

# **Memorandum of incorporation**

of

**Alexandra Broadcasting Corporation**

*(NPC2015/404296/08)*



## Memorandum of incorporation

of

### Alexandra Broadcasting Corporation

## 1 Definitions and interpretation

1.1 In this Memorandum of Incorporation:

- (1) A reference to a section number refers to a section of the Act;
- (2) Unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation;
- (3) The headings to the clauses are for reference purposes only and do not affect the terms of this Memorandum of Incorporation.

1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the *Companies Act, 2008*, as amended, together with any regulations published in terms thereof;
- (2) **Chairperson** means a Director elected as the chairperson of the Board and who shall preside as chairperson at all general meetings of Members;
- (3) **Commissioner** means the Commissioner for the South African Revenue Services, as defined in the Income Tax Act;
- (4) **Company** means the Alexandra Broadcasting Corporation, a non-profit Company with registration number *NPC2015/404296/08*, incorporated in accordance with the laws of South Africa;
- (5) **Director** means a member of the Board of the Company and the alternate Directors thereof;
- (6) **Income Tax Act** means the *Income Tax Act, 1962* or its successor act;
- (7) **Member** means a registered and functional non-governmental or community based organisation which operates within the same community as the Company and who holds membership in, and specified rights in respect of, the Company and who is registered as such in the Company's Members register;
- (8) **Public Benefit Activity** means a public benefit activity as defined in the Income Tax Act;
- (9) **Public Benefit Organisation** means a public benefit organisation as defined in the Income Tax Act,
- (10) **Remuneration** means remuneration as defined in the Fourth Schedule of the Income Tax Act;

- (11) **Station Manager** means the person appointed by the Board of Directors to run the day to day management and functioning of the Company's radio broadcasts; and
  - (12) **Voting Rights** means the rights of a Member to vote in connection with any matter to be decided by the Company.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.
- 1.4 Unless inconsistent with the context, an expression which denotes:
- (1) Any gender includes the other genders;
  - (2) A natural person includes an artificial person (including a trust) and vice versa;
  - (3) The singular includes the plural and vice versa.
- 1.5 The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.
- 1.6 When, in this Memorandum of Incorporation, a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by:
- (1) Excluding the day on which the first such event occurs;
  - (2) Including the day on or by which the second event is to occur; and
  - (3) Excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.6(1) and 1.6(2), respectively.

**[s 5(3)]**

- 1.7 Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

## **2 Incorporation and nature of the Company**

### **2.1 Incorporation**

- (1) The Company was incorporated in 2015, as a non-profit Company.
- (2) The Company is constituted subject to:
  - (a) The unalterable provisions of the Act;
  - (b) any provisions imposing on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Act;

- (c) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this Memorandum of Incorporation; and
- (d) The provisions of this Memorandum of Incorporation.

## 2.2 Powers of the Company [s 15(2)(b) or (c); s 19(1)(b)(ii)]

- (1) This Memorandum of Incorporation does not:
  - (a) Contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
  - (b) Prohibit the amendment of any particular provision hereof.
- (2) The Company has all of the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

## 2.3 Objects of the Company [schedule 1 s 1(1)]

- (1) The objects of the Company are as follows, though not necessarily limited to:
  - (a) Empower, inform and entertain the Community of Alexandra and the Broadcasting Area as outlined in the ICASA Broadcasting License by equipping them with the skills relating, but not limited to, broadcast journalism which includes Multi-Media and Radio Broadcasting.
  - (b) Promoting cultural and social activities through entertainment, arts and media; and
  - (c) Providing a platform for Members and the Alexandra Community to promote themselves and the work that they do.

## 2.4 Public Benefit Organisation Status

- (1) For so long as the Company is a non-profit Company:
  - (a) The Company will carry out all Public Benefit Activities undertaken by it in a non-profit manner and with an altruistic or philanthropic intent;
  - (b) It will at all times, have at least Five Directors to accept the fiduciary responsibility of the Company. No single person will directly or indirectly control the decision making powers relating to the Company.
  - (c) The income and property of the Company whenever derived, will be applied solely towards the furtherance of its main objects, and no portion thereof shall be distributed whether directly or indirectly, to any person (otherwise than in the course of undertaking any Public Benefit Activity); provided that nothing herein contained shall prevent payment:
    - (i) in good faith of reasonable Remuneration/honorarium to any Director, employee, office bearer, Member or other person, having regard to what is generally considered reasonable in the sector, and in return for any services rendered or goods delivered to the Company, subject to the provisions of 6.7;

- (ii) of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (iii) of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  - (iv) in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - (v) in respect of any legal obligation binding on the Company;
- (d) Upon its winding up, deregistration or dissolution:
- (i) no past or present Member or Director of the Company, or person appointing 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
  - (ii) the assets of the Company remaining after the satisfaction of all its liabilities shall be transferred to any Public Benefit Organisation contemplated in section 30(3)(b)(iii) of the Income Tax Act having objects similar to the Company's main object to be determined in terms of the Company's Memorandum of Incorporation or by its Members, or Directors immediately before the time of its dissolution, or by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination;
- (e) All activities of the Company will be for the benefit of, or widely accessible to the general public at large;
- (f) The Company will not accept any donation which is revocable at the instance of the donor, save to the extent contemplated in section 30(3)(b)(v) of the Income Tax Act;
- (g) The Company will submit to the Commissioner the original of this Memorandum of Incorporation and a copy of any amendment to this Memorandum of Incorporation of the Company;
- (h) The Company will comply with such reporting requirements as may be determined from time to time by the Commissioner;
- (i) The Company shall not pay Remuneration which is unreasonably excessive to any person;
- (j) The Company shall not economically benefit any person in a manner which is not consistent with its objects;
- (k) The Company shall comply with such further conditions as may be prescribed from time to time in terms of section 30(3) of the Income Tax Act;
- (l) The Company will not use its resources directly or indirectly to support, advance or oppose any political party;
- (m) to the extent that the Company is to donate funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Income Tax Act, the Company shall take reasonable steps to adopt reasonable measures to ensure that the relevant funds are utilised by the

association for the purpose for which it has been provided by the Company;

- (n) the Company shall not knowingly be a party to or 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 Income Tax Act or under any other act administered by the Commissioner; and
- (o) The Company shall cause any books of account, records or other documents relating to the Company:
  - (i) Where kept in book form, to be retained and carefully preserved for a period of four years after the date of the last entry in any book; or
  - (ii) Where not kept in book form, to be retained and carefully preserved for a period of four years after completion of the transactions, act or operations to which they relate.
- (2) For the purposes of this clause 2, any reference to a section of the Income Tax Act or any regulation promulgated there under shall be a reference to that section or regulation as at the date of incorporation of the Company, and as amended or substituted from time to time. To the extent that the any provisions of the Company's Memorandum of Incorporation conflict with the provisions of this clause, the provisions of this clause shall prevail over such conflicting clause.

### **3 Donations**

- 3.1 The Company shall in respect of every donation, furnish the donor with a receipt on which the following particulars shall be given:
  - (1) The reference number issued to the Company by the Commissioner;
  - (2) The date of receipt of the donation;
  - (3) The name of the Company, together with an address to which enquiries may be directed in connection therewith;
  - (4) The name and address of the donor;
  - (5) The amount of the donation or the nature of the donation if not in cash; and
  - (6) A certificate to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, and that the donation has been or will be used exclusively for the objects of the Trust.
- 3.2 The Company will only issue a receipt contemplated in clause 3.1 in respect of any donation to the extent that:
  - (1) the Company carries on the activities contemplated in Parts I and II of the Ninth Schedule of the Income Tax Act and that the donation will be utilised solely in carrying on the activities contemplated in Part II of the Ninth Schedule of the Income Tax Act.

**3.3 Memorandum of Incorporation and Company rules [s 16(1); s 16(5); s 16(7); s 16(9); s 15(3); s 15(5)]**

- (1) This Memorandum of Incorporation of the Company may be altered or amended:
  - (a) In compliance with a court order effected by a resolution of the Company's Board;
  - (b) By a special resolution of the Members but subject to that special resolution having been proposed by (i) the Board, or (ii) by Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.
- (2) An amendment contemplated in clause 3.3(1)(b) may take the form of:
  - (a) A new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
  - (b) One or more alterations to the existing Memorandum of Incorporation by:
    - (i) Changing the name of the Company;
    - (ii) Deleting, altering or replacing any of its provisions;
    - (iii) Inserting any new provisions; or
    - (iv) Making any combination of such alterations.
- (3) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8).
- (4) An amendment to this Memorandum of Incorporation takes effect:
  - (a) In the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or
  - (b) In any other case, on the later of:
    - (i) The date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or
    - (ii) The date, if any, set out in the Notice of Amendment.
- (5) The Board has authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in this Memorandum of Incorporation or the Act, by:
  - (a) Delivering a copy of those rules, or any amendment or repeal thereof, to every Member by hand, by ordinary mail (at such Member's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the Member has given the Company an email address for the purposes of receiving communications; and



- (b) Filing a copy of those rules, or any amendment or repeal thereof, with the Commission.
- (6) Any necessary or incidental rules made, amended or repealed as contemplated in clause 3.3(5):
- (a) Take effect on the later of:
    - (i) Ten business days after the rule is filed with the Commission; or
    - (ii) The date, if any, specified in the rule; and
  - (b) Are binding:
    - (i) on an interim basis from the time it takes effect until it is put to a vote at the next general Members meeting of the Company; and
    - (ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in clause 3.3(6)(b)(i).

**3.4 Alterations of Memorandum of Incorporation and Company rules, translations and consolidations of Memorandum of Incorporation [s 17(1); s 17(3); s 17 (6); s 152(6)(b)]**

- (1) The Company's Board, or an individual authorised by the Board, may alter the Company's rules, or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
- (a) delivering a notice of the alteration in the manner contemplated in clause 3.3(5)(a); and
  - (b) filing a notice of the alteration with the Commission.
- (2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.
- (3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 3.4(3) must be accompanied by:
- (a) a sworn statement by a Director; or
  - (b) a statement by an attorney or notary public,
- stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.

### **3.5 Application of optional provisions of the Act [s 34(2); s 118(1)(c)(ii)]**

The Company, as a non-profit Company, does not elect to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act.

### **3.6 Non-profit Company provisions [schedule 1 s 1 (2)]**

- (1) The Company is a non-profit entity; and
  - (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation; and
  - (b) subject to clause (a) may:
    - (i) acquire and hold securities issued by a profit Company; or
    - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the Company's stated objects.

## **4 Members**

### **4.1 Membership [schedule 1 s4(2)(e)(i);schedule 1 item 4(2)(e)(ii)]**

- (1) Membership of the Company shall be open all Members of the Alexandra Community and the Broadcasting Area; this includes registered and functional non-governmental organisations, Businesses, recreation societies and Listeners Clubs.
- (2) An application for membership in the Company shall be made to the Board, or a person appointed for this purpose by the Board, in writing in the form prescribed by the Board from time to time.
- (3) No person or organisation shall be admitted as a Member unless they have agreed in writing to be bound by the terms and conditions of this Memorandum of Incorporation.
- (4) Upon a new Member becoming admitted, the Board shall give written notice thereof to all Members.

### **4.2 Rights and obligations of Members [schedule 1 item 4(2)(e)(iv)]**

- (1) The rights and obligations of a Member shall not be transferable and every Member shall:
  - (a) Further the objects and interests of the Company to the best of his or her ability;
  - (b) Have the rights set out in this Memorandum of Incorporation; and
  - (c) Have the obligations set out in this Memorandum of Incorporation.

#### 4.3 **Cessation [or suspension] of membership**

- (1) A Members' membership of the Company shall terminate:
  - (a) Upon receipt by the Board at the office of a notice in writing to this effect from the Member concerned;
  - (b) Upon the issue of a final order of sequestration or winding up of the Member concerned;
  - (c) in the event of non-compliance by a Member with any obligations as may attach to his membership, upon the expiration of a period of 3 (three) months reckoned from the date of written notice by the Board to the member concerned requiring the remedying of such default, unless such default is remedied; save that the Board shall be entitled to extend the period of grace allowed to a particular member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate; or
  - (d) Upon the passing of a special resolution to this effect by the Company.

#### 4.4 **Register of Members**

The Company shall maintain a register of members as required by section 24.

#### 4.5 **Non-transferability of membership**

Membership shall be personal to the Member concerned and may not be assigned or transferred to any other person, Company or concern.

#### 4.6 **Members' right to information [s 26]**

Other than the rights to access information set out in section 26, a Member has no further rights to information pertaining to the Company.

**Members only have the right to vote, a right to influence broadcasting content and a right to access information at the AGM.**

#### 4.7 **Members' authority to act**

- (1) If the Company has only one Member, the ability of that Member to exercise any or all of the voting rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, every Member is also a Director, the authority of the Members to act on any matter that is required to be referred by the Board to the Members for decision at any time after being referred by the Board, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (3) A resolution which could be voted on at a Members meeting may instead be adopted by written consent of the Members, given in person or by electronic communication, provided that the resolution was submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by such Members within 20 business days after the resolution was submitted to them.

**4.8 Membership fees [schedule 1 item 4(2)(e)]**

- (1) Membership fees shall be determined by the Annual or Special General Meeting from time to time.

**4.9 Votes of Members [schedule 1 item 1(7) and (8)]**

Each Member shall have one vote and each such vote shall, unless otherwise provided in this Memorandum of Incorporation, be of equal value to the vote of each other voting Member on any matter to be determined by the Members.

**4.10 Proxies and voting under power of attorney**

- (1) A Member may, at any time, appoint any individual, including an individual who is not a Member, as a proxy to:
  - (a) Participate in, and speak and vote at, a Members meeting on behalf of the Member; or
  - (b) Give or withhold written consent on behalf of the Member to a decision by Members acting other than at a meeting.
- (2) The instrument that appoints a proxy must:
  - (a) Be in writing, dated and signed by the Member;
  - (b) Be given by the person appointing such proxy or by their attorney duly authorised in writing or, if the appointor is a corporation, given by a representative so authorised.
- (3) The holder of a power of attorney from a Member may, if so authorised by the power of attorney, vote for and represent such Member at any meeting of the Company.
- (4) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act and subject thereto be in following format, or in such other form as the Company's Board may approve, and the Board may, if they think fit, send out with the notice of any meeting proxy forms for use at the meeting:

"I/We

.....

of

.....

being a Member/Members of the Company appoint

.....of ..... or failing him or her  
.....of ..... or failing him the  
chairperson of the Company or failing him or her the chairperson of the meeting as  
my / our proxy to participate in, and speak and vote for me / us at a Members  
meeting of the Company to be held at ..... on  
..... 20..... at (time appointed) and at any adjournment thereof.

[give or withhold written consent on my / our behalf to the written resolutions to which this form of proxy is attached, as contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any Members meeting held by the Company, or give or withhold written consent on my / our behalf in respect of any decision contemplated in section 60 of the Act, between the date of this proxy instrument and ..... 20.....]\*

Dated this ..... day of ..... 20.....

Name (in full)

Address

.....

signature

**\* Delete as applicable**

I / We desire to vote as follows:

	For	Against	Abstain
Resolution No. 1			
Resolution No. 2			

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block.”

**4.11 Representation by concurrent proxies [s 58(3)(a)]**

The right of a Member to appoint two or more persons concurrently as proxies is not restricted or varied by this Memorandum of Incorporation.

**4.12 Authority of proxy to delegate [s 58(3)(b)]**

The authority of a Member’s proxy to delegate that proxy’s authority to act on behalf of the Member, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

**4.13 Requirement to deliver proxy instrument to the Company [s 58(3)(c)]**

The instrument of proxy or power of attorney appointing a proxy for any particular meeting must be delivered to the Company at its registered address not less than twenty four hours (or such lesser period as the Directors may determine in relation to any particular meeting) before such meeting is due to take place, or the instrument of proxy or power of attorney shall not be treated as valid.

**Deliberative authority of proxy [s 58(7)]**

The authority of a Member’s proxy to decide without direction from the Member whether to exercise, or abstain from exercising, any voting right of the Member, except to the extent

that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

#### **4.14 Validity of appointment**

- (1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy 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.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Member or revocation of the instrument or power of attorney unless notice in writing of such legal incapacity or, revocation is received by or on behalf of the Company not less than twenty four hours (or such lesser period as the Board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

#### **4.15 Record date for exercise of Member rights [s 59(3)]**

- (1) If, at any time, the Company's Board fails to determine a record date for any action or event, the record date for the relevant matter is:
  - (a) in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
  - (b) in any other case, the date of the action or event.

## **5 Members Meetings**

### **5.1 Requirement to hold meetings [s 61]**

The Company is not required to hold any Members meetings other than those specifically required by section 61 and this clause 5, but may do so.

### **5.2 Members' right to requisition a meeting [s 61(1); s 61(3)]**

- (1) The right of Members to requisition the Company's Board to call a Members meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.

### **5.3 Location of Members meetings [s 61(9)]**

The authority of the Company's Board to determine the location of any Members meeting and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

**5.4 Calling a Members meeting [s 61(11)]**

If the Company is unable to convene a Members meeting because it has no Directors or because all of its Directors are incapacitated, any Member may convene a meeting.

**5.5 Notice of Members meetings [s 62(1)(b); s 62(3) and s 63(3)]**

- (1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members is ten business days before the meeting is to begin or twenty four hours if agreed on in writing by Members holding not less than [90%] of the votes exercisable at such meeting.
- (2) A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3).

**5.6 Electronic participation in Members meeting [s 63(2)]**

The authority of the Company to conduct a Members meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.

**5.7 Quorum for Members meetings [s 64(1); s 64(2); s 64(3); s 64(4); s 64(5); s 64(8); s 64(9)]**

- (1) Subject to the provisions of clause 5.7(2) to clause 5.7(6) (both inclusive), the quorum for:
  - (a) a Members meeting to begin is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
  - (b) a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (2) Notwithstanding clause 5.7(1), where the Company has more than two Members, a meeting may not begin, or a matter begin to be considered, unless at least three Members are present at the meeting and the requirements of clause 5.7(1) are satisfied.
- (3) If, within thirty minutes after the appointed time for a meeting to begin, the requirements of clauses 5.7(1), or 5.7(2) if applicable:
  - (a) For that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
  - (b) For consideration of a particular matter to begin have not been satisfied:
    - (i) If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

- (ii) If there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- (4) The person intended to preside at a meeting, where the quorum requirements in clause 5.7(1), or clause 5.7(2) if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:
  - (a) Exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Members to be present at the meeting; or
  - (b) one or more delayed Members have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements; or
  - (c) Any other reason such person considers appropriate.
- (5) After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least one Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- (6) If the quorum requirements in clause 5.7(1), or clause 5.7(2), if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Members present in person or by proxy will be deemed to constitute a quorum.

**5.8 Adjournment of Members meetings [s 64(10); s 64(11); s 64(12)]**

- (1) Subject to clauses 5.7, 5.8(2) and 5.8(3), a Members meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms clause 5.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:
  - (a) 120 business days after the record date determined in accordance with clause 4.15; or
  - (b) 60 business days after the date on which the adjournment occurred.

**5.9 Members resolutions [s 65(7); s 65(9)]**

- (1) For an ordinary resolution to be approved by Members, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.
- (2) For a special resolution to be approved by Members, it must be supported by the holders of at least 60% of the voting rights exercised on that resolution.

**5.10 Annual General Meeting [s 61(7) and (8)]**

- (1) The Company must hold an annual general meeting:



- (a) Initially, no more than 18 months after its date of incorporation; and
  - (b) Thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- (2) In addition to the requirements of clause 5.5, the notice calling an annual general meeting must include:
- (a) The audited financial statements to be presented, or a summarised form thereof; and
  - (b) Directions for obtaining a copy of the complete audited annual financial statements for the preceding financial year.
- (3) The agenda at an annual general meeting shall include but shall not be limited to:
- (a) Presentation of the Directors' report and annual audited financial statements for the immediately preceding financial year; and
  - (b) Election of Directors, to the extent required by the Act or this Memorandum of Incorporation; and
  - (c) Any matters raised by Members, with or without advance notice to the Company.

## **6 Directors and officers**

### **6.1 Composition of the Board [s 66(2); s 67(1); s 68(1); s 68(2)(a); s 68(2)(b); s 66(4)(a)(ii); s 68(3); s 69(3) and (4); s 69(7); s 69(8)(a); s 69(8)(b)]**

- (1) The Company's Board must comprise not less than Ten Directors, elected by Members at a General Meeting.
- (2) Subject to clause 6.1(5), each Director, other than the first Directors and any Directors appointed in this Memorandum of Incorporation, must be elected by the persons entitled to exercise voting rights in such an election to serve for an indefinite period, or for a term as set out in this Memorandum of Incorporation.
- (3) In any election of Directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.
- (4) In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- (5) The authority of the Board to fill any vacancy on the Board on a temporary basis is not restricted or varied by this Memorandum of Incorporation. A Director appointed on a temporary basis must be a person who satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of any other Director.
- (6) To become or to continue to act as a Director or a prescribed officer of the Company, a person must not be:
  - (a) A juristic person;
  - (b) An emancipated minor, or a person under a similar legal disability;

- (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 162 or section 47 of the *Close Corporations Act, 1984*, except to the extent permitted by the order of probation.

CD)- absent from three consecutive Board Meetings without submitting a formal apology and or a valid reason for the failure to attend.

- (d) An un-rehabilitated insolvent;
- (e) Prohibited in terms of any public regulation to be a Director;
- (f) Removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (g) a person who has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
  - (i) Involving fraud, misrepresentation or dishonesty;
  - (ii) In connection with the promotion, formation or management of a Company;
  - (iii) In connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
  - (iv) Under the Act, the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act, 1998*, the *Financial Intelligence Centre Act, 2001*, the *Securities Services Act, 2004*, or Chapter 2 of the *Prevention and Combating of Corruption Activities Act, 2004*.

- (7) A person need not satisfy any further eligibility requirements or qualifications.

## 6.2 **Alternate Directors [s 66(4)(a)(iii)]**

- (1) An alternate Director may be elected or removed by the Members entitled to exercise voting rights in such an election to act as an alternate Director in a Director's place as the occasion arises and during that Director's absence, provided that such person has been approved for that purpose by a resolution of the Company's Board.
- (2) At least one third of the alternate Directors must retire at the Company's annual general meetings or other general meetings on an annual basis.
- (3) An alternate Director shall, except as regards the power to appoint an alternate (if applicable) and to receive remuneration, be subject in all respects to the terms and conditions applicable to the Director appointing them, and each alternate Director shall be entitled:
  - (a) To receive notice of all meetings of the Directors or of any committee of the Directors of which the alternate's appointor is a member;
  - (b) To attend and vote at any such meetings at which the alternate's appointor is not personally present;

- (c) To furnish written consent to adopt a decision which could be voted on at a Board meeting;
  - (d) to be appointed as an alternate to more than one Director and shall have a vote for each Director for whom such alternate acts, in addition to their own vote as Director, if any; and
  - (e) Generally, to exercise and discharge all the functions, powers and duties of the alternate's appointor in such appointor's absence as if such alternate were a Director.
- (4) An alternate Director shall cease to be an alternate Director if the alternate's appointor ceases for any reason to be a Director, but if any Director retires and is re-elected at the same meeting, any appointment made by such Director shall remain in force as though the Director had not retired.

**6.3 Authority of the Board [s 66(1); s 57(3)]**

- (1) The authority of the Company's Board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.

**6.4 Station Manager**

- (1) The Directors shall appoint a Station Manager following a formal and public application process and the Directors shall oversee all of the activities of the Station Manager.
- (2) The Station Manager will be responsible for the day to day management and functioning of the Company's radio broadcasts and will be employed by the Company in terms of a duly signed employment agreement.

**6.5 Directors' meetings [s 73(1); s 73(3); s 73(4); s 73(5)(a); s 73(5)(b); s 73(5)(c) and (d); s 73(5) (e); s 74]**

- (1) A Director authorised by the Board of the Company:
  - (a) May call a meeting of the Board at any time; and
  - (b) Must call such a meeting if required to do so by at least:
    - (i) 25% of the Directors, in the case of a Board that has at least 11 members; or
- (2) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (3) The authority of the Board to adopt a decision, that could be voted on at a Board meeting, by way of written consent of a majority of the Directors, given in person or

by electronic communication, provided that each Director has received notice of the matter to be decided, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 6.5(3) has the same effect as if it had been approved by voting at a meeting.

- (4) The Board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of the Board shall be convened without notice to all of the Directors subject, however, to the provisions of clause 6.5(5).
- (5) The authority of the Board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (6) The quorum requirement for a meeting is a majority of Directors.
- (7) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (8) In the case of a tied vote the chair will have a deciding vote and the resolution will fail.

#### **6.6 Directors' power to affect borrowing**

The Company's Board may raise or borrow (Interest Free) from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

#### **6.7 Directors' compensation and financial assistance [s 66(8);(9); s 44(2); s 45(2) and schedule 1 item 1(3)]**

- (1) The authority of the Company to pay remuneration to the Directors, in accordance with a special resolution approved by the Members within the previous two years, is not restricted or varied by this Memorandum of Incorporation.
- (2) Alternate Directors may only be paid out of the remuneration payable to the Director for whom they are appointed as an alternative.
- (3) The Company shall not, directly or indirectly pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except –
  - (a) As reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (b) 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;
  - (c) as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or

(d) In respect of any legal obligation binding on the Company.

**6.8 Indemnification of Directors [s 78(1); s 78(3); s 78(4); s 78(5); s 78(7); s 78(8)]**

- (1) For purposes of this clause 6.8, **Director** includes a former Director, an alternate Director, a prescribed officer or a person who is a member of a committee of a Board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.
- (2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.
- (3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
  - (a) a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 6.8(2) or clause 6.8(3); or
  - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director as contemplated in clause 6.8(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 6.8(3),is not restricted or varied by this Memorandum of Incorporation.
- (5) The Company shall be entitled to claim restitution from a Director or a related Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 6.8 or the Act.

**6.9 Committees of the Board [s 72(1)(a); s 72(1)(b)]**

- (1) The authority of the Company's Board to appoint any number of committees of Directors for managing any of the affairs of the Company and to delegate to any such committee any authority of the Board is not restricted or varied by this Memorandum of Incorporation.
- (2) Subject to the powers and authorities granted by the Board to any such committee, the authority of:
  - (a) the Board to include persons who are not Directors of the Company, provided that such persons are not ineligible or disqualified from being a Director as contemplated in clause 6.1(6) and the Act and that no such person shall vote on a matter to be decided by the committee;
  - (b) The committee to consult with or receive advice from any other person; and
  - (c) The committee to exercise the full authority of the Board in respect of a matter referred to it,

is not restricted or varied by this Memorandum of Incorporation.

#### **6.10 Authentication of documents**

- (1) Any Director or any person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Members or the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody of the documents at such other place shall be deemed to be the person so appointed.
- (2) A document purporting to be a copy of a resolution of the Directors or Members or an extract from the minutes of a meeting of the Directors or Members which is certified in accordance with clause 6.10(1) is *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or Members.

### **7 Chairperson**

The chairperson, who shall at all times be a resident of South Africa, shall be an appointee designated by the Company's Board. If the chairperson is not present or willing to act within 15 minutes of the time appointed for the commencement of any meeting, the Directors then present shall choose any other of their number to be chairperson of such meeting.

### **8 General Provisions**

#### **8.1 Accounts [s 25; s 28; s 30; s 31]**

- (1) The Company's Board must keep accurate and complete accounting records required or prescribed by the Act.
- (2) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other location within the Republic as the Board think fit, and shall at all times be accessible and open to inspection by the Board. Except as provided by the Act or the authority of the Board, no Member (other than a Member who happens to be a Director) has any right to inspect any accounting record or document of the Company.
- (3) The Board must, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting those annual financial statements and reports and group annual financial statements and reports, if any.

8.2 Subject to the provisions of the Act, a copy of the audited annual financial statements and reports referred to in clause 8.1(3) must be delivered or sent by post to the registered address of each Member at least 10 business days before the annual general meeting. A Member may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered electronically to that Member at that address. This clause 8.2 does not require the Company to send or deliver a copy of such documents to any person who is not entitled to receive notice of general meetings of the Company or whose address the Company is not aware of.

### **8.3 Conversion of the Company to a profit Company, disposal of assets, mergers and amalgamations**

- (1) The Company may not amalgamate or merge with, or convert to, a profit Company, or dispose of any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- (2) Any proposal to dispose of all or the greater part of the Company's assets or undertaking or to amalgamate or merge with another non-profit Company must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- (3) Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause (2) above.

### **8.4 Winding-up**

- (1) Upon the winding-up or dissolution of the Company, no past or present Member or Director of the Company, or person appointing 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.
- (2) The entire net value of the Company must be distributed in accordance with clause 2.4(1)(d)(ii) to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts which have similar objects to the Company's main Objects.
- (3) The Company's main objects may be determined in terms of the Company's Memorandum of Incorporation or by its Members or Directors immediately before the time of its dissolution; or by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.

### **Adoption of Memorandum of Incorporation [s 13(1)]**

This Memorandum of Incorporation was adopted by special resolution either at a Members meeting held on \_\_\_\_\_ or by Members acting other than at a meeting in terms of section 60.