

“ANNEXURE E”

MEMORANDUM OF INCORPORATION

of

.ZA DOMAIN NAME AUTHORITY NPC

Registration number 2003/021150/08

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1. **DEFINITIONS**

In the Memorandum of Incorporation, the following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them below and related expressions shall bear corresponding meanings:

- 1.1 **"AGM"** – means an annual general meeting of the Members.
- 1.2 **"audit"** – means the examination, in accordance with prescribed or applicable auditing standard, of :
 - Financial statements, with the object of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or
 - Financial or other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on that information.
- 1.3 **"the Board"** – means the board of Directors of the Company.
- 1.4 **"business day"** – means any day except a Saturday, Sunday or South African public holiday.
- 1.5 **"CEO"** – means the chief executive officer referred to in article 27.1.
- 1.6 **"Commercial Activity"** – Commercial Activity means any transaction resulting from the transfer of the agreed portion of the wholesale fee by the Registry Operator emanating from the registration and renewal of domain names.
- 1.7 **"the Commissioner"** – means the Commissioner for the South African Revenue Service.
- 1.8 **"the Company"** – means the entity described in clause 1.35 as ZADNA.
- 1.9 **"Compliance Provisions"** – means the provisions referred to in article 6, and recorded in Schedule Two.
- 1.10 **"Director"** – means a director of the Company who has been appointed as such in terms of this Memorandum of Incorporation
- 1.11 **"Ex- Officio Director"** – means a person who holds office as a Director of a particular company solely as a consequence of such a person holding some other office, title, designation, or similar status specified in the company's memorandum of incorporation.
- 1.12 **"domain name"** – means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resources on the Internet.
- 1.13 **"the ECT Act"** – means the Electronic Communications and Transactions Act, No. 25 of 2002.

- 1.14 "**electronic communication**" – bears the same meaning as defined in section 1 of the ECT Act.
- 1.15 "**Executive Authority**" – means the Department for which ZADNA is accountable to.
- 1.16 "**the Income Tax Act**" – means the Income Tax Act, no. 58 of 1962 as amended or any legislation which replaces it.
- 1.17 "**Member**" – means a person admitted to membership of the Company in terms of the relevant provisions of this Memorandum of Incorporation.
- 1.18 "**Members' Meeting**" – means a meeting of Members contemplated in article 15.2.
- 1.19 "**the Minister**" – means the Minister of Communications.
- 1.20 "**month**" – means a calendar month.
- 1.21 "**net profit**" – means all income and capital which accrues to the Company pursuant to its Commercial Activities, less all tax and tax-deductible expenses paid in relation to or in the generation of such income and capital accruals.
- 1.22 "**the Ninth Schedule**" – means the Ninth Schedule to the Income Tax Act.
- 1.23 "**Objects**" – means the Principal and Secondary Objects of the Company.
- 1.24 "**the Office**" – means the registered office of the Company.
- 1.25 "**ordinary resolution of Members**" – means a resolution of the Members which is adopted in the manner contemplated in article 15.7.4 or 15.7.5.
- 1.26 "**PBO**" – means a public benefit organisation approved by the Commissioner in terms of section 30 of the Income Tax Act.
- 1.27 "**Board meeting**" – means a Board meeting contemplated in article 22.
- 1.28 "**Principal Object**" – means the Object of the Company referred to in article 4.
- 1.29 "**Public Benefit Activities**" – means the following activities
- public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed in Part I of the Ninth Schedule.
 - 18A Activities.
- 1.30 "**registered auditor**" – means an individual or firm who/which has been registered as an auditor in terms of section 37 or 38 of the Auditing Profession Act, no. 26 of 2005.
- 1.31 "**the Republic**" – means the Republic of South Africa.

- 1.32 "**Secondary Object**" – means the Object of the Company referred to in article 4.2.
- 1.33 "**secretary**" – means any person appointed from time to time by the Board to perform the duties of secretary of the Company.
- 1.34 "**special resolution of Members**" – means a resolution of the Members adopted in the manner contemplated in article 15.7.2 or 15.7.3.
- 1.35 "**.ZA DOMAIN NAME AUTHORITY NPC**" – (also known as ZADNA) means a juristic person established in terms of Chapter X of the ECT Act.
- 1.36 "**18A Activities**" – means those Public Benefit Activities which are listed from time to time in Part II of the Ninth Schedule.
- 1.37 "**the 2008 Act**" - means the Companies Act, No 71 of 2008, as amended. References to people include references to corporate bodies, and *vice versa*.

1.2 In this Memorandum

- 1.2.3 The singular includes the plural, and *vice versa*, and reference to any gender includes a reference to the other genders.
- 1.2.4 Any reference to a statutory provision includes a reference to that provision as modified, amended, replaced or re-enacted from time to time.
- 1.2.5 Words and expressions contained in this Memorandum of Incorporation bear the same meanings assigned to them by, respectively, the 2008 Act and ECT Act.

2. INCORPORATION AND NATURE OF THE COMPANY

- 2.1 The Company is a non-profit company as contemplated in section 1 of the 2008 Act.
- 2.2 The Company is governed by :
- 2.2.1 The unalterable provisions of the 2008 Act which apply to non-profit companies.
- 2.2.2 The provisions of this Memorandum of Incorporation.
- 2.3 The alterable provisions of the 2008 Act which apply to non-profit companies, **do not** govern this Company, except to the extent that those

alterable provisions are included in any provision of this Memorandum of Incorporation, whether expressly or by necessary implication.

3. COMPANY TO HAVE MEMBERS

3.1 As is contemplated in item 4(2) of Schedule 1 to the 2008 Act, the Company has members.

4. OBJECTS OF THE COMPANY

4.1. The Principal Object

The Principal Object of the Company is to carry out all functions assigned to it by or in terms of the Electronic Communications and Transactions Act, No. 25 of 2002 ("the ECT Act"), which functions include the following:

4.1.1 To administer and manage the .za domain name space, and in doing so to comply with international best practices.

4.1.2 To license and regulate registries, namely entities licensed by the Company to manage and administer specific sub domains.

4.1.3 To license and regulate registrars for the respective registries.

4.1.4 To publish guidelines on –

4.1.4.1 The general administration and management of the .za domain name space;

4.1.4.2 The requirements and procedures for domain name registration; and

4.1.4.3 The maintenance of and public access to a repository (namely the primary register of the information maintained by a registry), with due regard to any policy directives which the Minister of Communications ("the Minister") may make from time to time by notice in the Government Gazette.

4.1.5 To enhance public awareness of the economic and commercial benefits of domain name registration.

4.1.6 To conduct research into and keep abreast of developments in the Republic of South Africa ("the Republic") and elsewhere on the domain names system.

4.1.7 To continually survey and evaluate the extent to which the .za domain name space meets the needs of the citizens of the Republic.

- 4.1.8 To make recommendations, when requested to do so by the Minister, in relation to policy on any matter relating to the .za domain name space.
- 4.1.9 To continually evaluate the effectiveness of the ECT Act, and things done in terms of the ECT Act in respect of the management of the .za domain name space.
- 4.1.10 To make Regulations, to be subjected to a public participation process and subsequently submitted to the Minister for approval, regarding the various matters stipulated in the ECT Act.

4.2. The Secondary Object

- 4.2.1. The Secondary Object of the Company is to partake in any business, trade, or undertaking ("Commercial Activity") which is consistent with or ancillary to its Principal Object.
- 4.2.2. The Secondary Object of the Company must not supersede or take precedence over its Principal Object.
- 4.2.3. All the net profits from the Company's Commercial Activities must be used only to fund the costs associated with the carrying on of the Company's Principal Object.

4.3. Restriction on Distribution

The Company 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 a director or officer or incorporator of the Company, or to any persons related to any such director, officer or incorporator, or to any person who appointed any such director or officer, except :

- 4.3.1. As reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;
- 4.3.2. As reasonable payment of, or reimbursement for, expenses incurred to advance an Object of the Company;
- 4.3.3. As 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 person;

- 4.3.4. 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 an Object of the Company; or
- 4.3.5. In respect of any legal obligation binding on the Company.

5. POWERS OF THE COMPANY

- 5.1. The Company has all of the legal powers and capacity of an individual, except to the extent that :
 - 5.1.1. A juristic person is incapable of exercising any such power, or having any such capacity; or
 - 5.1.2. Any such power or capacity is restricted, limited or qualified by :
 - 5.1.2.1. Any unalterable provision of the 2008 Act which applies to non-profit companies; or
 - 5.1.2.2. Any express provision of this Memorandum of Incorporation.
- 5.2. The Company is subject to a restrictive condition contemplated in section 15(2)(b) of the 2008 Act, namely the restrictive condition concerning the amendment of this Memorandum of Incorporation contained in article 10.

6. COMPLIANCE PROVISIONS

- 6.1. If and for as long as the Company is approved by the Commissioner for the South African Revenue Service ("the Commissioner") as a public benefit organisation ("PBO") :
 - 6.1.1. The Company must comply with all the provisions of the Income Tax Act which apply to PBOs from time to time, whether set out in section 30 or elsewhere in that Act.
 - 6.1.2. Those provisions will be referred to in this Memorandum of Incorporation as the "Compliance Provisions".
 - 6.1.3. The Compliance Provisions which apply as at the date of adoption of this Memorandum of Incorporation are set out in Schedule Two.

- 6.1.4. All the powers of the Company, and the powers and discretions of the board of Directors of the Company (“the Board”) will be limited to the extent set out in the Compliance Provisions.
- 6.1.5. The Compliance Provisions will override any contradictory or conflicting provision of this Memorandum of Incorporation.

7. DISTRIBUTION OF NET ASSETS ON DISSOLUTION

- 7.1. Despite any provision in any law or agreement to the contrary, if the Company is wound up or dissolved :
- 7.1.1. No past or present Director of the Company, or person who appointed a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 7.1.2. The entire net value of the Company must be distributed to one or more non-profit companies, voluntary associations or non-profit trusts :
- i. Having objects similar to the Objects of the Company; and
 - ii. Which are themselves approved as PBOs (if the Company, at the time of its dissolution or winding-up, is also approved as a PBO); and
 - iii. As determined :
 - a) By the Directors of the Company, at or immediately before the time of its winding-up or dissolution; or
 - b) By the High Court, if the Directors fail to make such a determination.

8. FINANCIAL YEAR OF THE COMPANY

- 8.1. Unless and until the Board decides otherwise, the financial year of the Company ends on 31 March.

9. OPTIONAL PROVISIONS AND COMPANY RULES

- 9.1. The Company will not be required to comply with the provisions of Chapter 3 of the 2008 Act (which relate to transparency, accountability and integrity) except to the extent that :
- 9.1.1. This Memorandum of Incorporation requires otherwise; or
- 9.1.2. The Company is required, in terms of article 30, to have its annual financial statements audited by a registered auditor.

9.2. The Board is permitted to make rules relating to the governance of the Company in respect of matters not addressed in the 2008 Act, this Memorandum of Incorporation or the ECT Act.

10. AMENDMENT OF THIS MEMORANDUM OF INCORPORATION

10.1. As is contemplated in section 16(1)(c)(i) of the 2008 Act, this Memorandum of Incorporation may be amended by way of a special resolution of Members.

10.2. A resolution for the amendment of this Memorandum of Incorporation may be proposed by :

10.2.1. The Board; or

10.2.2. Ten (10) percent of the Members pursuant to section 16(2) of the 2008 Act.

10.3. Despite anything to the contrary contained in this Memorandum of Incorporation, and as contemplated in section 61(2) of the ECT Act, no amendment to this Memorandum of Incorporation which affects any arrangement made by any provision of Chapter 10 of the ECT Act, will be of any force or effect unless the Minister has consented in writing to amendment; provided that the Minister's consent must not be unreasonably withheld or delayed.

11. MEMBERSHIP OF THE COMPANY

11.1 The Members of the Company as at the date of adoption of this Memorandum of Incorporation are the people then listed as such in the Company's register of Members.

11.2 As contemplated in section 60(2) of the ECT Act, the Company must admit to membership, without any further formality, any person who :

11.2.1. Is a natural person; and

11.2.2. Is a citizen of or permanently resident in the Republic; and

11.2.3. Pays such nominal Membership registration fee as the Board may prescribe from time to time, which use shall be solely for administration issues and not operational; and

11.2.4. Completes and submits such Membership application form as the Board may prescribe from time to time.

- 11.3 The Board will be entitled to co-opt and appoint any natural or juristic person as a Member of the Company, or create a new class of Members, even if that person or class does not comply with any of the criteria stipulated in article 11.2, if the Board believes that person or class will assist the Company in achieving its Objects.
- 11.4 The Members of the Company will be entitled, by way of a special resolution, to co-opt and appoint any natural or juristic person as a Member of the Company, or create a new class of Members, even if that person or class does not comply with any of the criteria stipulated in article 11.2, if the Members believe that person or class will assist the Company in achieving its Objects.
- 11.5 The Board will be entitled to terminate the membership of any person if the Board believes this to be in the interests of the Company; provided that no Board resolution for the termination of membership may be adopted unless the Member concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination.
- 11.6 The Members of the Company will be entitled, by way of a special resolution, to terminate the membership of any person if the Members believe this to be in the interests of the Company; provided that no resolution for the termination of membership may be adopted unless the Member concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination.
- 11.7 Any resolution by the Board to co-opt a Member in terms of article 11.3, or to terminate membership in terms of article 11.5, must be :
- 11.7.1. Adopted by a two-thirds (2/3rds) majority of the Directors present at a duly convened and quorate Board meeting; or
- 11.7.2. Adopted in the manner stipulated in article 22.4.

12. TERMINATION OF MEMBERSHIP

- 12.1 Membership of the Company will terminate :
- 12.1.1. On the death, sequestration, dissolution, or final liquidation of a Member, or if a Member becomes of unsound mind; or
- 12.1.2. On receipt by the Company at the Office of the written resignation of a Member; or

- 12.1.3. On the occurrence of any event disqualifying a Member, under the 2008 Act, from being the director of a company; or
- 12.1.4. In the case of a Member who is a natural person, and who has been admitted to membership in terms of article 11.2, as soon as that Member is no longer a citizen of nor permanently resident in the Republic; or
- 12.1.5. If a Member fails, for whatever reason, to attend five (5) consecutive Members' Meetings, even if the Member delivers his/her apologies for either or both Meetings; or
- 12.1.6. If a Member fails, for whatever reason, to reply within thirty (30) days of it being sent, to a notice from the Company calling on the Member to indicate in writing whether he/she wishes to remain a Member; or
- 12.1.7. Fails to pay any amount owing to the Company on due date; or
- 12.1.8. On the adoption of a resolution contemplated in article 11.5 or article 11.6;
- 12.1.9. Provided that the Board will be entitled, in the case of any person whose membership would otherwise terminate in terms of any one of articles 12.4 to 12.8, to determine, in its entire discretion, that such person will remain a Member.

13. MEMBERS' RIGHT TO INFORMATION

- 13.1 Every Member has a right to inspect and copy, without any charge for any inspection, or on payment of no more than the prescribed maximum charge for any copy, the information contained in the following records of the Company :
 - 13.1.1. The Company's Memorandum of Incorporation and any amendments to it.
 - 13.1.2. The records in respect of the Directors and Members of the Company.
 - 13.1.3. Any report presented at any meeting of the Members.
 - 13.1.4. The annual financial statements of the Company.
 - 13.1.5. The notices and minutes of all meetings of Members.
 - 13.1.6. All communications sent during the preceding seven (7) years by the Company to Members, or the holders of any securities issued by the Company.
 - 13.1.7. The Member's register of the Company, and if applicable, the Company's securities register.

14. MEMBERS' AUTHORITY TO ACT

14.1 If, at any time, there is only one (1) Member of the Company, that Member will be entitled to act without notice or compliance with any other internal formalities, as contemplated in section 57(2) of the 2008 Act.

14.2 If, at any time, every Member of the Company is also a Director of the Company, as contemplated in section 57(4) of the 2008 Act, the Members must nonetheless continue to comply with all formalities prescribed by this Memorandum of Incorporation in relation to meetings and decisions of the Members, and the exercising of their rights.

15. MEETINGS AND DECISIONS OF MEMBERS

15.1. The Members may take decisions :

15.1.1. At Members' Meetings.

15.1.2. By way of Signed Member Resolutions.

15.2. Members' Meetings

15.2.1. Members' Meetings are convened by the chairperson of the Board.

15.2.2. A Members' Meeting must be convened :

i. At the written request of :

a) The Board; or

b) Ten (10) percent of the Members.

ii. If any matter arises for decision, and that matter is required, by the 2008 Act or this Memorandum of Incorporation or the ECT Act, to be decided by the Members; unless that matter will be or has already been decided by way of a Signed Member Resolution.

15.2.3. At any time before the start of a Members' Meeting the people requesting that Meeting may withdraw the request; in which event the Meeting must be cancelled. The Company must cancel the Meeting if it has been convened at the request of the Members, and if, as a result

of one or more of those Members withdrawing their request, the number of Members requesting the Meeting is lower than the minimum percentage set out in article 15.2.2.

15.2.4. Each Members' Meeting will be held at a location determined by the Board.

15.2.5. If the chairperson of the Board fails to act on a written request to convene a Members' Meeting within seven (7) business days after receiving that request, the people requesting that Meeting may themselves convene it.

15.2.6. The Company must deliver a notice of each Members' Meeting to all the Members at least ten (10) business days before the date of the Meeting.

15.2.7. A Members' Meeting may be called with less notice than required by article 15.2.6, but that Meeting may proceed only if every Member :

- i. Is present at the Meeting; and
- ii. Votes to waive the required minimum notice of the Meeting.

15.2.8. A Member will be deemed to be present at a Members' Meeting if the Member or his/her proxy is present in person or by way of an electronic communication facility contemplated in article 15.3.

15.2.9. A notice of a Members' Meeting must be in writing and must include :

- i. The date, time and place of the Meeting.
- ii. The purpose of the Meeting.
- iii. A copy of any proposed resolution of which the Company has received notice, and which will be considered at the Meeting, and the percentage of votes that will be required for that resolution to be adopted.
- iv. A reasonably prominent statement that :
 - a) A Member is entitled to appoint a proxy to attend, participate in and vote at the Meeting in place of the Member.
 - b) A proxy need not also be a Member.
 - c) Section 63(1) of the 2008 Act requires that participants at the

Meeting provide satisfactory identification.

- 15.2.10. If there was a material defect in the giving of the notice of a Members' Meeting, the Meeting may proceed only if every Member is present at the Meeting and votes to approve the ratification of the defective notice.
- 15.2.11. An immaterial defect in the form or manner of giving notice of a Members' Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member, does not invalidate any action taken at the Meeting.
- 15.2.12. Before any person may attend or participate in a Members' Meeting :
- i. That person must present reasonably satisfactory identification; and
 - ii. The chairperson of the Meeting must be reasonably satisfied that the right of that person to participate and vote, either as a Member or as a proxy for a Member, has been reasonably verified.
- 15.2.13. At a Members' Meeting, voting must be conducted by polling; any person who is present at the Meeting, whether as a Member or as proxy for a Member, has one (1) vote.
- 15.2.14. The quorum for a Members' Meeting will be Ten (10) percent of the Members (or their proxies); on condition that :
- i. If the Company has more than two (2) Members, at least three (3) Members or their proxies must be present.
 - ii. If a quorum is not present within one (1) hour after the time appointed for the Meeting to begin, the Meeting must (subject to article 15.2.13.3) be postponed for seven (7) days to the same location, and for the same starting time.
 - iii. The person who was due to chair a Members' Meeting at which a quorum is not present, may extend the one (1) hour limit referred to above for a reasonable period on the grounds that :
 - a) Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally

impeding the ability of Members to be present at the Meeting; or
b) One or more particular Members, having been delayed, have communicated an intention to attend the Meeting, and those Members, together with the others already in attendance, would satisfy the requirements for a quorum.

- iv. If a Members' Meeting is postponed, the Company need not give notice of the postponement.
- v. At a postponed Members' Meeting, the Members or proxies present will constitute a quorum, even if only one Member or proxy is present.

15.2.15. A Members' Meeting may be adjourned from time to time without further notice, to a date, time and location decided at the Meeting, if the adjournment is supported by a simple majority of the Members present; on condition that the date of the adjourned Meeting must not be more than forty-five (45) business days after the date on which the adjournment occurred.

15.2.16. A Members' Meeting must be chaired by the chairperson of the Board, unless he/she is not available, in which case the Members and proxies present must choose one of them to chair the Meeting.

15.3. Electronic Attendance at Members' Meetings

15.3.1. Any Member (or his/her proxy) will be entitled to attend and participate in meetings of Members by electronic communication.

15.3.2. The electronic communication facility employed for electronic participation in a Members' Meeting must enable all Members and proxies who are participating in that Meeting electronically :

15.3.3. To communicate concurrently with each other and with all other participants without an intermediary; and

15.3.4. To participate reasonably effectively in the Meeting.

15.3.5. The notice of an Members' Meeting must provide any necessary information to enable Members or their proxies to access the electronic communication facility which will be used for that Meeting.

15.3.6. Access to the electronic communication facility used for a Members' Meeting is at the expense of the Member or proxy.

15.3.7. In order for a Members' Meeting to be held, the electronic communication facility to be used in relation to that Meeting must be reasonably accessible by all Members or their proxies who wish to participate electronically.

15.4. Signed Member Resolutions

15.4.1. A resolution that could be voted on at a Members' Meeting may instead be :

- i. Submitted for consideration to the Members; and
- ii. Voted on in writing by the Members within ten (10) business days after the resolution was submitted to them.

15.4.2. A resolution contemplated in article 15.4.1 will be referred to in this Memorandum of Incorporation as a "Signed Member Resolution".

15.4.3. A Signed Member Resolution may be submitted to Members for their consideration by electronic communication or in printed form (by hand delivery or by post).

15.4.4. A Member may vote for a Signed Member Resolution by :

- i. Signing the printed resolution in hand, and delivering that signed document to the Company (by electronic communication, by hand or by post) within the ten (10) -day period referred to above.
- ii. Affixing the Member's electronic signature to the resolution, and submitting that signed resolution to the Company by electronic communication within the ten (10) -day period referred to above.
- iii. Notifying the Company in writing, by post, by hand delivery or by electronic communication, that the Member supports the resolution, within the ten (10) -day period referred to above.

15.4.5. A Signed Member Resolution which is an ordinary resolution of the Members, will be adopted in line with article 10.2.2.

15.4.6. A Signed Member Resolution which is a special resolution of the Members, will be adopted in line with article 10.2.2.

15.4.7. If adopted, a Signed Member Resolution has the same effect as if it had been approved by voting at a Members' Meeting.

- 15.4.8. Within ten (10) business days after a Signed Member Resolution has been adopted, the Company must deliver a statement (by electronic communication, by hand delivery or by post) to every Member, describing the results of the vote.

15.5. Annual General Meeting

- 15.5.1. The Company must convene an annual general meeting of the Members ("AGM") at least once in every calendar year, but not more than fifteen (15) months after the date of the previous AGM.
- 15.5.2. The notice for an AGM must be accompanied by a copy of the annual business plan referred to in article 21.8.5, and a copy of the Company's annual financial statements for the financial year just ended.
- 15.5.3. At an AGM at least the following business must be transacted:
- i. The presentation of the annual report of the Board.
 - ii. The presentation of the annual financial statements of the Company for the immediately preceding financial year.
 - iii. The appointment of a new auditor (or the confirmation of the appointment of the current auditor) for the ensuing financial year (if the Company is obliged or chooses to appoint an auditor).
- 15.5.4. The provisions of articles 15.2, 15.3, 15.6 and 15.7 will apply, with the changes required by the context, to AGMs.

15.6. Member's Right to be Represented by Proxy

- 15.6.1. At any time, a Member may appoint any individual, including an individual who is not a Member, as a proxy to:
- i. Participate in, and speak and vote at, a Members' Meeting on behalf of the Member; or
 - ii. Give or withhold written consent on behalf of the Member to a Signed Member Resolution.
- 15.6.2. A proxy appointment :

- i. Must be in writing, dated and signed (in hand, or electronically) by the Member; and
 - ii. Will remain valid for :
 - a) One (1) year after the date on which it was signed; or
 - b) Any longer or shorter period expressly set out in the appointment, unless it is revoked or expires earlier, as contemplated in the remaining provisions of this article 15.6.
- 15.6.3. Irrespective of the form of instrument used to appoint a proxy :
 - i. The appointment is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights as a Member;
 - ii. The appointment is revocable unless the proxy appointment expressly states otherwise; and
 - iii. If the appointment is revocable, the Member may revoke the proxy appointment by :
 - a) Cancelling it in writing, or making a later inconsistent appointment of a proxy; and
 - b) Delivering a copy of the revocation instrument to the proxy, and to the Company.
- 15.6.4. If the instrument appointing a proxy has been delivered to the Company, as long as that appointment remains in effect, any notice that is required by the 2008 Act or this Memorandum of Incorporation to be delivered by the Company to the Member, must be delivered to the proxy (instead of the Member) if the Member has :
 - i. Directed the Company to do so, in writing; and
 - ii. Paid any reasonable fee charged by the Company for doing so.
- 15.6.5. A proxy is entitled to exercise, or abstain from exercising, any voting right of the Member without direction, except to the extent that the instrument appointing the proxy provides otherwise.

- 15.6.6. The Company will not be required to supply a form of instrument for the appointing of proxies. If the Company does supply such a form of instrument, it must comply with the provisions of section 58(8) of the 2008 Act.
- 15.6.7. A proxy is not entitled to delegate his/her authority as such to any other person.
- 15.6.8. Members will not be entitled to appoint concurrent proxies.

15.7. Member Resolutions

- 15.7.1. Every resolution of the Members is either an ordinary resolution or a special resolution.
- 15.7.2. A special resolution proposed at a duly convened and quorate Members' Meeting will be adopted if it is supported by at least seventy-five (75) percent of the Members present.
- 15.7.3. A special resolution which is a Signed Member Resolution will be adopted if it is signed by at least thirty (30) percent of the Members.
- 15.7.4. An ordinary resolution proposed at a duly convened and quorate Members' Meeting will be adopted if it is supported by a simple majority of the Members present.
- 15.7.5. An ordinary resolution which is a Signed Member Resolution will be adopted if it is signed by at least twenty (20) percent of the Members.
- 15.7.6. The Board may propose any resolution to be considered by Members, and may determine whether that resolution will be considered :
 - i. At a Members' Meeting; or
 - ii. By way of a Signed Member Resolution.
- 15.7.7. Any two (2) Members may propose a resolution concerning any matter in respect of which Members are entitled to exercise voting rights.
- 15.7.8. A proposed resolution of the Members must be :
 - i. Expressed with sufficient clarity and specificity; and
 - ii. Accompanied by sufficient information or explanatory material, to enable a Member who is entitled to vote on the resolution to determine whether to participate in the relevant Meeting (or in the consideration

of the Signed Member Resolution), and to seek to influence the outcome of the vote on the resolution.

- 15.7.9. Once a resolution has been approved, it may not be challenge or impugned by any person in any forum on the grounds that it did not satisfy the requirements stipulated in article 15.7.8.
- 15.7.10. Various articles of this Memorandum of Incorporation require the approval of special resolutions of the Members in relation to particulars matters.
- 15.7.11. In addition, special resolutions of the Members are required for all the matters referred to in section 65(11) of the 2008 Act.

16. OBLIGATIONS OF MEMBERS ON TERMINATION

- 16.1 Despite anything to the contrary contained or implied in this Memorandum of Incorporation, the termination of membership will in no way release a Member from any guarantee, commitment or obligation which that Member may have undertaken prior to that termination, either as a condition attaching to membership, or for any other reason.

17. TRANSFER OF MEMBERSHIP

- 17.1 Membership may not be ceded, assigned or transferred under any circumstances.

18. THE BOARD OF DIRECTORS : APPOINTMENT, VACANCIES AND TENURE

- 18.1 Subject to article 18.5, there must at all times be nine (9) Directors on the Board of the Company.
- 18.2 There are no *ex officio* directors of the Company except those provided for by this Memorandum of Incorporation.
- 18.3 The CEO shall be the only *ex officio* member of the Board.
- 18.4 To become or remain a Director of the Company, a person need satisfy no qualification or eligibility requirements other than those stipulated in section 69 of the 2008 Act.

18.5 As provided for in section 62 of the ECT Act :

18.5.1 The Board comprises Nine (9) Directors, all of whom are appointed by the Minister.

18.5.2 The chairperson of the Board is appointed by the Minister.

18.5.3 All Directors serve in a part-time and non-executive capacity.

18.6. Vacancies

18.6.1 Any vacancy on the Board from time to time is filled by a replacement appointed by the Minister.

18.6.2 If any position on the Board becomes vacant, for whatever reason, the remaining Directors must, within thirty (30) days after the vacancy arises :

- i. Notify the Minister in writing of the vacancy; and
- ii. Simultaneously request the Minister to appoint a replacement Director, as contemplated in section 62(6) of the ECT Act.

18.6.3 On condition that the remaining Directors comply with article 18.5.2, they may continue to act, and exercise all powers and functions of the Board, even though there are not nine (9) Directors in office as required by section 62(1) of the ECT Act.

18.6.4 However, despite what is set out in article 18.5.3, if the number of Directors in office is less than five (5), the remaining Directors may not continue to act, other than to notify the Minister as contemplated in article 18.5.2.

18.7. Tenure

18.7.1 It is intended that the Minister will, when appointing a Director (or thereafter at any time) determine the period for which the Director will hold office.

18.7.2 If the Minister does not make such a determination in respect of any Director, that Director will be deemed to have been appointed for four (4) years.

18.7.3 If the Minister, as at the date of the end of a Director's term of office,

has appointed a replacement, the Director will be deemed to have retired on the last day of that term.

18.7.4 If the Minister, as at the date of the end of a Director's term of office, has not appointed a replacement, the Director will continue in office until the date on which a replacement is appointed, on which date the Director will be deemed to have retired.

18.7.5 A retiring Director will be eligible for re-appointment, on condition that:

- i. No Director may serve more than two (2) consecutive terms of office; and
- ii. Where a Director or chairperson has served two (2) consecutive terms, he/she may serve again, but at least one (1) calendar year must elapse between his/her retirement at the end of those two (2) consecutive terms, and his/her subsequent re-appointment.

18.7.6 The Director appointed by the Minister as chairperson will serve as such until the Minister removes him/her from that office, or until the Minister appoints another Director as chairperson.

18.8. Qualification of Directors

18.8.1 It will not be necessary for a Director to be a Member of the Company.

18.9. Removal of Directors

18.9.1 The Board of Directors may, by resolution adopted by seventy-five (75) percent of the Directors, terminate the appointment of any Director if the Board believes this to be in the best interests of the Company; on condition that no such resolution will be of force or effect unless the Director concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination.

18.9.2 A Director may be removed by an ordinary resolution adopted at a Members' Meeting, on condition that, before the Members may consider such a resolution :

- i. The Director concerned must be given notice of the Meeting and resolution, at least equivalent to that which a Member is entitled to receive, whether or not the Director is a Member of the Company; and
- ii. The Director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the Meeting, before the resolution is put to a vote.

18.9.3 If a Member or Director has alleged that a Director of the Company :

- i. Has become :
 - a) Ineligible or disqualified in terms of section 69 of the 2008 Act; or
 - b) Incapacitated to the extent that the Director is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;
- ii. Has neglected, or been derelict in the performance of, the functions of Director,
- iii. Has carried out any act of misconduct construed to mean:
 - a) incompetence;
 - b) dishonesty;
 - c) failure to attend meetings;
 - d) lack of effective participation in Board activities;
 - e) negligence; or
 - f) financial misconduct;

18.9.4 the Board, other than the Director concerned, must determine the matter by resolution at a Board meeting, and may remove a Director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be; on condition that, before the Board may consider such a resolution, the Director concerned must be given :

- i. Notice of the meeting, including a copy of the proposed resolution, and a statement setting out reasons for the resolution, with sufficient

specificity to reasonably permit the Director to prepare and present a response; and

- ii. A reasonable opportunity to make a presentation in person or through a representative, to the meeting before the resolution is put to a vote.

18.9.5 The people holding office as Directors at the date of adoption of this Memorandum of Incorporation, and all people subsequently listed as Directors in the record of Directors of the Company, will hold office until the occurrence of an event contemplated in article 12.

18.10 Item 5(1)(a) of Schedule 1 to the 2008 Act stipulates that, where a non-profit company has members, the memorandum of incorporation must set out the basis on which the members choose the directors.

18.10.1 The Company is a non-profit company which has Members.

18.10.2 Despite anything to the contrary contained in this Memorandum of Incorporation, every person who accepts or retains Membership of the Company, will be deemed to have :

- i. Agreed that the Directors of the Company be appointed by the Minister; and
- ii. Delegated to the Minister, to the extent necessary, the power to appoint the Directors of the company.
- iii. Should there be an eminent collapse of governance, business rescue proceeding shall be initiated and governed as per chapter 6 of the 2008 Act.

19. DISQUALIFICATION AND REMOVAL OF DIRECTORS

19.1 A Director will immediately lose his/her position if he/she :

19.1.1 Becomes prohibited, or disqualified, by virtue of Section 71 of the 2008 Act or any other provision of any relevant law, from holding office as a trustee or a director.

- 19.1.2 Dies, or resigns by notice in writing to the Company.
- 19.1.3 Has or acquires a direct or indirect personal financial interest in any contract or proposed contract with the Company, and fails to declare his/her interest and its nature in the manner required by the 2008 Act.
- 19.1.4 Is removed from office in terms of article 18.
- 19.1.5 Is provisionally or finally sequestered, or placed under an administration order.

20. DIRECTORS' ALLOWANCE AND REIMBURSEMENT

- 20.1 The Directors will be entitled to reimbursement of all reasonable travelling, subsistence, and other expenses properly incurred by them in the execution of their duties on behalf of the Company and which are authorised or approved from time to time by the Board in line with section 30 of the 2008 Act.
- 20.2 The Directors may from time to time determine what allowances (if any) they will receive for performing their part-time and non-executive duties, and this allowance shall be authorised or approved from time to time by the Board in line with section 30 of the 2008 Act. Any such allowance must be reasonable, taking into account the nature of the work done, the time spent in doing it, and the sector in which the Company operates.
- 20.3 Nothing in this Memorandum of Incorporation will prevent the payment of further allowances to any Director for work done or services rendered to the Company in addition to that/those required in order to fulfil the part-time and non-executive role contemplated in article 20.2.
- 20.4 A Director will be entitled to contract directly or indirectly with the Company, or benefit from any contract which the Company may conclude, on condition that :
 - 20.4.1 The Director declares his/her interest in the relevant contract in the manner stipulated in the 2008 Act; and
 - 20.4.2 The Director does not participate in any proceedings of the Board during which the relevant contract is discussed or voted on; and
 - 20.4.3 The conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by the Company.

21. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

21.1. Powers

21.1.1 The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company. Without in any way limiting the general nature of this article 21.1, the Board will be entitled to exercise the following powers :

i. Co-option of Assistance and engagement with the Executive Authority

- a) The Board will be entitled to co-opt any person of its choice to assist the Board or any committee of the Board in the consideration of any matter concerning the management or administration of the Company, or the conduct of any aspect of its activities.
- b) The Board may enter into a Governance Agreement with the Executive Authority with the purpose of:
 - i. confirming the strategic objectives to be attained by ZADNA during the period of the Governance Agreement as required by the Minister;
 - ii. concluding the key performance areas and indicators to measure ZADNA's performance during the period of the Governance Agreement; and
 - iii. to regulate the discharge of the applicable responsibilities, duties and roles expressed in the ECT Act and any applicable legislation.

ii. Divisions

- a) The Board will be entitled to establish separate divisions of the Company, to perform any discrete or specialised functions of the Company. The Board must, from time to time, determine rules and procedures for the management and administration of any division, and must take all reasonable steps to ensure that such rules and procedures are complied with. The Board may, if deemed appropriate for administrative, fiscal or other reasons, keep separate books and account separately for each division.

iii. Committees and Delegation

- a) The Board may delegate any of its powers or assign any of its duties to individual Directors mandated through committees set up pursuant to section 72(1), comprising Directors and others, or to any agent or employee of the Company, as the Board chooses; on condition that :
- i. The rules, restrictions and procedures applicable to any such delegation or assignment must be recorded by the Board in writing; and
 - ii. The Board must take reasonable steps to ensure that any such person or committee, in exercising the relevant powers or carrying out the relevant duties, conforms to the rules, restrictions or procedures imposed by the Board from time to time; and
 - iii. The Board will not be divested of any power or duty by virtue of its delegation or assignment to any person; and
 - iv. The Board will be entitled, in its absolute discretion, to vary or set aside any decision made under any delegation or in terms of any assignment, or to revoke or amend the terms of any delegation or assignment.
- b) The Board must establish and maintain a committee known as the management committee, with responsibility for the oversight and direction of the day-to-day management and administration of the Company and its activities.

iv. Borrowing Powers

- a) The Board's borrowing powers will be unlimited, and the Board will be entitled to mortgage or otherwise encumber any or all of the assets of the Company as security for any debt, liability or obligation of the Company.

v. Loan Accounts

- a) Without in any way limiting the general nature of article 21.1.4, the Board will be entitled to cause the Company to borrow from

any person (including any Director) on loan account, on such terms (including terms as to repayment and interest) as the Board sees fit.

21.2. Duties

21.2.1. The Board must carry out all duties required of it by this Memorandum of Incorporation, by the 2008 Act, by the ECT Act, or any other provision of law. Certain of those duties are set out below.

21.3. Finances

21.3.1. In managing the finances of the Company, the Board must ensure that the provisions of articles 23 to 26 are complied with.

21.4. Expertise

21.4.1. The Board will be entitled to appoint independent contractors, or other appropriate people, to provide the Company with such skills and expertise as it may require in order to achieve its Objects.

21.4.2. The Board must develop and implement a process for all such appointments which is transparent, fair and objective.

21.5. Company Records

21.5.1. The Board must ensure that the Company maintains the following records [and retains them for a period of at least seven (7) years]:

- i. A copy of this Memorandum of Incorporation, and any amendments or alterations to it.
- ii. A record of the Directors of the Company, including :
 - a) All the information required in terms of section 24(5) of the 2008 Act in respect of each current Director at any particular time; and
 - b) That same information with respect to each past Director.
- iii. Copies of all :
 - a) Annual financial statements of the Company.
 - b) Accounting records of the Company.
- iv. Minutes of all meetings and resolutions of the Board, or committees of the Board.

- v. A register of the Members which contains the following information concerning each Member :
 - a) Full name.
 - b) Physical residential or business address.
 - c) Email address.
 - d) Cellphone or telephone number.
 - e) Date of admission as Member (and where applicable, date of termination of membership).

- vi. A record of its Company secretaries and registered auditors (if any), including, in respect of each person appointed as secretary or registered auditor of the Company:
 - a) The name of each such individual (or, if a firm or juristic person is appointed, the name, registration number and registered office address of that firm or juristic person); and
 - b) The date of every such appointment; and
 - c) Any change in the above information, as and when it occurs, with the date and nature of the change.

21.6. Location of Company Records

21.6.1. The records of the Company referred to in article 21.5 must be accessible at or from the Office.

21.7. Access to Company Records

21.7.1. All the Directors will be entitled, at any reasonable time, and from time to time, to inspect and make copies of any of the Company records referred to in article 21.5.

21.8. Standard of Conduct of Directors

21.8.1. A Director of the Company must not use his/her position as such, or any information obtained whilst acting in the capacity of Director :

- i. To gain an advantage for himself/herself, or for another person other than the Company; or
 - ii. To knowingly cause harm to the Company.
- 21.8.2. A Director must communicate to the Board, at the earliest practical opportunity, any information which comes to the Director's attention, unless the Director :
- i. Reasonably believes that the information is immaterial to the Company, or is generally available to the public, or is known to the other Directors; or
 - ii. Is bound not to disclose that information by a legal or ethical obligation of confidentiality.
- 21.8.3. A Director must, when acting in that capacity, exercise the powers and perform the functions of Director :
- i. In good faith and for a proper purpose; or
 - ii. In the best interests of the Company; and
 - iii. With the degree of care, skill and diligence that may reasonably be expected of a person:
 - a) Carrying out the same functions in relation to the Company as those carried out by that Director; and
 - b) Having the general knowledge, skill and experience of that Director.
- 21.8.4. Every Director must familiarise himself or herself with the provisions of section 76 of the 2008 Act, and must ensure that he/she is not guilty of any act or omission prohibited by that section.
- 21.8.5. Annual Report to the Minister
- i. As required by section 67 of the ECT Act, the Board must, as soon as practicable after the end of every financial year, prepare a report on

its activities during that year, and submit that report to the Minister, for tabling in parliament.

21.8.6. Domain Procedures and Criteria

- i. As contemplated in section 61(4)(k) of the ECT Act, and subject to article 21.8.7.2, the Board must, from time to time, determine procedures and criteria for the establishment and dis-establishment of second level domains, and for delegations to such domains.
- ii. No procedures or criteria determined by the Board in terms of article 21.8.7.1 will be of force or effect until they have been approved by an ordinary resolution of the Members.

21.8.7. Appeal Mechanisms

- i. As contemplated in section 61(4)(l) of the ECT Act, the Board must, from time to time, determine procedures and mechanisms whereby any person whose rights are adversely affected by any decision of the Company, may appeal that decision.
- ii. In order to avoid doubt it is confirmed that these appeal procedures and mechanisms will not be available for the resolution of any dispute in respect of the .za domain name space, or concerning the interpretation of this Memorandum of Incorporation; the resolution of those disputes is catered for, respectively, in section 69 of the ECT Act, and in article 21.8.9.

21.8.8. Dispute Concerning Interpretation of this Memorandum of Incorporation

- i. As contemplated in section 61(4)(i) of the ECT Act, the Board must, from time to time, determine procedures for the arbitration of disputes concerning the interpretation of the articles comprising this Memorandum of Incorporation.

22. DECISIONS OF THE BOARD OF DIRECTORS

22.1. The Directors may take decisions:

- 22.1.1. At a Board meeting; or
- 22.1.2. By way of a signed Board resolution.

22.2. Board Meetings

- 22.2.1. Meetings of the Board are convened by the chairperson of the Board.
- 22.2.2. The chairperson may convene a Board meeting at any time, on at least seven (7) days' notice to all the Directors.
- 22.2.3. The chairperson must convene a Board meeting if requested to do so in writing by any Director.
- 22.2.4. If the chairperson fails to act on a written request to convene a Board meeting within seven (7) days after receiving that request, the Director requesting that meeting may convene it him/herself.
- 22.2.5. The quorum necessary for the transaction of any business at a Board meeting is five (5) Directors. A Director is deemed to be present at a Board meeting if he/she :
- i. Is present in person; or
 - ii. Is represented by a proxy who is present in person; or
 - iii. Attends the meeting electronically, whether in person or through a proxy.
- 22.2.6. Each Director present at a Board meeting will be entitled to exercise one (1) vote on any matter put to the vote.
- 22.2.7. A Director may appoint any other Director as his/her proxy at a Board meeting, subject to compliance with any procedures and formalities which may be stipulated by the Board from time to time.
- 22.2.8. The Directors must make every reasonable effort to reach consensus on all matters arising at any Board meeting.
- i. If consensus cannot be reached on any matter, a resolution will be deemed to have been passed if supported by a simple majority of the Directors present (except in those cases where this Memorandum of Incorporation requires a greater majority).
 - ii. In the case of a tied vote at a Board meeting the chairperson will not have a casting or deciding vote, and the resolution will fail.
- 22.2.9. The chairperson will be entitled to preside over all Board meetings. If the chairperson is not present or willing to act within fifteen (15) minutes after the time set for the start of any Board meeting, the Directors present must choose one of their number to chair the meeting.
- 22.2.10. A resolution put to a vote at a Board meeting may be voted on by a show of hands or by polling, as decided by the chairperson in his/her absolute discretion.

22.3. Electronic Attendance at Board Meetings

- 22.3.1. A Director will be entitled to attend Board meetings by electronic communication.
- 22.3.2. The electronic communication facility employed for Board meetings must enable all Directors participating in that meeting:
- i. To communicate concurrently with each other without an intermediary; and
 - ii. To participate reasonably effectively in the meeting.

22.4. Signed Board Resolutions

22.4.1. A resolution signed by the Directors in the manner referred to below will be as valid and effectual as if it had been passed at a duly convened and quorate Board meeting.

22.4.2. The resolution must be :

- i. In writing;
- ii. Circulated to all the Directors, either in printed or electronic form; and
- iii. Signed by the requisite number of Directors in any of the following ways :
 - a) In hand on the original printed resolution;
 - b) In hand on a copy of the original printed resolution;
 - c) In hand on a copy of the original printed resolution which is then transmitted by electronic communication; or
 - d) By affixing an electronic signature; or
 - e) By transmitting the Director's assent to the resolution by electronic communication.

22.5. Numbering of Resolutions

22.5.1. Resolutions adopted by the Board must be dated and numbered sequentially.

22.6. Directors Disqualified

22.6.1. Despite anything to the contrary contained in this Memorandum of Incorporation, all acts done by the Board or a committee of Directors, or by any person acting as a Director, will, even if it is discovered afterwards that there was some defect in their appointment, or that they were disqualified, be as valid as if they were duly appointed and qualified.

22.7. Inadvertent Failure to Give Notice

- 22.7.1. If a mistake is made, and a Director is inadvertently not given notice of a Board meeting, or if a resolution is not circulated to a Director in the prescribed way, this will not affect the validity of any decision taken by the Board at a meeting or by way of a signed resolution.

23. FINANCES

23.1. Estimated Income and Expenditure Statement

- 23.1.1. The Board must, at least thirty (30) days before the beginning of each financial year, prepare a statement of the Company's estimated income and expenditure for that financial year ("the income statement"). That statement must record full particulars of any remuneration to be paid to directors.
- 23.1.2. If the Minister determines a date by when the income statement must be prepared (as contemplated in section 66(6) of the ECT Act), the Board must comply with that determination.
- 23.1.3. The Board must submit the income statement to the Minister, for his/her approval, by the date determined by the Minister in terms of section 66(6) of the ECT Act and, in any event, at least thirty (30) days before the beginning of the financial year to which the income statement relates.
- 23.1.4. The Board may, at any time during the course of a financial year, submit an amended or supplementary income statement for that financial year, to the Minister for approval.
- 23.1.5. The Board must ensure that the Company does not incur any expenditure in excess of the total amount set out in an income statement (or supplementary or amended income statement) approved in terms of section 66(6) of the ECT Act.

23.2. Funds of the Company

- 23.2.1. The Company is funded from :
- i. Capital invested in or lent to the Company;
 - ii. Money appropriated by parliament;
 - iii. Income derived from the sale or other commercial exploitation of its licences, approvals, products, technology, services or expertise;
 - iv. Loans raised by the Company;
 - v. The proceeds of any sale of assets of the Company;
 - vi. Income or interest earned on the Company's cash balances or money invested by it from time to time; and
 - vii. Money received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic.

- 23.2.2. The Board must ensure that the funds of the Company are utilised only to meet the expenditure incurred by the Company in connection with its functioning, business and operations in terms of the ECT Act.
- 23.2.3. The Board must ensure that the funds of the Company are utilised only as provided for in income statements approved in terms of section 66(6) of the ECT Act.
- 23.2.4. Money received by the Company by way of grant, contribution, donation or inheritance must be utilised in accordance with any conditions imposed by the grantor, contributor, donor or testator.

23.3. Reserves

- 23.3.1. The Board may set aside and carry to a reserve fund all or any of the surplus funds of the Company, which may at its discretion be applied for any purpose for which such funds may properly be applied in accordance with section 66 (4) of the ECT Act, provided that:
- i. Before a reserve fund is established, the Board must approve such establishment and a Board Resolution issued to that effect; and
 - ii. Any money allocated to a reserve fund must have been provided for in an income statement (or amended or supplementary income statement) approved in terms of section 66(6) of the ECT Act.

23.4. Banking and Investment of Funds

- 23.4.1. The Board must ensure that all money received by the Company is deposited in one or more bank accounts in the name of the Company with a bank established under the Banks Act, No. 94 of 1990.
- 23.4.2. The Board must, from time to time, determine, by way of resolution :
- i. Who will have authority to operate the bank accounts of the Company, sign cheques and other financial instruments and contracts on behalf of the Company, and otherwise disburse Company funds and incur commitments on behalf of the Company; and
 - ii. The procedures to be followed in this regard.

24. ACCOUNTING RECORDS

- 24.1 The Company must keep accurate and complete accounting records (including a proper record of all its financial transactions, assets and liabilities), in one of the official languages of the Republic, as necessary to enable the Company to satisfy its obligations in terms of the 2008 Act ,the ECT Act or any other law, with respect to the keeping of records and the

preparation of financial statements.

- 24.2 In terms of section 66(2) of the ECT Act, the chief executive officer ("CEO") of the Company is the Company's *accounting officer*.
- 24.3 The Board must ensure that the CEO, in his/her capacity as *accounting officer*, causes the Company to fulfil all its obligations set out in this article 24, and in articles 25 and 26 .

25. FINANCIAL STATEMENTS

25.1 Any financial statements prepared by the Company (including any annual financial statements) must :

- 25.1.1. Satisfy any reporting standards as to form and content which are prescribed from time to time in terms of the 2008 Act.
- 25.1.2. Present fairly the state of affairs and business of the Company, and explain the transactions and financial position of the business of the Company.
- 25.1.3. Show the Company's assets and liabilities, as well as its income and expenses, and any other information prescribed in terms of the 2008 Act or the ECT Act.
- 25.1.4. Set out the date on which the statements were published, and the accounting period to which the statements apply.
- 25.1.5. Bear, on the first page of the statements, a prominent notice indicating:
- i. Whether the statements :
 - a) Have been audited in compliance with any applicable requirement of the 2008 Act;
 - b) If not audited, have been independently reviewed in compliance with any applicable requirement of the 2008 Act; or
 - c) Have not been audited or independently reviewed.
 - ii. The name, and professional designation, if any, of the individual or firm who prepared, or supervised the preparation of, the statements.
- 25.1.6. Not be false or misleading in any material respect.
- 25.1.7. Not be incomplete in any material particular, except if they constitute a summary contemplated in section 29(3) of the 2008 Act.

26. ANNUAL FINANCIAL STATEMENTS : PREPARATION, AUDIT AND REVIEW

- 26.1 The Company must prepare annual financial statements within six (6) months after the end of its financial year.
- 26.2 The Company's annual financial statements must be audited by a registered auditor (selected and appointed by the Board in its absolute discretion) if this is required by any regulations made in terms of section 30(7) of the 2008 Act.
- 26.3 Even if the annual financial statements are not required to be audited by a registered auditor in terms of article 26.2, the Board may, in its absolute discretion, resolve from time to time that any annual financial statements of the Company be so audited.
- 26.4 If any annual financial statements of the Company are not audited by a registered auditor, they must be independently reviewed:
- 26.4.1. In the manner required by any regulations promulgated from time to time in terms of section 30(7) of the 2008 Act, if such regulations are promulgated, and if they require such an independent review.
- 26.4.2. By a member (selected by the Board in its absolute discretion) of a profession stipulated in any such regulation.
- 26.5 The annual financial statements of the Company must:
- 26.5.1. Include an auditor's report, if the statements are audited by a registered auditor.
- 26.5.2. Include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company.
- 26.5.3. Be approved by the Board and signed by an authorised Director on behalf of the Board.
- 26.6 If any annual financial statements of the Company are required to be audited by a registered auditor in terms of article 26.2, those annual financial statements must include particulars showing :
- 26.6.1 The remuneration and benefits received by each Director.
- 26.6.2 The amount of :
- i. Any pensions paid by the Company to, or receivable by, current or past Directors or office bearers.
 - ii. Any payment made or owing by the Company to a pension scheme

with respect to current or past Directors or office bearers of the Company.

- 26.6.3 The amount of any compensation paid in respect of loss of office to any current or past Directors or office bearers of the Company.
- 26.6.4 Details of the service contracts of any current Directors or office bearers of the Company.

27. COMPANY EMPLOYEES

- 27.1 The Board must appoint a CEO to manage and administer the activities, assets and staff of the Company on a day-to-day basis.
- 27.2 The CEO will be a full-time appointment.
- 27.3 If the CEO is for any reason unable to perform his/her functions (whether because of temporary incapacity, or because his/her employment has terminated, or otherwise), the Board must designate an employee in the service of the Company as acting CEO until the CEO is able to resume or take up office.
- 27.4 The Board must appoint such further employees as may be necessary to assist the CEO in carrying out his/her duties.
- 27.5 The Board must determine the conditions of service, remuneration and service benefits of the CEO and other Company employees.
- 27.6 In selecting and employing the CEO and other employees, the Board must apply, or cause to be applied, criteria and procedures which are objective, reasonable and transparent.

28. NOTICES

- 28.1 A notice may be given by the Company to any Member or Director :
 - 28.1.1 By giving it to the Member or Director personally;
 - 28.1.2 By sending it by prepaid registered post to the Member or Director at his/her postal address as recorded in the Company's records; or
 - 28.1.3 By sending it by electronic communication to any electronic address or fax number supplied by the Member or Director for this purpose.
- 28.2 Any notice :
 - 28.2.1 Sent by prepaid registered post will be deemed to have been received five (5) days after the proven date of posting.

- 28.2.2 Sent by electronic communication will be deemed to have been received on the next business day after the proven date of despatch.

29. INDEMNITIES

- 29.1 Subject to any contrary provision in the 2008 Act, every Director and other officer of the Company will be indemnified out of the funds of the Company against :

29.1.1 All costs, expenses and liabilities properly incurred by her/him with the authority of the Company, and in the course of the Company's business; and

29.1.2 Any and all liability contemplated in article 29.2, but subject to the provisions of article 29.3.

29.2 No Director, officer or employee of the Company will be liable for the acts, receipts, omissions or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for

29.2.1 Any loss or expense incurred by the Company as a result of the insufficiency or deficiency of any security on which any of the funds of the Company are invested;

29.2.2 Any loss or damage arising from the liquidation, sequestration, insolvency or delictual act of any person with whom any funds or securities are deposited;

29.2.3 Any loss or damage caused by any error of judgment or oversight on his/her part; or

29.2.4 Any other loss, damage or misfortune which happens in the exercise of his/her functions as Director.

29.3 Nothing contained in this article 29 serves to indemnify a Director in respect of :

29.3.1 Any liability arising in terms of sections 77(3)(a), (b) or (c) of the 2008 Act.

29.3.2 Any liability arising from wilful misconduct or wilful breach of trust on the part of the Director.

29.3.3 Any fine imposed on a Director as a consequence of the Director

having been convicted of an offence, unless the conviction was based on strict liability.

30. VOLUNTARY WINDING-UP

30.1 The Board may at any time, in its entire discretion, adopt a special resolution for the voluntary winding-up of the Company in the manner contemplated in section 80 of the 2008 Act.

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**SCHEDULE ONE
TO THE
MEMORANDUM OF
INCORPORATION OF
THE .ZA DOMAIN NAME
AUTHORITY NPC COMPLIANCE**

1. PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT

For as long as the Company is approved as a PBO, the Company must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this Memorandum of Incorporation :

- 1.1 The sole or principal object of the Company must be and remain to carry on one or more Public Benefit Activities, on condition that :
 - 1.1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.
 - 1.1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
 - 1.1.3 Each such activity carried on by the Company must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 1.2 The Company must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for the Company, and no single person may directly or indirectly control the decision-making powers relating to the Company.
- 1.3 The Company may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Objects for which the Company has been established.

- 1.2 If and when the Company is wound-up or dissolved in any manner provided for in this Memorandum of Incorporation, or as required by law, the net remaining assets of the Company, after all the obligations and commitments of the Company have been met, must be transferred to:
 - 1.2.1. Any PBO; or
 - 1.2.2 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 as its sole or principal object the carrying on of any Public Benefit Activity; or
 - 1.2.3 The government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,
 - 1.2.4 which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.

- 1.3 The Directors will 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 PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, and which has as its sole or principal object the carrying on of any Public Benefit Activity] may not impose conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.

- 1.4 The Directors must submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation, and must ensure that the Company submits the required income tax returns together with the relevant supporting documents.

- 1.5 The Directors must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its Objects.

- 1.6 The Directors must make sure that the Company does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is 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 Income Tax Act or any other Act administered by the Commissioner.

- 1.7 The Company must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Objects.
- 1.8 The Directors must comply with such reporting requirements as may be determined by the Commissioner.
- 1.9 The Directors must ensure that any books of account, records or other documents relating to the Company :
 - 1.9.1 Where kept in book form, are retained and carefully preserved for a period of four (4) years after the date of the last entry in any such book; or
 - 1.9.2 Where not kept in book form, are retained and carefully preserved for a period of four (4) years after completion of the transactions, acts or operations to which they relate.
- 1.10 The Company must not use its resources directly or indirectly to support, advance or oppose any political party.

2. PROVISIONS IMPOSED BY SECTION 18A OF THE INCOME TAX ACT

- 2.1 When the Company issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must ensure that the donations from those donors are used solely to carry on the Company's own 18A Activities, namely those activities of the Company which are contemplated in Part II of the Ninth Schedule.
- 2.2 Where the Company, in any year of assessment, issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must obtain and retain an audit certificate confirming that all the donations received or accrued in that year in respect of those receipts, were used by the Company in the manner contemplated in paragraph 2.1 above.

2.3 The Company must not issue a receipt in terms of section 18A(2) of the Income Tax Act in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar rights, or which constitutes an intangible asset or financial instrument, unless that financial instrument is :

2.3.1 A share in a listed company; or

2.3.2 Issued by a financial institution as defined in section 1 of the Financial Services Board Act, No. 97 of 1990.

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