.

## 13. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS

13.1 The Annual Financial Year of the Association shall be as from 1 January in each year to 31 December in the succeeding year.

13.2 The National Working Group, and the Provincial Working Groups shall ensure that the Association keeps proper books of account. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in South Africa, and shall clearly reflect the affairs of the Association. The books of account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant, or in such other manner by a competent disinterested person, as may be deemed appropriate by the National Working Group.

13.3 A copy of the Annual Financial Statements shall be made available to each National and Provincial Member of the Association as soon as possible after 13 the close of the financial year. 14. BANKING

## 14. ACCOUNT AND SIGNATURES

14.1 The Association's banking and financial affairs shall be conducted through one or more banking accounts.

14.2 All cheques, promissory notes, and other documents requiring signature on behalf of the Association shall be signed by such persons as may be duly authorised by the National Working Group from time to time.

## 15. AMENDMENTS TO CONSTITUTION AND DISSOLUTION

15.1 By decision of the National Members at a specially convened National General Meeting:

15.1.1 the name of the Association may be changed; and/or

15.1.2 the terms of this Constitution may be amended; and/or

15.1.3 the Association may be dissolved;

provided that written notice of the proposed resolution is given to all National Members not less than Twenty-One (21) business days prior to the date of the meeting at which it is to be considered; and provided further that such notice duly states the nature of the resolution to be proposed.

Any such resolution shall be deemed to have been duly adopted if it is supported by no less than Two-thirds (2 /3) of all the National Members of the Association at the relevant time.

15.2 Notwithstanding anything to the contrary contained in this Constitution, it is confirmed that a resolution signed by all the National Members of the Association, shall be valid as if passed at a duly convened General Meeting of the Association.

15.3 A copy of any amending Deed, or Resolution, as the case may be, shall be submitted following its adoption, to the Commissioner, and to the Director appointed in terms of the Nonprofit Organisations Act.

15.4 In the event of the dissolution of the Association, any net residue of funds remaining after provision for all its liabilities and expenses, shall be given or transferred to one or more other Approved Public Benefit Organisations, or other eligible beneficiary institutions, as may be determined by the National Working Group at its discretion; provided that any such portion of the net residue as may arise in consequence of donations made by taxpayers to whom receipts have been issued in terms of section 18A of the Income Tax Act, must be given or transferred to some other beneficiary institution eligible for purposes of section 18A, as may be approved by the Commissioner in terms of the Income Tax Act.

## 16. INDEMNITY

16.1 Subject to the limitations of any relevant Statute, each member of the National or Provincial Working Groups, and all their office bearers, shall be indemnified by the Association for the consequences of acts done and decisions taken in good faith, on the Association's behalf; and it shall be the duty of the Association to pay all costs and expenses which any such person may incur, or become liable for, as a result of contracts entered into, or acts or deeds done in her/his capacity, and with the authority of the relevant Working Group.

16.2 Subject to the provisions of any relevant statute, no member of the National or Provincial Working Groups or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of the duties of her or his office or in relation thereto, unless it arises in consequence of her or his dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

## 17. AMBIT OF DISCRETIONS

Where discretions are vested in the National Working Group, Provincial Working Group, and/or a General Meeting of members of the Association in terms of this Constitution, such discretions, except where expressly limited, shall be complete and absolute.

## 18. PRESCRIBED FISCAL CONDITIONS

18.1 Anything to the contrary hereinbefore contained or implied notwithstanding, the powers of the Association, shall be subject to due compliance with all conditions stipulated from time to time in respect of Public Benefit Organisations in terms of section 30 of the Income Tax Act, as read with the Ninth Schedule thereto, in order thereby to ensure that the Association both establishes and retains its tax-exempt status in terms of section 10(1)(cN) of the Act, and the further fiscal benefits envisaged by section 18A of the Act. The Prescribed Fiscal Conditions applicable to the Association at the time of adoption of the Constitution shall be such as are set forth in Schedule "B" to this Constitution, but remain subject to any amendments thereto as may be enacted or prescribed at any time

18.2 In furtherance of its Purpose and Sole Object, the Association may accept donations in support of its Public Benefit Activities, as identified from time to time in terms of Part II of the Ninth Schedule; and with the authority of the 15 Commissioner it may issue receipts in terms of section 18A of such Act, for the benefit of South African taxpaying

donors. The National Working Group and Provincial Working Groups shall ensure full compliance by the Association with the special conditions prescribed by the Income Tax Act with respect to such tax deductible donations, including any new conditions that may be imposed by regulation, or by the exercise of the statutory powers and discretions vested in the Minister and/or the Commissioner, as the case may be.

## 19. REGISTRATION: NONPROFIT ORGANISATIONS ACT

The Association shall take all such steps as may be necessary to procure and retain registration in terms of the Non-Profit Organisation's Act, No. 71 of 1997. Accordingly, having regard to the mandatory requirements of the relevant legislation, it is hereby recorded with respect to the Association (described as “the Organisation”), as follows:

19.1 The Organisation’s name shall be as stated in clause 1.1;

19.2 The Organisation’s Purpose and Sole Object shall be as stated in clause 4;

19.3 The Organisation’s income and property shall not be distributable to members or office-bearers as stated, or in terms of clause 2.4, save insofar as they may be reimbursed for reasonable out of pocket expenses incurred in the execution of their duties,

19.4 The Organisation shall be deemed to be a body corporate, and shall have an identity separate and distinct from its Members, as envisaged by clause 2.1;

19.5 The Organisation shall continue to exist notwithstanding periodic changes that may occur in the composition of its Membership, its governing structures, or its Office-Bearers, as envisaged by clause 2.1;

19.6 The Members or Office-Bearers shall have no rights in the property or other assets of the Organisation by virtue of their membership or office, as stated in clause 2.4;

19.7 The powers of the Organisation shall be as set forth in this Constitution, including clauses 11 and 17, as read with Schedules “A” and “B”;

19.8 The organisational structure and mechanisms for the Organisation’s governance shall be as set forth in this Constitution, including clauses 6, 9, and 10;

19.9 The rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings, shall be as stated in clauses 10 and 20;

19.10 The manner in which decisions are to be made shall be as stated in clauses 6, 8, 9, and 10; 16

19.11 The Organisation’s financial transactions must be conducted by means of a banking account, as stated in clause 14.1;

19.12 The date for the end of the Organisation’s financial year shall be as stated in clause 13.1;

19.13 The procedure for changing the constitution shall be as stated in clause 15;

19.14 The procedure by which the Organisation may be wound up or dissolved shall be as stated in clause 15;

19.15 If the Organisation is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to some other eligible Nonprofit Organisation or institution, having the same or similar objectives, as stated in clause 15.4, as read with clause 9 of Schedule “B”.

## 20. FURTHER MEETING FORMALITIES

20.1 A "round robin" resolution – that is a resolution in writing, supported and signed unanimously by all persons eligible to vote thereon – shall be as valid as if passed at a duly convened meeting; and, unless stated to the contrary, shall be deemed to have been passed as at the date of the last signature thereto. Any such "round robin" Resolution may be recorded in a single document, or in several documents, as may be found convenient.

20.2 For the avoidance of doubt, it is further stipulated that Meetings of the National Working Group and the Provincial Working Group may be held at any time or times, and at any place or places, subject to due notice having been given thereof; and such meetings may be held simultaneously in more than one place, provided that all persons involved are linked to each other by telephone, video, teleconference or other facilities, whereby they may communicate and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present together at the same time and place.

## NAMES OF FOUNDER MEMBERS

### EASTERN CAPE BASED MEMBERSHIP

Thembani Onceya

### GAUTENG BASED MEMBERSHIP

Dale T McKinley, Kate Skinner, Jayshree Pather, Adam Noord

### KZN BASED MEMBERSHIP

Roy Chetty, Eric Tate, Desmond D'Sa

### WESTERN CAPE BASED MEMBERSHIP

Alison Tilley, Hennie van Vuuren, Murray Hunter, Vinayak Bhardwaj

# SCHEDULE "A": GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

Subject to the limitations set forth in the Prescribed Fiscal Conditions (Annexure "B"), the ASSOCIATION, shall have the following General Investment and Administrative Powers, in addition to those special powers and discretions as are set forth in the Constitution to which this Schedule is annexed, viz:

1. To invest and reinvest the funds of the ASSOCIATION in a manner permitted by law, as they may deem appropriate, in their sole and absolute discretion; which may include, if deemed appropriate, the transfer and investment of funds off-shore.
2. To retain, or take over assets and investments constituting the subject matter of donations made to the ASSOCIATION, and to retain them in the form in which they are received, or realise and re-invest the proceeds thereof.
3. To realise or vary any investments from time to time forming part of the funds of the ASSOCIATION, and re-invest the proceeds thereof in any authorised investments.
4. To allow investments forming part of the funds of the ASSOCIATION to remain uninvested, or in their original state of investment upon acquisition by the ASSOCIATION.
5. Lend money to the ASSOCIATION, with or without security, and with or without provision for interest, as may be deemed appropriate.
6. To borrow on such terms and conditions as The Board may consider fit for any of the purposes of the ASSOCIATION; including the payment of liabilities of the ASSOCIATION; the payment of capital to any other permitted beneficiary; the making of any loan in furtherance of the Sole Object of the ASSOCIATION; the preserving or acquiring of any assets or investments; the subscription of any shares with powers from time to time to consent to any alteration or variation in the terms applicable thereto; and as security for any moneys so borrowed, The Board shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the funds of the ASSOCIATION, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace such borrowings or security.
7. To guarantee (either gratuitously or for a consideration) the performance of contracts or obligations of any third party in order to promote the sole object of the ASSOCIATION, upon such conditions, and with or without security, as The Board in its sole and absolute discretion may deem fit; provided that such transaction is entered into for the benefit of the ASSOCIATION.
8. To exercise the voting power attached to any shares forming part of the funds of the ASSOCIATION, as The Board may consider appropriate in the best interests of the ASSOCIATION; and to enter into arrangements as it may consider necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any company of whose capital the shares shall form 21 portion.

9. To deal with, and turn to account, any of the assets forming part of the funds of the ASSOCIATION, by way of exchange, sale, lease or otherwise and in exercising any powers of sale, The Board shall be entitled to cause such sale to be effected by public auction, tender, or private treaty as it may consider appropriate.
10. To purchase or acquire both movable and immovable property for use by the ASSOCIATION itself in the conduct of its affairs, and in furtherance of the Specified Activities.
11. In respect of any immovable property donated to, or forming part of the funds of the ASSOCIATION, at any time:
- 11.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
  - 11.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document and to obtain copies of deeds, bonds or documents for any purposes and generally to do or cause to be done any act whatsoever in any such Registry or office.
12. To transfer shares or other assets into the name of any nominee/s for the ASSOCIATION, or into the name/s of any one or more of The Board.
13. To cause any Company to be incorporated, or any Trust, Foundation, or Association not for Gain, to be established, which is owned or controlled, directly or indirectly by the ASSOCIATION; for the purpose of holding specific assets or undertaking specified activities which serve to promote the Sole Object of this ASSOCIATION, in the Republic or elsewhere, in accordance with the provisions of this Constitution.
14. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the ASSOCIATION, and bring sequestration, liquidation or judicial management proceedings against any person.
15. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the ASSOCIATION and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
16. To attend meetings of creditors of any person indebted to the ASSOCIATION<sup>22</sup> whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors and generally exercise all rights of a creditor.
17. To exercise the voting power attaching to any share, stock, debenture or unit, in such manner as The Board may deem fit, for the purpose of amalgamation, merger or compromise, in any Company or Trust in which any such share, stock, debenture or unit is held.
18. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture or unit forming part of the assets of the ASSOCIATION.



19. To engage employees in a part-time or full-time capacity; determine their remuneration; and terms of employment, and delegate to them such duties as The Board may determine; and to dismiss them.
20. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
21. To treat as income any periodic receipts although received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
22. To determine in such manner as The Board may consider fit what shall be treated as income and what shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the TRUST; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as The Board may consider fit.
23. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business of whatever nature required to be done pursuant to this Constitution, and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees, or for any loss occasioned by their employment.
24. To exercise all such management and executive powers as are normally vested in the Board of Directors of a Company with regard to the affairs of the ASSOCIATION.
25. To exercise any of such powers and authorities not only in the Republic, but also in any other part of the world.
26. Generally, to deal with assets or investments forming part of the funds of the ASSOCIATION, in such manner as The Board may deem advisable; and to this end it shall be vested with any such additional powers and authorities as it may require to enable it to do so.

## ENDS ##

# SCHEDULE “B” PRESCRIBED FISCAL CONDITIONS

[In terms of sections 18A and 30 of the Income Tax Act] Once approved by the Commissioner for the South African Revenue Service (SARS) as a “Public Benefit Organisation” in terms of Section 30 (and, insofar as it may be applicable, also for purposes of Section 18A) of the Income Tax Act, No. 58 of 1962, as amended, this Constitution shall be deemed also to include the following provisions prescribed in terms of the Income Tax Act, which shall in that event become binding upon and applicable to the ASSOCIATION, in accordance with the requirements of that Act, viz;

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

1.1 Ensure that any eligible donations actually paid or transferred to the ASSOCIATION, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term “Eligible Beneficiaries” shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.

1.2 Ensure that during each year of assessment preceding the year of assessment of the ASSOCIATION during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least SeventyFive Percent (75%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.

1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.

1.4 Ensure that an audit certificate is provided upon submission by the ASSOCIATION to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the ASSOCIATION in that year, in respect of which section 18A receipts were issued by the ASSOCIATION, were utilised in the manner contemplated by that section.

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

2.1 Carry on the public benefit activities of the ASSOCIATION in a non-profit manner, and with an altruistic or philanthropic intent.

2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the ASSOCIATION, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

2.3 Take reasonable steps to ensure that each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups)

2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the ASSOCIATION are directed in the furtherance of its objects.

2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.

2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the ASSOCIATION, and that no single person directly or indirectly controls the decision making powers of the ASSOCIATION.

2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established.

2.8 Be required on dissolution to transfer its assets to :

2.8.1 any Public Benefit Organisation which has been approved in terms of section 30(3) of the Income Tax Act;

2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or

2.8.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act.

2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such 3 donor to derive some direct or indirect benefit from the application of such donation.

2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.

2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.

2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.

2.13 Comply with such reporting requirements as may be determined by the Commissioner.

2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.

2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.

2.16 Ensure that any books of account, records or other documents relating to its affairs are:

- 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the ASSOCIATION, for a period of at least four years after the date of the last entry in any such book; or
- 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the ASSOCIATION, for a period of four years after the completion of the transaction, act or operation to which they relate.

### ENDS ###