

COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION

REPUBLIC OF SOUTH AFRICA

In accordance with s 16(1)(c)

MEMORANDUM OF INCORPORATION OF



THE NATIONAL SCIENCE AND TECHNOLOGY FORUM. (RF) NPC

Registration Number: 2007/029165/08

Shortened name: NSTF

('the Forum')

The Forum is a non-profit company with members, and with the following objects:

To advance, promote and protect the common interests of its members relating to science and technology; to encourage and promote the general restructuring and advancement of science and technology and to support the development of an integrated science and technology system which reflects the principles inherent in a free and democratic South Africa. This object shall be achieved by, *inter alia*:

- considering, discussing and making recommendations on matters connected with or incidental to these objects;
- collecting, circulating and publishing information thereon,
- investigating and conducting research into such matters;
- representing its members and acting on their behalf in matters affecting science and technology;
- making representations or submitting any evidence to the President, Parliament, any other legislative or administrative body or any commission on science and technology matters and seeking to influence legislative measures in the field of science and technology; and
- promoting and fostering the exchange of views among members of the Forum and liaising and co-operating with other organisations on matters of common interest.

Adoption of Memorandum of Incorporation

This amended Memorandum of Incorporation ("MOI") was adopted by the members of the Forum, in accordance with section 16(1)(c) of the Companies Act, 2008 ('the Act'), as evidenced by the special resolution to which this Memorandum of Incorporation is annexed.

In this Memorandum of Incorporation:

- A reference to a section by number refers to the corresponding section of the Act;*
- A reference to a clause by number refers to the corresponding clause in this MOI; and*
- Words that are defined in the Act bear the same meaning in this memorandum as in the Act.*

1. INCORPORATION

- 1.1 The Forum was incorporated as an Association not for Gain under section 21 of the previous Companies Act, but is now a non profit company, as defined in the Act.
- 1.2 The Forum is governed by:
- 1.2.1 the unalterable provisions of the Act that are applicable to non profit companies;
- 1.2.2 the alterable provisions of the Act that are applicable to non profit companies, subject to
- 1.2.2.1 any limitation, extension, variation or substitution set out in this Memorandum;
- 1.2.2.2 and the provisions of this Memorandum of Incorporation.

2. OBJECTS AND POWERS OF THE FORUM

- 2.1 The objects of the Forum are as set out on the first page of this MOI and describes the ambit and types of the public benefit activities (as defined in the Ninth Schedule to the Income Tax Act 58 of 1962, as amended ["the Income Tax Act"]) which the Forum intends to carry out.
- 2.2 The Forum shall have all the legal powers and capacity of an individual:
- 2.2.1 except to the extent necessarily implied by its stated objects;
- 2.2.2 except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and
- 2.2.3 subject to such restrictive conditions (as contemplated in section 15(2)(b)) and other limitations or qualifications, as are contained in this memorandum of incorporation.
- 2.3 The powers of the Forum may only be executed in accordance with the main object of the Forum.
- 2.4 The Forum may not:
- 2.4.1 grant to any member any direct or indirect personal or private interest in the Forum;
- 2.4.2 amalgamate or merge with, or convert to, a profit company; or
- 2.4.3 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 disposal of an asset occurs in the ordinary course of the activities of the Forum.
- 2.4.4 knowingly become a party to, or knowingly permit itself to be used as part of any tax avoidance scheme, being 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 would have been or would have become payable by any person under the Income Tax Act or any other Act Administered by the Commissioner for the South African Revenue Services.
- 2.5 All of the public benefit activities of the Forum shall be carried out in a non-profit manner and with an altruistic or philanthropic intent and no public benefit activities shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of the Forum, other than by way of reasonable remuneration payable to that director, officer or employee .

3. MEMORANDUM OF INCORPORATION AND FORUM RULES

- 3.1 This Memorandum of Incorporation of the Forum may be altered or amended in the manner set out in sections 16, 17, 60 or 152(6)(b), subject to the following:

- 3.1.1 if the Forum is exempted from payment of normal tax a copy of any such amendment shall be sent to the Commissioner for the South African Revenue Service or his authorised representative;
- 3.1.2 if the Forum is registered as a Non-Profit Organisation then a copy of any amendments shall be sent to the Directorate of Non-Profit Organisations.
- 3.2 The authority of the Forum's Executive Committee to make rules for the Forum is limited or restricted to the extent that the powers of the Forum are limited by this Memorandum of Incorporation.
- 3.3 The Executive Committee shall publish any rules made by delivering a copy of those rules to each member by ordinary mail, or by electronic communication, provided that the members concerned have consented to the delivery of such communication by electronic mail.
- 3.4 The Forum shall publish a notice of any alteration of the Memorandum of Incorporation or the Rules by delivering a copy of those rules to each director by ordinary mail or electronic mail provided that the Executive Committee members concerned have consented to the delivery of such communication by electronic mail.

4. OPTIONAL PROVISIONS OF THE ACT: AUDIT

- 4.1 The Forum elects, in terms of section 34 (2), to comply voluntarily with some of the provisions of Chapter 3 of the Act in that the representatives of the voting members of the Forum, at the annual general meeting, will appoint an auditor, in terms of sections 90 and 93.

5. MEMBERS OF THE FORUM

- 5.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Forum has members who shall consist of:
- 5.1.1 The voting members of the Forum, which shall be such bodies which support the objectives of the Forum as may be admitted to voting membership from time to time in terms of this memorandum; and
- 5.1.2 The non-voting members of the Forum which shall be such bodies, organisations and persons which wish to support, engage with and participate in the activities of the Forum from time to time, and who shall be admitted to non-voting membership for this purpose.
- 5.2 Any institution, organisation or juristic body which wishes to become a voting member of the Forum shall lodge with the Secretariat of the Forum referred to in clause 17 ("the Secretariat") a written application to the Executive Committee for admission as such and, for the purposes of the application, the applicant shall provide the Executive Committee with its full name and registered address and such other further information as the Executive Committee may require. The application shall be considered at the next ordinary meeting of the Executive Committee or, if the Chairman so directs, at a special meeting of the Executive Committee convened for that purpose and the Executive Committee shall then decide whether or not the applicant shall be admitted and the terms and conditions upon which it shall be admitted. The decision of the Executive Committee shall not be subject to review.
- 5.3 After the meeting of the Executive Committee at which such application is considered, the applicant shall be notified, in writing, by the Secretariat whether or not the applicant has been admitted and of the applicable terms and conditions of membership.

- 5.4 There shall be different Sectors of voting members of the Forum, which Sectors shall be established in accordance with criteria approved (and amended) by the plenary meeting, as set out in clause 10 ("the plenary meeting") from time to time. The Executive Committee shall allocate every voting member to one of such Sector. In making such allocation the Executive Committee shall be guided, but not bound, by the voting member's principal interest in science and technology. The Executive Committee may at any time re-allocate a voting member to any Sector.

6. MEMBERSHIP SUBSCRIPTIONS AND OTHER FEES AND PAYMENTS

- 6.1 The subscriptions payable for each financial year by each voting member and any levy payable by the members shall, from time to time, be determined by the Executive Committee, after taking into account all relevant factors and balancing the retention of members and affordability of fees against the need to maintain the financial sustainability of the Forum. .
- 6.2 Annual subscriptions will be invoiced as at 1 April each year, and are payable within 3 months' of date of invoice.

7. TERMINATION OF MEMBERSHIP

- 7.1 A member of the Forum shall cease to be a member:
- 7.1.1 if they are a nonvoting member and have not engaged with, supported, or participated in the activities of the Forum in the preceding financial year;
 - 7.1.2 such member resigns upon one month's written notice to the Secretariat;
 - 7.1.3 if business rescue, insolvency, voluntary winding up or deregistration proceedings have begun in respect of that member; or
 - 7.1.4 if that voting member's subscription is twelve months in arrears and the Executive Committee determines that their membership should cease. The Executive Committee may, on such conditions as it may deem fit, reinstate a defaulting member on payment by it of all subscriptions in arrears and any amounts owing to the Forum.
- 7.2 Any member who has infringed the provisions of this memorandum or of any by-laws passed by the Forum in plenary meeting, or which is, in the opinion of the Executive Committee, guilty of any practice likely to discredit the Forum, may be excluded from the Forum by resolution of the Executive Committee. The Secretariat shall immediately notify the member of such decision and the ground on which such member has been excluded.
- 7.3 If a voting member who has been excluded from the Forum by resolution of the Executive Committee lodges with the Secretariat, within one month of the date of the notification of the expulsion, a request, in writing, that the decision of the Executive Committee be reviewed by the members of the Forum, the matter shall be considered at the next annual general meeting of the Forum or, if the Executive Committee so decides, at a plenary meeting of the Forum convened for the purpose, and the voting member concerned shall not be excluded from the Forum if the meeting decides not to exclude by a majority of not less than two thirds of the representatives present and entitled to vote. Unless it is decided that the voting member concerned should not be excluded, such member shall cease to be a member at the conclusion of the meeting. If no written request to review exclusion is received by the Secretariat within two weeks of the date of the notification of the expulsion, the relevant member shall cease to be a member immediately after the two weeks have elapsed.
- 7.4 Cessation of membership in terms of this memorandum shall not release the member concerned from liability for any subscription or any amount due by the member to the Forum or from any other obligation to the Forum.

8. REPRESENTATIVES OF MEMBERS

- 8.1 Within two weeks of admission to membership of the Forum, each member shall appoint, by notice in writing lodged with the Secretariat, a representative and an alternate representative. Such notice shall contain the full names, occupations and addresses and other contact details of the representatives concerned. An alternate representative of a member, while acting in the place of the representative of that member, shall exercise all the duties, powers and functions of such representative.
- 8.2 A member may withdraw the appointment of any representative or alternate representative, by notice in writing lodged with the Secretariat, and if the appointment of any representative or alternate representative is so withdrawn, or if any representative or alternate representative ceases for any other reason to be such, the member concerned shall appoint, within two weeks thereafter and in the manner prescribed, another in his/her place.
- 8.3 Any representative or alternate representative of a member shall cease to be such:
- 8.3.1 if they resign; or
 - 8.3.2 if their appointment is withdrawn by the member by whom they were appointed; or
 - 8.3.3 if the member by whom they were appointed, ceases to be a member of the Forum.
- 8.4 Representatives of members may appoint proxies to act on their behalf at meetings of the Forum provided that:
- 8.4.1 Members may not appoint concurrent proxies;
 - 8.4.2 a member's proxy may not delegate the proxy's powers to another person;
 - 8.4.3 unless authorised by the Executive Committee in advance, no person may act as proxy for more than three members at any time;
 - 8.4.4 a member must deliver to the Forum a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting;
 - 8.4.5 any representative of any member intending to vote by proxy shall have the right to terminate such proxy at any time prior to the commencement of the meeting by lodging with the Forum a written notice terminating such proxy and a proxy shall further be deemed to be ipso facto terminated in the event of the member who granted such proxy being present at the meeting; and
 - 8.4.6 a member's proxy may not decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member.

9. ANNUAL GENERAL MEETING OF THE FORUM

- 9.1 The annual general meeting of the members of the Forum shall be held at such time and place as the Executive Committee may determine, but as soon as may be after the first day of October of each year. The Secretariat shall give at least one month's notice, in writing, of such meeting to each member.
- 9.2 The Executive Committee may also arrange that the functions and requirements of the annual general meeting shall be performed via email and other electronic communication and/or voting mechanisms.
- 9.3 At each annual general meeting the chairperson of the meeting shall review the activities of the Forum and refer to any other matters which the chair may consider to be relevant to the occasion and the Executive Committee shall submit an audited statement of income and expenditure for the past financial year, an audited balance sheet as at the date to which such statement is made up, and the report of the Forum's auditors thereon.

- 9.4 At least fourteen days before the date for which each annual general meeting is called, the Secretariat shall send to each member true copies of the audited statement of income and expenditure, the audited balance sheet and the report of the Forum's auditors thereon, which are to be submitted to the meeting.

10. PLENARY MEETINGS OF THE FORUM

- 10.1 The Executive Committee will convene other general meetings of the Forum for consideration of the business necessary to achieve the objects of the Forum and these shall be called "plenary meetings".
- 10.2 The Executive Committee shall convene such meetings,
- 10.2.1 as and when necessary;
- 10.2.2 within one month of the request therefor, in writing, by the representatives of at least three members;
- 10.2.3 at any time that the board of directors is required by the Act or this Memorandum of Incorporation to refer a matter to members for decision and the Executive Committee determines that it is not appropriate to hold the matter over till the following annual general meeting; and
- 10.2.4 if the number of directors drops below the minimum required by this memorandum, and the next annual general meeting is more than 2 months from the date upon which the relevant director/s cease/s to act
- 10.3 Except as otherwise provided, the Secretariat shall give to each member at least one week's notice, in writing, of each plenary meeting, or such shorter period of notice as the Executive Committee may decide; provided that such shorter period of notice, if given, shall not be less than is reasonably necessary to permit the representatives of members to attend the meeting concerned.
- 10.4 The Forum may conduct a meeting entirely by electronic communication, or 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.

11. GENERAL PROVISIONS: ANNUAL GENERAL MEETINGS AND PLENARY MEETINGS OF THE FORUM

- 11.1 Each member shall be represented at meetings of the Forum by the representative of such member or, in the absence of any such representative, the alternate representative of such member, duly appointed in terms of this Memorandum of Incorporation.
- 11.2 The representatives of any member shall be entitled to take part in the discussions at all meetings of the Forum. If the representative of the member is present at any meeting, the alternate representative of that member may also be present and may take part in the discussions, but shall not vote at the meeting on behalf of the member concerned. In the case of electronic meetings or voting, representatives of members or their alternates shall participate via email, online forum and/or online voting procedures.
- 11.3 The Chairman of the Forum shall take the chair at all meetings of the Forum, failing which the Vice-chairman shall take the chair. If neither the Chairman nor the Vice-chairman is present at any meeting, the representatives of members present and entitled to vote shall elect one of those representatives to be chairman of that meeting. The chairman of a meeting of the Forum shall be responsible for the conduct of the meeting.
- 11.4 25% of the number of appointed representatives of the members being present shall form a quorum for any meeting of the Forum, whether the meeting is held in person or via any electronic participation platform

- 11.5 If, within one hour after the appointed time for a meeting to begin, the quorum requirements for that meeting to begin have not been satisfied, the meeting shall be automatically postponed without considering any business or item of the agenda for one month, subject to the proviso in 11.7.
- 11.6 If the quorum requirements for consideration of a particular matter to begin have not been satisfied and:
- 11.6.1 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
- 11.6.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for one month.
- 11.7 The rules in 11.5 and 11.6 shall be subject to the proviso that the person intended to preside at a meeting that cannot begin may extend the one-hour limit allowed in for a reasonable period on the grounds that 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 one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members, together with others in attendance, would satisfy the quorum requirements.
- 11.8 The maximum period allowable for an adjournment of a members meeting is two months from the date of the adjourned meeting or part-meeting.
- 11.9 Each representative, or in his absence the alternate representative of each member, present at a meeting of the Forum shall be entitled, on a show of hands (or, where applicable, by electronic or email vote), to one vote on behalf of the member concerned.
- 11.10 For a resolution to be adopted at a members meeting, it must be supported by;
- 11.10.1 more than 50% of the representatives of members who voted on the resolution, in the case of an ordinary resolution; or
- 11.10.2 at least 66 % of the representatives of members who voted on the resolution, in the case of a special resolution.
- 11.11 For a resolution to be adopted by written or electronic vote of members it must be supported by:
- 11.11.1 more than 50% of the total number of representatives of members, in the case of an ordinary resolution; or
- 11.11.2 at least 66% of the total number of representatives of members, in the case of a special resolution,
- which votes shall be those received within one month of the resolution's being submitted to them.
- 11.12 A declaration by the chairman of the meeting of the result of a vote shall be conclusive.
- 11.13 A special resolution is only required for those matters set out in section 65 (11), being the amending of the memorandum of incorporation, ratifying actions by the Forum or Executive Committee members in excess of their authority, approving an application to transfer the registration of the Forum to a foreign jurisdiction, amalgamating or merging with another non-profit company, approving the voluntary winding up of the Forum, or disposing of all or a greater part of the assets of the Forum and section 66(9) being a resolution to remunerate directors for their services as directors.



12. CHAIRMAN OF THE FORUM

- 12.1 The Chairman of the Forum shall be elected every three years at an annual general meeting of the Forum, by the representatives of members present and entitled to vote and in accordance with the procedure set out below.
- 12.2 Each candidate for election to the office of Chairman of the Forum, other than a retiring Chairman, shall be nominated by a representative of a member and such nomination shall be lodged with the Secretariat at least two weeks prior to the date on which the election is to take place or such earlier date as the Executive Committee may determine. The Executive Committee shall, from the nominations received, make a recommendation to the annual general meeting of the Forum as to which person or persons it proposes for the office of Chairman of the Forum. If the Executive Committee recommends only one person for such office, and the annual general meeting accepts that recommendation, then that person shall be deemed to have been elected by the annual general meeting of the Forum. In the event of more than one person having been recommended by the Executive Committee for such office, the decision shall be put to a vote at the annual general meeting of the Forum.
- 12.3 The Chairman of the Forum shall hold office until the annual general meeting which falls in the year of the expiry of his term of office when they shall retire, but shall be eligible for re-election.
- 12.4 The Chairman of the Forum shall ex-officio be the Chairman of the Executive Committee

13. COMPOSITION OF THE EXECUTIVE COMMITTEE (INCLUDING THE BOARD OF DIRECTORS)

- 13.1 There shall be an Executive Committee of the Forum which shall perform the function of a Board of directors under the Act, all such functions imposed on it under this memorandum, as well as such functions as may be requested of it or delegated to it by the Forum in plenary meeting.
- 13.2 Because of practical considerations, the members of the Executive Committee shall nominate those of their number who shall be registered as directors in terms of the Act. Those selected to be directors shall form part of the Executive Committee, and shall execute their duties alongside those Executive Committee members who are not directors. Executive Committee members who are not registered as directors are 'prescribed officers' in terms of the Act and bear the same responsibilities towards the Forum as do those who are registered as directors.
- 13.3 Each Sector of voting members of the Forum, shall appoint, by notice in writing lodged with the Secretariat, one member and one alternate member to the Executive Committee. The Sector shall appoint these persons to the Executive Committee either by vote of the representatives of the voting members of that Sector, or, where the Sector is a government department, or where there is only one member in that Sector, by appointment following internal process of that department or member.
- 13.4 An alternate member of the Executive Committee, while acting in the place of the member, shall exercise all the duties, powers and functions of such member. Each Sector of voting members of the Forum may withdraw the appointment of its member or alternate member of the Executive Committee, by notice in writing lodged with the Secretariat, and if the appointment of the member or alternate member is so withdrawn, or if the member or alternate member ceases for any other reason to be such, the Sector of members concerned shall appoint within two weeks thereafter another in his place.
- 13.5 The members of the Executive Committee appointed in terms of 13.3 shall be entitled to co-opt, upon such terms and conditions as they may determine, one or more representatives of any voting member of the Forum as members of, or alternate members of, the Executive Committee. The maximum number of persons to be so co-opted, shall, from time to time, be determined by the Forum in plenary meeting.

- 13.6 The Executive Committee may at any time, to such extent and for such purposes as it may decide, co-opt the services of an expert. Such person may attend, by invitation, any meeting of the Executive Committee and may take part in discussion, but may not vote.
- 13.7 In the event of an Executive Director having been appointed, they shall ex-officio be a non-voting member of the Executive Committee.
- 13.8 The number of directors who are appointed by the Executive Committee to be registered as directors shall be a minimum of 3 who are not 'connected persons' (as defined in the Income Tax Act) in relation to one another.
- 13.9 No single person shall, directly or indirectly, control the decision-making powers of the Forum.
- 13.10 Executive committee members shall serve as such until their service is terminated in terms of 13.14.
- 13.11 Directors shall serve terms of not more than three years each beginning from the date of their appointment, provided that the appointment and resignation of directors shall be staggered so that at least one third of the directors retires each year.
- 13.12 Directors retiring in terms of clause 13.11 shall be eligible for re-election.
- 13.13 At the meeting at which the director retires in the manner aforesaid, the Executive committee members may fill the vacated office by electing an eligible person thereto. If they do not do so, the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless such meeting resolves not to fill such vacated office or resolves that such retiring member should not be re-elected.
- 13.14 Any member or alternate member of the Executive Committee shall cease to hold office as such (and shall also, if applicable, cease to hold office as director) if:
- 13.14.1 they resign by giving notice in writing to the Secretariat of his resignation; or
 - 13.14.2 they are convicted of an offence in which dishonesty is an element; or
 - 13.14.3 they becomes of unsound mind; or
 - 13.14.4 they become unfit and/or incapable of acting as a member of the Executive Committee; or
 - 13.14.5 they become insolvent or assigns their estate for the benefit of or compounds with his creditors; or
 - 13.14.6 they cease in terms of the Act or for any reason to be qualified for appointment as a director of a company; or
 - 13.14.7 the majority of the members of the Executive Committee in writing require them to resign; or
 - 13.14.8 their appointment is withdrawn by the Sector of members by which they were appointed;
 - 13.14.9 they are appointed *ex officio* and ceases to occupy the relevant position or office, unless the remaining Executive committee members decide otherwise or
 - 13.14.10 they are directly or indirectly interested in any contract or proposed contract with the Forum and fails to declare their interest and the nature thereof in the manner required by the Act;
 - 13.14.11 they are absent from three consecutive meetings of the Executive Committee without leave of the Chairman of the Forum; or
 - 13.14.12 their terms and conditions of employment so provide.

14. AUTHORITY OF THE EXECUTIVE COMMITTEE AND DIRECTORS

- 14.1 The authority of the Forum's Executive Committee and directors to manage and direct the business and affairs of the Forum, as set out in section 66 (1) is limited or restricted to the extent that the powers of the Forum are limited in this Memorandum of Incorporation.



15. EXECUTIVE COMMITTEE MEETINGS

- 15.1 Executive Committee meetings shall include directors, and no separate meetings of directors shall be held. References in the Act to meetings of the directors shall be read, in the Forum's case, as referring to meetings of the Executive Committee.
- 15.2 The Forum's Executive Committee may consider a matter other than at a meeting, and the Executive Committee members may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the majority of Executive Committee members, given in person or by electronic communication, provided that each Executive Committee member has received notice of the matter to be decided upon. A decision so made shall have the same effect as if it had been approved at a meeting.
- 15.3 No less than 25% of the Executive Committee members (or at least two Executive Committee members, whichever is greater) may requisition a meeting of the Executive Committee.
- 15.4 The Forum's Executive Committee may 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.
- 15.5 The minimum period of notice required to hold an Executive Committee meeting is two weeks from the date on which the notice is issued. The notice must specify the date, time and place of the meeting and the general nature of the business to be discussed. The notice shall be in writing, by e-mail, fax or post.
- 15.6 The Executive Committee may proceed with a meeting despite a failure or defect in giving notice of the meeting, if all of the Executive Committee members:
- 15.6.1 acknowledge actual receipt of the notice;
 - 15.6.2 are present at a meeting; or
 - 15.6.3 waive notice of the meeting.
- 15.7 The Chairman of the Forum shall ex-officio be the Chairman of the Executive Committee. The Executive Committee shall at its first meeting after its Chairman is appointed, elect a Vice-chairman from amongst its members.
- 15.8 The Chairman of the Executive Committee shall take the chair at all meetings of that Committee and, failing him, the Vice-chairman shall do so. If neither the Chairman nor Vice-chairman is present at any such meeting, the members present shall elect one of their number to be chairman of that meeting.
- 15.9 An Executive Committee member who will not be able to attend any meeting, shall be entitled to appoint another of the Executive Committee members as his/her proxy, to exercise his/her vote in their stead (in addition to his/her own vote). Such appointments shall be made in writing in advance of the meeting, and shall be communicated to the chairperson of the meeting. Those Executive Committee members represented by proxy at any meeting, shall be considered present at the meeting for quorum purposes.
- 15.10 The rules for Executive Committee members' meetings are as follows:
- 15.10.1 The Executive Committee members shall meet together not less often than quarterly for the dispatch of business, but shall otherwise regulate their meetings as they think fit.



- 15.10.2 The Chairman may convene a meeting of the Executive Committee at any time and the Secretariat shall convene a meeting of the Executive Committee if requested in writing to do so by at least two members thereof (or in terms of 15.3)
- 15.10.3 The quorum necessary for the transacting of business of the Executive Committee shall be half plus one of the number of Executive Committee members. If at three consecutive meetings of the Executive Committee a quorum is not present, the Secretariat shall, within one month of the last such meeting of the Executive Committee, convene a plenary meeting of the Forum to consider corrective steps
- 15.10.4 Each voting Executive Committee member shall have one vote on a matter before the Executive Committee, except as provided in 15.11;
- 15.10.5 Every reasonable endeavour shall be made by the members of the Executive Committee to reach unanimous agreement on any decision, determination or act but, if this fails, a majority of the votes cast on a resolution will be sufficient to approve that resolution; and
- 15.10.6 In the case of a tied vote the chair may cast a deciding vote, in addition to his/her deliberative vote.
- 15.11 Executive Committee members shall
- 15.11.1 disclose in advance,
15.11.2 inform the relevant meeting of material information and answer questions concerning,
15.11.3 not take part in any consideration of and leave the relevant meeting after disclosure concerning and
15.11.4 not be entitled to vote on or sign any document in relation to
- any matter in which they or any person in relation to whom they are a 'connected person' (as defined in the Income Tax Act), has a personal financial interest.
- 15.12 The Secretariat shall keep minutes of the meetings of the Executive Committee, and any of its committees, and include in the minutes:
- 15.12.1 any declaration given by notice or made by an Executive Committee member as required by section 75 with reference to the personal financial interests of the Executive Committee member, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and
- 15.12.2 every resolution adopted by the Executive Committee, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.
- 15.13 Copies of the minutes of every meeting shall be despatched by the person appointed by the Executive Committee from time to time, to all Executive Committee members within one month of the holding of the meeting.

16. OFFICERS, COMMITTEES

- 16.1 The Executive Committee may appoint any officers it considers necessary to better achieve the objects of the Forum.
- 16.2 The Executive Committee may appoint committees of Executive Committee members, and delegate to any such committee any of the authority of the Executive Committee, and/or include in any such committee persons who are not Executive Committee members.

16.3 The authority of a committee appointed by the Forum's Executive Committee, as set out in section 72 (2)(b) and (c) is limited and restricted to the extent that the powers of the Forum are limited by this Memorandum of Incorporation.

17. SECRETARIAT

17.1 The administrative and support functions of the Forum may, with the approval of the Forum in plenary meeting, be rendered by:

17.1.1 any person contracted to perform these functions; or
17.1.2 employees of the Forum appointed by the Executive Committee ("the Secretariat").

17.2 The Executive Committee shall appoint the Secretariat, which may include an Executive Director, on such terms and conditions as the Executive Committee may determine.

17.3 Subject to the direction and control of the Executive Committee:

17.3.1 the Secretariat shall perform the following administrative functions:

17.3.1.1 keeping a register of members in which there shall be recorded the full names and address of each member and the full names of the representative and alternate representative of each member;

17.3.1.2 keeping of the records and accounts referred to in clauses 18 and 20;

17.3.1.3 keeping minutes and records of proceedings of meetings of the Forum and of the meetings of the Executive Committee, and also records of the correspondence and transactions of the Forum;

17.3.1.4 such other administrative duties and functions as the Secretariat may be required to perform by this memorandum or which may be required of it by the Executive Committee in accordance with the terms and conditions of appointment of the Secretariat; and

17.3.2 the Secretariat shall perform the following support functions:

17.3.2.1 the annual, or at such intervals as the Executive Committee may decide, compilation of a report on the activities of the Forum for the information of its members; and

17.3.2.2 such other support duties and functions as the Secretariat may be required to perform by this memorandum or which may be required of it by the Executive Committee in accordance with the terms and conditions of appointment of the Secretariat.

18. ACCOUNTING RECORDS, BANKING AND FINANCIAL MATTERS

18.1 The Forum will receive substantially the whole of its funding from annual subscriptions or other membership fees, or from appropriations by government, provincial administration or a municipality.

18.2 The Forum may not have a share or other interest in any business, profession or occupation carried on by any of its members.

18.3 The Executive Committee members shall cause such accounting records as are prescribed by Section 28 of the Act to be kept.

18.4 The accounting records shall be kept in the registered office of the Forum or at such other place or places as the Executive Committee members think fit and shall always be open to inspection by the Executive Committee members.



- 18.5 The Forum shall comply with such reporting requirements as shall be determined by the Commissioner for the South African Revenue Services, from time to time.
- 18.6 The financial transactions of the Forum shall be administered via one or more bank accounts which shall be opened in the name of the Forum.

19. EXPENDITURE AND USE OF RESOURCES

- 19.1 The income and property of the Forum, whencesoever derived, shall be applied solely towards the promotion of its main object (and not for the specific benefit of any individual member or minority group) or invested and no funds will be distributed to any person other than in the course of undertaking any of its objects and no portion of the income or assets of the Forum may be paid or transferred, directly or indirectly, to the Executive Committee members or persons appointing Executive Committee members of the Forum; provided that this shall not prevent:
- 19.1.1 the payment in good faith of reasonable remuneration to any officer or servant of the Forum, for any services rendered to the Forum.
- 19.1.2 payment of an amount due and payable by the Forum in terms of a bona fide agreement between the Forum and that person or another;
- 19.1.3 payment in respect of any rights of that person, to the extent that such rights are administered by the Forum in order to advance a stated object of the Forum; or
- 19.1.4 payment in respect of any legal obligation binding on the Forum.
- 19.2 No remuneration (as defined in the Fourth Schedule to the Income Tax Act 58 of 1962, as amended ("the Income Tax Act")) shall be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, and no person shall be economically benefitted in any way which is not consistent with the objects of the Forum;
- 19.3 The Forum shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to an Executive Committee member of the Forum or of a related or inter-related Forum, or to a person related to any such Executive Committee member, unless it
- 19.3.1 is in the ordinary course of the Forum's business and for fair value;
- 19.3.2 constitutes an accountable advance to meet
- 19.3.2.1 legal expenses in relation to a matter concerning the Forum; or
- 19.3.2.2 anticipated expenses to be incurred by the person on behalf of the Forum;
- 19.3.3 is to defray the person's expenses for removal at the Forum's request; or
- 19.3.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 19.4 No expenditure shall be incurred by or on behalf of the Forum except on authority of the Executive Committee or of the person or persons to whom the Executive Committee has generally or specifically delegated the power to authorise expenditure.

20. ANNUAL FINANCIAL STATEMENTS AND RETURNS

- 20.1 The Executive Committee members shall, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the members of the Forum such annual financial statements as are referred to in those sections which annual financial statements shall:
- 20.1.1 be prepared within 6 months of the end of each financial year;

- 20.1.2 be audited voluntarily, as provided in this memorandum;
 - 20.1.3 include an auditor's report;
 - 20.1.4 include a report by the Executive Committee members as to the activities and financial state of the Forum; and
 - 20.1.5 be approved by the Executive Committee and signed by an authorised Executive Committee member.
- 20.2 A copy of the annual financial statement shall, at least three weeks prior to the relevant meeting, be sent to every member of the Forum.
- 20.3 The Forum shall file annual returns with the Companies and Intellectual Property Commission within 30 business days of each anniversary of its date of incorporation, along with such payment, documents and information as may be required from time to time.

21. NONPROFIT ACT

- 21.1 The Executive Committee members may apply for the Forum to be registered as a NonProfit Organisation and shall, if so registered, ensure that the Forum complies with all the requirements of the Nonprofit Organisations Act No.71 of 1997.

22. INDEMNIFICATION OF EXECUTIVE COMMITTEE MEMBERS

- 22.1 Every member, director, Executive Committee member and officer of the Forum, every member of any committee of the Forum, and any person employed by the Forum as auditor, shall be indemnified by the Forum against all liability incurred by him as such director, officer or auditor, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which they are acquitted, or in respect of any proceedings which are abandoned or in connection with any application under Section 77(9) of the Act in which relief is granted to him by the Court.
- 22.2 No director, officer or employee of the Forum shall be liable for
- 22.2.1 loss or expense incurred by the Forum through the insufficiency or deficiency of any security in or upon which any of the moneys of the Forum are invested;
 - 22.2.2 any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom monies, securities or effects shall be deposited;
 - 22.2.3 any loss or damage occasioned by any error of judgment or oversight on his/her part; or
 - 22.2.4 any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his/her office, or in relation thereto,

unless the same happened through his/her own gross negligence, gross default, gross breach of duty or wilful misconduct or wilful breach of trust.

- 22.3 The authority of the Forum's Executive Committee to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, to indemnify a director in respect of liability and to purchase insurance to protect the Forum or a director, as set out in sections 78 (3), 78 (5) and 78 (6), is not limited or restricted by this Memorandum of Incorporation.

23. WINDING UP, DE-REGISTRATION OR DISSOLUTION

- 23.1 Upon its winding up, de-registration or dissolution no past or present member or director of the Forum, or person appointing a director of the Forum, is entitled to any part of the net value of the Forum, but the assets of the Forum remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the members of the Forum at or before the time of its dissolution, or failing such determination, by the court and which:

- 23.1.1 is/are non-profit,
- 23.1.2 have objects similar to its main object;
- 23.1.3 if the Forum is so registered, is/are registered in terms of the Nonprofit Organisations Act, 1997; and
- 23.1.4 if the Forum is exempt from income tax, donations tax and estate duty, under the relevant laws of the country is/are:
 - 23.1.4.1 another entity with similar objects which is approved in terms of section 10(1)(d)(iii) or (iv); or
 - 23.1.4.2 any similar public benefit organisation, which has been approved in terms of section 30 of the Income Tax Act;
 - 23.1.4.3 any institution, board or body which is exempt from income tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity; or
 - 23.1.4.4 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) of the Income Tax Act,

which shall be required to use such assets solely for the purpose of carrying on such activities as are similar to the objects of the Forum.